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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND ESTABLISHMENT OF EASEMENTS
OF
SOMMERS BEND
AA PLANNING AREA**

**THIS DECLARATION CONTAINS A BINDING ARBITRATION PROVISION FOR THE RESOLUTION
OF CERTAIN DISPUTES IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT IN
ARTICLE 16 HEREOF. THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES DO NOT
UTILIZE A JURY AND DO NOT PERMIT CLASS ACTION SUITS.**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND ESTABLISHMENT OF EASEMENTS
OF
SOMMERS BEND
AA PLANNING AREA**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS OF SOMMERS BEND AA PLANNING AREA ("Declaration") is made and executed as of this 18th day of September, 2020 by Woodside 05S, LP, a California limited partnership ("Woodside") and Wingsweep Corporation, a California corporation ("Wingsweep") (each a "Declarant" as defined herein) with reference to the facts set forth below.

RECITALS

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

A. Covered Property. Woodside is the fee title Owner of the real property located in the City of Temecula, County of Riverside, State of California described on Exhibit "A". Woodside is also the Owner of the portion of the Annexable Property described on Exhibit "B-1" attached hereto as the Woodside Property, Wingsweep is the Owner of the portion of the Annexable Property described on Exhibit "B-2" attached hereto as the Wingsweep Property and the Guest Builders identified on Exhibit "B-3" are the Owners of the Annexable Property described on Exhibit "B-3". All or any portion of the Annexable Property may be annexed to and made subject to this Declaration. Declarants may also designate, from time to time, other real property in the vicinity of the Covered Property which can be annexed hereto by recordation of Supplementary Declarations. All of the real property described on Exhibit "A" and any of the Annexable Property which is annexed to and make subject to this Declaration is referred to herein as the "Covered Property."

B. Sommers Bend Master Association. The Covered Property is included within a portion of the master planned community known as "Sommers Bend". The Sommers Bend Master Maintenance Association, which is referred to herein as the "Master Association", was formed to perform certain maintenance obligations related to facilities and infrastructure for the benefit of all of the Owners within Sommers Bend. All Owners at Sommers Bend whose property is subject to the Master Declaration are members of the Master Association.

C. Planning Areas in Sommers Bend. Some of the Planning Areas within Sommers Bend, which are referred to herein collectively as the "AQ Planning Area" are planned to be developed as an age-qualified community with its own recreational amenities and with private streets which may be gated. Since the AQ Planning Area will have its own recreational amenities and facilities, the Owners in the AQ Planning Area will not be subject to this Declaration and will not be members of the Association formed pursuant to this Declaration. Except for the AQ Planning Area, Declarants intend that all of the other Planning Areas at Sommers Bend which include the Covered Property and the Annexable Property will be subject to this Declaration which imposes upon the Covered Property covenants, conditions, restrictions and easements to benefit the Covered Property and provides for the establishment of the Sommers Bend AA Planning Area Association. Declarants intend to develop the Covered Property as a master planned development (as defined in Section 2792 of Title 10 of the California Code of Regulations) and as a common interest development pursuant to the Davis-Stirling Common Interest Development Act. The Covered Property is planned to include both residences located on separate Residential Lots and Condominiums. It is also possible that in the future, Apartment Buildings may be developed and included within the Covered Property. The Covered Property is also planned to include the Sommers Bend Clubhouse and Recreational Facilities for the benefit of the Owners. In order to govern and manage the Owners and their Separate Interests, the Sommers Bend AA Planning Area Association which is referred to herein as the "Association", has been or will be formed. The Association will also maintain and manage the Sommers Bend Clubhouse and Recreational Facilities and the other areas designated herein as Association Property and Association Maintenance Areas.

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

E. Guest Builders. Guest Builders may also develop portions of the Covered Property and, in connection therewith, may also establish Subassociations to govern their Neighborhoods. Guest Builders have been granted certain rights to develop market and sell Residences within the Covered Property as described in this Declaration and any Supplementary Declarations.

F. Future Development of the Covered Property. The Covered Property will be developed over a long period of time and therefore needs to evolve to implement the goals and objectives of Declarants, Guest Builders and the City and to address changes in development goals, technology, laws, and to satisfy the needs and desires of the Members and the Owners. The Association Governing Documents must be able to adapt to these changes while protecting the special features that make Sommers Bend distinctive and unique. This Declaration establishes and provides the Association with the powers it needs to govern, operate and maintain the Covered Property as a master planned residential development. This Declaration shall be liberally construed to effectuate its purpose of creating a flexible plan for the subdivision, maintenance, governance, development and marketing of the Separate Interests in the Covered Property. To achieve these goals and to ensure a flexible governance structure, further rights, obligations, allocations, easements and other matters affecting the Covered Property or portions thereof will be identified in Supplementary Declarations recorded in the future.

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

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

ARTICLE 1

DEFINITIONS

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

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

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

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

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

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

1.1.4 Interest at the Applicable Rate; and

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

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

1.3 **“Annexable Property”** means any or all of the real property described on Exhibit “B-1”, Exhibit “B-2” and Exhibit “B-3” which may be annexed hereto by either Declarant in a Supplementary Declaration. Annexable Property shall also include any other real property designated by both Declarant(s) in a Supplementary Declaration which may be made subject to this Declaration in accordance with the provisions set forth in Article 13.

1.4 **“Annexation”** means the process by which the Annexable Property may be made subject to this Declaration set forth in Article 13.

1.5 **“Annual Operating Budget”** means the annual operating budget adopted by the Association from time to time.

1.6 **“Apartment Area”** means any real property designated as an Apartment Area in a Supplementary Declaration, which is or will be developed with Apartment Buildings and other Improvements used or intended to be used for multi-family rental apartment use.

1.7 **“Apartment Building”** means an apartment building within an Apartment Area.

1.8 **“Apartment Unit”** means a residential apartment in an Apartment Building located within an Apartment Area.

1.9 **“Applicable Laws”** means any law, regulation, rule, order and ordinance of any Governmental Agencies which are applicable to the Covered Property, now in effect or as hereafter promulgated.

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

1.11 “**Applicant**” has the meaning set forth in Section 8.3.

1.12 “**AQ Association**” means the owners association formed to govern and manage the AQ Planning Area pursuant to the AQ Declaration.

1.13 “**AQ Declaration**” means the Declaration of Covenants, Conditions and Restrictions and Establishment of Easements for the AQ Planning Area or similar document which establishes the AQ Association.

1.14 “**AQ Planning Area**” means any portion of the real property included in Sommers Bend which is subject to the AQ Declaration.

1.15 “**Association**” means the Sommers Bend AA Planning Area Association, a California non-profit mutual benefit corporation, or any successor entity charged with the duties, obligations and powers of the Association.

1.16 “**Association Articles**” means the Articles of Incorporation of the Association filed in the Office of the Secretary of State and any amendments thereto.

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

1.17.1 “**Capital Improvement Assessments**” means the Capital Improvement Assessments that are levied by the Association pursuant to Section 6.8.

1.17.2 “**Compliance Assessments**” means the Compliance Assessments that are levied by the Association pursuant to Section 6.9.

1.17.3 “**Regular Assessments**” means the Regular Assessments that are levied by the Association pursuant to Section 6.5.

1.17.4 “**Special Assessments**” means the Special Assessments that are levied by the Association pursuant to Section 6.7.

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

1.18 “**Association Board**” means the Board of Directors established to operate the Association.

1.19 “**Association Bylaws**” means the Bylaws of the Association which shall be adopted by the Association Board as the same may from time to time be amended.

1.20 “**Association Design Guidelines**” means the design guidelines adopted by the Association and any amendments thereto.

1.21 “**Association Fence and Wall Responsibility Plan**” means any plan attached to a Supplementary Declaration designating the fences and walls within the portion of the Covered Property described in such Supplementary Declaration and the allocation of Maintenance Obligations for such fences and walls.

1.22 “**Association Governing Documents**” or “**Governing Documents**” means collectively, this Declaration and the Association Bylaws, Association Articles, Association Rules, Association Design Guidelines, Supplementary Declarations and other governing instruments of the Association and any amendments or supplements to any of the foregoing.

1.23 “**Association Maintained Drainage Facilities**” means any Storm Water and Water Quality Improvements which are required to be maintained by the Association. The Association Maintained Drainage Facilities which may be included in a Phase shall be designated in a Supplementary Declaration.

1.24 “**Association Maintained Slopes**” means any slopes included within any Association Property or Separate Interests required to be maintained by the Association. The Association Maintained Slopes Areas in a Phase, if any, shall be designated in a Supplementary Declaration.

1.25 “**Association Maintained Trails**” means the trails and pathways and other trail enhancements included within the Covered Property, if any, which are required to be maintained by the Association, and intended for pedestrian, bicycle and equestrian uses. It is currently intended that the Master Association will maintain the trails within the Sommers Bend Community. However, if any trails and pathways are required to be maintained by the Association, such Association Maintained Trails shall be designated in a Supplementary Declaration.

1.26 “**Association Maintenance Areas**” means any property the Association is obligated to maintain as described in this Declaration and/or Supplementary Declarations. The Association Maintenance Areas shall be designated by Phase in the Supplementary Declarations.

1.27 “**Association Maintenance Manual**” means the maintenance manual which may be provided by Woodside for the Sommers Bend Clubhouse and Recreational Facilities or which may be provided by either Declarant or any Guest Builder as to any other portions of the Covered Property required to be maintained by the Association which sets forth the maintenance recommendations, standards and schedules for the maintenance and preservation of the Improvements situated within the Association Property and within the Association Maintenance Areas by the Association, as updated and amended from time to time by Declarants or the Association Board, pursuant to the terms of the Association Governing Documents.

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

1.29 “**Association Rules**” means the rules and regulations adopted by the Association Board as amended or supplemented from time to time.

1.30 “**Authorized Users**” means the employees, consultants, contractors, subcontractors and agents of Declarant, a Guest Builder or the Association.

1.31 “**Bungalows**” means those portions of the Association Property upon which any bungalows may be developed which, if developed, shall be used for occupancy by guests of the Owners and if so authorized by the Association, other persons in conformance with the Association Governing Documents. Unless the context otherwise requires, references to the Bungalows shall include all of the furniture, fixtures and equipment within the Bungalows. By referencing Bungalows, nothing contained herein is intended to be a representation that the Sommers Bend Clubhouse and Recreational Facilities or as other portions of the Association Property will include Bungalows.

1.32 “**City**” means the City of Temecula, California.

1.33 “City Agreements” means any agreements entered into or required to be entered into by either of the Declarants, a Declarant Party, a Guest Builder (with the consent of both Declarants) or any other Person pursuant to the Sommers Bend Entitlements which impose obligations to be satisfied by the Association, which agreements may be assigned to the Association or Subassociation or a successor Owner pursuant to the terms of the applicable City Agreement as more particularly described in Section 17.8. Additional City Agreements may be, but shall not be required to be, identified in Supplementary Declarations.

1.34 “City Design Guidelines” means the design, development and site plan guidelines, established pursuant to the Specific Plan and any other design guidelines established under the Sommers Bend Entitlements. The City Design Guidelines are in addition to the Association Design Guidelines.

1.35 “Claims” means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses and/or expenses, including, without limitation, reasonable attorneys’ fees and costs and the costs and expenses of enforcing any indemnification, defense or hold harmless obligations under this Declaration or the other Association Governing Documents.

1.36 “Common Expenses” means the costs and expenses incurred by the Association associated with the maintenance, operation, governance and services of the Association including, without limitation, the following:

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

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

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

1.36.4 expenses incurred in complying with the Sommers Bend Entitlements and Applicable Laws relating to the Covered Property and the obligations of the Association hereunder (but which are not otherwise the obligations of the Master Association required to be performed by the Master Association under the Master Declaration), including, without limitation, expenses to comply with requirements for recycling or to otherwise comply with conservation requirements imposed by the Sommers Bend Entitlements, Applicable Laws and the Association Governing Documents;

1.36.5 expenses incurred in administering any committees formed by the Association including, without limitation, the Design Review Committee;

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

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

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

1.36.9 expenses incurred for attractions and promotional events, including, without limitation, expenses of any decorations and seasonal displays and events (e.g., egg hunts, Fourth of

July picnics, etc., fairs, displays, farmers market, musical and other performances and programs and other events and attractions sponsored by the Association);

1.36.10 if Bungalows are constructed, expenses from operating any rental or use program for the Bungalows and for maintenance of any personal property, fixtures and appliances in the Bungalows;

1.36.11 expenses of operating and maintaining any Utility Facilities serving the Association Property or Association Maintenance Areas;

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

1.36.13 expenses, if any, required for the maintenance of the Association Maintenance Areas required by any Governmental Agency to be maintained by the Association;

1.36.14 expenses for any utilities, trash disposal, patrols (if any) and other services benefiting the Owners and their Separate Interests to the extent such services are provided and paid for by the Association;

1.36.15 expenses of insurance and bonds maintained by the Association;

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

1.36.17 expenses of bonding of the members of the Board and any professional managing agent or any other person handling the funds of the Association;

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

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

1.36.20 expenses incurred in connection with fulfilling obligations imposed upon the Association under the City Agreements, if any; and

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

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

1.37 "**Condominium**" means a condominium within the Covered Property established under Section 4125 of the California Civil Code.

1.38 "**County**" means the County of Riverside.

1.39 "**Covered Property**" means all the real property described on Exhibit "A" attached hereto and all Improvements thereon and any real property which shall become subject to this

Declaration by Annexation. In the event of the de-annexation of any Covered Property previously subject to this Declaration, the term "Covered Property" shall not include any such de-annexed land.

1.40 "Custom Home" means a Residence constructed by an Owner on a Custom Homesite.

1.41 "Custom Homesite" means the legally subdivided lots upon which a Residence and associated Improvements shall be constructed by an Owner who acquires such Custom Homesite.

1.42 "Custom Homesite Improvements" means any Custom Home and other structures of any type or kind installed in connection with the initial construction of a Custom Home on a Custom Homesite including, without limitation, grading, installation of utilities, landscaping and hardscaping and/or the Custom Home in accordance with the terms of the Governing Documents, including without limitation any supplemental Declaration which imposes requirements relating to the development of the Custom Homesite and the construction of the Custom Homesite Improvements.

1.43 "Custom Homesite Supplementary Declaration" means any Supplementary Declaration recorded by a Declarant who conveys a Custom Homesite to a First Purchaser imposing requirements and restrictions relating to the development of a Custom Homesite and the construction of the Custom Homesite Improvements.

1.44 "Declarant" means each of Woodside 05S, LP, a California limited partnership ("Woodside") and Wingsweep Corporation, a California corporation ("Wingsweep"), and shall include those successors and assigns of Woodside or Wingsweep, as applicable, who acquire or hold title to any part or all of the Covered Property acquired from Woodside or Wingsweep for purposes of development and are expressly named as a successor Declarant to all or a portion of Declarant's rights in an Assignment of Declarant's Rights ("Assignment of Declarant's Rights") executed by Woodside and/or Wingsweep, or a successor Declarant, and recorded in the Official Records assigning the rights and duties of such Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties. To the extent an Assignment of Declarant's Rights assigns rights but not duties or obligations, if any, of a Declarant hereunder, the consent of the other Declarant shall not be required. To the extent an Assignment of Declarant's Rights assigns obligations (which assignment may also include an assignment of rights), the consent of both Declarants to the Assignment of Declarant's Rights shall be required. Any such assignment of rights may be subject to such conditions or limitations as the assigning Declarant may impose in its sole and absolute discretion. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Covered Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale and a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant by sale, merger, reverse merger, consolidation sale of stocks or assets, operation of law or otherwise.

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

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

1.47 "Declaration" means this Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Sommers Bend AA Planning Area, as this Declaration may from time to time be amended or supplemented.

1.48 “**Design Review Committee**” means the committee appointed by the Association to perform the design review and other services pursuant to Article 8 and the Association Design Guidelines.

1.49 “**DRE**” means the California Department of Real Estate, and any successor agency. References herein to any matters requiring review by the DRE shall apply only so long as there are Separate Interests within the Covered Property or the Annexable Property which are being sold or planned to be sold for which Public Reports are required to be issued in connection with the conveyances of any Separate Interests to First Purchasers.

1.50 “**Eligible Mortgage Holder**” means any First Mortgagee who has given written notice to the Association specifying its name, address and the Separate Interest encumbered by the First Mortgage and requesting written notice of any or all of the events to which such Eligible Mortgage Holder is entitled to notice specified in this Declaration.

1.51 “**Emergency**” means any situation, condition or event which threatens substantial imminent damage or injury to Person or property.

1.52 “**Fannie Mae**” means the Federal National Mortgage Association.

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

1.54 “**Final Map**” means a subdivision or parcel map filed in the Official Records that subdivides any portion of the Covered Property into legal parcels or lots.

1.55 “**Fire Suppression Area(s)**” means the Fire Suppression Areas shown in the general pictorial representation of the Fire Suppression Areas depicted on Exhibit “D” attached hereto. Any modifications or additions to the Fire Suppression Areas in a Phase, if any, shall be described in Supplementary Declarations.

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

1.57 “**First Mortgagee**” means the Mortgagee of a First Mortgage.

1.58 “**First Purchaser**” means the Owner of a Separate Interest who acquired the Separate Interest under authority of a Public Report from a Declarant or a Guest Builder.

1.59 “**Fiscal Year**” means the fiscal accounting and reporting period of the Association selected by the Association Board.

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

1.61 “**Governmental Requirements**” means all Applicable Laws and any other applicable rules, regulations, orders, ordinances, subdivision requirements, zoning restrictions, map conditions, and all other applicable requirements (including all requirements to have or to obtain permits) of any Governmental Agencies.

1.62 “**Guest Builder**” means a Person designated by a Declarant as a Guest Builder in a recorded document who acquires a portion of the Covered Property for the purpose of developing such portion of the Covered Property for resale to the general public, or a Person who is otherwise designated as a Guest Builder by a Declarant in a Supplementary Declaration or other recorded document. The term “Guest Builder” does not include the Declarants.

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

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

1.65 “**Institutional Mortgagee**” means a First Mortgagee that is (a) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (b) an insurer or governmental guarantor of a First Mortgage; (c) any First Mortgagee that is a Federal or State Agency; or (d) any other institution specified by the Association Board in a recorded instrument that is the Mortgagee of a Mortgage or the beneficiary of a deed of trust encumbering a Separate Interest.

1.66 “**Lessee**” means any tenant or lessee occupying a portion of the Covered Property with a written lease agreement.

1.67 “**Maintenance Manual**” or “**Maintenance Guide**” means the Association Maintenance Manual and any other manual or guide provided by a Declarant or a Guest Builder to a First Purchaser imposing standards and requirements for maintenance.

1.68 “**Maintenance**” or “**Maintain**” whether capitalized or not, means maintain, repair and replace unless otherwise specified in this Declaration or a Supplementary Declaration.

1.69 “**Maintenance Obligations**” means the obligations of the Association, each Subassociation and the Owners to perform (a) all reasonable maintenance consistent with the terms of the applicable Maintenance Manual and the Sommers Bend Standards and Sommers Bend AA Planning Area Standards, and (b) any maintenance obligations of the Association, a Subassociation or an Owner set forth in this Declaration or a Supplementary Declaration or any of the other Association Governing Documents, Master Governing Documents or Subassociation Governing Documents.

1.70 “**Maintenance Responsibility Map**” means the plan attached hereto as **Exhibit “C”** which is a general pictorial representation of certain areas which it is anticipated the Association shall maintain. The Maintenance Responsibility Map may be supplemented as portions of the Annexable Property are annexed to and made subject to this Declaration.

1.71 “Majority of the Voting Power” means the vote, consent or approval of all of the Member(s) representing a majority of the Voting Power of the Association and, unless otherwise provided herein, Declarants until the Declarants' Rights Termination Date. As to property then owned by a Declarant, such Declarant may designate in a Supplementary Declaration any matters which may require a vote of less than a majority of the Voting Power within the real property described in such Supplementary Declaration as to a particular matter which affects fewer than all of the Owners.

1.72 “Master Association” means the Sommers Bend Master Maintenance Association, a California non-profit mutual benefit corporation.

1.73 “Master Association Assessments” means the assessments levied by the Master Association pursuant to the Master Declaration.

1.74 “Master Association Maintained Walls and Fences” means the walls and fences (or portions thereof), if any designated for maintenance by the Master Association, pursuant to the Master Governing Documents.

1.75 “Master Association Maintenance Areas” means all real property and the Improvements situated on such real property owned by the Master Association or required to be maintained by the Master Association pursuant to the Master Governing Documents.

1.76 “Master Association Rules” means the rules and regulations adopted by the Master Board as amended or supplemented from time to time.

1.77 “Master Board” means the Board of Directors established to operate the Master Association.

1.78 “Master Bylaws” means the Bylaws of the Master Association which shall be adopted by the Master Board as the same may from time to time be amended.

1.79 “Master Declaration” means the First Amended and Restated Master Declaration of Covenants, Conditions and Restrictions and Establishment of Easements of Sommers Bend recorded in the Official Records as it may be further amended and supplemented from time to time.

1.80 “Master Governing Documents” means collectively the Master Declaration, the Master Articles, the Master Bylaws, the Master Association Rules and any Supplementary Declarations and other documents described as the Master Governing Documents in the Master Declaration and any amendments or supplements to any of the foregoing.

1.81 “Member” means every Person who holds a membership in the Association.

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

1.83 “Mortgagee” means the holder of a Mortgage, including, without limitation, a beneficiary under a deed of trust as well as a mortgagee.

1.84 “Neighborhood” means any area within the Covered Property developed by a Declarant or a Guest Builder which may be designated as a Neighborhood in the Supplementary Declaration.

1.85 “Notice and Hearing” means the procedure which gives an Owner notice of an alleged violation of the Association Governing Documents and the opportunity for a hearing before the Association Board.

1.86 “Notice of Delinquent Assessments” has the meaning set forth in Section 6.15.1.

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

1.88 “Official Records” means the Official Records of the County Recorder of the County.

1.89 “Offsite Maintenance Areas” means any real property or facilities located outside of the Covered Property which the Association is obligated to maintain. Offsite Maintenance Areas, if any, will be designated and/or depicted in a Supplementary Declaration. References to Association Maintenance Areas include the Offsite Maintenance Areas.

1.90 “Owner” means the record owner from time to time, whether one (1) or more Persons, of fee simple title to any Separate Interest in the Covered Property. Without limiting the foregoing, the term Owner includes Declarant and each Guest Builder, unless otherwise specified in this Declaration or any Supplementary Declaration. The term Owner does not include Persons who hold an interest in a Separate Interest merely as security for the performance of an obligation, unless and until such Person acquires fee title thereto.

1.91 “Parcel” means each of the separate parcels or lots shown and described on a Final Map.

1.92 “Permitted Horse Lots” means the Residential Lots upon which horses may be maintained subject to compliance with City requirements, requirements set forth in this Declaration and the other Association Governing Documents. Residential Lots upon which horses shall be permitted to be maintained shall be designated as “Permitted Horse Lots” in a Supplementary Declaration, which Supplementary Declarations may also impose requirements and restrictions on such Permitted Horse Lots in addition to any requirements and restrictions set forth in this Declaration.

1.93 “Permitted Recreational Vehicle Separate Interests” means the Separate Interests upon which recreational vehicles may be maintained subject to compliance with City requirements, requirements set forth in this Declaration and the other Association Governing Documents. Separate Interests within which recreational vehicles shall be permitted shall be designated as “Permitted Recreational Vehicle Separate Interests” in a Supplementary Declaration which Supplementary Declarations may also impose requirements and restrictions on such Permitted Recreational Vehicle Separate Interests.

1.94 “Permitted Users” means all Occupants and any Person whose presence within the Covered Property is approved by or is at the request of the Association, a Subassociation or a particular Owner or Lessee, including, without limitation, the respective employees, agents, contractors, customers, family, guests, invitees, licensees and concessionaires of such Persons.

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

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

1.97 “Planning Areas” means each of the planning areas for Sommers Bend described in the Specific Plan.

1.98 “Plans” has the meaning set forth in Section 8.3.

1.99 “Private Streets” means those streets, roads, drives, and/or alleys and lighting improvements, parkways, sidewalks and other corresponding infrastructure, if any, which are owned or maintained by the Association. The Private Streets which shall be owned and/or maintained by the Association shall be described and/or depicted in Supplementary Declarations and shall be included in the Special Benefit Maintenance Areas unless otherwise specified in a Supplementary Declaration.

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

1.101 “Public Street Parkway Maintenance Areas” means the parkway areas located within the public streets within and/or adjacent to the Covered Property which the Association is obligated to maintain pursuant to the Sommers Bend Entitlements. The Public Street Parkway Maintenance Areas which the Association shall be obligated to maintain shall be described in Supplementary Declarations.

1.102 “Public Use Areas” means any portion of the Association Property required to be made available for public or quasi-public use pursuant to the requirements of the City. Public Use Areas may include, without limitation, open spaces, trails and other facilities in the Covered Property. Public Use Areas may be designated on a Final Map and/or a Supplementary Declaration.

1.103 “Residence” means a residential dwelling located within the Covered Property.

1.104 “Residential Lot” means a subdivided lot shown on a Final Map approved for the development of a single family Residence.

1.105 “Restricted Access Areas” means those portions of the Association Property or Association Maintenance Areas to which access is restricted under the Sommers Bend Entitlements or the other Association Governing Documents, or by the Association (if access is permitted to be restricted under the Sommers Bend Entitlements) pursuant to this Declaration or in connection with the performance by the Association of its Maintenance Obligations under this Declaration. Additional Restricted Access Areas may be (but shall not be required to be) designated in a Supplementary Declaration. Such Restricted Access Areas are in addition to any other areas over which access is restricted under the Master Declaration.

1.106 “Roripaugh Ranch – Phase 2 Specific Plan” or “Specific Plan” means the Roripaugh Ranch – Phase 2 Specific Plan and all amendments thereto including but not limited to Amendment Number 4 approved by the City on January 23, 2018, and all further amendments thereto.

1.107 “Separate Interest” means any of the following: (a) any Residential Lot shown on any Final Map upon which a Residence is or intended to be constructed, and (b) any Condominium within the Covered Property. The term “Separate Interest” shall not include any Association Property or Subassociation Property.

1.108 “Sommers Bend AA Planning Area” means all of the Planning Areas within Sommers Bend except the AQ Planning Area.

1.109 “Sommers Bend AA Planning Area Standards” means the higher of the following standards: (a) the standards and quality required to maintain, repair and restore the Association Maintenance Areas and/or the Association Property and any other applicable portions of the Covered Property to the condition that existed as of the date the Residences, Sommers Bend Clubhouse and Recreational Facilities and other Improvements within an area were first completed, (b) the standard required to maintain the Association Property and the Association Maintenance Areas and the Residences and other Improvements within the Covered Property to the level contemplated under the Sommers Bend Entitlements, (c) the Sommers Bend Standards, and (d) the standards set forth in the applicable Maintenance Manual.

1.110 “Sommers Bend Clubhouse and Recreational Facilities” means the Sommers Bend Clubhouse and Recreational Facilities located or planned to be located within Planning Area 30 which, upon conveyance to the Association shall be owned and operated by the Association, and if developed as planned, will include a clubhouse and other recreational facilities.

1.111 “Sommers Bend Community” or “Sommers Bend” means all of the real property subject to the Master Declaration.

1.112 “Sommers Bend Entitlements” means the Specific Plan, the City Agreements, any conditions of approval issued by the City in connection with the approval of any tentative maps for any portion of the Sommers Bend Community, and any other entitlements, permits, requirements, regulations and authorizations relating to Sommers Bend or any portion thereof imposed from time to time by the City or other Governmental Agencies as a condition of development.

1.113 “Sommers Bend Standards” means the standards set forth in the Master Declaration and Master Governing Documents described as the Sommers Bend Standards.

1.114 “Special Benefit Area Budget” means those elements of the Annual Operating Budget or any separate budget prepared by the Covered Property which itemize the cost components to be assessed against portions of the Covered Property within a Special Benefit Area, as provided in this Declaration and the other Association Governing Documents.

1.115 “Special Benefit Area Rules” means any rules established by the Association applicable to a Special Benefit Area.

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

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

1.118 “State-Authorized Businesses” means those types of in-home businesses required by State law to be allowed to operate within a Residence.

1.119 “Storm Drain and Water Quality Improvements” or “Stormwater Facilities” means any private storm drain and water quality protection improvements and systems including, without limitation, detention and storm water basins and other pollution control devices located in the Covered Property, including any which may be required to be maintained by the Association or the Owners or any Subassociation. Stormwater Facilities located in the Association Property or an Owner’s Separate Interest may be designated in a Supplementary Declaration.

