

Project affected by this Declaration by reason of mistake in judgment, negligence or non-feasance, unless due to willful misconduct or bad faith of the Architectural Control Committee. The Architectural Control Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such Architectural Standards as may be promulgated by the Architectural Control Committee, and the Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

## ARTICLE 10

### REPAIR AND MAINTENANCE

**10.1 Repair and Maintenance by Association.** Without limiting the generality of the Article herein entitled "Powers and Duties of the Association," the Association shall have the duty to maintain, landscape, repair, improve, restore and replace all Improvements upon the Association Property, as designated in this Declaration or in any subsequent Notice of Annexation which may be recorded, from time to time, in a neat, clean, safe, attractive and orderly condition at all times, including, without limitation, the following:

- a. All drainage and irrigation facilities and easements within the Association Property;
- b. The water system which services the Association Property with water for landscaping and irrigation purposes;
- c. Entry area monumentation located within the Association Property;
- d. The exterior surfaces and structural integrity of those Project perimeter walls and fences shown on Exhibit "C" attached hereto, and additional walls and fences designated in Notices of Annexation;
- e. All other areas, facilities, furniture, equipment, services or aesthetic components of whatsoever nature as may, from time to time, be requested by the vote or written consent of a majority of the voting power of the Association.

Any Exhibits depicting or delineating maintenance areas or obligations of the Association are for illustrative purposes only. The "as-built" condition of all such maintenance areas and obligations as installed and constructed by Declarant, or by Merchant Builders with Declarant's consent, shall be controlling.

The cost of any maintenance and repair by the Association which is a result of neglect, negligence or willful misconduct by an Owner, or such Owner's tenants, guests, agents and invitees, shall, after Notice and Hearing, be levied by the Board as a Compliance

Assessment against such Owner. Except as otherwise provided herein, all costs and expenses for such maintenance above shall be a Common Expense and shall be paid out of the general operating fund of the Association.

**10.2 Annual Inspections of Association Property.** In satisfaction of a condition of approval of the Project imposed by the City, the Board shall retain a licensed civil engineer, or other similarly qualified expert ("Consultant") to inspect the Association Property at least once a year. The Consultant shall prepare and present to the Board a written report of the results of the inspection of the Association Property. The purpose of the inspection shall be to:

(1) Determine whether the Association Property is being maintained in a clean, safe and functional condition (including, without limitation, all slopes, walls, retaining walls, drainage devices, retaining walls and other related Improvements);

(2) Identify the conditions located on such areas and the existence of any defects or hazards therein, and the need to perform additional maintenance, refurbishment, replacement or repair; and

(3) Recommend preventive measures which may be taken by the Association and/or the Owners, as appropriate, to reduce the possibility of damage and maintenance costs which might be incurred in the future.

This section shall not be amended, modified or deleted from this Declaration without the prior written consent of the City.

**10.3 Repair and Maintenance by Owner.** Except as the Association shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall:

a. Maintain his Lot and the Residence located thereon, including, without limitation, any side yard and rear yard walls and fences which may be constructed by such Owner, roofs, patios, patio covers, decks, deck covers, balconies, windows, window frames, screens, locks and doors of his Residence, landscaping, slopes, berms and irrigation improvements, irrigation lines, concrete drainage swales, subdrain outlets, yard drains and all other Improvements located on such Owner's Lot not otherwise designated as Association Property in a neat, clean, safe and attractive condition at all times, and make all repairs as they may be required; and

b. Install, within a reasonable period of time after conveyance of title to a Lot to an Owner, but in no event later than six (6) months after the close of escrow for the sale of such Lot, the front yard landscaping (and side yard landscaping in the case of a corner Lot) in a neat and attractive condition, including all necessary landscaping and gardening, to properly maintain and periodically replace, when necessary, the trees, plants, grass and other vegetation originally placed on such Lot by Declarant or Merchant Builders, if any. The Board may adopt Rules and Regulations proposed by the Architectural Control Committee to regulate landscaping permitted

within the Project. In the event that any Owner shall fail to install and maintain landscaping, including all slope areas within the Lot, in conformance with the Rules and Regulations, or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, after Notice and Hearing, may enter such Owner's property for the purpose of remedying the condition, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be levied by the Board as a Compliance Assessment.

**10.4 Maintenance of Public Utilities.** Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Association Property owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

**10.5 Damage and Destruction Affecting a Residence - Duty to Rebuild.** In the event any Residence is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Residence to repair or reconstruct said Residence in a manner which will restore it to its condition and appearance immediately prior in time to such damage or destruction, or as otherwise approved by the Architectural Control Committee. The affected Owner shall be obligated to proceed, with all due diligence hereunder, and shall be responsible for commencing reconstruction within three (3) months after the damage occurs, and completing such reconstruction as soon as reasonably possible thereafter.

## ARTICLE 11

### DAMAGE OR DESTRUCTION TO THE ASSOCIATION PROPERTY

**11.1 Restoration of Damaged Association Property.** Damage to or destruction of all or any portion of the Association Property shall be handled in the following manner:

a. In the event of damage to or destruction of the Association Property, and the insurance proceeds are sufficient to effect total restoration, the Association shall, as promptly