1.120 “Subassociation” means any California corporation or unincorporated association, established in connection with a Subassociation Declaration, the membership of which is composed of Owners of Separate Interest within the area of the Covered Property covered by the Subassociation Declaration. The Master Association and the Association are not Subassociations.

1.121 “Subassociation Assessments” means assessments levied pursuant to any Subassociation Declaration on the Separate Interests, subject to the jurisdiction of a Subassociation.

1.122 “Subassociation Declaration” means any declaration of covenants, conditions and restrictions which affects solely a portion of the Covered Property and which establishes a Subassociation. This Declaration and any Supplementary Declarations recorded pursuant hereto are not Subassociation Declarations.

1.123 “Subassociation Governing Documents” means a Subassociation Declaration and any bylaws, articles of incorporation, rules, architectural guidelines, supplemental declarations and other governing instruments of a Subassociation.

1.124 “Subassociation Property” means the real property owned by a Subassociation.

1.125 “Supplementary Declaration(s)” means those certain Supplementary Declarations of Annexation or other Supplementary Declarations or similar instruments which may be recorded as provided in Section 9.13. Unless otherwise specified herein, references to a Supplementary Declaration include a Custom Homesite Supplementary Declaration.

1.126 “Telecommunications Facilities” means systems, equipment, Improvements, wiring and services for cable television, cellular, communications, telecommunications, antenna, high-speed data, telephone and all related intranet, internet, information transfer, transmission, video and other similar services and any technological evolutions of the foregoing.

1.127 “Utility Facilities” means all utility, communication, heating and ventilation and other similar facilities including, without limitation, intake and exhaust systems, any back flow preventers, any drainage systems, ducting systems for ventilation and utility services, water systems, sanitary sewer systems, natural gas systems, electrical systems and all other utility systems, conduits, cabling and facilities servicing the Covered Property which are situated in, on, over and under, or located within the Covered Property.

1.128 “Voting Power” means the votes allocated to the Members as provided under Article 5.

1.129 “Water Quality Maintenance Agreements” means those certain Water Quality Management Plan Operation and Maintenance Agreements recorded or to be recorded in the Official Records, and any amendments or supplements thereto. Any Water Quality Maintenance Agreements subsequently recorded for other portions of the Covered Property shall be attached to the applicable Supplementary Declarations covering such portion of the Covered Property.

1.130 “Water Quality Management Plan” or “WQMP” means that certain Water Quality Management Plan for Sommers Bend which is required to be implemented by the Sommers Bend Entitlements.

ARTICLE 2

DESCRIPTION OF THE SOMMERS BEND AA PLANNING AREA AND ESTABLISHMENT OF EASEMENTS

This Article describes the easements necessary for the Association to exercise its rights and obligations under the Association Governing Documents, the easements necessary for Declarants and Guest Builders to implement the development plan and marketing for the Covered Property, and the easements necessary for the Associations and Owners to exercise their rights and participate and enjoy the overall features and amenities of the Covered Property intended for their use. Each Owner's rights of use within the Covered Property are limited by some of the property rights which are described in this Article.

2.1 Description of the Sommers Bend AA Planning Area. If developed as planned, the Covered Property will consist of the Covered Property and any Annexable Property that may be added to

the Covered Property under this Declaration. The Covered Property includes areas intended for the use by the Association, the Subassociations, the Owners and their Permitted Users subject to the rights and limitations set forth in this Declaration and the other Association Governing Documents and the Master Governing Documents. The Covered Property may also include Public Use Areas for use by the Owners, their Permitted Users and members of the public.

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

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

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

2.4.1 Easements Reserved In Favor of Declarants. As to a Declarant, any easement reserved to Declarants in this Article 2 shall only apply to real property owned by such Declarant.

2.5 Easements for Access.

2.5.1 Non-Exclusive Easements for Association Property. Declarants each hereby reserve to themselves with respect to the portions of the Covered Property owned by such Declarant for each of their benefit and the benefit of their Permitted Users, together with the right to grant and transfer the same and grant to the Owners for their benefit and the benefit of their Permitted Users a non-exclusive easement for ingress, egress and use in and to the Association Property, and any other areas designated in a Supplementary Declaration; provided, however, that Owners and their Permitted Users shall not have easements for ingress, egress or use of any Restricted Access Areas. The Association Board may impose restrictions or limitations on access to the Association Property and Association Maintenance Areas, including, without limitation, restrictions and limitations described in Sections 3.2.5, Section 3.2.9, Section 3.2.11 and Section 3.2.16 and as otherwise set forth in the Association Rules or any Supplementary Declarations.

2.5.2 Non-Exclusive Easement for Association Maintained Trails. Declarants hereby reserve to themselves for their benefit and the benefit of their Permitted Users, together with the right to grant and transfer to same and hereby grant to the Owners for their benefit and the benefit of their Permitted Users a non-exclusive easement for ingress, egress and use of the Association Maintained Trails, if any, subject to the rights of the Association to restrict access, including restrictions on access by certain motorized and non-motorized wheeled equipment deemed inappropriate or a hazard by the Association Board or as otherwise restricted under the Association Rules or Governmental Requirements. In no event shall the Association restrict public access to the Association Maintained Trails to the extent required pursuant to the Sommers Bend Entitlements.

2.5.3 Private Streets. Declarants each hereby reserve to themselves for their benefit and the benefit of their Permitted Users, over any Private Streets developed by such Declarant or any Guest Builder to whom such Declarant has conveyed portions of the Covered Property upon which

Private Streets are or will be located and grant to the Owners for their benefit and the benefit of their Permitted Users, a non-exclusive easement for vehicular and pedestrian ingress and egress over and across any Private Streets, except that, for any Private Streets included in a Special Benefit Area, such access may be restricted to the Owners of the Private Streets in the Special Benefit Areas and their Permitted Users as may be set forth in a Supplementary Declaration and, in connection with the conveyance of any Private Streets to the Association, other restrictions on access may be imposed. The Association Governing Documents may impose additional restrictions on access on such Private Streets, including, without limitation, restrictions imposed by the Association in connection with the performance of its Maintenance Obligations hereunder.

2.6 Easements in Favor of Declarants and the Association.

2.6.1 Easements for Performance of Obligations and Enforcement of Rights.

Declarants each hereby reserve to themselves, for their benefit and the benefit of their Permitted Users, together with the right to grant and transfer the same, and grant to the Association, for its benefit and the benefit of its Permitted Users a non-exclusive easement on, over, under, through and across the Covered Property for performing their duties and exercising their powers described in this Declaration including for the purpose of taking such actions as may be reasonably required to exercise the remedies of such Declarant or the Association (as applicable) in regard to any violation of this Declaration or any of the other Association Governing Documents or the applicable Master Governing Documents. Such easements include, without limitation, a non-exclusive easement over, upon, across and through all Association Property and Association Maintenance Areas, and (to the extent necessary) all portions of the Covered Property for the purpose of performing such maintenance as the Association is authorized or required to perform under the Association Governing Documents and the Sommers Bend Entitlements, and such access as may be reasonably required in connection with such activities. In the case of any such entry which will materially restrict access or use of such portions of the Covered Property over, upon, across and through any Covered Property that is not owned by the Association, or included in the Association Maintenance Areas such portions of the Covered Property, the Association shall endeavor to provide reasonable prior notice to the Association or the Owner of the affected portions of the Covered Property. It shall be the responsibility of any Subassociation that receives notice from the Association to provide such notice to that Association's members, as may reasonably necessary.

2.6.2 Events, Services and Concessions. Declarants each hereby reserve to themselves, together with the right and power to grant the same to their Guest Builders and other Permitted Users, a non-exclusive easement over the Association Property and other Association Maintenance Areas and other portions of the Covered Property to conduct promotional and sales activities, events, programs and provide other services within such portions of the Covered Property.

2.6.3 Easements for Telecommunication Facilities. Declarants each hereby reserve to themselves, together with the right and power to grant the same, including the right to grant such easements to the Association non-exclusive easements through the areas beneath the surface of the Association Property, Association Maintenance Areas, and Private Streets for the installation of Telecommunication Facilities and for maintenance of Telecommunication Facilities (to the extent either a Declarant or a Guest Builder or the Association has the obligation and/or right to maintain such Telecommunication Facilities) and each Declarant further reserves to itself, the right to any revenue obtained from such Telecommunications Facilities installed by such Declarant or any Guest Builder as to which a Declarant has assigned its rights unless such rights have been transferred to the Association.

2.6.4 Public Use. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same over any Private Streets initially owned by such Declarant, and grant to the Association (a) the right and authority to grant to the City or other Governmental Agency one or more easements, licenses or other rights over, upon and across the Association Property, or any portion thereof, and (b) the right and authority to grant (with the prior consent of the Declarants until the Declarants' Rights Termination Date) to the public or to other Persons who are not Owners one or more easements, licenses or other rights over, upon and across the Association Property for such purposes as Declarants or the Association may deem appropriate,

including, without limitation, for the purpose of permitting the City to perform various obligations and responsibilities within the Covered Property, including ingress and egress easements for Emergency purposes. Such rights in favor of the City include, without limitation, any rights of the City, if any, established under the City Agreements.

2.6.5 Other Easements. Declarants anticipate that the Covered Property shall be subject to additional easements as set forth in the Supplementary Declarations, as well as in any Final Maps, the Sommers Bend Entitlements and any other agreements recorded against the Covered Property. Nothing in this Declaration shall be deemed to limit the rights of Declarants or, with the prior consent of the Declarant who has conveyed to a Guest Builder any portion of the Covered Property or Annexable Property, the applicable Guest Builder(s) and/or the Association, to grant or reserve any additional easements over any portion of the Covered Property to such grantees and for such purposes as Declarant or the Association (as applicable) may deem appropriate, provided that any such easement shall not be inconsistent with the easement rights granted in this Declaration.

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

2.7.1 Easements to Exercise Rights of Declarants. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same, for their benefit and the benefit of any Guest Builders acquiring portions of the Covered Property or Annexable Property from such Declarant, a non-exclusive easement for ingress and egress to perform their duties and exercise their powers granted or reserved in this Declaration to Declarants or the Guest Builders, including, without limitation, the easement rights described in this Section 2.7.1 and the rights and powers described in Article 9.

2.7.2 Development Easements in Favor of Declarants. Declarants each hereby reserve to themselves together with the right and power to grant and transfer the same, for their benefit and the benefit of any Guest Builders acquiring portions of the Covered Property or Annexable Property from such Declarant, and each of their Permitted Users, non-exclusive easements over the Covered Property for access to, and ingress and egress over and across, any portions of the Covered Property as are reasonable and necessary to undertake and complete the work of development, construction, marketing, conveyance and/or repair and replacement of the Improvements and the right to exercise any warranty or rights to repair granted to Declarants or a Guest Builder under this Declaration, or Subassociation Declaration or any sales or other conveyance or lease documents entered into by a Guest Builder with an Owner or Lessee and any other agreements between a Declarant, a Guest Builder and/or an Owner.

2.7.3 Easements to Declarant for Annexable Property. Declarants each hereby reserve to themselves together with the right and power to grant and transfer the same, for their benefit and the benefit of any Guest Builders acquiring portions of the Covered Property or Annexable Property from such Declarant, an easement over, upon, through and across the Covered Property for the purpose of reasonable ingress to and egress from, over and across the Covered Property to the Annexable Property until all of such Annexable Property is annexed to the Covered Property.

2.7.4 Maintenance and Repair. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same, for their benefit and the benefit of any Guest Builders acquiring portions of the Covered Property or Annexable Property from such Declarant, and each of their Authorized Users, a non-exclusive easement over, upon, through and across the Covered Property for access to perform necessary maintenance or repair of any Improvements constructed by a Declarant or a Guest Builder or their respective Authorized Users or to exercise any warranty rights related thereto.

2.7.5 Installation of Additional Improvements. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same, for their benefit and the benefit of any Guest Builders acquiring portions of the Covered Property or Annexable Property from such Declarant, and each of their Authorized Users, the right to install and operate within the Association

Property and other Association Maintenance Areas facilities and Improvements, as may be deemed appropriate by the applicable Declarant in connection with the development of the Covered Property owned by such Declarant and/or as may be required by the Sommers Bend Entitlements.

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

2.7.7 Drainage. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same, for their benefit and the benefit of any Guest Builders acquiring portions of the Covered Property or Annexable Property from such Declarant and each of their Permitted Users, a non-exclusive easement through and across any portions of the Covered Property within which any Association Maintained Drainage Facilities are located for the drainage of water.

2.7.8 Easements for Signage. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same, for their benefit and with the prior consent of the Declarant conveying any portion of the Covered Property or Annexable Property to a Guest Builder for the benefit of such Guest Builder and each of their Permitted Users, an easement on, over, under, through and across the Covered Property to install and maintain, identification, promotional, and other signage (including, without limitation, banners, pennants, flags, balloons and similar displays) required or deemed necessary by Declarants or a Guest Builder who has been granted such rights.

2.7.9 Bonds or Other Security. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same for their benefit and with the prior consent of the Declarant conveying any portion of the Covered Property or Annexable Property to a Guest Builder for the benefit of such Guest Builder and each of their Permitted Users, the right to enter upon any portion of the Association Property or Association Maintenance Areas to perform any work required to be performed under any of the Sommers Bend Entitlements or to cure any failure of the Association or a Subassociation or any Owner to perform any work required as a condition to the release of any bonds or other security posted with a Governmental Agency or any other obligee.

2.7.10 Lighting Easement. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same for their benefit and with the prior consent of Declarant conveying any portion of the Covered Property or Annexable Property to a Guest Builder for the benefit of such Guest Builders and their Authorized Users, non-exclusive easements over and (ongoing any portion of the Covered Property or Annexable Property) across the Association Property and the Association Maintenance Areas and other areas within the Covered Property to install, operate, maintain, repair and replace lighting, including, without limitation, holiday lighting.

2.8 Easements in Favor of the Association, Subassociations and Owners.

2.8.1 Encroachments. Declarants each hereby reserve to themselves, together with the right and power to grant and transfer the same, for their benefit and for the benefit of any Guest Builders and for the benefit of the Association, each Subassociation and, to the extent applicable, each Owner, as an appurtenance to the Owner's Separate Interests an easement upon and across all adjacent Separate Interests, for purposes of accommodating (a) any minor encroachments of Improvements originally constructed whether such encroachment is expressly contemplated by any plans and specifications or is due to construction errors, settlement or shifting of Improvements, or similar causes (provided, however, that no such easement shall be deemed created if the encroachment occurred due to the intentional conduct of the Association, a Subassociation, Guest Builders or any

Owner), and (b) any encroachment of an Improvement constructed on such Covered Property substantially in accordance with the Plans approved pursuant to Article 8 of this Declaration and expressly contemplated in such Plans (including without limitation balconies, light fixtures, signage fixtures, awnings, and similar items). The easement for the maintenance of the encroaching improvement shall exist for as long as the encroachments exist. Any easement of encroachment may, but need not be, cured by repair and restoration of the structure.

2.8.2 Drainage. Declarants each hereby grant to the Association, the Subassociations and the Owners for their benefit and the benefit of the Owners and their Occupants a non-exclusive easement through and across the Association Maintained Drainage Facilities and any Storm Drain and Water Quality Improvements servicing an Owner's Separate Interest for the drainage of water from such Owner's Separate Interests or any property owned by the Association, the applicable Subassociation or any Owner.

2.8.3 Utilities. Declarants each hereby grant to the Association, the Subassociations and to the Owners for their benefit and the benefit of their Occupants a non-exclusive easement through and across the applicable portions of the Covered Property for any Utility Facilities which have been installed by either Declarant or any Guest Builder in connection with the original development of the Covered Property servicing such Owners' Separate Interests in the location originally installed by a Declarant or a Guest Builder.

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

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

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

2.9.3 Limits on Use of Association Property. Subject to the Association Governing Documents and the Sommers Bend Entitlements and the rights specifically reserved by Declarants above and in other provisions of this Declaration, the Association shall have the right to (a) limit and restrict the use of the Sommers Bend Clubhouse and Recreational Facilities and any other recreational facilities or amenities within the Association Property and portions thereof, during specific times or on specific dates and/or to prohibit all use and access to portions of the Association Property as otherwise deemed necessary by the Association for health, safety, welfare, privacy or security purposes, (b) limit or permit usage thereof by Persons as the Association deems appropriate including making memberships available as described on Section 3.3.25, and/or (c) limit the number of Persons using the Association Property. In exercising such rights, the Association shall not limit or restrict Declarants from exercising any rights expressly reserved to Declarant in this Declaration or the Association Governing Documents or as may be required for the development, marketing and disposition of the Separate Interests. The Association shall have the right to limit or restrict access in connection with any events and other activities pursuant to Section 3.2.9.

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

2.9.5 Parking. The Association shall have the right to limit and/or control parking within the Covered Property, including the Private Streets; except that, for any Private Streets owned by a Subassociation over which access is restricted to the Owners in the Neighborhood subject to the jurisdiction of such Subassociation, the Subassociation shall have the right to control and regulate any parking which may be permitted on the Private Streets, unless otherwise specified in a Supplementary Declaration.

2.9.6 Levy Charges. The Association shall have the right to levy charges for promotional and other events which it sponsors within the Sommers Bend Clubhouse and Recreational Facilities and/or for use of the Bungalows.

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

2.9.8 Limitation on Access Rights in Connection with Maintenance. Except for the rights of a Declarant, any Declarant Party and any Guest Builder, and except to the extent restrictions on access are not authorized under the Sommers Bend Entitlements, the Association and the Declarants shall each have the right to temporarily close or restrict access to the Association Property or Association Maintenance Areas as may be reasonably necessary in connection with the performance of any Maintenance Obligations under this Declaration or the other Association Governing Documents, if any, or in the event of an Emergency or to exercise any other rights reserved or granted by Declarant or the Association hereunder.

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

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

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

ARTICLE 3

POWERS AND DUTIES OF THE ASSOCIATION

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

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

3.2 Powers of Association. Subject to the limitations expressly set forth in the Association Governing Documents, the Association shall have the powers of a non-profit mutual benefit corporation organized under the laws of the State of California. The Association shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under the Association Governing Documents and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the powers set forth below.

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

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

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

3.2.4 Enforcement of Subassociation Governing Documents and Obligations.

The Association shall have the right, but not the obligation, to review periodically the operation of any Subassociation, and the performance by a Subassociation of its maintenance and other obligations to assure compliance with the Sommers Bend Standards and Sommers Bend AA Planning Area Standards and the Association Governing Documents. The Association shall have the power, but not the obligation, to enforce the Subassociation Governing Documents (a) if the Association determines that the applicable Subassociation is unable or unwilling to do so, and/or (b) if the Association determines, in its reasonable judgment, that it is in the best interests of the Owners and/or the Covered Property to do so. The Association also shall have the power to require that specific action be taken by a Subassociation in connection with its obligations and responsibilities hereunder or under other covenants affecting the Covered Property, including requiring specific maintenance or repairs that a Subassociation undertakes. The costs associated with such maintenance and repairs shall be the obligation of the Subassociation.

3.2.5 Right of Entry.

The Association and its Authorized Users shall have the power to enter any portion of the Covered Property, to the extent reasonably necessary to perform the construction and Maintenance Obligations of the Association as required under the Association Governing Documents and the Sommers Bend Entitlements and to exercise its enforcement rights under this Declaration. Any right of entry shall be exercised in accordance with the same requirements set forth in Section 2.5.1. Such Persons shall not be deemed guilty of trespass by reason of such entry.

3.2.6 Contract for Goods and Services.

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

3.2.7 Delegation of Powers.

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

3.2.8 Delegation of Rights of Use.

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

3.2.9 Special Events, Promotional Events and Marketing.

The Association shall have the power to provide, for the benefit of the Subassociations and/or the Owners, special events and promotional events and to provide or sponsor activities, services and programs intended to build and maintain a sense of community and shall have the power to levy charges or fees for such events and activities. The Association shall have the power to allow Owners and their Permitted Users and other persons to use the Sommers Bend Clubhouse and Recreational Facilities (or portions thereof) for events, programs and activities sponsored by the Owners and their Permitted Users by such Owner or to the extent authorized under the Association Governing Documents, such Owner's Lessees subject to compliance with the Association Governing Documents and the conditions imposed under the Association Governing Documents. The Association shall have the authority to issue permits or authorizations granting to such Owners and their Permitted Users, a nonexclusive license of access and use over some or all of the Association Property reasonably necessary to the operation of the special event. Further, the Association shall have the power to levy use fees for payment by the sponsor or promoter of such events to cover the additional costs and services incurred by the Association in connection with such events. The Association shall have the right to allow sponsorship of events and

other activities and to retain any revenue derived therefrom as determined by the Association Board. The Association shall have the right to make portions of the areas included within the Sommers Bend Clubhouse and Recreational Facilities available for rental by Owners and their Occupants and other Permitted Users or other persons for events such as weddings, birthdays and other events, subject to the Association Rules.

3.2.10 Bungalows. If Bungalows are included in the Sommers Bend Clubhouse and Recreational Facilities Areas, the Association shall have the power to adopt a program to allow the overnight occupancy of the Bungalows and charge a fee therefor, provided, however, that any such program shall comply with the requirements of Fannie Mae to the extent a Fannie Mae project approval is in effect for any Condominium project located within the Covered Property.

3.2.11 Memberships on Cost Sharing Arrangements Recreational Facilities. The Association shall have the power (and to the extent provided in Section 3.3.23 (Obligations Under Other Master Governing Documents)), to make memberships available on an annual basis to the Owners in the AQ Planning Area as provided in Section 3.3.25 (Memberships and/or Cost Sharing Agreements) or to enter into cost sharing or other agreements allowing usage of the Sommers Bend Clubhouse and Recreational Facilities by the owners and occupants in the AQ Planning Area and their Permitted Users, subject to the Association Rules.

3.2.12 Provide Educational and Other Programs. The Association shall have the power to establish and interact with tax-exempt organizations for educational, cultural, environmental, recreational, preservation, and other activities benefitting the Subassociations and/or Owners.

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

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

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

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

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

3.2.18 Enter Into Maintenance, Cost Sharing and Easement Agreements. The Association shall have the power to enter into maintenance, cost sharing and/or easement agreements with owners of property adjacent to or in the vicinity of the Covered Property (including, without limitation, Governmental Agencies) and any Subassociations and the Owners of the Separate Interests.

Unless otherwise specified in the applicable agreement or a Supplementary Declaration, any agreements entered into by Declarants with any Governmental Agency relating to the Covered Property shall be binding on the Association.

3.2.19 Lighting. The Association shall have the power to provide for and operate lighting throughout the Association Property and the other Association Maintenance Areas, including, without limitation, holiday lighting.

3.2.20 Bungalows. If Bungalows are developed within the Association Property, the Association shall have the right to establish rules, including priority use rules, length of stay rules and other rules for the use of the Bungalows and the power to require payments to be made (including security and cleaning deposits) for use of the Bungalows. The Association shall have the power to engage an operator for the Bungalows if the Association Board determines it to be necessary in order to ensure the proper operation and use of the Bungalows.

3.2.21 Special Benefit Areas. Subject to the requirements set forth in Section 3.3.17 and the restrictions set forth in Section 6.10 of this Declaration and any other limitations set forth in this Declaration (including requirements for approval by the Declarants), the Association shall have the power to form and administer Special Benefit Areas in accordance with the Association Governing Documents. In connection with the administration of Special Benefit Areas (whether established by a Declarant or the Association), the Association shall have the power to establish Special Benefit Area Rules and may establish advisory committees for any Special Benefit Area. Such advisory committees may propose special rules and regulations with respect to their Special Benefit Areas which may be adopted by the Association. The Association may also adopt special election procedures for the election of members of such advisory committees.

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

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

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

3.3.3 Acceptance of Association Property and Association Maintenance Areas. The Association shall accept title to and maintenance responsibility for each portion of the Association Property and maintenance responsibilities for any other Association Maintenance Areas when title or an easement and maintenance responsibility is transferred by a Declarant or a Guest Builder, whether in fee simple, by easement or otherwise, and the Association shall execute each deed and any accompanying escrow instructions if requested to do so by a Declarant or a Guest Builder, and execute any bond exonerations when presented if the bonded obligations are satisfied. No Owner shall interfere

with the exercise by the Association, a Declarant or a Guest Builder of its rights or the fulfillment of its obligations hereunder.

3.3.4 Sommers Bend Standards and Sommers Bend AA Planning Area Standards. The Association shall comply with all obligations imposed upon the Association under the Master Governing Documents and shall comply with and, as it deems necessary, enforce adherence to the Sommers Bend Standards and the Sommers Bend AA Planning Area Standards and the Association Governing Documents.

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

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

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

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

3.3.9 Association Maintained Trails. The Association shall maintain the portions of the Association Maintained Trails which may be designated for maintenance by the Association in a Supplementary Declaration in accordance with the requirements of the City Agreements, the Sommers Bend Entitlements and the Association Governing Documents. To the extent the Maintenance Obligations for the Association Maintained Trails are delegated to a Subassociation, then the Subassociation shall perform such Maintenance Obligations and shall coordinate with the Association to ensure a uniform appearance and level of maintenance, and ensure access is available by Owners and other Permitted Users and members of the public as required under the Sommers Bend Entitlements, subject to any right of the Association, Declarants or Guest Builders to close such areas during any development, maintenance or other similar activities.

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

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

3.3.12 Collection of Master Association Assessments. The Association shall collect and pay to the Master Association prior to delinquency all Master Association Assessments levied against the Separate Interests pursuant to the Master Declaration unless the Master Association has elected to collect such Master Association Assessments directly from the individual Owners. The Association shall comply with the requirements in the Master Declaration and other Master Governing Documents and separately invoice and collect the Master Association Assessments from its Owners. The Association shall comply with any requirements by the Master Association to provide membership rolls and information regarding delinquencies in the payment of Master Association Assessments. If the Master Association elects to collect the Master Association Assessments directly from the Owners, the Association shall cooperate with the Master Association, including providing the appropriate membership information to the Master Association or its management company. If an Owner fails to pay such Owner's share of the Master Association Assessments, the Association shall pay such amounts on behalf of the defaulting Owner and then take such actions as may be necessary to collect the delinquent assessments from the defaulting Owner, including, without limitation, pursuing the remedies set forth in Article 6.

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

3.3.14 Association Maintenance Manual. The Association shall comply with the provisions of the Association Maintenance Manual. The Association Board may, from time to time, make appropriate revisions to the Association Maintenance Manual based upon the Association Board's review thereof, to update such manual to provide for maintenance according to industry practices, so long as such changes do not reduce the useful life or functionality of the items being maintained.

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

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

3.3.17 Special Benefit Area Administration. Prior to the conveyance of a portion of the Covered Property to an Owner, either Declarant (or a Guest Builder with the prior consent of the Declarant conveying the applicable portion of the Covered Property or Annexable Property to such Guest Builder) may establish a Special Benefit Area or may expand an existing Special Benefit Area by designating portions of the Covered Property to be included within such Special Benefit Area in a Supplementary Declaration. If any Special Benefit Area is formed or expanded after any portion of the Covered Property to be included within such Special Benefit Area has been conveyed to an Owner, then the approval of the Owners representing a Majority of the Voting Power within such Special Benefit Area shall be required. Upon its approval, the Special Benefit Area shall be described in a Supplementary Declaration recorded by the Declarants or Association, as applicable. Nothing contained herein shall give the Association any rights to approve Special Benefit Areas established by a Declarant upon the recordation of this Declaration or the recordation of a Supplementary Declaration.

3.3.18 Board and Members' Approval of Certain Actions. In the event any claim or other action is brought by the Association against a Declarant or Guest Builder, including, without

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

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

3.3.19 Liens and Charges. The Association shall pay any amount necessary to discharge any lien or encumbrance upon the Association Property and to the extent caused by the Association or its Authorized Users, the Association Maintenance Areas or any other property or interest of the Association.

3.3.20 Notice Prior to Litigation. The Association shall notify the Members of any litigation filed for or on behalf of the Association pursuant to California Civil Code Sections 5510(b) or 5515 that involve the use of reserve funds. The Association shall also notify the Members of any litigation filed pursuant to Article 16. Such notice shall include an explanation of why the litigation is being initiated or defended. The notice must state that the Members have a right to review an accounting for the litigation provided in Section 5520 of the California Civil Code, which will be available at the Association's office. Any such litigation which is filed shall also be subject to the requirements set forth in Article 16.

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

3.3.22 Stormwater Facilities. The Association shall ensure each Subassociation or Owner who has the responsibility to maintain any Storm Drain and Water Quality Improvements located within the Subassociation Property or an Owner's Separate Interest, as applicable, perform their Maintenance Obligations in conformance with all Governmental Requirements and in a manner which will not obstruct the flow of stormwater on, over or through other portions of the Covered Property.

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

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

3.3.25 Memberships and/or Cost Sharing Agreements. The Association shall comply with the terms of any membership or cost sharing agreement(s) entered with the AQ Planning Area Association to offer memberships, if there is a membership agreement, or allow usage of the Sommers Bend Clubhouse and Recreational Facilities for payment of a fee if there is a cost sharing agreement and shall comply with the terms of any such agreements.

3.3.26 Compliance with Requirements in Water Quality Management Plan and Other Plans. The Association shall comply with all obligations set forth in any the Water Quality Management Plan and any other plans and requirements set forth in the Specific Plan and/or identified in the Association Maintenance Manual and/or specified in a Supplementary Declaration relating to the Association Property or Association Maintenance Areas.

3.4 Limitations on Authority of Association Board.

3.4.1 Actions Requiring Member Approval. The Association shall not take any of the actions listed below except with the vote or written consent of (a) a majority of the Members of each of Class A and Class B Members during the time the Class B voting structure set forth in Section 5.3.2 is in effect; or (b) the vote at a meeting of the Association, or by written ballot without a meeting pursuant to Corporations Code Section 7513, of at least a majority of the Members of the Association including at least a majority of Members other than Declarant after conversion to a single Class A voting membership.

(a) **Limit on Capital Improvements.** The Association shall not without obtaining the consent of the Members as set forth above, incur aggregate expenditures for capital improvements to the Association Property or Association Maintenance Areas in any Fiscal Year in excess of five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

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

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

3.4.2 Limitations on Third Party Person Contracts. The Association shall not enter into a contract with a third person where the third person will furnish goods or services to the Association for a term longer than one (1) year without the following: (a) the vote or written consent of a majority of each of the Class A Members and, until the Declarants' Rights Termination Date the Class B

Members, or (b) the vote at a meeting of the Association or by written ballot without a meeting pursuant to California Corporations Code Section 7513 of the Members representing at least a Majority of the Voting Power of the Association. Notwithstanding the foregoing, the limitations set forth above shall not apply to any of the following contracts:

(a) **Management Contracts**. A management contract the terms of which have been approved by FHA or VA or other Federal Agencies;

(b) **Public Utility Contracts**. A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate or a contract with a solar or other alternate energy provider;

(c) **Insurance Policies**. A prepaid casualty and/or liability insurance policy not to exceed three (3) years' duration provided that the policy permits for short-rate cancellation by the insured;

(d) **Cable Television Contracts**. An agreement for cable television services and equipment or satellite television services or equipment of not to exceed five (5) years' duration, and which may provide for automatic renewals for successive five (5) year periods unless at least one year prior to the end of any such period the Members representing a Majority of the Voting Power vote not to renew such agreement;

(e) **Security, Fire and Other Contracts**. Agreements for installation, sale or lease of security, fire or other similar equipment and services of not to exceed five (5) years' duration, but which may provide for automatic renewals for successive five (5) year periods unless at least one year prior to the end of any such period the Members representing a Majority of the Voting Power vote not to renew such agreement;

(f) **Telecommunications Contracts**. Agreements for installation, sale or lease of telecommunications, data processing, antennae, fiber optics, cable or other similar services or technological evolutions of the foregoing of not to exceed ten (10) years' duration, but which may provide for automatic renewals for successive five (5) year periods unless at least one year prior to the end of any such period the Members representing a Majority of the Voting Power vote not to renew such agreements;

(g) **Contracts Submitted to the DRE**. A contract submitted to the DRE in connection with the processing and obtaining of a Public Report or for any other purpose;

(h) **City Agreements**. The City Agreements or any agreements required to be entered into by the Association or which may be assigned to the Association; and/or

(i) **Contracts Terminable After One Year**. A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligations upon ninety (90) days' written notice of termination to the other party.

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

3.5.1 Political Activities. The Association shall not engage in any federal, state or local political activities or activities intended to influence a governmental action. These activities include endorsement or support of legislative or administrative actions by a Governmental Agency, candidates for elected or appointed office, initiatives, recall elections or other ballot proposals. In no event shall the

Association allow or authorize the placement of any political or similar signs on any Association Property or other Association Maintenance Areas.

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

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

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

ARTICLE 4

MAINTENANCE RESPONSIBILITIES

This Article sets forth the Maintenance Obligations of the Association and the standards for that maintenance to ensure the overall quality and aesthetic appearance of the Covered Property. This Article also sets forth the Maintenance Obligations of the Subassociations and Owners. It is important that every Subassociation and Owner understands the maintenance responsibilities set forth in this Article. Maintaining the Covered Property to the Sommers Bend AA Planning Area Standards and Sommers Bend Standards will help to preserve and protect the value and aesthetic appearance of the Covered Property. The Sommers Bend Standards and Sommers Bend AA Planning Area Standards may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Association Board, and elements which may or may not be set out in writing. The Association shall enforce adherence to both the Sommers Bend Standards and the Sommers Bend AA Planning Area Standards which standards may evolve as the Covered Property is developed.

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

4.2 Responsibilities of the Association.

4.2.1 Areas to be Maintained by the Association. The Association shall maintain and provide for the maintenance of the Association Property, Association Maintenance Areas and any other areas specified for maintenance by the Association in a Supplementary Declaration. The Association Maintenance Areas and the Association Property shall be maintained in a first class, neat, clean, attractive and orderly condition of maintenance and in accordance with all of the obligations set forth in the Association Maintenance Manual and in accordance with the Sommers Bend Standards and the Sommers Bend Entitlements. The Maintenance Obligations of the Association shall include, without limitation, the specific Maintenance Obligations described below and the Maintenance Obligations described in any Supplementary Declaration and the Association Maintenance Manual and the Master Governing Documents. The Association Property, the Association Maintenance Areas and any other areas specified for maintenance by the Association in a Supplementary Declaration shall not be developed, operated, or maintained in a manner that creates a public nuisance.

(a) **Sommers Bend Clubhouse and Recreational Facilities.** The Association shall maintain the Sommers Bend Clubhouse and Recreational Facilities in a first class condition with the regular removal of trash therefrom and to ensure the sound operation of any facilities located within or servicing the Sommers Bend Clubhouse and Recreational Facilities.

(b) **Landscape Areas.** The Association shall maintain all landscaped areas within the Association Property and other Association Maintenance Areas (including fertilizing and irrigating as necessary) in a healthy and thriving condition, free from weeds, trash and debris and shall replace injured and diseased trees and other vegetation within the Association Maintenance Areas and Association Property and plant trees, shrubs and ground cover as the Association deems necessary to comply with the Sommers Bend Standards, the Sommers Bend AA Planning Area Standards and in conformance with the requirements set forth in Section 4.2.3.

(c) **Private Streets.** The Association shall maintain, sweep, repair, reseal, resurface and replace all Private Streets owned by the Association or over which the Association has an easement for maintenance, if any. Such maintenance shall include, without limitation, the maintenance of any parkways located within the Private Streets and street lights to the extent not maintained by another entity, and any other maintenance required by the City or required pursuant to the Water Quality Management Plan and the Governmental Requirements.

(d) **Association Maintained Drainage Facilities.** The Association shall maintain all Association Maintained Drainage Facilities which obligations shall include the obligation to perform any maintenance described in a Supplementary Declaration, in accordance with all Governmental Requirements and, if applicable, the Water Quality Management Plan and any Water Quality Maintenance Agreements.

(e) **Irrigation.** The Association shall maintain all irrigation systems serving the Association Property and other Association Maintenance Areas in sound operating condition and in a manner which does not result in over-watering of the landscaped areas.

(f) **Association Maintained Trails.** The Association shall maintain any Association Maintained Trails in an even and level condition, free of obstructions and debris.

(g) **Litter and Debris.** Unless delegated to an Owner or Subassociation, the Association shall pick up litter and debris on the Association Property and other Association Maintenance Areas.

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

(i) **Painting.** The Association shall paint and otherwise maintain all surfaces, fences, walls and equipment within the Association Property and any Association Maintenance Areas as necessary to comply with the Sommers Bend Standards and the Sommers Bend AA Planning Area Standards.

(j) **Signage.** The Association shall maintain any monument or way finding signage located within the Association Property and other Association Maintenance Areas.

(k) **Walls and Fences.** The Association shall maintain, repair and/or replace the walls and fences (or portions thereof) designated for maintenance by the Association on any Association Fence and Wall Responsibility Plan attached to a Supplementary Declaration. Walls and fences located within Association Property shall be maintained, repaired and replaced by the Association and may be, but shall not be required to be depicted on an Association Fence and Wall Responsibility Plan attached to a Supplementary Declaration.

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

(m) **Offsite Maintenance Areas.** The Association shall maintain any Offsite Maintenance Areas designated for maintenance by the Association in a Supplementary Declaration.

(n) **Association Maintained Slope Areas.** The Association shall maintain any slope areas which may be located within any Separate Interests or Association Property or Association Maintenance Areas designated for maintenance by the Association in a Supplementary Declaration.

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

4.2.2 Rights of Association as to Maintenance Standards. The Association Board shall be the sole judge as to the appropriate level of maintenance of all Association Maintenance Areas and any other areas maintained by the Association. Declarants, until the Declarants' Rights Termination Date and/or, the Association, shall have the sole right to (a) allocate maintenance responsibilities over portions of the Association Maintenance Areas to a Subassociation if the Declarants or the Association Board, as applicable, makes a determination based on the Association Board's or the Declarant's, as applicable, business judgment as to whether such delegation is in the best interests of the Covered Property, considering cost, functionality costs of appearance, location and other factors deemed relevant by the Association Board or the Declarants and so long as (i) the board of directors of the Subassociation approved such delegation and (ii) such delegation is not prohibited under the Sommers Bend Entitlements or other requirements of the City and is consistent with a plan of development reviewed by the DRE, and/or (b) establish Special Benefit Area(s) for providing maintenance services to certain Owners as provided in this Declaration, subject to the provisions of Section 3.3.17. Such allocation of maintenance responsibilities shall not be required to be designated in a Supplementary Declaration; provided however the establishment of a Special Benefit Area shall be memorialized in a Supplementary Declaration. The Association may contract with others for the performance of the maintenance and other obligations of the Association under this Article 4 and the other provisions of the Association Governing Documents.

4.2.3 Tree Maintenance. The Association shall only plant trees or replace existing plants, trees and other plant materials and other plant materials with growth characteristics that do not have the potential to create root, branch or other intrusion problems. The Association shall retain the services of a landscape company which will agree to trim, prune, cut, remove, lace, thin and maintain the

landscaping and trees within the Association Property and the Association Maintenance Areas in accordance with all City requirements and so as to address damage caused by the roots of trees. In order to prevent such damage, the Association Board shall require that the landscape company review all trees and landscaping on a periodic basis as deemed reasonable by the Association Board, and advise the Association Board of the need to take immediate action with regarding to landscaping and/or trees if necessary to prevent damage caused by the roots of trees and/or other potential damage caused by the roots of trees and/or other potential damage which may be caused by other types of landscaping.

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

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

4.5 Maintenance by Owners or Subassociations.

4.5.1 Maintenance of Improvements. Except for those Residences or other Improvements required to be maintained by any Subassociation under any Subassociation Governing Documents and any Association Maintenance Areas located within a Separate Interest, if any, and any Master Association Maintenance Areas, if any, which may be located within a Separate Interest, each Owner shall maintain his or her Residence and other Improvements visible on the exterior from any portion of the Covered Property owned by such Owner or required to be maintained by such Owner under this Declaration or any Subassociation Governing Documents or any Supplementary Declarations in first class appearance and condition at all times in conformance with (a) the Sommers Bend AA Planning Area Standards and Sommers Bend Standards, (b) any Maintenance Manual which may have been provided by a Declarant or a Guest Builder, (c) the requirements set forth in the Association Governing Documents, (d) the Sommers Bend Entitlements, and (e) all Applicable Laws. No Owner shall interfere with or impede a Declarant, a Guest Builder or the Association in connection with the maintenance of the Association Maintenance Areas which may be located within a Separate Interest.

4.5.2 Maintenance of Custom Homesite. Each Owner of a Custom Homesite shall, prior to the commencement of construction of any Custom Homesite Improvements, maintain the Custom Homesite in a weed free and litter free condition. During the construction of any Custom Homesite Improvements, the Owner of the Custom Homesite shall comply with any restrictions and requirements during the construction period imposed under the Governing Documents and any Custom Homesite Supplementary Declarations imposing requirements on the development of a Custom Homesite and the construction of the Custom Homesite Improvements.

4.5.3 Right of Subassociation or Owners to Perform Maintenance Obligations.

If a Subassociation or Owner causes or permits any Improvement which Subassociation or Owner is responsible for maintaining to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate the Maintenance Obligations set forth in this Declaration, the Association Board, Subassociation or Owner may seek any remedies at law or in equity which it may have. In addition, the Association Board may, after Notice and Hearing, enter upon such portions of the Covered Property to make such repair or to perform such maintenance and charge the cost thereof to the applicable Subassociation or Owner. Said costs shall be a Compliance Assessment enforceable as set forth in this Declaration.

4.5.4 Damage by Owners and Subassociation. Each Subassociation and Owner shall be liable for damage they cause or their Permitted Users cause to the Association Maintenance Areas and/or Association Property as provided in this Declaration.

4.5.5 Fencing and Walls. Each Owner shall maintain, in a good condition of maintenance and repair, the fencing and walls surrounding such Owner's Separate Interest, unless such fences and walls (or any portion thereof) are designated for maintenance by the Association or a Subassociation in a Supplementary Declaration. Such maintenance shall include, without limitation, the prompt removal of all graffiti from walls or fences which the Owner is obligated to maintain. Any glass used as a component of fencing which is damaged shall be repaired or replaced at the Owner's (or Subassociation's if such wall or fence is designated for maintenance by the Subassociation) expense in a timely manner; provided, however, that to the extent the damage is caused by the Association or its Authorized Users, such damage shall be repaired by the Association. For any fences or walls which separate two (2) Separate Interests, such maintenance shall be performed by the two (2) neighboring Owners in accordance with California Civil Code Section 841. The Owner of each Separate Interest upon which a party wall or fence is located shall have a reciprocal non-exclusive easement over the Separate Interest immediately adjacent to the interior fence for the limited purpose of maintaining the party wall or fence. Unless otherwise designated in a Supplementary Declaration, the Association shall maintain all walls and fencing located within the Association Property, and any other walls and fencing designated for maintenance by the Association in the Governing Documents.

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

4.6.1 Maintenance Deficiencies. Upon a finding by the Association of a deficiency by a Non-Maintaining Party in its Maintenance Obligations, the Association may provide to the Non-Maintaining Party a written notice (the "Notice of Deficiency"), which shall briefly specify the conditions which the Association finds to be deficient, and request that such deficiency be cured within a specified reasonable period of time. If the Association determines that such deficiency continues to exist at the end of the period of time specified in the Notice of Deficiency, the Association may, at its option, either: (a) enter on and accomplish the maintenance of such portion of the Covered Property that continues to be deficient; (b) contract with another party to accomplish such maintenance; or (c) seek any other remedy available at law or in equity including, without limitation, specific performance or an injunction to enforce the Non-Maintaining Party's Maintenance Obligations provided herein. Any of the foregoing remedies may be employed at the option of the Association, and the failure to employ any of such remedies upon any occurrence giving rise to such remedies shall not be a waiver of the right to employ such remedies in connection with any other occurrence.

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

Emergency action the Association gives a Notice of Deficiency (without providing a cure period) to the Non-Maintaining Party.

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

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

4.8 Inspection of the Association Property, Association Maintenance Areas and Offsite Maintenance Areas. The Association shall regularly inspect the Association Maintenance Areas and the Association Property including, without limitation, the landscaping, drainage and irrigation systems, Storm Drain and Water Quality Improvements and Private Streets and other Association Maintenance Areas which may be required to be maintained by the Association, and shall comply with the requirements of the Association Maintenance Manual, the Specific Plan and any other plans or agreements requiring maintenance by the Association. The Association shall employ the services of such Persons as are deemed necessary by the Association Board to assist the Association in performing its duties hereunder and follow any recommendations contained in the Association Maintenance Manual. The Association Board may, from time to time, make appropriate revisions to the Association Maintenance Manual, if any, based upon the Association Board's review of the Association Maintenance Manual, to update such Association Maintenance Manual to provide for maintenance according to current industry practices so long as such changes do not reduce the useful life or functionality of the items being maintained or reduce the standard below the Sommers Bend AA Planning Area Standards or Sommers Bend Standards. If requested by a Declarant, any such inspection reports shall be provided to the requesting Declarant promptly following completion. If requested by a Declarant, the requesting Declarant shall be invited to attend any such inspections. The written reports shall identify any items of maintenance or repair which either require current action by the Association or will need further review and analysis. The Association shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors and shall keep a record of all such matters in the Association's minutes.

ARTICLE 5

MEMBERSHIP IN THE ASSOCIATION AND VOTING RIGHTS

The Association will function as a corporate entity with Members who will participate in the governance of the Association. This Article describes the membership of the Association. Additional provisions regarding the procedures for elections to and meetings of the Association Board are set forth in the Association Bylaws.

5.1 Membership. Each Owner of a Separate Interest which is subject to Assessment, including Declarants and Guest Builders shall be a Member of the Association. Ownership of a Separate Interest shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until such Owner's ownership in a Separate Interest ceases, at which time such Owner's membership in the Association shall automatically cease. Any reference in this Declaration to a vote of the Members, shall refer only to those Members against whose Separate Interest Assessments have commenced, unless otherwise specified in the Association Governing Documents.

5.2 Membership.

5.2.1 Qualifications. Members of the Association shall be (a) Declarant (irrespective of whether Declarant is the Owner of a Separate Interest), for so long as Declarant is entitled to either cast a Class C vote as a Class C Member (as described below) or cast votes on behalf of any Guest Builders, and (b) each Owner (including Declarant and any Guest Builder) of one (1) or more Separate Interests in the Covered Property. Membership in the Association shall be subject to this Declaration and the other Association Governing Documents. Ownership of a Separate Interests shall be the sole qualification for an Owner's membership in the Association; provided, however, that Declarant shall be a Class C Member irrespective of such ownership. Membership in the Association shall be in addition to membership in the Master Association and any Subassociation.

5.2.2 Transfer of Membership. All memberships in the Association held by Owners, other than Declarant, shall be appurtenant to the Separate Interest owned by each Owner and shall not be transferred, pledged or conveyed, in any way, except upon the transfer of title to the Owner's Separate Interest.

5.2.3 Assignment of Right of Use. Any Owner of a Separate Interest may delegate his or her rights of enjoyment, if any, to the Association Property to the members of his or her family, or Occupants of his or her Separate Interest who reside within such Separate Interest, subject to the Association Governing Documents; provided, however, that, unless otherwise authorized by the Association, such Owner shall not also be entitled to use of the Sommers Bend Clubhouse and Recreational Facilities or other recreational facilities, if any, located in the Association Property during the term of such assignment. However, no such delegation by an Owner shall in any way extinguish, limit or otherwise release the Owner of any obligations or duties imposed on the Owner by this Declaration and the other Association Governing Documents. The Association may allow the use of the Sommers Bend Clubhouse and Recreational Facilities by Persons who do not occupy a Separate Interest within the Covered Property.

5.3 Classes of Voting Membership. The Association shall have the classes of voting membership which are described below.

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

5.3.2 Class B Membership. The Class B Members shall be the Declarants and any Guest Builders (unless the voting rights of a Guest Builder have been assigned to Declarant, in which case such Declarant may cast such voting rights which have been so assigned) who shall be entitled to three (3) votes for each Separate Interest owned by such Declarant or Guest Builders, in the Covered Property for which Regular Assessments have commenced. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

(a) When a total of nine hundred eighty six (986) Separate Interests (which represents seventy-five percent (75%) of the 1,314 Separate Interests approved for development by the City within the Sommers Bend AA Planning Area under the Sommers Bend Entitlements) have been conveyed to First Purchasers;

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

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

5.3.3 Class C Membership. The Class C Members shall be both Declarants (whether or not Declarants are Owners). The Class C membership shall not be considered a part of the voting power of the Association and Declarants shall not be entitled to exercise any Class C votes except for the purpose of electing a majority of the members of the Association Board (as may be agreed upon by the latter) in accordance with the provisions set forth below. The Class C Members shall be entitled to solely appoint a majority of the members of the Association Board until the date which is the earlier to occur of:

(a) When a total of nine hundred eighty six (986) Separate Interests (which represents seventy-five percent (75%) of the 1,314 Separate Interests approved for development by the City within the Sommers Bend AA Planning Area under the Sommers Bend Entitlements) have been conveyed to First Purchasers;

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

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

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

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

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

5.6 Commencement of Voting Rights. A Member's right to vote or cast votes on behalf of an Owner, including Declarants, shall not vest until Assessments have been levied upon such Owner's Separate Interest as provided in this Declaration (except for Declarants' voting rights under Sections 5.3.2 and 5.3.3 above). All voting rights shall be subject to the restrictions and limitations provided for in the Association Governing Documents.

5.7 Declarants' Rights to Select Directors. After the termination of the Class C membership, the Declarants shall be entitled to appoint twenty percent (20%) of the members of the Association Board, until the first to occur of (a) when a total of one thousand fifty two (1052) Separate Interests (which represents ninety percent (90%) of the Separate Interests approved for development by the City) within the Sommers Bend AA Planning Area) have been conveyed to First Purchasers; (b) on the fifth (5th) anniversary following the most recent conveyance of a Separate Interest to a First Purchaser; or (c) on the twenty-fifth (25th) anniversary of the first conveyance of the first Separate Interest to a First Purchaser.

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

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

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

5.8.3 Annexation. Annexation of any real property other than the Annexable Property described on Exhibit "B-1" and Exhibit "B-2" or a Supplementary Declaration;

5.8.4 Assessments. Alteration in the method of allocating Assessments (as set forth in Section 6.12) and collecting Assessments;

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

5.8.6 Design Changes. Any change in the general overall architectural style and design of the Sommers Bend Clubhouse and Recreational Facilities;

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

5.8.8 Association Rules or Association Maintenance Manual. Any changes to the Association Rules or Association Maintenance Manual or Sommers Bend AA Planning Area Standards;

5.8.9 Modifications to Association Maintenance Areas or Association Property. Modifications to Improvements in the Association Maintenance Areas and/or Association Property which materially change the appearance or lower the standard for maintenance;

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

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

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

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

5.9 Election Committee. If deemed necessary by the Association Board, an election committee ("Election Committee") may be appointed annually by the Association Board to nominate candidates for the Association Board, regulate nominations, evaluate voting requirements, regulate voting procedures and campaigns and adopt rules to insure an orderly and fair election of directors in accordance with the terms of the Association Bylaws. The Association Board may, from time to time, vest the Election Committee with certain rule-making powers for the limited purpose of effectuating the fair and orderly election of directors.

5.10 Dissolution of the Association. If the Association as a corporate entity is dissolved, a non-profit unincorporated association shall, without further action or notice, be formed to succeed to all of the rights and duties of the Association. The affairs of such unincorporated association shall be governed by the Association Bylaws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association.

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

5.12 Joint Owner Votes. If there is more than one Owner of a Separate Interest, the voting rights for such Separate Interest may not be cast on a fractional basis. If the joint Owners are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. Upon the close of escrow on a Separate Interest by more than one Owner, the Owners of such Separate Interest must notify the Association in writing of the one Owner who will exercise the voting rights for such Separate Interest ("Voting Owner"). In the event such Owners do not notify the Association in writing in accordance with this Section, the Owner shall not be entitled to exercise their vote in writing, unless and until they deliver written notice to the Association designating the Voting Owner and until such designation is made, the Association can cast the vote, if it so elects, for such Separate Interest. If the Owners desire to designate a different Voting Owner, such request to change the Voting Owner must be made in writing to the Association. If any Owner other than the Owner designated in the records of the Association as the Voting Owner exercises the voting rights of a particular Separate Interest, such vote shall not be counted and shall be deemed void.

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

ARTICLE 6

ASSESSMENTS AND LIENS

To fund the activities of the Association, the Association will be collecting various types of Assessments. These Assessments fund the services which are being provided by the Association. In addition to the overall assessments which are levied against all Owners, some Owners whose Separate Interests are situated in Special Benefit Areas will pay an additional payment for the services provided to the Special Benefit Areas by the Association. Unless the Master Association elects to collect the Master Association Assessments directly from the Owners, the Association shall collect and pay to the Master

Association the Master Association Assessments in accordance with the Master Governing Documents. The Master Association also has certain remedies under the Master Governing Documents if an Owner fails to pay the Master Association Assessments when due.

6.1 Creation of Lien and Personal Obligation for Assessments. The Association shall establish, allocate, levy and collect the Assessments in accordance with the provisions of this Declaration and the other Association Governing Documents. Declarants and each Guest Builder hereby covenant, and each Owner of a Separate Interest by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all Assessments levied pursuant to the provisions of this Declaration. All Assessments levied hereunder, together with Additional Charges, shall be a charge on the land and shall be a continuing lien upon the Separate Interest of such Owner against which each such Assessment is levied, the lien to be effective upon recordation of a Notice of Delinquent Assessments. Each such Assessment, together with Additional Charges, shall also be the personal obligation of the Owner against whom the Assessment is levied, and, on the recordation of a Notice of Delinquent Assessment, a lien against the Separate Interests of such Owners. Unlike the lien for non-delinquent Assessments, the personal obligation for delinquent Assessments shall not pass to successive Owners, unless expressly assumed by such successive Owner. No such assumption of personal liability by a successor Owner shall relieve any Owner against whose Separate Interest, the lien was levied from personal liability for delinquent Assessments. If more than one Person is the Owner of a Separate Interest, the personal obligation to pay such Assessment or installment thereof with respect to such Separate Interest shall be both joint and several.

6.2 No Waiver of Right to Use Association Property Facilities. Owners shall not be exempt from liability for payment of the Owner's Assessments by waiver of the use of or access to the Sommers Bend Clubhouse and Recreational Facilities or other portions of the Association Property or the Covered Property, or by the destruction or abandonment of the Owners' portion of the Separate Interest.

6.3 Master Association Assessments. The Association shall collect all Master Association Assessments levied against the Separate Interests under the Master Declaration, concurrently with the collection of the Assessments levied hereunder, and in the event an Owner fails to pay its Master Association Assessments, together with the Assessments collected hereunder by the Association, the Association shall have all of the rights and remedies provided for in this Article 6, including, without limitation, the lien rights and foreclosure rights set forth herein and the Master Association shall have all of the rights and remedies set forth in the Master Governing Documents to also exercise its remedies against the Association and/or a delinquent Owner. Notwithstanding the foregoing, the Master Association may elect, pursuant to the terms of the Master Declaration, to collect the Master Association Assessments directly from the Owners and in such case the Owners shall pay such Master Association Assessments directly to the Master Association as provided in the Master Declaration and the Association shall not have the obligation to collect such Master Association Assessments during any such period the Master Association elects to collect the Master Association Assessments directly from the Owners.

6.4 Purpose of Assessments. The Assessments levied by the Association shall be used to perform the obligations and duties of the Association, including, without limitation, the improvement and maintenance of the Association Maintenance Areas and/or Association Property and for any other maintenance and other responsibilities and obligations of the Association, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Association Governing Documents.

6.5 Regular Assessments.

6.5.1 Payment of Regular Assessments. The Assessments for Common Expenses for each Fiscal Year shall be established when the Association approves the Annual Operating Budget for that Fiscal Year, which Annual Operating Budget shall be prepared in accordance with the provisions of the Association Governing Documents and Applicable Laws. Regular Assessments for Common Expenses ("Regular Assessments") shall be levied on a Fiscal Year basis. Unless otherwise specified by the Association Board, Regular Assessments shall be due and payable in

monthly installments on the first day of each month during the term of this Declaration. A Declarant's or a Guest Builder's obligation for such Regular Assessments may be reduced in accordance with the terms of any maintenance or subsidy agreement executed by a Declarant and the Association.

6.5.2 Reserves. The Annual Operating Budget shall include amounts which are allocated for reserves ("Reserves") in such amounts as the Association reasonably considers appropriate to meet the costs of maintaining the portions of the Association Property and Association Maintenance Areas for which the Association has Maintenance Obligations, and to satisfy any requirements of Applicable Laws.

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

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

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

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

6.6 Supplemental Assessments. If the Association Board determines that the Association's essential functions may be properly funded by a Regular Assessment in an amount less than the maximum authorized Regular Assessment described above, it may levy such lesser Regular Assessment. If the Association Board determines that the estimate of total charges for the current Fiscal Year is or will become inadequate to meet all Common Expenses, it shall determine the approximate amount of the inadequacy. Subject to the limitations described in Section 6.11, the Association Board may levy a supplemental Regular Assessment reflecting a revision of the total charges to be assessed against each Separate Interest.

6.7 Special Assessments. If the Association determines at any time that the estimated total amount of funds necessary to fund the Common Expenses of the Association for a given Fiscal Year is or will become inadequate to meet Common Expenses for any reason, including, without limitation, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital Improvements on, damage and destruction or condemnation of the Association Maintenance Areas and Association Property or any other areas which the Association is obligated to maintain, the Association Board shall determine the approximate amount necessary to defray such expenses, and may levy a special assessment ("Special Assessment") in order to raise funds for such operating or other costs, insufficient operating or reserve funds, or such other purposes as the Association in its discretion considers appropriate. Special Assessments shall be subject to the limitations set forth in Section 6.11; provided, however, that such limitation shall not apply to Special Assessments levied by the Association Board to replenish the Association's reserve account as provided in the Article of the Association Bylaws entitled "Association's Accounts." The Association Board may, in its discretion, prorate such Special Assessment over the remaining months of the Fiscal Year or levy the Assessment immediately against each Separate Interest as to which Assessments have commenced. The Association must comply with California Civil Code Section 5610.

6.8 Capital Improvement Assessment. In addition to any other Assessments provided for hereunder, the Association may levy a capital improvement assessment ("Capital Improvement Assessment") for the purpose of defraying, in whole or in part, the cost of any construction or replacement of a capital improvement. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Association Board shall designate. Capital Improvement Assessments shall be subject to the limitations set forth in Section 6.11.

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

6.10 Special Benefit Area Assessments. The Association shall establish assessments to be levied against the Owners within a Special Benefit Area ("Special Benefit Area Assessments") for any expenses incurred in performing the Special Benefit Area Services. Unless otherwise specified in a Supplementary Declaration, any Special Benefit Area Assessment charged to the Owners for a particular item or services shall be levied uniformly to the Owners receiving the benefit of the particular maintenance or service provided by the Association.

6.11 Increases to Assessments.

6.11.1 Limitation on Increases in Assessments. From and after January 1st of the Fiscal Year immediately following the conveyance of the first Separate Interest to a First Purchaser, the maximum annual Regular Assessment may not, except in the case of an Emergency, be increased by an amount greater than twenty percent (20%) of the Regular Assessments for the preceding Fiscal Year, and Special Assessments and Capital Improvement Assessments shall not be imposed that in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association set forth in its Annual Operating Budget for that Fiscal Year, unless the Association has obtained the consent of the Members, constituting a quorum and casting a majority of the votes at a meeting or election of the Association conducted in accordance with the provisions of: (a) California Civil Code Section 5100, et seq. and the rules adopted by the Association Board pursuant thereto; and (b) California Corporations Code Sections 7510, et seq. and 7613. The Association Board may not increase the Regular Assessments for any Fiscal Year unless it has complied with California Civil Code Section 5605. For the purpose of this Section, a quorum shall mean more than fifty percent (50%) of the Members of the Association, pursuant to California Civil Code Section 4070, and an Emergency shall mean any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Association Maintenance Areas, Association Property or other portions of the Covered Property that the Association is obligated to maintain where a threat to personal safety is discovered; or

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

In calculating whether there has been an increase in Assessments, increases to Master Association Assessments which the Association is collecting shall not be included in such calculation and the provisions of the Master Declaration shall control with respect to increases in the Master Association Assessments.

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

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

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

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

6.12.3 Other Assessments. Special Assessments and Capital Improvement Assessments shall be allocated in the same manner as Regular Assessments. Compliance Assessments shall be levied directly to the individual Separate Interests in a manner consistent with the provisions of this Declaration and the other Association Governing Documents.

6.13 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each Separate Interest in a Phase subject to this Declaration on the first day of the month following the first conveyance of the first Separate Interest in that Phase to a First Purchaser. If any Apartment Areas are included in the Covered Property, Regular Assessments shall commence as of the dates specified in a Supplementary Declaration applicable to such Apartment Areas. Notwithstanding the foregoing, a Declarant or a Guest Builder may elect to commence to pay Regular Assessments for a Phase prior to the conveyance of a Separate Interest in such Phase to a First Purchaser (provided that, upon making such election, the Declarant or Guest Builder, as applicable, shall continue to pay such Regular Assessments for such Phase until conveyance of the applicable Separate Interests in the Phase as to which Assessments have commenced to a First Purchaser), in such case, the Declarant or the Guest Builder (if the Guest Builder has not assigned its voting rights to a Declarant) shall have the voting rights as to the Separate Interest in such Phase while it owns such Separate Interests pursuant to Section 5.3.

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

6.15 Collection of Assessments; Liens.

6.15.1 Right to Enforce. The right to collect and enforce Assessments is vested in the Association Board acting for and on behalf of the Association. The Association Board may enforce the obligations of the Owners to pay Assessments provided for in this Declaration or the other Association Governing Documents by commencement and maintenance of a suit at law or in equity, or the Association Board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 6.15.5 enforce the lien rights created which lien shall be effective upon the recordation in the Official Records of a notice of delinquent assessment ("Notice of Delinquent Assessment") as provided in California Civil Code Section 5675. Suit to recover a money judgment for unpaid Assessments together with all other Additional Charges shall be maintainable without foreclosing or waiving the lien rights. Notwithstanding anything else to the contrary herein, a monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Association Governing Documents or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Association Property or Association Maintenance Areas for which the Member was allegedly responsible or in bringing the Member and his or her Separate Interest or a Subassociation into compliance with the Association Governing Documents may not be characterized nor treated as an Assessment that may become a lien against the Member's Separate Interest enforceable by a sale of the interest hereunder. The limitation in the preceding sentence, however, does not apply to any Additional Charges.

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

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

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

6.15.5 Notice of Default; Foreclosure. After filing a Notice of Delinquent Assessment and, subject to the requirements and limitations of California Civil Code Section 5700, et

seq., can cause the Separate Interest with respect to which a Notice of Delinquent Assessment has been recorded to be sold either in the same manner as a sale is conducted under California Civil Code Sections 2924, 2924b and 2924c or through judicial foreclosure and as provided in California Civil Code Section 5700, et seq. However, as a condition precedent to the holding of any such sale under Section 2924c, appropriate publication shall be made. In connection with any such sale, the Association Board is authorized to appoint a trustee for purposes of conducting the sale. If a delinquency is cured before sale of the Separate Interest or before completing a judicial foreclosure, or if it is determined that a lien previously recorded against a Separate Interest was recorded in error, the Association Board shall apply payments and follow the procedures set forth in California Civil Code Section 5685. On becoming delinquent in the payment of any Assessment or installment, each delinquent Owner shall be deemed to have absolutely assigned all rent, issues and profits of its Separate Interest to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Separate Interest at foreclosure sale and to acquire, hold, lease, mortgage and convey the Separate Interest and vote as an Owner of the Separate Interest.

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

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

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

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

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

such Separate Interest by such acquirer, except for a share of such charges or Assessments resulting from a reallocation of such charges or Assessments that are made against all Separate Interests.

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

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

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

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

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

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

6.24 Association Property Improvements. If the Improvements to be installed by a Declarant or a Guest Builder on the Association Property in a Phase have not been completed prior to the issuance by the DRE of a Public Report covering the Phase, and in the further event that the Association is the obligee under a bond to secure performance by a Declarant or the Guest Builder to complete such Improvements, then if such Improvements have not been completed and a notice of completion filed within sixty (60) days after the completion date specified in the planned construction statement appended to the bond, the Association Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such Improvement, then the Association Board shall consider and vote on said question if such Improvements have not been completed and a notice of completion filed within thirty (30) days after the expiration of the extension period. In the event that the Association Board determines not to take action to enforce the obligations secured by the bond or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing five percent (5%) or more of the Voting Power of the Association, excluding the Voting Power of Declarants and Guest Builders, the Association Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Association Board or of requiring the Association Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members

shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting, a vote of a Majority of the Voting Power of Members of the Association, excluding the vote of Declarants and Guest Builders, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Association Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

6.25 Initial Capital Contribution. Unless otherwise specified in a Supplementary Declaration as to any Phase, upon acquisition of record title to a Separate Interest from a Declarant or a Guest Builder, each First Purchaser shall contribute to the capital of the Association an amount equal to One Hundred Twenty-Five Dollars (\$125.00). This amount shall be deposited by a First Purchaser into the purchase and sale escrow for his or her Separate Interest and disbursed therefrom to the Association. The obligation set forth in this Section does not apply to the resale of any Separate Interest.

ARTICLE 7

USE RESTRICTIONS

It is important to establish use restrictions for the use and benefit of all of the Covered Property and to preserve the values and appearance of the Covered Property. Many other use restrictions may be established under Supplementary Declarations and Subassociation Declarations. Some of these use restrictions may apply to some but not all of the Separate Interest subject to this Declaration. The Association shall have the right and power to enforce these restrictions and all of the restrictions set forth in the Association Governing Documents. Each Owner shall comply and cause its Occupants and Permitted Users to comply with the restrictions set forth in this Article and the Association Governing Documents.

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

7.2 Master Declaration Restrictions. Each Owner shall comply with all of the restrictions set forth in Article 7 of the Master Declaration which are incorporated herein by reference. Each Owner shall be responsible for any breach by such Owner's Occupants and other Permitted Users of the restrictions set forth in this Declaration and the other Governing Documents or the Master Governing Documents.

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

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

7.5 No Time-Share Projects. No Separate Interest shall be divided into a time-share estate or time-share use as defined in California Business and Professions Code Section 11003.5 without the prior written approval of the Association and, until the Declarants' Rights Termination Date, Declarant. The foregoing restrictions shall not apply to the Bungalows if so developed within the Association Property.

7.6 Rental of Residence. An Owner shall be entitled to rent his or her Residence subject to the restrictions in the Association Governing Documents, and any contractual agreement between a Guest Builder and each original Owner for such Owner's Separate Interest, any other restrictions of record and all Applicable Laws. Any rental or lease agreement shall: (a) be in writing; (b) provide that the lease is subject to the Association Governing Documents and Master Governing Documents; and (c) provide that any failure to comply with any provisions of the Association Governing Documents and Master Governing Documents shall be a default under the terms of the rental or lease agreement. Upon request, a copy of the rental or lease agreement shall be provided to the Association. The Owners shall, at all times, be responsible for their Lessee's compliance with all of the provisions of this Declaration and the other Association Governing Documents pursuant to the occupancy and use of the Residence. A Lessee shall have no obligation to the Association to pay Assessments nor shall any Lessee have any voting rights in the Association. No Owner may lease such Owner's Residence for hotel, motel or transient purposes. Any lease which is either for a period of fewer than sixty (60) days or pursuant to which the lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes. In no event does this restriction apply to any Bungalows if so developed within the Association Property. Notwithstanding the foregoing, if there are any FHA or VA insured loans affecting a Separate Interest, any restrictions in this Declaration on renting or leasing that violate any FHA or VA requirements related to renting or leasing shall not apply to such Separate Interest.

7.7 Animals.

7.7.1 Domestic Animals and Pets Other Than Horses. The provisions of this Section shall not apply to horses (which shall be subject to Section 7.7.2). Only domestic animals that are kept as household pets and are not kept, bred or raised for commercial purposes are permitted to be maintained within the Separate Interests. In no event shall poultry, livestock or other farm animals (including, without limitation, goats, bees in beehives, chickens and pigs) be kept within the Covered Property. An Owner or Lessee may maintain or allow to be maintained within the Residence a reasonable number of dogs or cats as determined by the Association Board and defined, from time to time, in the rules and regulations and subject to all limitations imposed by Applicable Law. Domestic birds shall be permitted so long as such animals are kept in the interior of a Residence and are not so excessively noisy as to disturb the quiet enjoyment by each Owner of his or her Separate Interest and are not kept in unreasonable numbers as determined by the Association Board. Nothing contained herein shall restrict the keeping of fish in an aquarium or fish in an exterior pond or pool (such as koi) so long as the installation of such pond have been obtained under Article 8. Notwithstanding the foregoing, the Association Rules may further limit or restrict the keeping of such pets. Domestic reptiles which do not pose a threat to the safety or welfare of other Owners and Occupants in the Covered Property shall be permitted to be kept in reasonable number as determined by the Association in its sole and absolute discretion.

7.7.2 Horse Restrictions. Horses may only be kept within the Permitted Horse Lots, subject to compliance with all of the provisions and restrictions set forth below and the Association Rules.

(a) Maximum Number of Horses. An Owner of a Permitted Horse Lot shall be restricted to the maximum number of horses permitted to be maintained on such Permitted Horse

Lot pursuant to Section 17.10.020 of the City of Temecula Municipal Code. A Supplementary Declaration recorded by either Declarant upon any portion of the Covered Property owned by such Declarant or any Guest Builder to whom such Declarant has conveyed such portion of the Covered Property (with the prior consent of such Declarant) may further limit the number of horses allowed within a Permitted Horse Lot.

(b) Pasture and Other Requirements. A minimum of ten thousand (10,000) square feet of stable, pasture area, corral, or combination thereof shall be provided for up to two (2) horses and an additional five thousand (5,000) square feet for each horse in excess of two (2); provided, however, that such minimum requirements shall be subject to increase to the extent inconsistent with any minimum requirements of the City of Temecula. A minimum seventy-five (75) foot wide belt surrounding the stable, corral or pasture where such horse(s) is/are kept must be maintained between any Residence, other than the Residence of the owner of such horse(s).

(c) Horse Structures. Any structure housing horses must be of a style consistent with the design and architectural features of the Residence on the Permitted Horse Lot and must comply with all requirements of the Association Design Guidelines.

(d) Nuisances. The Owner of a Permitted Horse Lot on which a horse is maintained, shall take reasonable steps to reduce odor and flies resulting from the maintenance of horses including, without limitation, collection and appropriate disposal of feces at least once every forty-eight hours. Each Owner maintaining a horse in accordance with these restrictions will as a condition to the right of an Owner to maintain a horse, comply with all of the restrictions set forth herein and in the Association Governing Documents and acknowledges that failure to so comply shall give the Association all rights to enforce the restrictions and bring all actions available to the Association under the Association Governing Documents and Applicable Laws, which actions may require the Owner to remove the horses from the Covered Property.

7.7.3 Restrictions Applicable to All Animals. The Association Rules may further limit or restrict the keeping of animals and the Association shall have the power to prohibit the keeping or maintenance of any animal, which, in the opinion of the Association Board, after Notice and Hearing, is deemed by the Association to constitute a nuisance to any other Owner or which constitutes a threat to the personal safety of any Owner in the reasonable discretion of the Association Board. Each person bringing or keeping a pet or animal within the Covered Property shall be absolutely liable to other Owners and their Permitted Users for any damage to persons or property caused by any pet brought upon or kept upon the Covered Property by such person or any Permitted User of such person. Each Owner shall clean up after such animals that have deposited droppings or otherwise used any portion of the Covered Property. When outside the Separate Interest, animals belonging to Owners or Permitted User of any Owner must be kept on a leash or reigns held by a person capable of controlling the animal. Nothing contained in this Declaration shall constitute a restriction on human assistance animals.

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

7.9 Association Maintained Trails. The Association Maintained Trails, if any, shall be kept in good condition and free from obstructions. No Owner shall damage, alter, modify or interfere with any Association Maintained Trails. The Association Maintained Trails, if any, cannot be modified without City approval.

7.10 Temporary Structures. No trailer, mobile home, tent, shack or other outbuildings shall be kept upon any Separate Interest, any Subassociation Property, or in any street within the Covered Property, except in connection with work or construction diligently pursued (including in connection with the construction of a Custom Home) or except for (a) any tents or temporary structures associated with any events sponsored by or authorized by the Association or with the approval of the Association Board, a Subassociation and (b) storage sheds which conform to the Association Governing Documents and Master Governing Documents and City ordinances.

7.11 Unightly Articles. No unsightly articles shall be permitted to remain within the Covered Property so as to be visible from any other portion of the Covered Property. No lumber, grass, shrub or tree clipping or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate within any Separate Interest, except within an enclosed structure or container or otherwise appropriately screened from public view. Composting and capturing rainwater will be allowed so long as contained and enclosed in containers in conformance with the Association Design Guidelines, City ordinances and the Association Governing Documents and Master Governing Documents.

7.12 Parking And Vehicular Restrictions.

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

7.12.2 Recreational Vehicles. Recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats) may be parked and stored within a Permitted Recreational Vehicle Separate Interest provided that the recreational vehicle is reasonably screened from view. Additional requirements on the parking and storage of recreational vehicles within the Permitted Recreational Vehicle Separate Interests may be imposed by the Association and/or set forth in the Association Design Guidelines.

7.12.3 Prohibited Vehicles. The following vehicles are "Prohibited Vehicles": (a) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, tow trucks, step vans, concrete trucks, limousines, and pick-up trucks of more than one (1) ton), (b) buses or vans designed to accommodate more than ten (10) people, (c) vehicles having more than two (2) axles, (d) trailers, (e) inoperable vehicles or parts of vehicles, (f) aircraft, (g) any vehicle or vehicular equipment deemed a nuisance by the Association Board, (h) dilapidated, dismantled or wrecked vehicles, (i) any vehicle which is under repair, and (j) any other vehicle not classified as an Authorized Vehicle. In addition to the foregoing, except for Permitted Recreational Vehicle Separate Interests, recreational vehicles (e.g., motorhomes, travel trailers, camper vans and boats) shall be deemed to be Prohibited Vehicles. Prohibited Vehicles may not be parked, stored, repaired or kept on any driveway, garage or private street in, adjacent to or visible from the Covered Property or except for brief periods for loading, unloading, making deliveries or emergency repairs. If a vehicle qualifies as both an Authorized Vehicle and a Prohibited Vehicle, then the vehicle is presumed to be a Prohibited Vehicle, unless the vehicle is expressly classified as an Authorized Vehicle in writing by the Association Board. The restrictions set

forth shall not apply to any vehicle owned or operated by the Association or, with the approval of the Association Board, any Subassociation.

7.12.4 General Restrictions. Subject to the restrictions on Prohibited Vehicles, all vehicles owned or operated by or under the control of an Owner or an Occupant of an Owner's Separate Interest must first be parked in the garage of that Owner. Once the maximum number of vehicles are parked in the garage, Owners may park Authorized Vehicles in their driveway provided that such Authorized Vehicle does not extend into any sidewalk, parkway or street bordering the Owner's driveway. Unless otherwise specified in a Supplementary Declaration, parking in any alley is prohibited.

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

7.12.6 Parking Regulations. The Association may establish additional regulations regarding any parking areas not assigned to individual Owners, including designating "parking," "guest parking," and "no parking" areas. The Association may take all actions necessary to enforce all parking and vehicle use regulations for the Covered Property including removing violating vehicles from the Covered Property pursuant to California Vehicle Code Section 22658.2 or other Applicable Laws. If the Association has not enforced any of the parking or vehicle use regulations, the City or County may enforce such regulations. No Subassociation shall establish parking rules and regulations in conflict with those contained herein or the other Association Governing Documents. Gated parking, if any, within Private Streets subject to the jurisdiction of a Subassociation shall be for the use and benefit of Owners and their Permitted Users within the applicable Subassociation as set forth in the Subassociation Governing Documents.

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

7.13 Installations.

7.13.1 Generally. This Section does not apply to Improvements installed by Declarant or, with the prior consent of the Declarant who has conveyed a portion of the Covered Property to a Guest Builder, by such a Guest Builder or to any Owner of a Custom Homesite (until such time as the Custom Home has been completed and a certificate of occupancy or its equivalent issued at which time such restrictions shall apply) so long as the Custom Homesite Improvements have been approved by the Declarant conveying the Custom Homesite to a First Purchaser (or any successor to such First Purchaser) in accordance with the terms set forth in a Custom Homesite Supplementary Declaration.

7.13.2 Outside Installations. Unless installed by Declarant or a Guest Builder or approved by the City, if City approval is required by Applicable Laws or the Sommers Bend Entitlements, and the Association pursuant to Article 8 the following items are prohibited: (a) outside installations, including balcony, patio or deck covers, wiring, air conditioning equipment, other machines and other Improvements; (b) Improvements to deck or balcony railings; and (c) other exterior additions or alterations to any Separate Interests. In addition to the foregoing restrictions, patio covers shall be permitted only if such patio covers are consistent with the architecture of the Residence originally constructed by Declarant or a Guest Builder and are in compliance with the Association Design Guidelines and the Association Governing Documents. Owners are hereby advised that the Separate

Interests are subject to City lot coverage requirements and any Improvements shall be subject to compliance with such lot coverage requirements in addition to all restrictions set forth herein.

7.13.3 Sports Apparatus. No basketball standards or other fixed sports apparatus shall be constructed or attached to any Residence except as approved pursuant to Article 8. Portable basketball apparatus shall be permitted so long as such apparatus is in conformance with the Association Rules.

7.13.4 Exterior Lighting. Any exterior electrical, gas or other artificial lighting installed on any Residence shall be positioned, screened, or otherwise directed or situated and of such controlled focus and intensity so as to fall on the same Separate Interest on which such lighting is located. Further rules regarding exterior lighting may be promulgated by the Association Board. Additionally, Separate Interests adjacent to open space areas may be subject to further exterior lighting restrictions imposed by Governmental Agencies.

7.13.5 Window Coverings. Temporary window coverings ("Temporary Window Coverings") in a design and color that does not conflict with the surrounding Improvements (but excluding aluminum foil, newspapers, or any other contrasting material) shall be permitted for a maximum period of sixty (60) days from the date that a Separate Interest is conveyed to an Owner by Declarant or a Guest Builder or such longer period as may be authorized by the Association Board. Except as specifically provided above, no Temporary Window Coverings shall be used to cover any door or window of any Residence. All window coverings (including Temporary Window Coverings) shall be of a neutral color harmonious with and not in conflict with the color scheme of the exterior wall surface of the Residence.

7.13.6 Painting. No Owner shall paint the exterior of the Owner's Residence or any other exterior Improvements within a Separate Interest without prior approval in accordance with Article 8, except that no consent shall be required if an Owner repaints the exterior with the same color.

7.13.7 Roof-Mounted Equipment. No mechanical equipment, tank, duct, elevator enclosure, cooling tower, mechanical ventilator or air conditioner shall be erected, constructed, converted, established, altered or enlarged on the roof of any building, unless such equipment has been approved in accordance with Article 8.

7.13.8 Decks and Balconies. No Owner shall use any deck or balcony areas for storage purposes.

7.14 Association Maintenance Areas. Unless approved pursuant to Article 8, each Owner shall be prohibited from placing, maintaining, constructing or planting any Improvements, landscaping or other items, including without limitation, decks, stairs, walls, irrigation systems, trees or any vegetation on any Association Maintenance Area located within a Separate Interest. Additionally, each Owner shall be prohibited from altering or modifying the Association Maintenance Area in any way; provided that each Owner shall have the right to access any Association Maintenance Area that exists on such Owner's Separate Interest as may be necessary in connection with the maintenance of such Owner's Residence or other Improvements on such Owner's Separate Interest.

7.15 Displaying the Flag of the United States. The Association Board shall comply with California Civil Code Section 4705, by allowing an Owner to display the flag of the United States, as defined by subdivision (b) of Section 434.5 of the California Government Code within such Owner's Separate Interest, in a location reasonably approved by the Association Board. For purposes of this Section, "Displaying the flag of the United States" means a flag of the United States made a fabric, cloth or paper display from a staff or pole or in a window and does not mean a depiction or emblem of the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, balloons or any similar building, landscaping or decorative component.

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

7.17 Insurance Requirements. No Subassociation or Owner shall do anything that would materially increase the premiums of any policy of insurance maintained by the Association or would render any portion of the Covered Property uninsurable, or create any valid defense to the Association's right to collect insurance proceeds, or cause any insurance policy to be cancelled, or cause a refusal to renew the same.

7.18 Activities. The Association shall have the power to regulate all activities within the Sommers Bend Clubhouse and Recreational Facilities and Association Property and the Association Property and the Association Maintenance Areas including the Recreational Facilities. Except as otherwise permitted by a Supplementary Declaration or with the approval of the Association Board, or as otherwise required to be allowed by Applicable Laws, no display, sale or offering for sale of merchandise, and no promotional or business activities within the Association Maintenance Areas, including, without limitation, distribution of handbills, flyers and similar materials, will be permitted, except for organized special promotions or activities consistent with the Sommers Bend Standards, and the Association Governing Documents or approved in advance by the Association Board and Declarants until the Declarants' Rights Termination Date. The foregoing provision shall not apply to either Declarant or the exercise by a Declarant of any rights reserved in favor of a Declarant or with the prior consent of Declarant, any Guest Builder or any assignee of a Declarant under this Declaration or the other Association Governing Documents.

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

7.20 Garbage and Refuse Disposal. All rubbish, trash, garbage and recycling shall be regularly removed from each Parcel, and shall not be allowed to accumulate. All trash shall be fully contained with appropriate trash receptacles and/or recycling containers. Before deposit in the garbage, trash refuse and recycling collection facilities, all trash, garbage, recycling and other waste shall only be kept in clean and sanitary containers. Each Subassociation and each Owner shall comply with all recycling requirements imposed by the Association.

7.21 Trash. Weeds, rubbish, debris, unsightly material or objects and trash may not be kept upon the Covered Property or on any street abutting or visible from the Covered Property. All trash containers shall be located so as to be out of public view, except when placed for pickup. Trash shall be kept in individual and sanitary containers in rear or side yards or garages, and each Owner shall at all times maintain adequate space in the garage or rear or side yards for storage of trash containers. Trash containers may be exposed to the view of neighboring Separate Interests for a reasonable period of time on trash collection days (not to exceed any time limitations set forth in the Association Rules). No odor may be permitted to arise from such containers so as to render any portion of the Covered Property offensive or detrimental to any other property in the vicinity thereof or to its occupants. Trash containers owned by the Association may be kept on the Association Property so long as they are contained in an enclosure installed by Declarant or a Guest Builder or approved by the Design Review Committee.

7.22 Responsibility for Damage to Association Property. No Owner or Subassociation shall cause any damage to the Association Property or other Association Maintenance Areas. Should any Owner or Subassociation or their respective Permitted Users cause any damage to sidewalks, curbs or other City property or rights-of-way, or to any Association Property or other Association Maintenance Areas, the Association and a Declarant shall have the right to (a) either repair such damage on behalf of

the Owner and charge the cost thereof to the Owner or Subassociation as a Compliance Assessment, or (b) require the Owner or Subassociation to promptly and fully repair such damage at the Owner's expense or Subassociation's expense. In the event such damage is repaired by the Association or a Declarant, the Owner or Subassociation shall immediately reimburse such party for the full costs of repair. Each Owner and Subassociation shall be liable to the Association and the other Owners, including Declarants, for any damage to any of the Association Property or other Association Maintenance Areas that may be sustained by reason of the negligence of that Owner or Subassociation, and that Owner's or Subassociation's Permitted Users.

7.23 Established Drainage. Neither the Association nor any Subassociation or Owner shall in any way interfere with the established drainage within the Covered Property unless adequate provisions have been for proper drainage. "Established drainage" is defined as the drainage which existed at the time the final grading and the drainage improvements which were originally completed by a Declarant or a Guest Builder. "Established drainage" refers to both surface drainage and subsurface drainage, if any. Any Subassociation or Owner that changes the established drainage shall be responsible for any damages which might result to any other Association or Owner or the Association or to any third party.

7.24 Storm Water Pollution Control. The Association and each Subassociation and the Owners shall comply with the requirements of the Master Declaration regarding storm water and other drainage obligations and pollution control.

7.25 Signs. No sign, advertising device or other display of any kind shall be displayed in a Separate Interest, except for the following:

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

(b) for each Separate Interest, one (1) nameplate or similar Owner name or address identification which complies with the Association Design Guidelines;

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

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

(ii) the sign is in compliance with the Association Design Guidelines or is otherwise authorized by the Association Board;

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

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

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

7.26 Fences, Walls Etc. No fences, ornamental screens or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Covered Property, except those that are installed in accordance with the original construction by a Declarant or a Guest Builder or are approved by a Declarant for a Custom Homesite or as are authorized and approved in accordance with Article 8. In no event shall any fences, gates or walls installed by a Declarant or a Guest Builder or the Owner of a Custom Homesite be altered in any way unless such alteration has been

approved in accordance with the provisions set forth in Article 8 below. In no event shall any fencing or walls separating portions of the Sommers Bend Community and open space lots owned and maintained by the City or other Governmental Agency, be modified or supplemented, removed, relocated or altered, unless such modification, removal, relocation or alteration occurs in connection with repairing or replacing such fencing in accordance with the requirements set forth in the Specific Plan, and all other City or other Governmental Agency requirements. All fences and walls within the Sommers Bend Community shall be installed and maintained as designated and specified in a Supplementary Declaration.

7.26.1 Walls and Fences Located Adjacent to Open Space Areas. Walls and fences adjoining the open space area may not be modified or moved from the location originally installed by a Declarant or Guest Builder without the approval of the City and the Association pursuant to Article 8.

7.27 Landscaping. For any Separate Interests, front yard and rear yard landscaping (to the extent not installed by Declarant or a Guest Builder prior to the conveyance to a First Purchaser by Declarant or a Guest Builder) shall be installed within the time period set forth in the Association Design Guidelines. Each Owner shall submit an application for landscaping in accordance with the requirements set forth in Article 8 and the Association Design Guidelines and shall install such landscaping within the time period(s) set forth in the Association Design Guidelines. For any Custom Homesite, such landscaping shall be approved by the applicable Declarant who conveyed the Custom Homesite and installed in accordance with any requirements set forth in a Custom Homesite Supplementary Declaration.

7.27.1 Compliance with City Requirements. All landscaping within the Covered Property shall comply with the City landscape water conservation requirements, if any, the Sommers Bend Entitlements, and the Association Design Guidelines.

7.28 No Subdivision of Separate Interests. No Separate Interest shall be further subdivided nor shall less than all of any such Separate Interest be conveyed by an Owner thereof. The Owners of two (2) or more contiguous Separate Interests may apply to the Design Review Committee for permission to use such Separate Interest as the site for a single Residence provided such Owner shall continue to pay Assessments on both Separate Interests. Such restrictions on future subdivisions shall not apply to a Declarant or with the prior approval of the Declarant who conveyed a Separate Interest to such Guest Builder.

7.29 Holiday Decorations. Outdoor holiday decorations, or indoor holiday decorations that are visible from outside, shall be limited to a reasonable period of time prior to the date of the holiday, as determined by the Association in the Association Rules, and shall be removed within no more than fourteen (14) days after such holiday, unless prior written authorization has been granted by the Association to remove them at a later date. This Section shall not be deemed to prevent the Association from installing and maintaining holiday lights and decorations within the Association Property pursuant to a schedule approved by the Association Board.

7.30 Post Tension Concrete Slabs. Concrete slabs for Residences constructed in the Covered Property may 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, personal injury, or both. Each Owner shall determine if his Residence has been constructed with a Post-Tension Slab and if so, agrees: (a) Owner shall not cut into or otherwise tamper with the Post-Tension Slab; (b) Owner shall not permit or allow any other Person to cut into or tamper with the Post-Tension Slab so long as the Owner owns any interest in the Residence; (c) Owner shall disclose the existence of the Post-Tension Slab to any Person who rents, leases or purchases the Residence from Owner; and (d) Owner shall indemnify and hold the Declarant, Guest Builders and all of their affiliated entities, officers, directors, agents and assigns 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.

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

7.32 Custom Homes and Custom Homesites. Any Owner who acquires a Custom Homesite for the purpose of constructing thereon a Custom Home shall comply with any restrictions and requirements imposed under any Custom Homesite Supplementary Declaration recorded to impose restrictions on the development and construction of a Custom Homesite and any other Custom Homesite Improvements and until a Custom Home has been constructed and a certificate of occupancy or its equivalent issued for the Custom Homesite, with respect to any restrictions set forth above which apply to a Residence for which a certificate of occupancy has been issued, then any restrictions set forth above which apply to the use of a Separate Interest after completion of a Residence shall not be applicable to the Custom Homesite during the period of design and construction.

7.33 Fire Suppression Areas. If there are any Fire Suppression Areas located within the real property owned or maintained by the Association or a Subassociation, then the Association or Subassociation shall not install any flammable landscaping or Improvements or make alterations to any flammable landscaping or Improvements within such Fire Suppression Areas without review and approval of the City. If there are any Fire Suppression Areas included within any Separate Interests, the Owner shall not install any flammable landscaping or Improvements within such Fire Suppression Areas or make alterations to any flammable landscaping or other Improvements within such Fire Suppression Areas without review and approval of the City.

ARTICLE 8

DESIGN REVIEW AND DESIGN STANDARDS

To maintain the architectural integrity and to protect and preserve the value of the Covered Property, the Association is charged with the responsibility of design review over the Covered Property. The design review and approval process will help to protect the interests of the Owners in the Covered Property.

8.1 Non-Applicability to Declarants and Guest Builders. The provisions of this Article shall not apply to any Improvements installed in the Covered Property installed by a Declarant or Guest Builder and the Association shall not have any rights of review or approval with respect thereto. In addition, until the Declarant's Rights Termination Date, if either Declarant conveys a Custom Homesite to a First Purchaser, then such Declarant shall be entitled to approve the Plans and Specifications for the construction of a Custom Home or may, in its sole discretion, delegate such review and approval rights to the Association.

8.2 Compliance with Association Design Guidelines. The Association Design Guidelines include design and construction standards for the Covered Property. All Plans and Specifications must comply with the requirements set forth in the Association Design Guidelines. The Association Design Guidelines may include design and construction standards for the design and construction of Custom Homes on the Custom Homesites or either Declarant, with respect to any Separate Interests owned by such Declarant, may promulgate requirements for the construction of Custom Homesite Improvements which shall be set forth in a Custom Homesite Supplementary Declaration and in such case the Owner of the Custom Homesite shall comply with such requirements in connection with the initial construction of a Custom Home and all Custom Homesite Improvements.

8.3 Scope of Required Review of Plans for Improvements. No construction, installation or alteration of any Improvements in the Covered Property by a Subassociation or Owner may be commenced until the Plans therefor have been submitted to and approved in writing by the Design

Review Committee in accordance with the Association Design Guidelines. If approval of the Association is required, complete plans and specifications, showing the nature, kind, shape, scope, materials and any other information required by the Association and the Association Design Guidelines ("Plans") shall be submitted to the Design Review Committee as provided below. The Association may require the Plans submitted by an Owner, subject to the jurisdiction of a Subassociation be submitted by the Subassociation on behalf of the Owners subject to the Subassociation's jurisdiction. (Herein, the party submitting Plans is referred to as the "Applicant").

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

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

8.4.2 Relationship to Associations' Review. The Design Review Committee may require that all Plans be approved by any Subassociation having jurisdiction over the applicable Separate Interest or Condominium before submitting the Plans to the Design Review Committee for review. To the extent the requirements imposed by the Design Review Committee are more restrictive, such requirements supersede all conflicting requirements which may be imposed by a Subassociation. The Design Review Committee's determination of the existence of a conflict or discrepancy between the requirements imposed by the Design Review Committee and those imposed by a Subassociation are binding and conclusive upon the Subassociation and any affected Applicant.

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

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

8.5 Association Design Guidelines. The Association may, from time to time, adopt, amend and repeal the Association Design Guidelines in accordance with California Civil Code Section 4355, et seq. The Association Design Guidelines shall not detract from or conflict with the standards required by this Declaration. The Association Design Guidelines may impose different guidelines for the different types of areas in the Covered Property, including, without limitation different standards for the design and construction of Custom Homesite Improvements.

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

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

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

8.5.4 Hearings. If the Design Review Committee, in its sole discretion, elects to conduct a hearing on an application (including with respect to issues which may arise during construction), reasonable notice of the time, place and proposed agenda for the Design Review Committee hearing shall be distributed prior to the date of a hearing to any Applicant whose application is scheduled to be heard. The Applicant shall be entitled to appear at the hearing and to be heard on the matter, and may be accompanied by the Applicant's architect, engineer and/or contractor. Although the Subassociations within the Covered Property may submit all applications on behalf of the Owners subject to its jurisdiction to the extent required by the Association, for the purpose of any such hearings, the Owner requesting the alteration and/or the Owner's design professional shall be entitled to attend such meetings.

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

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

render its decision within thirty (30) days after receipt of the Reminder Notice, then the Association shall be deemed to have rendered a decision in favor of the Applicant.

8.7 Approval of Solar Energy Systems. Any Owner proposing to install or use a solar energy system, as defined in Civil Code Section 801.5, shall be subject to the same review and approval process as any Owner proposing to construct any Improvements or other actions requiring the approval of the Design Review Committee pursuant to this Declaration. However, only reasonable restrictions on the installation and use of a solar energy system shall be permitted. Reasonable restrictions on a solar energy system are those restrictions which do not significantly increase the cost of the system or its sufficiency or specified performance, or which allow for an alternative system of comparable costs, efficiency, and energy conservation benefits.

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

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

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

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

8.12 Estoppel Certificate. Within forty-five (45) days after a written request is delivered to the Association by the Applicant, and upon payment of any fees as may be imposed by the Association Board, the Association Board shall deliver an estoppel certificate, executed by the Association Board stating that as of the date thereof, either: (a) all Improvements completed by the Applicant comply with this Declaration and the other Association Governing Documents, or (b) such Improvements do not so comply, in which event the certificate shall also identify the non-complying Improvements and set forth

with particularity the basis of such non-compliance. Any purchaser or other Person requesting the certificate shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and Applicant.

8.13 Liability. The Association Board, the Design Review Committee, and any member of either or consultant retained by any of the foregoing, shall not be liable to the Association or to any Applicant for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any Plans, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved Plans; (c) the inspection of any work; (d) damage to any property within the Covered Property; or (e) the execution and delivery of an estoppel certificate pursuant to Section 8.12, whether or not the facts therein are correct; provided, however, that the Association Board member or the Design Review Committee member has acted in good faith on the basis of such information as may be possessed by him or her.

8.14 Notice of Non-Compliance or Non-Completion. Upon completion of any construction or reconstruction or the alteration or refinishing of any Improvements, or upon the completion of any other work for which approved Plans are required under this Article, the Owner shall give written notice of completion thereof to the Association Board or if appointed, the Design Review Committee. Within thirty (30) days after receiving notice of completion, the Association Board, or its duly authorized representative, shall have the right to enter into a Separate Interest (but not the interior of the Residence situated therein), as provided in Section 8.9, to inspect the Improvements to determine whether they were constructed or installed in substantial compliance with the approved Plans. If the Association Board or if appointed, the Design Review Committee, finds that such construction or installation was not done in substantial compliance with the approved Plans, it shall notify the Owner in writing of such noncompliance within such thirty (30) day period, specifying particulars of noncompliance, and shall require the Owner to remedy such noncompliance. If an Owner fails to remedy such non-compliance within thirty (30) days after the date of notification of noncompliance, the Association Board or if appointed, the Design Review Committee, after affording the Owner Notice and Hearing, shall determine whether there is a noncompliance, and if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the Association Board or if appointed, the Design Review Committee, shall require the Owner to remedy or remove the same within a period of not more than thirty (30) days from the date of the Association Board or if appointed, the Design Review Committee, ruling. If the Owner does not comply with the Association Board or if appointed, the Design Review Committee, ruling within such period or within any extension of such period as the Association Board in its discretion may grant, the Association Board at its option may either remove the non-complying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Association Board shall levy a Compliance Assessment against such Owner for reimbursement.

8.15 Notice of Non-Compliance or Non-Completion. Notwithstanding any other provision of this Declaration, after the expiration of one (1) year from the date of completion of the Improvements for which approval was required to be obtained under this Article 8 as evidenced by a recorded notice.

8.15.1 Failure to Notify. If for any reason the Association Board fails to notify the Owner of any noncompliance within sixty (60) days after receipt of the notice of completion or a certificate issued by an architect or design professional or other Person preparing the approved Plans, such Improvements shall be deemed to be in compliance with all provisions of this Declaration and the other Association Governing Documents, unless actual notice of such noncompliance or non-completion, executed by the Association Board or the Design Review Committee, shall have been delivered to the Owner, or Association, or unless legal proceedings shall have been instituted to enforce compliance or completion, within such one (1) year period. Any purchaser or holder of a Mortgage on any portion of the Covered Property shall be entitled to rely upon such deemed compliance. Notwithstanding the foregoing, the provisions of this Section 8.15 shall not apply to any Owner who has not obtained the approvals required under this Article 8.

ARTICLE 9

DEVELOPMENT AND OTHER RIGHTS

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

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

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

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

9.4 Marketing Rights. Subject to the limitations of this Declaration and Applicable Laws, a Guest Builder, each Declarant, any Declarant Party and, with the prior consent of the Declarant, who conveyed a portion of the Covered Property to a Guest Builder shall have the right to:

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

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

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

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

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

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

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

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

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

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

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

9.7 **Declarant's Additional Representative.** Until the Declarants' Rights Termination Date, the Association shall provide each Declarant with written notice of all meetings of the Association Board and each Declarant shall be entitled, without obligation, to have a representative (in addition to any members of the Association Board appointed by Declarant pursuant to Section 5.3) present at all such Association Board meetings ("Declarant's Additional Representative") provided, however, in no event shall Declarant's Additional Representative be entitled to participate in any executive sessions of the Association Board, unless such participation is approved by a majority of the non-Declarant appointed or elected members of the Association Board. The Declarant's Additional Representative shall be in addition to any member which a Declarant may have on the Association Board and, if a Declarant elects to have a Declarant's Additional Representative, the Declarant's Additional Representative may be present in an advisory capacity only and shall not be an Association Board member or have any right to vote on matters coming before the Association Board.

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

9.9 **Declarant and Guest Builder Exemption.** The development, construction, marketing and sales activities of Declarants and each Guest Builder are exempt from the covenants, restrictions and limitations set forth in this Declaration to the extent provided for herein and subject to any approvals required to be obtained from a Declarant or any other limitations on the rights of Guest Builders and none of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Declaration shall be applied to the development, construction, marketing or sales or leasing activities of Declarants and

with the consent of Declarants, a Guest Builder or construed in such a manner as to prevent or limit development, construction, marketing, leasing or sales activities by any Declarant or Guest Builder. This Section shall not be amended or removed without the prior written consent of both Declarants until the Declarants' Rights Termination Date.

9.10 Design Review Exemption. Declarants, Guest Builders, and any Person to whom a Declarant may assign all or a portion of its exemptions under this Declaration need not seek or obtain Design Review Committee approval of any Improvements constructed anywhere within the Covered Property by Declarants, Guest Builders, or such other Persons. Declarants may exclude portions of the Covered Property from jurisdiction of the Design Review Committee in a Supplementary Declaration.

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

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

9.13 Supplementary Declarations. Supplementary Declarations of Annexation or other Supplementary Declarations or similar instruments may be recorded without the consent of any Owner or the Association Board, by either Declarant (or if specifically required hereunder, both Declarants), or a Guest Builder (with the prior consent of the Declarant conveying any portion of the Covered Property or Annexable Property to such Guest Builder), or by the Association (with the prior consent of both Declarants, if the Supplementary Declaration affects any portions of the Covered Property or Annexable Property owned by both Declarants or if the Supplementary Declaration only affects the Covered Property or Annexable Property owned by one Declarant, the consent of such Declarant until the Declarants' Rights Termination Date) to do any or all of the following: (a) annex all or a portion of the Annexable Property and impose additional covenants and restrictions or make such other complementary additions and/or modifications necessary to reflect the different character of the real property to be annexed; (b) prior to Annexation, delete any portion of the Annexable Property from the description of the Annexable Property, or after Annexation, deannex any portion of the Covered Property pursuant to Article 13 and subject to the limitations set forth in Section 13.5; (c) designate an area in the Annexable Property or portion thereof as a Phase or Neighborhood; (d) designate any additional real property to be included within the Annexable Property, so long as the development plan for such additional real property is approved by the applicable Governmental Agency and reviewed by the DRE in accordance with Regulation § 2792.27; (e) designate Special Benefit Areas and Special Benefit Maintenance Areas with the Annexable Property concurrently with the annexation of such Annexable Property and/or pursuant to the provisions of Section 3.3.17; (f) identify Association Property and other Association Maintenance Areas (including Offsite Maintenance Areas) or other areas to be maintained by the Association and/or make modifications or supplements to any areas designated for maintenance by the Association or any Owner, subject to the limitations on such rights of the Declarants set forth in Article 9 or elsewhere in this Declaration; (g) conform this Declaration or any previously recorded Supplementary Declarations to Applicable Laws or any conditions of approval imposed by any Governmental Agency or the Sommers Bend Entitlements; (h) conform this Declaration and other Association Governing Documents to the requirements of any Federal Agencies, and notwithstanding anything to the contrary set forth in this Declaration, impose obligations or covenants if required by the Federal Agencies without the prior consent of any Owner, the Association or any Subassociation; (i) memorialize any exemptions or variances related to design review which may have been granted by a Declarant to any portion of the Covered Property owned by such Declarant; (j) supplement or modify any of the exhibits to this Declaration or any previously recorded Supplementary Declarations, so long as such modifications are non-material and do not materially or adversely change any of the Association Maintenance Areas reviewed by the DRE as part of the overall development plan of the Covered Property; (k) impose requirements relating to the design and construction of any Custom Homes and Custom Homesite Improvements and standards and requirements for the maintenance of any Custom Homesites prior to

and during the construction of a Custom Home and other Custom Homesite Improvements; (l) designate any Fire Suppression Areas in a Phase; (m) make non-material corrections to the provisions of this Declaration or any previously recorded Supplementary Declaration(s); (n) designate Permitted Horse Lots and/or Permitted Recreational Vehicle Separate Interests and/or impose restrictions related thereto, and (o) for any of the other purposes for which a Supplementary Declaration may be recorded under this Declaration. Supplementary Declarations may also be recorded by a Declarant or the Association (with the prior consent of both Declarants until the Declarants' Rights Termination Date) to impose additional covenants and restrictions on the Owners with the prior consent of the applicable Owners upon whose portion of the Covered Property the covenants and restrictions are being imposed and/or to the extent that such Supplementary Declaration materially or adversely affects such Owners, unless such restrictions are imposed pursuant to any of the purposes for which a Supplementary Declaration may be recorded as set forth herein, or in the Planning Area Governing Documents in which case no such consent shall be required. The Subassociations may also record Supplementary Declarations for any of the purposes for which a Supplementary Declaration may be recorded as set forth above with the prior consent of either or both Declarants until the Declarants' Rights Termination Date.

ARTICLE 10

INSURANCE

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

10.1 Association's Insurance Obligations.

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

10.1.2 Property Insurance. The Association shall obtain and maintain property insurance for the risks covered by, and providing coverage at least as broad as, a current ISO "special form" policy or its equivalent, insuring: (a) all Improvements upon, within or comprising the Association Property and other Association Maintenance Areas any other areas to be maintained, repaired or replaced by the Association; (b) all personal property owned or maintained by the Association; and (c) such other insurance that the Association is required to maintain as designated in a Supplementary Declaration (collectively, the "Association Insured Property"). Such insurance shall be maintained in the amount of the maximum insurable replacement value of the property to be insured thereunder as determined annually by the Association Board. Such coverage may exclude land, foundations,

excavations and other items typically excluded from property insurance coverage on properties similar in construction, location and use.

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

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

(c) **Primary.** With respect to the Association Insured Property, the property insurance maintained by the Association shall be primary and noncontributing with any other property insurance maintained by an Owner covering the same loss.

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

(e) **Deductibles.** Such Association Property Insurance may contain reasonable deductible amounts comparable to those customarily maintained with respect to properties similar in construction, location and use, as may be determined by the Association Board for projects approved by Fannie Mae, the maximum deductible may not exceed the maximum deductible, if any, established by Fannie Mae.

(f) **Additional Insurance.** The Association may, but shall not be required to, carry (i) earthquake insurance; (ii) pollution liability insurance; (iii) flood insurance; and/or (iv) terrorism insurance.

10.1.3 Workers' Compensation Insurance. The Association shall obtain Workers' Compensation Insurance in an amount sufficient to satisfy Applicable Laws. The Association shall also maintain Employee's Liability insurance of at least \$1,000,000 per occurrence. The Association shall obtain a certificate of insurance regarding current valid workers' compensation insurance from any independent contractor who performs any service for the Association, if practicable.

10.1.4 Fidelity Bonds or Crime Insurance. The Association shall obtain fidelity bonds, employee dishonesty insurance, or commercial crime insurance including employee dishonesty insurance in an amount equal to the greater of: (a) the estimated maximum amount of funds, including reserves, expected to be regularly held by or on behalf of the Association or a managing agent at any given time during the term of the fidelity bond; and (b) three (3) months' aggregate of the Regular Assessments on all Separate Interests plus any reserve funds. Such insurance shall define non-compensated directors, officers, committee members, and volunteers as employees for purposes of coverage. Such insurance shall cover all Association Board members, Association officers and employees, other Association committee members (including, without limitation, all members of the Design Review Committee), and any manager of the Association, that have access to any Association

funds. If the Association hires a management company, the theft of Association assets by any representative of the management company shall be covered for the benefit of the Association.

10.1.5 Directors and Officers Liability Insurance. The Association shall obtain liability insurance providing coverage at least as broad as a current ISO commercial general liability insurance form and maintain officers and directors liability insurance for officers, directors, committee members, and volunteers of the Association. There shall be no exclusion(s) pertaining to acts of the Declarant's Representatives who may be serving as directors and/or officers of the Association. The limits of such insurance shall be not less than One Million Dollars (\$1,000,000) for each occurrence and the aggregate limit shall not be less than Three Million Dollars (\$3,000,000), and shall at all times meet or exceed the minimum requirements of California Civil Code Section 5800.

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

10.1.7 Assessments for Insurance. The cost of insurance coverage required to be maintained by the Association shall constitute a Common Expense and be included as part of the Regular Assessments. Notwithstanding the foregoing, the Association Board may allocate the cost of insurance as a Special Benefit Area Assessment if the insurance coverage provides a particular benefit to the Owners in a Special Benefit Area, as reasonably determined from time to time by the Association Board or as specified in the Special Benefit Area Budget.

10.1.8 Other Insurance. The Association shall maintain other types of insurance as the Association Board determines to be necessary to protect the interests of the Owners or as may be required by a Governmental Agency.

10.1.9 Compliance with Federal Agencies' Requirements. Notwithstanding any other provisions contained herein, the Association shall continuously maintain in effect such insurance and a fidelity bond meeting the minimum insurance and fidelity bond requirements for condominium projects established by the Federal Agencies for so long as the respective Federal Agency is a Mortgagee, guarantor of a Mortgage or an Owner of a Separate Interest, except to the extent such coverage is not available or has been waived in writing by the applicable Federal Agency. If Fannie Mae or FHLMC requirements conflict, the more stringent requirements shall be met.

10.1.10 Insurance to Satisfy California Civil Code. Section 5800 of the California Civil Code provides for a partial limitation on the liability of volunteer officers and directors of the Association, provided that certain requirements, as set forth in such California Code Section 5800 are satisfied. The requirements include that general liability insurance and officers' and directors' liability insurance be carried by the Association in specified amounts. The Association shall maintain general liability insurance and officers' and directors' liability insurance in amounts which satisfy the requirements of the California Civil Code Section 5800 to limit the liability of volunteer officers and directors of the Association.

10.2 Requirements for Insurance to be Maintained by the Association.

10.2.1 No Liability for Failure to Obtain Insurance. The Association, the Association Board, and any manager of the Association, shall have no liability to any Subassociation, Owner or Mortgagee if, using good faith efforts, it is unable to obtain the insurance required hereunder because the insurance is no longer available at commercially reasonable rates or terms.

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

10.2.3 No Separate Insurance. A Subassociation and any Owner shall not separately insure the Improvements on or within its Separate Interest or the real property owned by a Subassociation against loss by fire or other casualty covered by any insurance carried by the Association in a manner that will result in any diminution in insurance proceeds otherwise payable under the Association's policies. If any Owner or Subassociation violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner or Subassociation who acquired other insurance.

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

10.3 Insurance to be Maintained by Each Owner. Each Owner is strongly advised to seek the advice of a qualified insurance consultant regarding: (i) the amount of property insurance the Owner should procure for casualty losses to Owner's property; and (ii) the amount of personal liability insurance coverage the Owner should maintain. Additional insurance requirements for an Owner may be set forth in a Supplementary Declaration or a Subassociation Declaration.

10.4 General Provisions Applicable to Insurance Coverages. The provisions in this Section 10.4 shall apply to all insurance required to be maintained under this Article 10.

10.4.1 Cancellation. The policies shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association Board and, in the case of the Association's policies, the Members of the Association, or in the event of a cancellation for non-payment of a premium without at least ten (10) days' prior written notice to all insureds. If the insurance required by this Declaration shall be effected by blanket or other policies as permitted under this Article, any certificates of insurance provided under this Article shall include schedules attached thereto (with respect to property or building insurance) showing the amount of insurance afforded by such policies applicable to the Separate Interest which is being insured.

10.4.2 Deductibles. The Association Board shall adopt a policy regarding payment of deductibles on any insurance coverage. Unless the Association Board determines otherwise, the Association shall pay deductibles required under any insurance claim from Association funds, unless

insufficient funds are available to the Association from the Association's accounts or from funds borrowed by the Association in accordance with this Declaration, in which event the Association shall levy a Special Assessment, in accordance with the provisions of this Declaration, with respect to the amount of any such deductible which exceeds funds available to the Association from the Association funds or from borrowing.

10.4.3 Reimbursement. Any prepaid premiums paid by Declarant on behalf of the Association shall be included in the Common Expenses and the Owners hereby authorize the Declarant to obtain reimbursement from the funds of the Association.

10.4.4 Summary to the Members. The Association shall annually distribute a summary of the Association's insurance policies to the Members.

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

10.4.6 Copies of Policies. Copies of all insurance policies of the Association shall be retained by the Association and open for inspection by Owners and First Mortgagees at reasonable times. All such insurance policies shall provide that they shall not be cancelable or substantially modified by the insurer without first giving at least thirty (30) days prior notice in writing to the Owners and First Mortgagees, except that ten (10) days prior written notice shall be required if the cancellation is for non-payment of premiums. In addition to the foregoing, the Association shall provide to the Owners such information regarding the insurance of the Association as may be required by Applicable Laws or under the Association Bylaws.

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

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

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

is no longer available, or, if available, the insurance can be obtained only at a cost that the Association Board, in its sole discretion, determines is unreasonable under the circumstances, or if the Owners fail to approve any assessment increase needed to fund the insurance premiums.

ARTICLE 11

DESTRUCTION OF IMPROVEMENTS

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

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

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

(a) Insurance Trustee. If so elected by the Association, all insurance proceeds shall be paid to an Insurance Trustee designated by the Association Board to be held for the benefit of the Association and the Owners and their First Mortgagees, as their interests shall appear.

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

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

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

11.1.2 Insurance Proceeds Inadequate. If the cost of such repairing or rebuilding exceeds the amount of available insurance by more than ten percent (10%) of the cost of reconstruction,

then all insurance proceeds shall be deposited as provided in Section 11.1.1(a) the Association Board shall levy a Special Assessment and such damage and destruction shall constitute an Emergency under Section 6.11.1 and therefor the limitations set forth in Section 6.11 shall not apply. Any deductibles required to be paid by the Association as the result of a casualty event shall also be deemed to be an Emergency for purposes of Section 6.11.1 and the limitations set forth in Section 6.11 shall not apply. Any decision regarding whether to levy a Special Assessment shall be made as soon as reasonably practical after the Association determines that insurance proceeds are not adequate to complete the Repair but not later than ninety (90) days after the Association determines that the insurance proceeds are not adequate to complete the Repair. Notwithstanding the foregoing, if the damage or destruction affects only portions of a Special Benefit Area, the vote or written consent of only Members within such Special Benefit Area shall be required. If the Members determine not to levy such Special Assessment, then the Association Board shall use the insurance proceeds available to make such restoration or repair as soon as reasonably possible or to clear the site of the damaged premises and complete such repairs as the Association Board deems appropriate and the costs thereof shall be paid for with the insurance proceeds. Any deficiency may be funded by a Special Assessment in an amount determined by the Association Board. In the event any excess insurance proceeds remain, the Association Board, in its sole discretion, may retain such sums in the general funds of the Association or distribute pro-rata all or a portion thereof to the Members, subject to the prior rights of Mortgagees whose interest may be protected by insurance policies carried by the Association. The rights of the Owners and the Owner's Mortgagees, if any, as to such pro-rata distribution shall be governed by the provisions of any Mortgage encumbering such Separate Interest.

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

- (a) diligently commence to rebuild the same, if the insurance proceeds and other funds available to the Association or Owner are sufficient to pay the costs of such rebuilding; or
- (b) if there are not sufficient funds to rebuild, clear and level the Separate Interest, remove all wreckage, foundations, slabs, debris and remains of the Building or Buildings therefrom and leave the same in a level, clean and landscaped condition.

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

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

ARTICLE 12

EMINENT DOMAIN

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

12.1 Condemnation. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of the Association Property or if any action is brought to condemn all or any portion of the Association Property or a sale of all or a part thereof is in lieu of condemnation. The Members hereby

appoint the Association Board and such persons as the Association Board may delegate to represent all of the Owners in connection with the taking. The Association Board shall act, in its sole discretion, with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association, and used, held or distributed as reasonably deemed appropriate by the Association Board subject to the provisions hereof.

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

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

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

ARTICLE 13

ANNEXATION OF REAL PROPERTY

13.1 Annexation. Declarants may annex any of the Annexable Property by any of the methods set forth in this Article. To the extent there are minor boundary changes or lot line adjustments to the Annexable Property, any additional portions of land added as a result of such boundary or lot line adjustments shall be included within the Annexable Property. Additionally, any property identified in a Supplementary Declaration recorded by one or both Declarants identifying such real property as Annexable Property may be included in the Annexable Property, provided the development plan for such additional real property is approved by the applicable Governmental Agency and reviewed by the DRE in accordance with Regulation §2792.27. However, either or both Declarants may elect not to develop all or any part of the Annexable Property owned by such Declarant, to annex the Annexable Property to this Declaration in increments of any size whatsoever, or to develop or cause to be developed, more than one such increment at any given time and in any given order. The Annexable Property shall not become subject to this Declaration unless and until a Supplementary Declaration covering it has been recorded executed by one or both Declarants. Until the Declarants' Rights Termination Date, no Person other than the Declarants may annex any of the Annexable Property without the prior consent of either or both Declarants.

13.2 Procedures for Annexation.

13.2.1 Annexation by Declarant Without Approval. All or any part of the Annexable Property may be annexed by Declarants as provided below and become subject to this Declaration and

subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that:

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

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

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

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

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

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

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

13.2.2 Annexation Pursuant to Approval. If any Person other than a Declarant desires to add property other than the real property described on Exhibit "B-1" and Exhibit "B-2" to this Declaration and to subject such property to the jurisdiction of the Association and this Declaration, then such property may be annexed, if the vote or written assent of both Declarants until the Declarants' Rights Termination Date and Members representing sixty-seven percent (67%) of the Voting Power of the Association is obtained (excluding the vote of the Declarants and any Guest Builders) and the owners of the property to be annexed have consented to such Annexation.

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

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

13.5 De-Annexation. Declarants, upon mutual agreement, may delete all or any portion of the Covered Property from the coverage of this Declaration or any Supplementary Declaration, provided (a) a Declarant and/or a Guest Builder are the sole Owner(s) of all of the real property to be deleted, or if a Declarant or a Guest Builder are not the sole Owners, the consent of the Owners of the portion of the Covered Property to be de-annexed have consented thereto; (b) Assessments have not commenced with respect to the portion of the Covered Property to be de-annexed and/or the Association has not commenced to perform the Maintenance Obligations for such portions of the Covered Property to be deannexed for which the costs are included in the Annual Operating Budget unless otherwise approved by the Board; and (c) voting rights have not been exercised with respect to the portions of the Covered Property to be de-annexed. Such deletion shall be effective upon the recordation in the Official Records of a Supplementary Declaration or equivalent document, signed by Declarants and consented to by the affected Owners. Prior to Annexation, Declarant may also, upon recordation of a Supplementary Declaration, delete any portion of the Annexable Property by so designating such portion of land to be excluded from the Annexable Property in a Supplementary Declaration.

ARTICLE 14

RIGHTS OF LENDERS

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

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

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

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

14.4 Notice to Mortgagees. A Mortgagee and guarantor of a Mortgage on a Separate Interest are entitled to timely written notice of the following events:

14.4.1 Condemnation. Any condemnation loss or casualty loss that affects either a material portion of the Covered Property or the Separate Interest on which the Mortgagee holds a Mortgage;

14.4.2 Delinquencies. Any delinquency in the payment of Assessments or charges owed by the Owner that is subject to a Mortgage held by the Mortgagee if the delinquency is not cured within sixty (60) days after its due date;

14.4.3 Cancellation of Insurance. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

14.4.4 Termination of the Covered Property. Any proposal to take any action specified in this Article 14 or in Article 11, provided that, for purposes of a proposal to terminate the common interest development established hereunder and/or dissolve the Association, "timely written notice" shall mean at least thirty (30) days' advance written notice;

14.4.5 Actions Under Articles 14 and 15. Any proposal to take any action specified in this Article 14 or in Article 15;

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

14.4.7 Actions Requiring Consent. Any proposed action that requires the consent of a specified percentage of the Mortgagees.

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

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

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

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

14.8.1 Abandon or Termination of Covered Property. By act or omission, seek to abandon or terminate the Sommers Bend AA Planning Area as a common interest development;

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

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

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

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

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

14.9 Votes for Termination of Legal Status of Covered Property. Any election to terminate the legal status of the Covered Property as a residential community shall require:

14.9.1 The approval of Mortgagees that represent at least fifty-one percent (51%) of the votes of Separate Interests that are subject to Mortgages and at least sixty-seven percent (67%) of the total Voting Power if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Covered Property; or

14.9.2 The approval of at least sixty-seven percent (67%) of the total Voting Power and Mortgagees that represent at least sixty-seven percent (67%) of the votes of Separate Interests that are subject to Mortgages, if Section 14.9.1 is not applicable.

For so long as is required by FNMA's legal requirements for Covered Property acceptance, all references to "Mortgagees" in this Section shall be deemed to include all guarantors of such Mortgagees.

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

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

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

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

14.14 Voting Rights on Default. In case of default by any Owner in any payment due under the terms of any institutional Mortgage encumbering such Owner's Separate Interest, or the promissory note secured by the Mortgage, the Mortgagee or its representative, on giving written notice to such defaulting Owner or Owners, and placing of record a notice of default, is hereby granted a proxy and can

exercise the voting rights of such defaulting Owner attributable to such Separate Interest at any regular or special meeting of the Members held during such time as such default may continue.

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

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

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

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

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

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

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

ARTICLE 15

AMENDMENT AND TERM OF DECLARATION

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

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

15.2 City Approval. This Declaration shall not be terminated without approval of the City as provided in Section 18.8.

15.3 Amendments.

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

15.3.2 Amendments Subsequent to Commencement of Assessments. After the conveyance of a Separate Interest to a First Purchaser and the commencement of Assessments and subject to the provision of this Section 15.3, this Declaration may be amended by both: (i) the vote or written consent of the Members representing at least a Majority of the Voting Power of the Association; and (ii) at least a Majority of the Voting Power of Members other than Declarants and Guest Builders.

15.3.3 Lender Consent. Amendments which are adopted pursuant to Section 15.3.2 of a material and adverse nature to Mortgagees must be approved by Eligible Mortgage Holders that represent at least fifty-one percent (51%) of the votes of Separate Interests that are subject to Mortgages held by Eligible Mortgage Holders. Any Eligible Mortgage Holder who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within sixty (60) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. For so long as is required by Fannie Mae's legal requirements for project acceptance, all references to "Eligible Mortgage Holder" in this Section 15.3.3 shall be deemed to include all guarantors of First Mortgagees.

15.3.4 Consent of Declarants. Until the Declarants' Rights Termination Date, this Declaration and the other Association Governing Documents shall not be amended to (a) amend, diminish or eliminate any rights (including without limitation, easement rights) specifically granted or reserved to a Declarant, a Declarant Party or a Guest Builder or impose any obligations upon the

Declarants or a Guest Builder or (b) amend, diminish or eliminate any rights granted to the Association or impose any obligations upon the Association under this Declaration without the consent of both Declarants and any attempt to do so shall have no effect.

15.3.5 Amendment of Certain Provisions. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision.

15.3.6 Consent of City. This Declaration shall not be amended without the express written consent of the Director of Community Development of the City of Temecula.

15.3.7 Further Approvals Regarding Amendments. Notwithstanding anything to the contrary contained in this Declaration, Section 3.3.20 (Notice Prior to Litigation), Section 3.3.18 (Board and Members' Approval of Certain Actions), Article 9 (Development and Other Rights), Article 15 (Amendments and Term of Declaration), and Article 16 (Enforcement) of this Declaration shall not be amended without the vote or approval by written ballot of at least (a) the Members representing seventy-five percent (75%) of the Voting Power (and with the written consent of the Declarants until the Declarants' Rights Termination Date), and (b) at least seventy-five percent (75%) of their First Mortgagees.

15.4 Approval of Amendments to Subassociation Declarations. In no event may any Subassociation Declaration be amended, modified or supplemented in any way which materially or adversely affects the right or duties of the Association and/or the rights or duties of a Subassociation, without the prior consent of the Association Board and as provided in the Master Declaration, the board of directors of the Master Association.

15.5 Secret Ballot The vote on a proposed amendment to the Declaration shall be held by secret written ballot in accordance with the procedures set forth in California Civil Code Section 5100 and the rules adopted by the Association Board pursuant thereto. Such amendment shall become effective upon the recording of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or approval by written ballot have been obtained. For the purposes of recording the certificate of amendment, the President or Vice President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording the Certificate of Amendment with the Official Records.

15.6 Lender Consent for Material Amendment. In addition to the foregoing, in the case of any Material Amendment, as defined below, the vote of Mortgagees that represent at least fifty-one percent (51%) of the votes of Separate Interests that are subject to Mortgages held by Mortgagees and at least sixty seven percent (67%) of the Voting Power of each class of Members (or at least sixty-seven percent (67%) of the Owners of Separate Interests other than Declarants and Guest Builders) shall also be required. "Material Amendment" shall mean, for the purposes of this Section, any amendments to provisions of this Declaration governing any of the following subjects:

15.6.1 Purpose of the Sommers Bend AA Planning Area. The fundamental purpose for which the common interest development was created;

15.6.2 Assessments. Collection of assessments, assessment liens and subordination thereof;

15.6.3 Reserves. The reserve for repair and replacement of the Association Property;

15.6.4 Maintenance. The maintenance obligations of the Association;

15.6.5 Insurance. Casualty and liability insurance or fidelity bond requirements;

15.6.6 Reconstruction. Reconstruction in the event of damage or destruction;

15.6.7 Use of Association Property. Rights to use the Association Property;

15.6.8 Reallocation of Interest. Reallocation of any interests in the Association Property;

15.6.9 Voting. Changes to the voting power of the Owners;

15.6.10 Mortgagee Provisions. Any provision that, by its terms, is specifically for the benefit of Mortgagees, or specifically confers rights on Mortgagees;

15.6.11 Expansion or Contraction of the Covered Property. Expansion or contraction of the Covered Property or the addition, annexation or withdrawal of property to or from the Covered Property, other than the addition or deletion of the Annexable Property, the redefinition of Separate Interest boundaries or the conversion of a Separate Interest or Separate Interests into Association Property;

15.6.12 Imposition of Restrictions on Transfers. Imposition of any restriction on any Owner's right to sell or transfer of such Owner's Separate Interest;

15.6.13 Merger or Consolidation. Merger or consolidation of the Association; and/or

15.6.14 Professional Management. A determination not to require professional management if required pursuant to this Declaration.

Any Mortgagee who receives written request to consent to additions or amendments requiring consent under this provision who does not deliver to the requesting party a negative response within sixty (60) days after receipt of a notice delivered by certified or registered mail, return receipt requested, shall be deemed to have consented to such request. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, Mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Official Records.

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

15.8 Additional Approvals.

15.8.1 Governmental Approvals. If the consent or approval of any Governmental Agency, VA, FNMA or FHA is required with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained pursuant to the requirements of any Governmental Agency, VA, FNMA and/or FHA.

15.8.2 Amendment of Certain Provisions. If any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of Members in order to take

affirmative or negative action under such provision, the same percentage of such class or classes of Members shall be required to amend or revoke such provision.

15.8.3 Declarant's Consent. So long as Declarant owns any portion of the Property or Annexable Property, this Declaration may not be amended to do any of the following without the prior written approval of Declarant: (a) diminish or eliminate any rights specifically granted or reserved to Declarant; or (b) modify or eliminate the easements reserved to Declarant.

15.9 Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

15.10 Conflict with Article 14 or Other Provisions of this Declaration. To the extent any provisions of this Article conflict with the provisions of Article 14 or any other provision of this Declaration except those contained in this Section 15.10, the provisions of Article 14 shall control.

15.11 Business and Professions Code Section 11018.7. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 to the extent such section is applicable.

15.12 Notice to Eligible Mortgage Holder. Eligible Mortgage Holders shall be entitled to timely written notice of any amendments to this Declaration, the Association Bylaws or the Association Articles.

ARTICLE 16

ENFORCEMENT

This Article describes the enforcement rights for violations of this Declaration and the Governing Document and certain procedures which must be followed in the event of a Claim as defined in this Article 16. The claims procedures are intended to establish an efficient procedure to enable a claim or dispute to be resolved promptly for the benefit of Owners, the Declarant, the Guest Builders, Members, the Association, and each of them.

16.1 Enforcement and Non-Waiver. Owners, Members, Declarants, the Guest Builders and the Association, acting through the Association Board, shall have the right to enforce, by proceedings at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of the Master Governing Documents, and the Association Governing Documents and any Subassociation Governing Documents, including the right to prevent the violation of such documents and the right to recover damages for such violation. Failure of the Declarants, the Guest Builders or the Association to enforce any covenants or restrictions contained in the Association Governing Documents or Master Governing Documents and any Subassociation Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

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

16.3 Disputes Involving the Association and Members. Prior to filing a civil action by either the Association or by a Member solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, (other than for nonpayment of

Assessments), related to the any of the following matters: (i) enforcement of the Association Governing Documents; (ii) damage to the Association Property or any other Association Maintenance Areas; or (iii) damage to a Separate Interest that arises out of, or is integrally related to, damage to the Association Property or Association Maintenance Area; the Association shall be required to perform any act reasonably necessary to resolve any civil claim or action through alternative dispute resolution proceedings such as mediation, binding arbitration, or non-binding arbitration proceedings. Any dispute resolution procedure imposed by the Association shall satisfy the requirements of California Civil Code Sections 5900, 5905, 5910 and 5910.1. In the event the Association does not comply with the minimum requirements of a fair, reasonable and expeditious dispute resolution procedure, the Association or any Member may invoke the procedures provided for in California Civil Code Section 5915. The Association Board may impose any of the remedies provided for in the Association Bylaws.

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

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

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

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

16.6 Resolution of Disputes.

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

(a) "**Claims**" means any and all claims, controversies, breaches or disputes (whether based on contract, tort, statute, or equity but expressly excluding Excluded Claims), by or between (a) a Claimant or Claimant Parties, on the one hand, and (b) a Declarant, a Guest Builder or any Declarant Party or Guest Builder Party, on the other hand, arising under this Declaration or the Association Governing Documents, or otherwise relating to the Covered Property, including, without limitation, any disputes relating to:

- (i) the development and sale of any portion of the Covered Property;
- (ii) any Sale or Conveyance Agreements;
- (iii) non-disclosure or negligent or intentional misrepresentation or fraud;
- (iv) breach of any alleged duty of good faith and fair dealing;
- (v) any claims whether or not the governed by or subject to the Right to Repair Act or by common law that arises from or is related in any way to any alleged deficiencies

in construction, design, engineering, specifications, surveying, planning, supervision, testing, or observation of construction, including, but not limited to, any alleged violation of the standards set forth in California Civil Code Sections 895 through 897, inclusive;

(vi) allegations of failure to comply with the Functionality Standards under the Right to Repair Act; and/or

(vii) allegations of latent or patent design or construction defects in any work of Improvement constructed on or otherwise performed in connection with development of the Covered Property.

(b) "**Claimant**" means the Association, a Subassociation or an Owner.

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

(d) "**Declarant Parties**" means any director, officer, partner, shareholder, member, employee, representative, contractor, subcontractor, design professional or agent of a Declarant. For purposes of this Article 16, the definition of Declarant Parties set forth in this Section 16.6 shall control as to the procedures set forth in this Declaration and replace the definition of Declarant Party in Article 1.

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

(f) "**FAA**" means the Federal Arbitration Act, 9 United States Code Section 1 et seq. (as hereafter amended).

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

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

(i) "**JAMS**" means the Judicial Arbitration and Mediation Services.

(j) "**JAMS Rules**" means the rules established by JAMS.

(k) "**Non-Association Involved Claims**" has the meaning set forth in Section 16.6.2(a).

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

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

(n) **“Right to Repair Procedures”** means the procedures set forth in Chapter 4 of the Right to Repair Act.

(o) **“Sale or Conveyance Agreement”** means any conveyance, contractual agreement or other transaction between a Declarant, a Declarant Party, a Guest Builder, or Guest Builder Parties and any of the Claimant Parties relating to the sale of Separate Interests or conveyance of Association Property but excluding a conveyance or other agreement between a Guest Builder or Guest Builder Party, on the one hand, and a Declarant and/or a Declarant Party, on the other hand.

(p) **“Warranty”** means any express warranty provided by a Declarant or a Guest Builder to an Owner or Subassociation, if any.

16.6.2 Categories of Claims. The purpose of this Section is to set forth procedures for the resolution of Claims which may arise between a Claimant, on the one hand and a Declarant, any Declarant Parties, a Guest Builder and/or any Guest Builder Parties on the other hand. As described below, there are three categories of Claims which shall be resolved in accordance with the procedures set forth below.

(a) **“Non-Association Involved Claims”** are Claims between (a) any Owner or a Subassociation, on the one hand, but not the Association, and (b) a Guest Builder or Guest Builder Party, on the other hand, which shall be resolved in accordance with any non-adversarial or other dispute resolution procedures established in the Sale or Conveyance Agreements and any Subassociation Declarations or other declarations applicable to the Owners, if any

(b) **“Non-Declarant Involved Claims”** are Claims between a Claimant or Claimant Parties and a Guest Builder and/or a Guest Builder Party in which neither Declarant nor any Declarant Party is involved which shall be resolved in accordance with any non-adversarial procedures or other proceedings established in the Sale or Conveyance Agreements or Subassociation Declarations or other declarations otherwise applicable to any such Claimant or Claimant Parties or a Guest Builder or Guest Builder Party.

(c) **“Declarant and Association Involved Claims”** are Claims between (a) the Claimant or Claimant Parties (which includes the Association) on the one hand and (b) a Declarant or a Declarant Party (which may or may not involve a Guest Builder or Guest Builder Party) on the other hand which shall be resolved in accordance with the procedures set forth in Section 16.6.3 below.

16.6.3 Resolution of Declarant Involved Claims.

(a) **Resolution of Claims Subject to a Home Warranty.** If the Guest Builder is involved in the Claims, and the Guest Builder has provided a Warranty, and the Claimant or Claimant Party has made a claim on the Warranty, the Claim shall be resolved in accordance with the procedures set forth in the Warranty. If a Declarant is involved in a Claim, and the Declarant has provided a Warranty to the Claimant or Claimant Party, the Claim shall be resolved in accordance with the procedures set forth in the Warranty provided by the Declarant. If an Involved Party has made a claim under the Warranty which has not been resolved under the Warranty and the claim is a Declarant Involved Claim, the Involved Party must thereafter make a Claim in compliance with the Right to Repair Procedures.

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

(c) Involved Party's Acknowledgment of Right to Repair Procedures.

Declarants hereby provide notice of the existence of the Right to Repair Procedures, and further notifies the Association, each Subassociation and each Owner that such Right to Repair Procedures impact the legal rights of each Claimant. To the extent a Declarant Involved Claim which is covered by the Right to Repair Act is not covered by or resolved under a Warranty (to the extent applicable), each Claimant covenants and agrees to comply with the Right to Repair Procedures set forth in the Right to Repair Act prior to the initiation of any arbitration or other proceeding. Notwithstanding the foregoing, each Owner understands and agrees that pursuant to California Civil Code Section 915, Declarants' rights include the right to discontinue or elect not to pursue the Right to Repair Procedures at any time. If the Right to Repair Procedures fail to resolve such Declarant Involved Claims, the Claims shall be resolved in accordance with the procedures set forth below.

(d) Mandatory Binding Arbitration. Except as otherwise provided herein, all Declarant Involved Claims, not resolved under the Warranty or the Right to Repair Procedures shall be resolved by neutral, binding arbitration governed by the Federal Arbitration Act (9 U.S.C. §§1-16) ("Federal Act") and not by any court action except as provided for judicial review of arbitration proceedings under the Federal Act. The construction of any Residence and other portions of the Covered Property involved interstate commerce and therefore the arbitration procedures specified in this Section 16.6.3 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. Each Residence and other portions of the Covered Property were constructed with materials and products manufactured throughout the United States which have been shipped to the Covered Property 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 16.6.3 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 16.6.3. 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.); provided, however, Code of Civil Procedure Section 1281.2(c) shall not be applicable to permit the court to delay or refuse to order arbitration. 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 herein 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.

(i) Agreement to Arbitrate. The Claimant Parties agree to resolve each and every Declarant Involved Claim exclusively through binding arbitration in Riverside, California.

(ii) Waiver of Trial by Judge or Jury. By agreeing to resolve all Declarant Involved Claims through binding arbitration, the Claimants, Declarants, the Declarant Parties, the Guest Builders and Guest Builder Parties each give up the right to have their respective claims and defenses decided by a judge or a jury. All claims and defenses shall instead be decided by the arbitrator, or by the appeal arbitrator(s), if applicable.

(iii) Rules Applicable to All Cases. The Proceedings will be conducted by JAMS in accordance with the JAMS Rules in effect as of the initiation of the arbitration, as supplemented by the provisions set forth below. If the JAMS Rules have been repealed or replaced at the time the arbitration claim is filed, the JAMS's rules then most applicable to residential construction will apply. The following supplemental rules shall apply to all Proceedings and shall govern in the event of a conflict between the rules set forth below and the JAMS Rules. 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 and the parties shall agree to an alternative arbitrator or have a court appoint a new arbitrator whose experience and training in construction arbitration is similar to that of an JAMS-trained arbitrator.

(iv) **Qualifications of Arbitrators.** The Proceeding shall be conducted by one (1) qualified arbitrator selected in accordance with the JAMS Rules. The term "qualified" shall mean a retired judge who has experience with the laws governing residential real estate development and construction or an attorney who has actively practiced law in California for at least fifteen (15) years and who has experience with the laws governing real estate development and construction.

(v) **Appointment of Arbitrator.** The arbitrator to preside over the Declarant Involved Claim shall be selected in accordance with the JAMS Rules, but no later than sixty (60) days after a notice of claim is filed.

(vi) **Preliminary Procedures.** If state or federal law requires a Claimant or Involved Party to take steps or procedures before commencing an action in court, then the Claimant or Involved Party must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code Sections 6000, 6100 or 6150.

(vii) **Rules of Law.** The arbitrator must follow California substantive law (including without limitation, the California Evidence Code and the application of any statutes of limitations and/or statutes of repose to the Proceedings). The arbitrator shall be authorized to provide all recognized remedies available at law or equity for any cause of action.

(viii) **Statutes of Limitation.** Except for procedural issues, and to the extent not inconsistent with the Federal Act, the Proceedings, as well as the arbitrator and, the ultimate decisions of the arbitrator shall be subject to and bound by existing California case and statutory law including, but not limited to, applicable statutes of limitation and statutes of repose established in the Right to Repair Act or by common law.

(ix) **Participation By Other Parties.** Claimant, Declarants, and Guest Builders each have the sole and absolute right, in its discretion, to join any person or entity who is not a party to the Proceedings (including without limitation any Declarant Party or Guest Builder Party) if the presence of such person or entity is required or is necessary for complete relief to be accorded in the Proceedings or if the interest or responsibility of such person or entity in the Claim is not insubstantial. The parties shall cooperate in good faith and shall diligently perform such acts as may be necessary to ensure that all necessary and appropriate parties are included in the Proceedings.

(x) **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. The arbitrator shall have the sole power to enforce, extend, modify or vacate any such provisional remedies.

(xi) **Discovery.** All discovery shall be permitted by the arbitrator at the arbitrator's reasonable 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.

(xii) **Full Disclosure.** 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: (a) an outline of the issues and its position on each such issue; (b) a list of all witnesses the party intends to call; and (c) 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 Claim involves a Construction Defect Claim, then the Claimant 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.

(xiii) **Measure of Damages.** Any damages awarded shall be limited to the extent required by Chapter 5 of the Right to Repair Act and other applicable provisions of California law and must be specified in the findings of the arbitrator. If any damages are awarded to a Claimant in any other cause of action not covered by this Section 16.6.3, the damages awarded pursuant to this Section 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 such Declarant Parties can demonstrate any of the affirmative defenses set forth in California Civil Code Section 945.5.

(xiv) **Hearing.** The Proceedings shall be held in the County and 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 Proceedings 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. 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.

(xv) **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 (a) try all issues of both fact and law, and (b) 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. If the amount at controversy in the Claim is greater than Two Hundred Fifty Thousand Dollars (\$250,000), the arbitrator shall cause a complete record of all Proceedings to be prepared similar to those kept in the Superior Court, including a stenographic record of the Proceedings, which record shall remain confidential except as may be necessary for post-hearing motions and appeals. The cost of the record shall be borne one-half (½) by the Claimant and one-half (½) 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.

(xvi) **Attorney Fees and Costs.** For any Declarant Involved Claims, the Guest Builder shall, if the Guest Builder is an Involved Party, advance all initial fees and expenses to commence the Proceedings, and each Involved Party shall otherwise bear his, her, or its own costs and attorney fees. For any Declarant Involved Claims in which the Guest Builder is not an Involved Party,

Declarant shall advance all initial fees and expenses to commence the Proceeding. If Declarant or Guest Builder, as applicable, is the prevailing party in the arbitration, the arbitrator may, in his or her discretion and only to the extent permitted by law and the JAMS Minimum Standards of Procedural Fairness, direct the Claimant to reimburse Declarants or Guest Builder, as applicable, for such Claimant's pro rata share of the JAMS fee and arbitrator's fee advanced by a Declarant or Guest Builder. 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.

(e) **Procedure for Appeal of Certain Cases.** In any arbitration in which a claim or arbitration award of Claimant or Involved Party exceeds Five Hundred Thousand Dollars (\$500,000) in value, Claimant and Involved Party hereby adopt and agree to the JAMS Optional Appeal Procedure. The following additional rules will supplemental the JAMS Optional Appeal Procedure or any appeal procedures of the Alternative Arbitration Service, as applicable, and shall govern in the event of a conflict between the following rules and the JAMS Optional Appeal Procedure.

(i) **Right of Appeal.** There shall be no right to appeal unless the oral evidence received by the arbitrator was preserved in a manner such that it can be converted to an accurate and reliable written transcript.

(ii) **Appellate Panel.** An appeal shall be decided by one neutral appeal arbitrator unless either party, within the time permitted for the appointment of the appeal arbitrator, elects to have the appeal decided by a panel of three (3) appeal arbitrators. Any party who elects to have an appeal decided by a panel of three (3) appeal arbitrators agrees to be solely responsible for the cost of having two (2) additional appeal arbitrators. The sole appeal arbitrator, or at least one member of any panel of three (3) arbitrators, shall have prior experience as a member of an appellate panel of the California Court of Appeal.

(iii) **Issues on Appeal.** The only issues which may be considered on appeal are issues covered under the JAMS Rules for appellate procedures.

(iv) **Expenses and Costs on Appeal.** The fees charged by JAMS or the Alternative Arbitration Service and the appeal arbitrator(s) shall be advanced by Declarant or Guest Builder, as applicable, pursuant to Section 16.6.3(d)(xvi) above. The party who files the appeal must, at its sole expense, provide JAMS or the Alternative Arbitration Service and all non-appealing parties with a certified copy of the hearing transcript, and must provide JAMS with copies of all documentary evidence and all other tangible evidence received by the arbitrator. If more than one party appeals, the appealing parties must share equally the cost of the transcript and copies of all other documentary and tangible evidence received by the arbitrator. The appeal arbitrators may, within thirty (30) days of their determination award costs of the nature provided in the Federal Rules of Appellate Procedure. If a Declarant or Guest Builder, as applicable, is the prevailing party on appeal, the appeal arbitrator(s) may, in his, her or their discretion and only to the extent permitted by law and JAMS Minimum Standards of Procedural Fairness, include all or part of the JAMS fee, or the Alternative Arbitration Service, and arbitrator's fee advanced by a Declarant or Guest Builder in the award of costs on appeal.

(f) **New Evidence.** The appeal arbitrators must not receive new evidence. The appeal arbitrators must make their decision based only on the evidence that was presented to the arbitrator, except that the appeal arbitrators may visit any site involved in the Claim.

16.6.4 CLASS ACTIONS NOT AVAILABLE. EACH OWNER AND THE ASSOCIATION AND EACH SUBASSOCIATION HAVE AGREED TO WAIVE THE RIGHT FOR ANY CLAIM TO BE COMMENCED, HEARD OR RESOLVED AS A CLASS ACTION. EACH OWNER, BY ACCEPTANCE OF FEE TITLE TO A SEPARATE INTEREST AND THE ASSOCIATION BY ACCEPTANCE OF FEE TITLE TO ANY ASSOCIATION PROPERTY AND/OR BY PERFORMANCE OF THE OBLIGATIONS FOR THE MAINTENANCE OF THE ASSOCIATION MAINTENANCE AREAS AND EACH SUBASSOCIATION BY ACCEPTANCE OF FEE TITLE TO ANY REAL PROPERTY

CONVEYED TO SUCH SUBASSOCIATION AND/OR PERFORMANCE OF ANY OBLIGATIONS IMPOSED UPON SUCH SUBASSOCIATION UNDER A SUBASSOCIATION DECLARATION AGREE NOT TO ASSERT ANY CLASS ACTION OR REPRESENTATIVE ACTION CLAIMS AGAINST A DECLARANT, A DECLARANT PARTY OR A GUEST BUILDER OR GUEST BUILDER PARTY IN MEDIATION, ARBITRATION OR OTHERWISE, AND AGREE THAT IT IS THE EXPRESS INTENT OF EACH PARTY THAT CLASS ACTION AND REPRESENTATIVE ACTION PROCEDURES NOT BE ASSERTED OR APPLIED WITH RESPECT TO ANY CLAIM.

16.6.5 JURY, DISCOVERY AND APPEAL NOT AVAILABLE. THE OBLIGATIONS ESTABLISHED BY THIS SECTION 16.6 TO SUBMIT CLAIMS TO NEUTRAL ARBITRATION ELIMINATES ALL RIGHTS WHICH AN INVOLVED PARTY MIGHT POSSESS TO HAVE A CLAIM LITIGATED IN A COURT OR JURY TRIAL. NO INVOLVED PARTY SHALL HAVE ANY JUDICIAL RIGHTS TO DISCOVERY OR APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS SECTION 16.6. IF A DECLARANT, GUEST BUILDER, OR ANY CLAIMANT REFUSES TO SUBMIT TO ARBITRATION THEY MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE.

16.6.6 Relinquishment of Control. Notwithstanding any other provision in this Declaration to the contrary (including, without limitation, any provision which expressly or implicitly provides Declarants or Guest Builder with control over Association decisions for any period of time), while the Declarants have majority control of the Association Board, each Declarant and Guest Builder each hereby relinquishes control over the Association's ability to decide whether to initiate any Claim against such Declarant or any of such Declarant's Parties or Guest Builder's Parties. No representative of a Declarant or a Guest Builder on the Association Board shall vote on the initiation of any Claim, including, without limitation, any Construction Defect Claim under California Civil Code Section 895, et seq., of the Right to Repair Act, such that from and after the first election of directors in which Class A Members of the Association participate, neither Declarant nor a Guest Builder shall have any control over the Association's ability to decide whether to initiate a Claim, including, without limitation, any Construction Defect Claim and in the event of such a vote, the affirmative vote of the non-Declarant representatives on the Association Board shall be binding so long as a quorum of the Association Board is present at any meeting where such vote is taken. In addition to the foregoing, in the event a vote of the Members is taken to decide to initiate a Claim, including, without limitation, a Construction Defect Claim, neither Declarants nor a Guest Builder shall have any Class A or Class B voting rights with respect thereto.

16.6.7 Pursuit of Claims. The Association and not the individual Owners shall have the power to pursue any Construction Defect Claims for the Association Property, and/or Association Maintenance Areas. The Association and each Owner shall comply with the Claim Process in bringing any such Construction Defect Claims. Each Owner and Association hereby agrees to delegate authority to the Association and assigns to the Association all power and authority as is necessary for any settlement or release of any Claim relating to the Association Property and/or Association Maintenance Areas.

16.6.8 Notification to Prospective Buyers. In the event that the Association commences a Claim, or pursues any other legal action, all Owners must notify prospective purchasers of such action or Claim and must provide such prospective purchasers with a copy of the notice produced by the Association and delivered to the Owners in accordance with Section 6000 of the California Civil Code and this Declaration.

ARTICLE 17

COVENANTS OF COOPERATION AND OBLIGATIONS UNDER THE CITY AGREEMENTS

Given the diverse nature of the Covered Property, each of the Owners and the Association must cooperate to accomplish the objectives of this Declaration and to ensure the continued operation of the Association. In addition each Owner acknowledges that the City has imposed certain requirements and

entered into certain agreements with the Declarant and other parties that impose obligations relating to the Covered Property. This Article describes some of those obligations.

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

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

17.3 Estoppel Certificates. The Association, at any time and from time to time, upon not less than twenty (20) days' prior written notice from a Subassociation (on behalf of an Owner, subject to the jurisdiction of a Subassociation or an Owner if the Owner is not subject to the jurisdiction of a Subassociation), shall execute, acknowledge and deliver to a Subassociation (on behalf of any Owner) or to the Owner (if the Owner is not subject to the jurisdiction of Subassociation) for its benefit and the benefit of any prospective purchaser, tenant or Mortgagee of such Owner, an estoppel certificate of the Association stating: (a) that this Declaration is unmodified and in full force and effect (or, if there have been modifications, that this Declaration is in full force and effect as modified and stating the modifications), (b) to the best of the Association Board's knowledge, whether or not there are then existing any defaults by the applicable Owner under this Declaration and the other Association Governing Documents (and, if so, specifying same), (c) the dates, if any, to which Assessments and other charges under this Declaration have been paid by such party and the amounts of the most recently charged Assessments, and (d) any other information that may reasonably be required by any of such persons. It is intended that any such certificate delivered pursuant to this Section 17.3 may be relied upon by the requesting Subassociation (or the applicable Owner) or any prospective purchaser, tenant or Mortgagee of any portion of the Covered Property. The Association may charge a reasonable fee to prepare Owner issue the estoppel certificate. The Association may require that a Subassociation (and not the individual Owners) request estoppels from the Association on behalf of the Owners subject to its jurisdiction subject to the jurisdiction of a Subassociation and in such case, only the Subassociation and not the individual Owner may request the estoppel.

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

17.5 Limitation on Liability. Neither the Association nor any Declarant or Guest Builder and any of their Authorized Users (including, without limitation, the manager of the Association) shall be liable to any Association, any Owner, or any Occupant, for any failure of any Utility Facilities or other services which are to be obtained or provided by a Declarant or a Guest Builder or the Association, or paid for as a Common Expense, or for injury or damage to person or property caused by the elements or other causes beyond the control of a Declarant or a Guest Builder or the Association; provided, however, that if the underlying reason for such failure and/or degree of resulting damage was the result of, or affected by, the negligent acts or non-acts of such parties then this limitation of liability shall not then apply to the extent contemplated by this clause. Notwithstanding the foregoing, nothing contained herein will limit any rights of the Association, any Subassociation or any Owner to tender a claim under any insurance policy

maintained hereunder. No diminution or abatement of any Assessments shall be claimed or allowed for closures, inconvenience or discomfort arising from the making of repairs or improvements to the Association Property, or from any action taken by the Association to comply with any Applicable Laws.

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

17.7 Transfer of Membership Upon Sale.

17.7.1 Notice to Association. Concurrently with the consummation of the conveyance of any of the Separate Interests under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Association Board or the manager of the Association in writing of such sale. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the address of the Separate Interest purchased by the transferee, the transferee's and the mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the Association Board or the manager of the Association shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

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

17.8 City Agreements. To the extent provided in the City Agreements, the City Agreements may be assigned by a Declarant with the consent of the other Declarant if the other Declarant is a party thereto, including an assignment to the Association, a Subassociation, or any Guest Builder. If any rights and obligations are assigned to the Association, any Guest Builder or any Subassociation under the City Agreements, the assignee thereunder shall be obligated to perform all such obligations so assigned as and when required under the applicable City Agreement. The assignee shall commence to perform such obligations effective as of the date of the assignment. To the extent such assignee fails to perform such obligations, the Association shall have the right (but not the obligation) to exercise any of its remedies provided for hereunder for non-performance of an Owner's (or other assignee's) obligations hereunder, including without limitation the right to cure such default and the right to levy a Compliance Assessment if the Owner fails to reimburse the Association for the expenses incurred in curing such default. In addition, the City shall have the right to pursue any rights or remedies which it may have under the applicable City Agreement if such assignee fails to perform its obligations under the applicable City Agreement.

ARTICLE 18

CITY OF TEMECULA REQUIRED PROVISIONS

The City has required the following provisions to be included in the Declaration.

18.1 City Approval Required. The Conditions of Approval of Tentative Tract Map Number 37368 and 37341 require the City to review and approve this Declaration and the Association Articles ("Conditions of Approval").

18.2 City's Approval of Declaration and Association Articles. Declarants acknowledge that the City has reviewed this Declaration and the Association Articles and that its review is limited to a determination of whether the proposed Declaration and the Association Articles properly implementing the requirements of the Conditions of Approval for the Covered Property. The City's consent to this Declaration does not contain or imply approval of the appropriateness or legality of the other provisions of this Declaration, including, without limitation, the use restrictions, private easements and encroachments, private maintenance requirements, architecture and landscape controls, assessments, enforcement of assessments, resolutions of disputes or procedural matters.

18.3 Failure of Association to Perform Maintenance Obligations. In the event that the Association fails to maintain the Association Property and/or the Association Maintenance Areas as provided in Article 4, the City shall have the right, but not the duty, to perform the necessary maintenance. If the City elects to perform such maintenance, the City shall give written notice to the Association, setting forth with particularity the maintenance which the City finds to be required and requesting the same be carried out by the Association within a period of thirty (30) days from the giving of such notice. In the event that the Association fails to carry out such maintenance of the Covered Property within the period specified by the City's notice, the City shall be entitled to cause such work to be completed and shall be entitled to reimbursement with respect thereto from the Association as provided herein.

18.4 Enforcement Rights of the City. The City shall have the right, but not the obligation, to enforce the provisions of Article 4 and any other maintenance obligations imposed under any other Association Governing Documents. The City shall first provide the Association with written notice, including a detailed description of the default as well as the actions necessary to cure said default, and thirty (30) days within which to cure. Such notice shall be delivered personally or mailed by certified or registered mail, postage prepaid to the address for the Association on file with the City. The decision of the City to enforce the provisions of Article 4 shall be in the City's sole discretion.

18.5 Special Assessments Levied by the City. If the City has exercised its rights pursuant to Section 18.3 or Section 18.4 to perform the maintenance of the Association Property and/or the Association Maintenance Areas which was required to be performed as required under this Declaration or applicable City ordinances, the City shall submit a written invoice to the Association for all costs incurred by the City to perform such maintenance. The City shall provide a copy of such invoice to the Association personally or mailed by certified or registered mail, postage prepaid, together with a statement that if the Association fails to pay such invoice in full within the time specified, the City will pursue collection against the Owners in the Covered Property pursuant to the provisions of this Section. Said invoice shall be due and payable by the Association within thirty (30) days of receipt by the Association. If the Association shall fail to pay such invoice in full within the period specified, the City shall send a follow-up notice to Association and thirty (30) days thereafter, payment shall be deemed delinquent and shall be subject to a late charge in an amount equal to six percent (6%) of the amount of the invoice. Thereafter, the City may pursue collection from the Association by means of any remedies available at law or in equity including, without limitation, the right and power to impose a lien upon the Association Property and to bring all legal actions and/or to pursue lien foreclosure procedures.

18.6 Conflict. In the event there is a conflict between the Conditions of Approval and the land use entitlements issued by the City for the Covered Property or federal, state and local laws, ordinances, and regulations and this Declaration, the more restrictive provision shall prevail, as long as such provision complies with all Federal, State or local laws, ordinances and regulations. The Declaration shall include a provision requiring compliance with all Federal, State or local laws, ordinances and regulations.

18.7 Termination of Association. The Association shall not be terminated or dissolved as an incorporated entity without the express approval of the Director of Community Development of the City of Temecula.

18.8 City's Right to Consent to Termination or Amendment. This Declaration shall not be terminated, amended or otherwise modified without the express written consent of the Director of Community Development of the City of Temecula.

ARTICLE 19

GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

19.11 Joint and Several Liability. When the Owner of a Separate Interest is comprised of more than one (1) Person, each such Person shall be jointly and severally liable for payment of Assessments, and performance of all obligations (including, without limitation, indemnification obligations)

arising under any provision of the Association Governing Documents with respect to such Separate Interest or the ownership thereof.

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

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

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

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

19.16 Approval of VA and FHA. So long as there is a Class B membership in the Association, the following actions shall require the prior approval of VA if a VA blanket loan approval is in effect for the any portion of the Covered Property or a VA loan encumbers any Condominium in the Covered Property: any reorganization, merger, dissolution, or consolidation of the Association, and any amendment to this Declaration, a draft of which shall be submitted to and approved by the VA prior to recordation; and/or any extraordinary actions. For purposes of this Section "extraordinary actions" means any of the following: (a) merging or consolidating the Association; (b) determining not to require professional management if previously required by a lender or; (c) expanding the Covered Property to include land not described as Annexable Property if such addition increases the overall land area of the Covered Property by more than ten percent (10%); (d) abandoning, partitioning, encumbering, mortgaging, conveying or selling or otherwise transferring or relocating the boundaries of the Association Property except as otherwise permitted by VA; (e) using insurance proceeds to purposes other than construction or repair of the insured Improvements, or (f) making capital expenditures (other than for repair or replacement of existing Improvements) during any period of twelve (12) consecutive months costing more than twenty percent (20%) of the Annual Operating Budget. FHA shall have the same approval rights given to VA in this Section if an FHA blanket loan approval is in effect for any portion of the Covered Property or an FHA loan encumbers any Condominium in the Covered Property.

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarants have executed this instrument as of the day and year first herein above written.

DECLARANT:

Woodside 05S, LP, a California limited partnership

By: WDS GP, Inc., a California corporation,
Its General Partner

By: Trent Heiner
Name: Trent Heiner
Title: Authorized Signer

DECLARANT:

Wingsweep Corporation, a California corporation

Signed in Counterpart

By: _____
Name: _____
Title: _____

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.

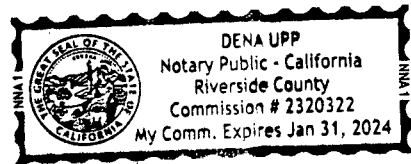
State of California)
County of Riverside)

On September 17, 2020, before me, Dena Upp, a Notary Public, personally appeared Trent Heiner, 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.

Signature Dena Upp



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.

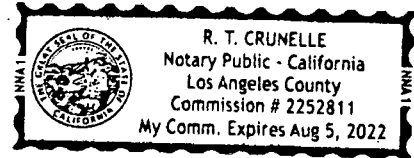
State of California)
County of Los Angeles)

On September 21, 2020, before me, R. T. Crunelle, a Notary Public, personally appeared Corry Hong, 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.

Signature 



CONSENT OF CITY OF TEMECULA

The Conditions of Approval for Tentative Map 37368 and 37341 require the City of Temecula to review and approve the CC&Rs for the Parcel. The City's review of these CC&Rs has been limited to a determination of whether the proposed CC&Rs properly implement the requirements of the Conditions of Approval for the Parcel. The City's consent to these CC&Rs does not contain or imply any approval of the appropriateness or legality of the other provisions of the CC&Rs, including, without limitation, the use restrictions, private easements and encroachments, private maintenance requirements, architecture and landscape controls, assessments, enforcement of assessments, resolutions of disputes or procedural matters. Subject to the limitations set forth herein, the City consents to the CC&Rs.



Luke Watson
Director
Neighborhood Development

Approved as to Form:



Peter M. Thorson
City Attorney

LIST OF EXHIBITS

- EXHIBIT "A"..... LEGAL DESCRIPTION OF THE COVERED PROPERTY
- EXHIBIT "B-1" WOODSIDE ANNEXABLE PROPERTY
- EXHIBIT "B-2" WINGSWEEP ANNEXABLE PROPERTY
- EXHIBIT "B-3" GUEST BUILDER ANNEXABLE PROPERTY
- EXHIBIT "C" MAINTENANCE RESPONSIBILITY MAP
- EXHIBIT "D" FIRE SUPPRESSION AREAS

EXHIBIT "A"

LEGAL DESCRIPTION OF THE COVERED PROPERTY

Real property in the City of Temecula, County of Riverside, State of California, described as follows:

PROPERTY:

LOTS 6 THROUGH 20, INCLUSIVE, 65 AND 66, OF TRACT MAP NO. 37341-3, IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 471, PAGES 40 THROUGH 47, OF MAP, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

ASSOCIATION PROPERTY:

LOTS 65 AND 66, OF TRACT MAP NO. 37341-3, IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 471, PAGES 40 THROUGH 47, OF MAP, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT "B-1"

WOODSIDE ANNEXABLE PROPERTY

Real property in the City of Temecula, County of Riverside, State of California, described as follows:

LOTS 5 THROUGH 10, INCLUSIVE, AND 21 THROUGH 23, INCLUSIVE, OF TRACT MAP NO. 37368, AS PER MAP FILED IN BOOK 468, PAGES 89-98 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

PARCEL B OF NOTICE OF LOT LINE ADJUSTMENT LD19-1393 RECORDED FEBRUARY 20, 2020 AS INSTRUMENT NO. 2020-0076510 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS A PORTION OF LOT 24 AND LOT 25 OF TRACT MAP NO. 37368 AS PER MAP FILED IN BOOK 468, PAGES 89-98 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOTS 88 THROUGH 89, INCLUSIVE, OF TRACT MAP NO. 37341-1, AS PER MAP FILED IN BOOK 471, PAGES 19-25, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOTS 1 THROUGH 47, INCLUSIVE, OF TRACT MAP NO. 37341-2, AS PER MAP FILED IN BOOK 471, PAGES 26-32 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOTS 1 THROUGH 66, INCLUSIVE, OF TRACT MAP NO. 37341-3 AS PER MAP FILED IN BOOK 471, PAGES 40-47 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOT 47 OF TRACT MAP NO. 37341-4, AS PER MAP FILED IN BOOK 471, PAGES 33-39 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOTS 1 THROUGH 32, INCLUSIVE, AND LOTS A THROUGH D, INCLUSIVE, OF TRACT MAP NO. 37341-11, AS PER MAP FILED IN BOOK 473, PAGES 72-79 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOTS 1 THROUGH 24, INCLUSIVE, AND LOT A OF TRACT MAP NO. 37341-12, AS PER MAP FILED IN BOOK 473, PAGES 80-86 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOTS 1 THROUGH 21, INCLUSIVE, AND LOT A OF TRACT MAP NO. 37341-13, AS PER MAP FILED IN BOOK 473, PAGES 87-93 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOTS 1 THROUGH 52, INCLUSIVE, AND LOTS A THROUGH E, INCLUSIVE, OF TRACT MAP NO. 37341, AS PER MAP FILED IN BOOK 473, PAGES 8-14, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

EXHIBIT "B-2"

WINGSWEEP ANNEXABLE PROPERTY

Real property in the City of Temecula, County of Riverside, State of California, described as follows:

LOTS 1, 4, 5, 6, H AND K OF TRACT MAP NO. 29353-2, IN THE CITY OF TEMECULA, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 342, PAGE 73 THROUGH 85, OF MAPS, IN THE OFFICE OF THE RECORDER OF SAID COUNTY.

EXHIBIT "B-3"

GUEST BUILDER ANNEXABLE PROPERTY

Real property in the City of Temecula, County of Riverside, State of California, described as follows:

LOTS 1 THROUGH 86, INCLUSIVE, OF TRACT MAP NO. 37341-1, AS PER MAP FILED IN BOOK 471, PAGES 19 THROUGH 25 INCLUSIVE OF MAPS, IN THE OFFICE OF THE RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

LOTS 1 THROUGH 45, INCLUSIVE, OF TRACT MAP NO. 37341-4, AS PER MAP FILED IN BOOK 471, PAGES 33-39 OF MAPS, IN THE OFFICE OF THE RECORDER, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

EXHIBIT "C"


MAINTENANCE RESPONSIBILITY MAP

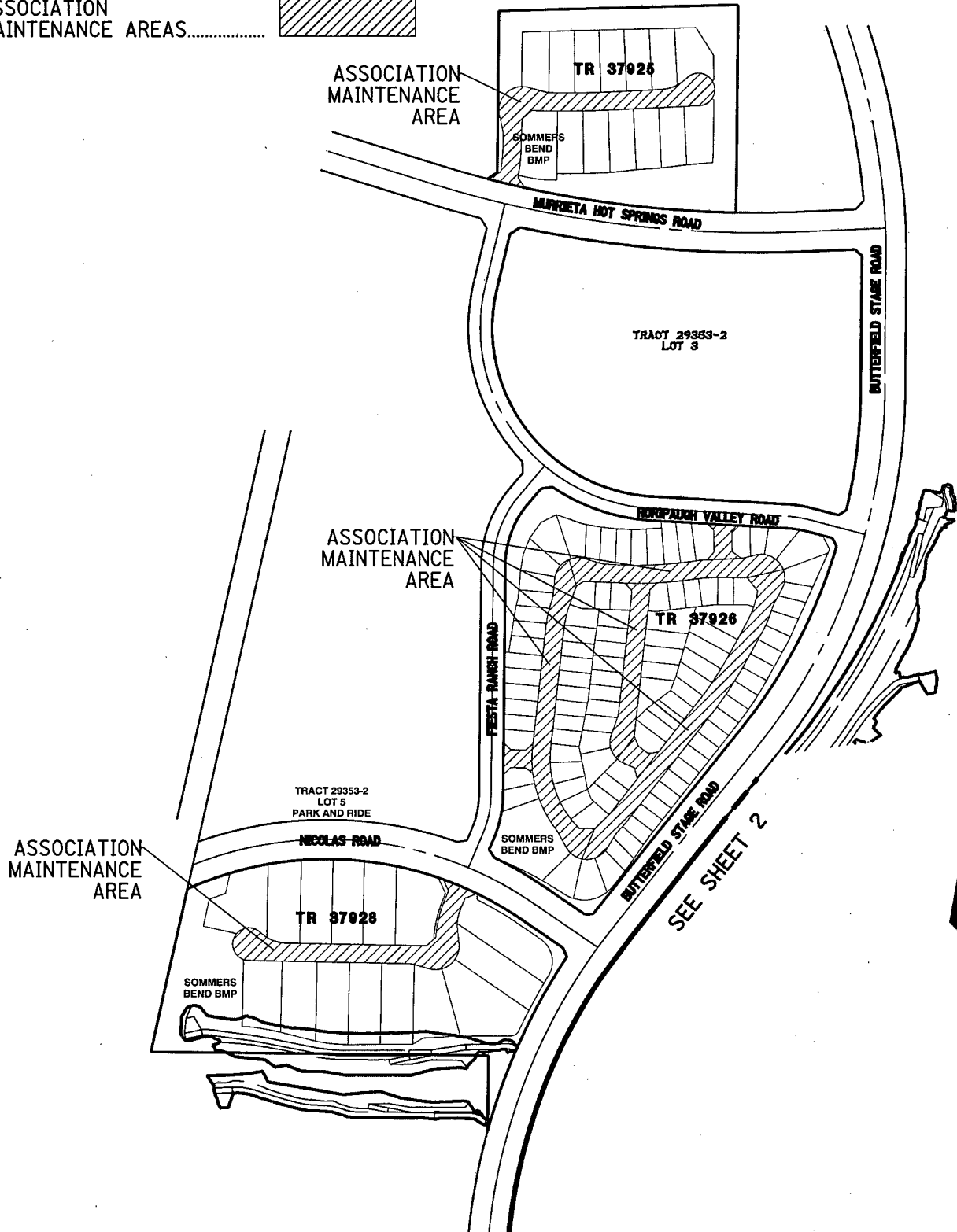
The attached exhibit is for illustrative purposes only and depicts approximate locations. In the event of a discrepancy between the references to the locations shown on the attached exhibit and the actual as-built locations, the actual as-built locations shall control.

[ATTACHED HERETO]

MAINTENANCE RESPONSIBILITY MAP

LEGEND

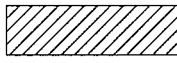
ASSOCIATION MAINTENANCE AREAS..... 



SHEET 1 OF 5

MAINTENANCE RESPONSIBILITY MAP

LEGEND

ASSOCIATION MAINTENANCE AREAS 

ASSOCIATION MAINTAINED DRAINAGE FACILITIES

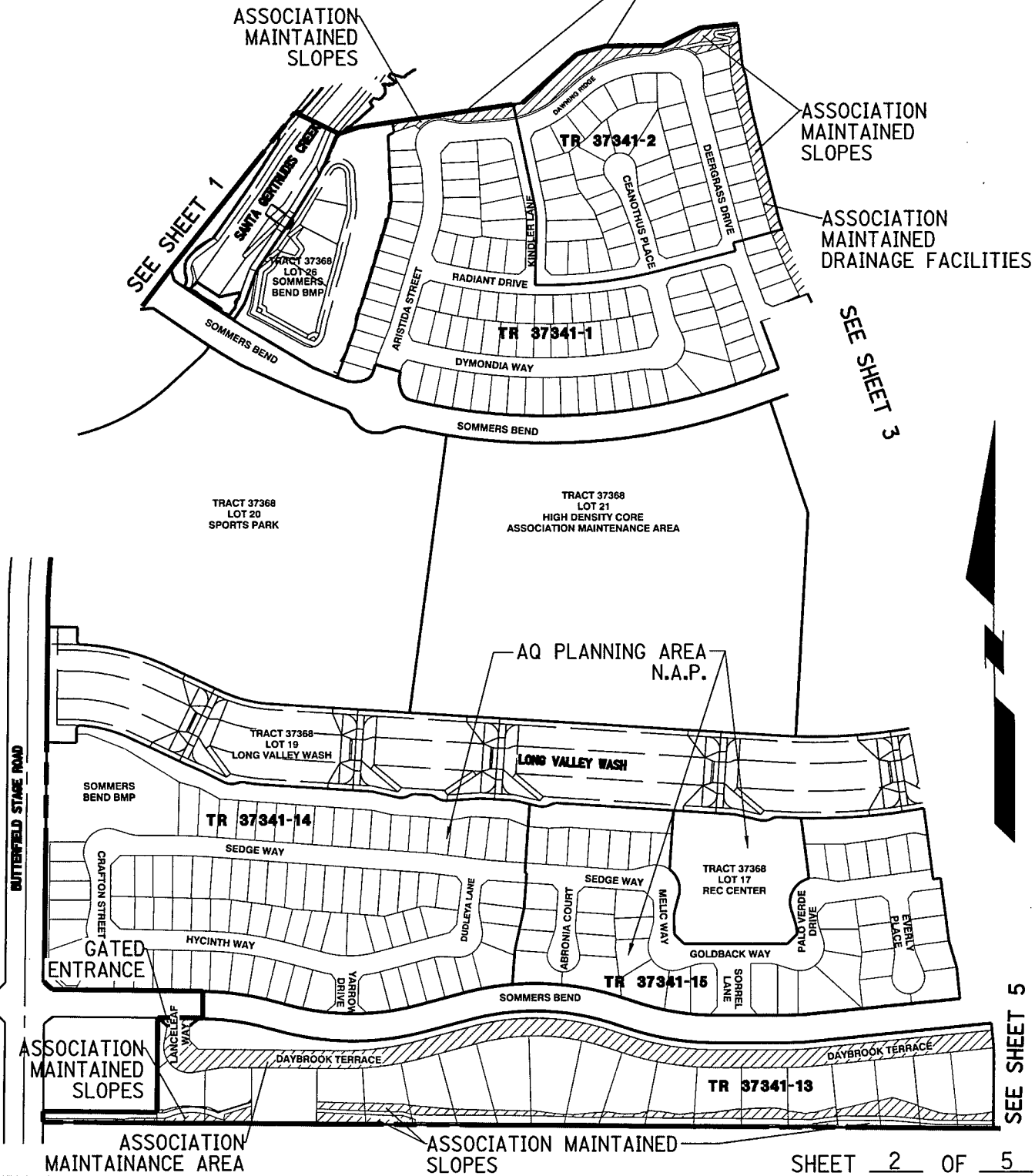
ASSOCIATION MAINTAINED SLOPES

ASSOCIATION MAINTAINED SLOPES

ASSOCIATION MAINTAINED DRAINAGE FACILITIES

SEE SHEET 1

SEE SHEET 3



BUTTERFIELD STAGE ROAD

GATED ENTRANCE

ASSOCIATION MAINTAINED SLOPES

ASSOCIATION MAINTAINANCE AREA

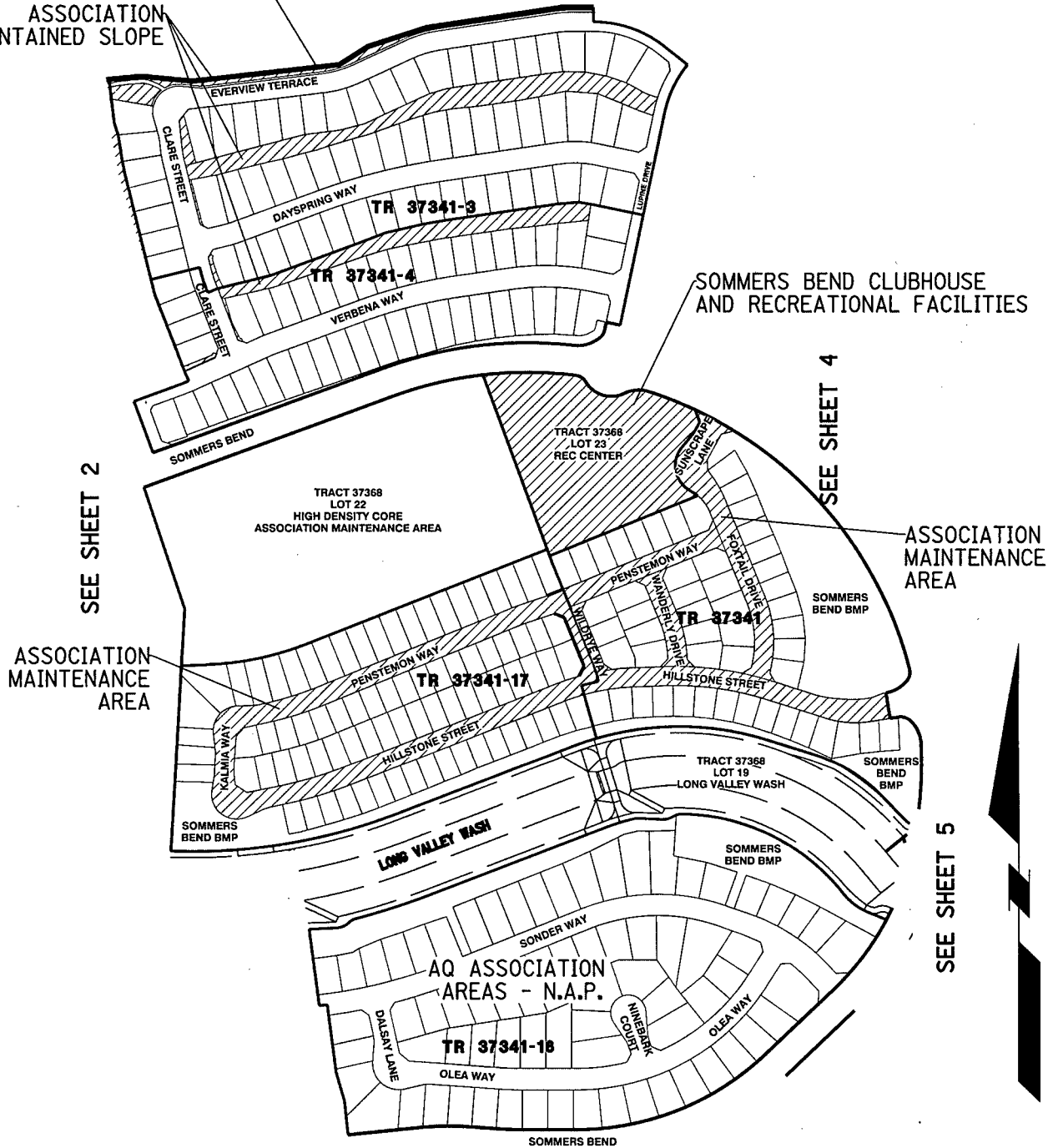
ASSOCIATION MAINTAINED SLOPES

SHEET 2 OF 5

SEE SHEET 5

MAINTENANCE RESPONSIBILITY MAP

ASSOCIATION MAINTAINED DRAINAGE FACILITY
ASSOCIATION MAINTAINED SLOPE



SEE SHEET 2

SEE SHEET 4

SEE SHEET 5

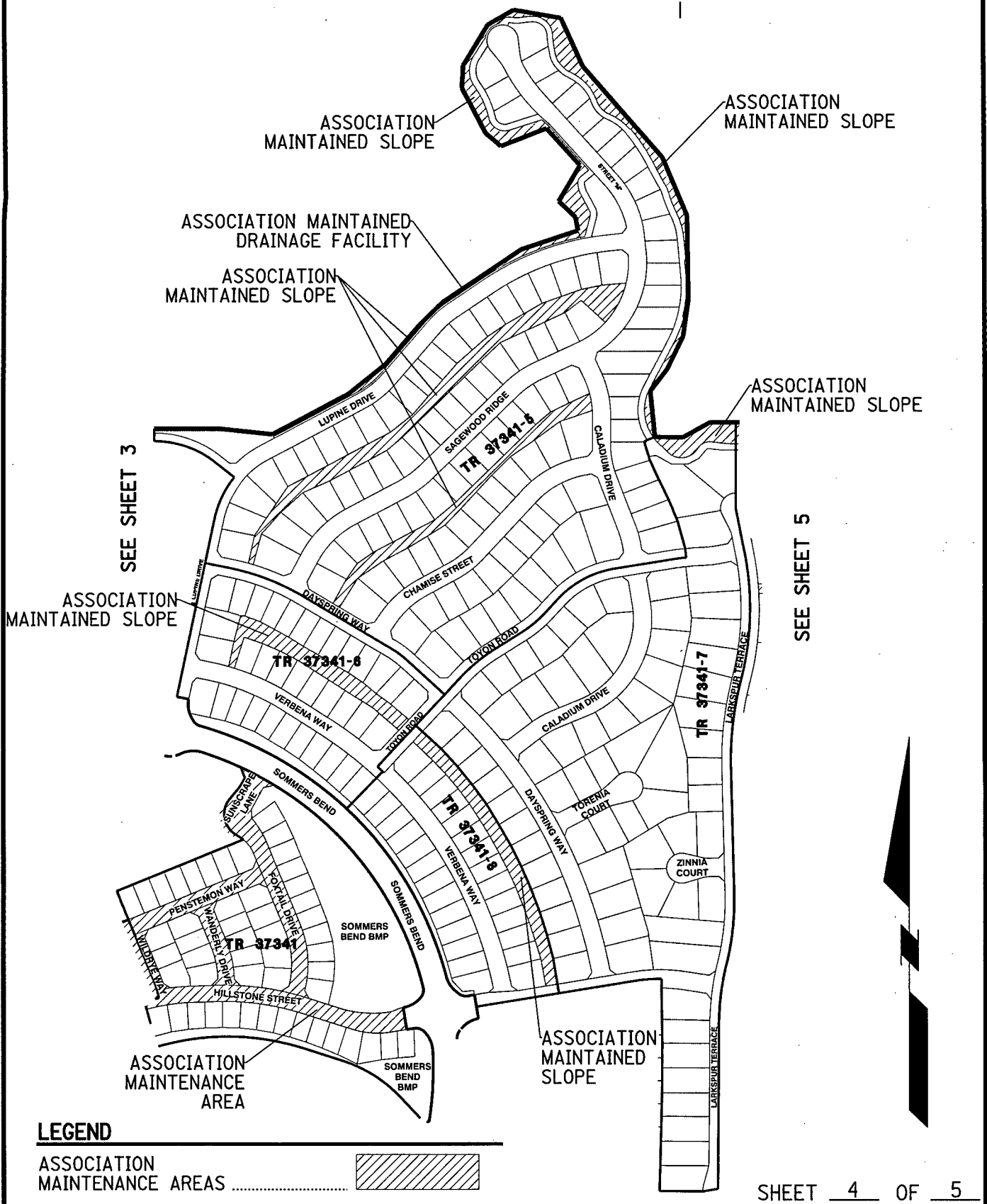
ASSOCIATION MAINTENANCE AREA

ASSOCIATION MAINTENANCE AREA

LEGEND

ASSOCIATION MAINTENANCE AREAS 

MAINTENANCE RESPONSIBILITY MAP



LEGEND

ASSOCIATION MAINTENANCE AREAS 

MAINTENANCE RESPONSIBILITY MAP



LEGEND

ASSOCIATION MAINTENANCE AREAS 

ASSOCIATION MAINTAINED SLOPES

SEE SHEET 4

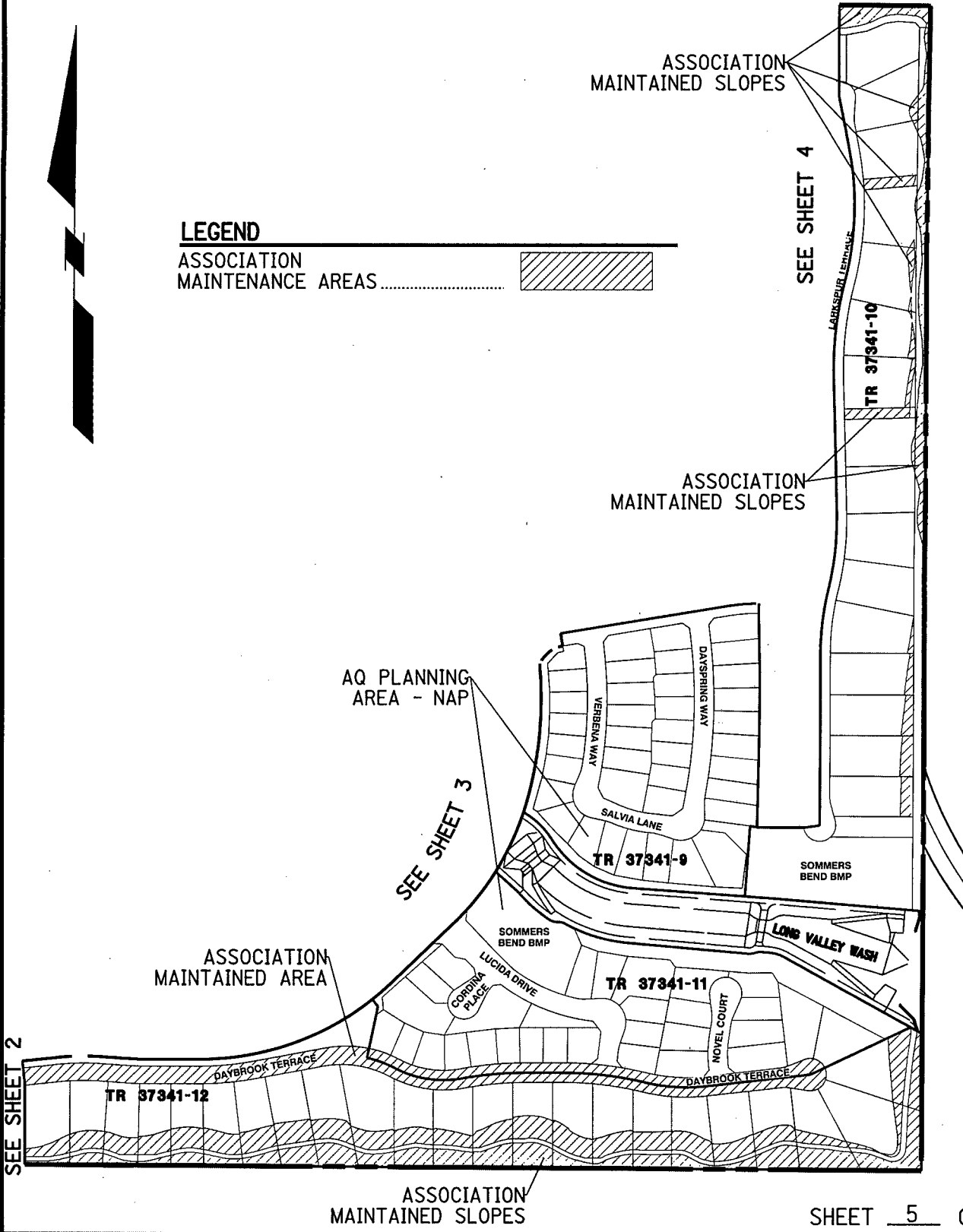
ASSOCIATION MAINTAINED SLOPES

AQ PLANNING AREA - NAP

SEE SHEET 3

ASSOCIATION MAINTAINED AREA

SEE SHEET 2



ASSOCIATION MAINTAINED SLOPES

SHEET 5 OF 5

EXHIBIT "D"

FIRE SUPPRESSION AREAS

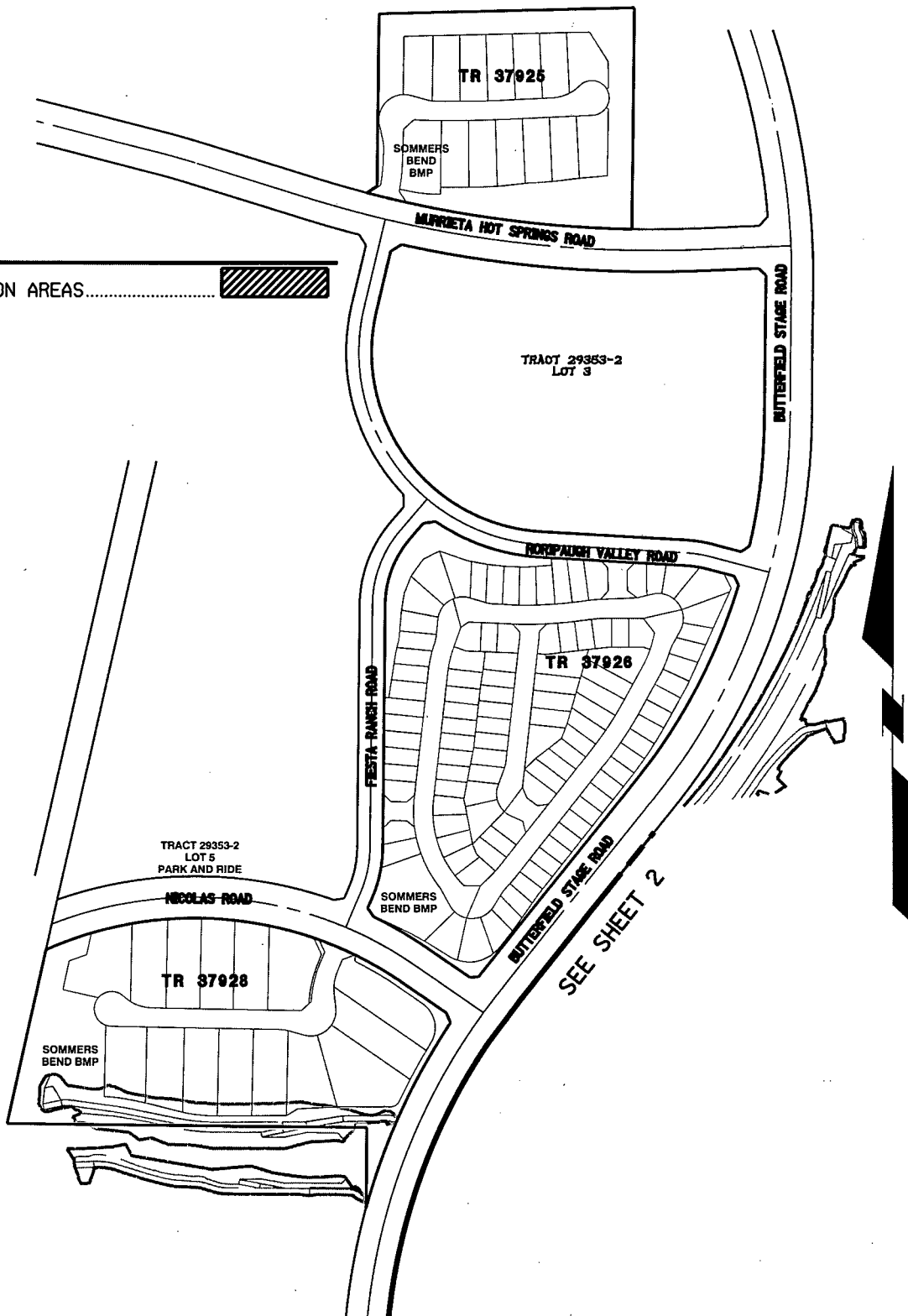
The attached exhibit is for illustrative purposes only and depicts approximate locations. In the event of a discrepancy between the references to the locations shown on the attached exhibit and the actual locations, the actual locations shall control. The locations of Fire Suppression Areas may be modified or supplemented in a Supplementary Declaration.

[ATTACHED HERETO]

AA ASSOCIATION FIRE SUPPRESSION AREA

LEGEND

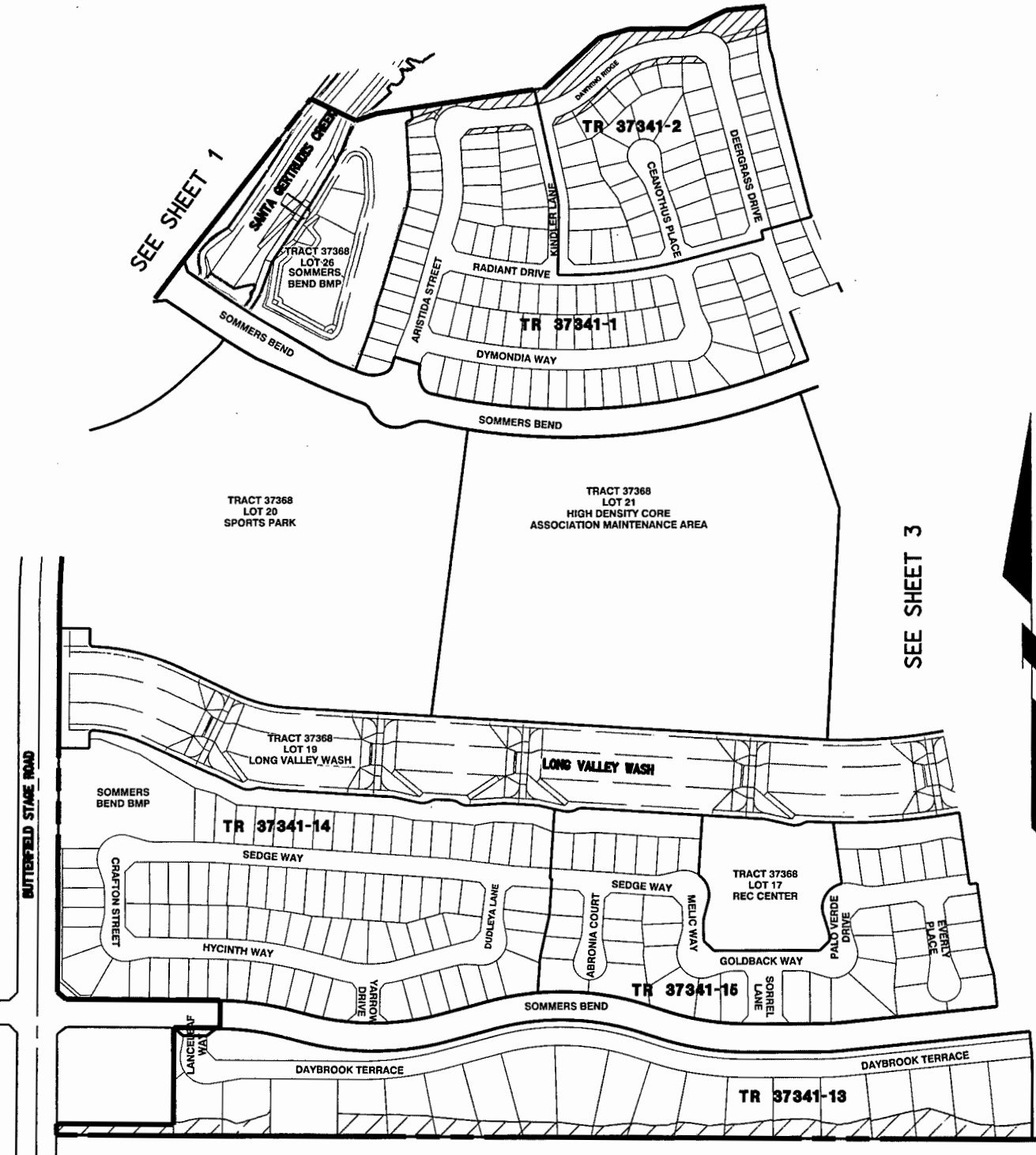
FIRE SUPPRESSION AREAS..... 



SHEET 1 OF 5

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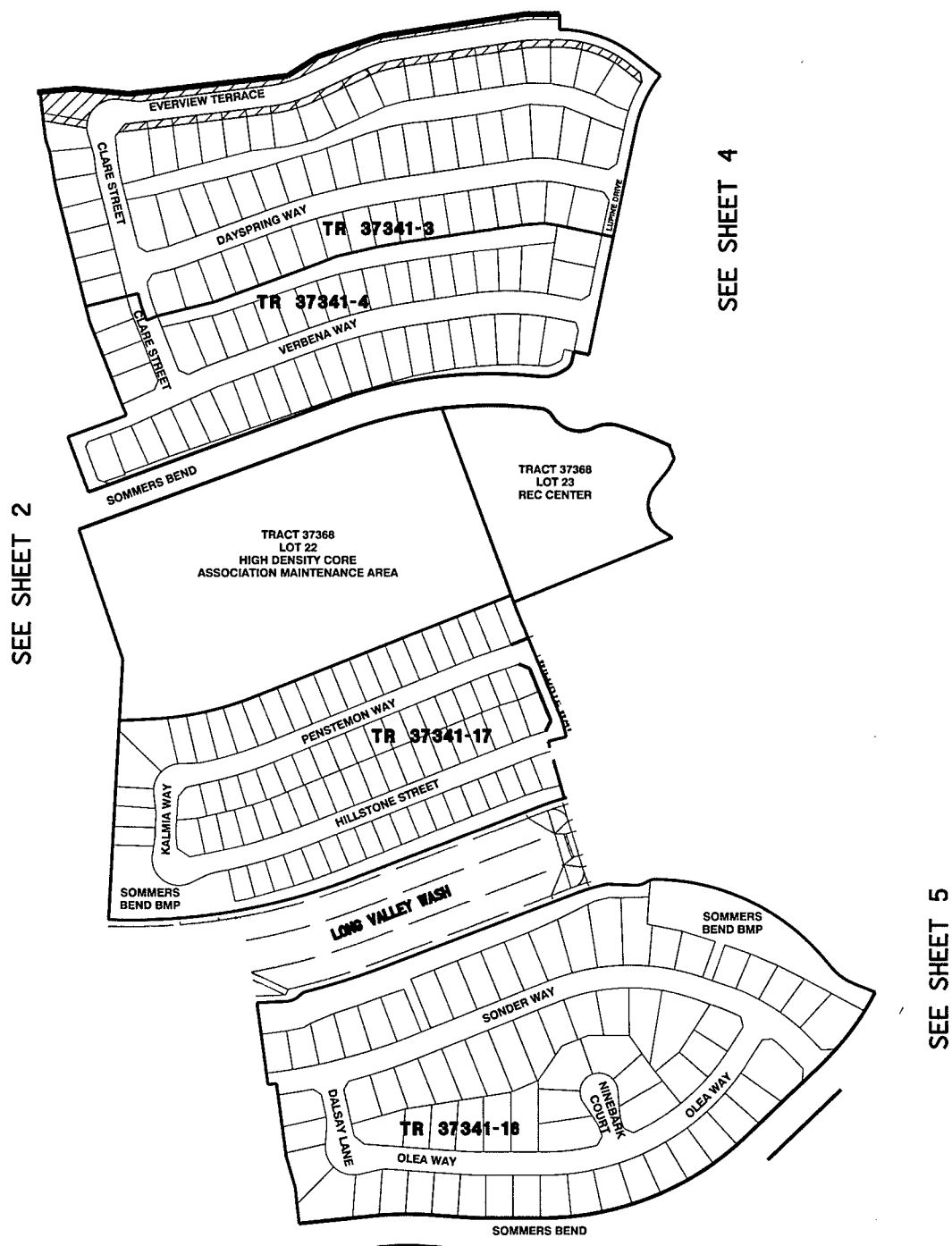
AA ASSOCIATION FIRE SUPPRESSION AREA



LEGEND

FIRE SUPPRESSION AREAS..... 

AA ASSOCIATION FIRE SUPPRESSION AREA




SEE SHEET 2

SEE SHEET 4

SEE SHEET 5

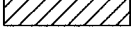


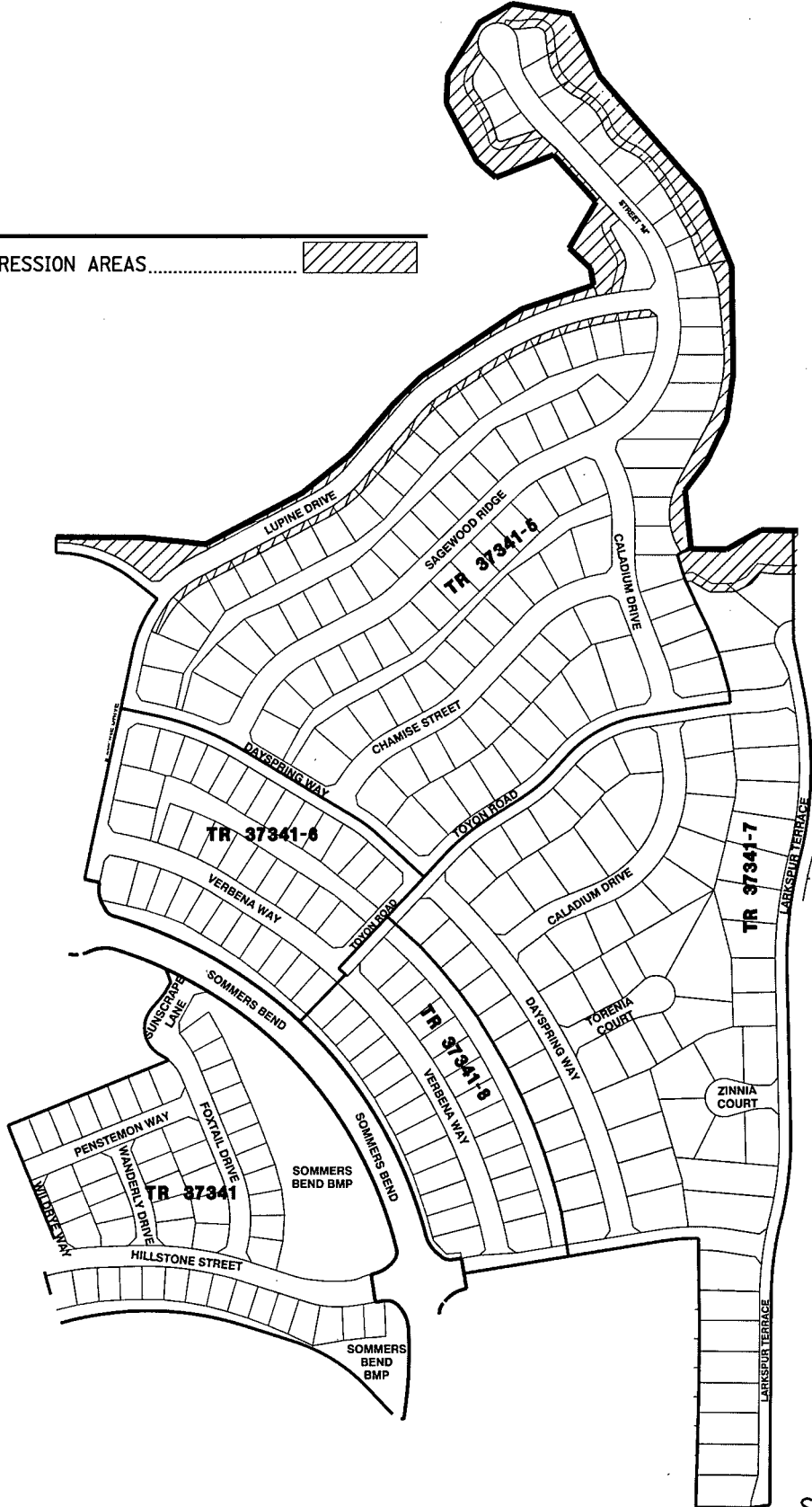
LEGEND

FIRE SUPPRESSION AREAS..... 

AA ASSOCIATION FIRE SUPPRESSION AREA

LEGEND

FIRE SUPPRESSION AREAS..... 



SEE SHEET 5

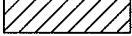
SHEET 4 OF 5

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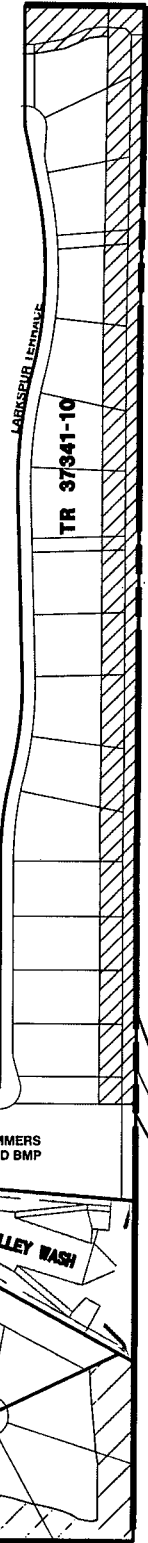
AA ASSOCIATION FIRE SUPPRESSION AREA



LEGEND

FIRE SUPPRESSION AREAS 

SEE SHEET 4



SEE SHEET 3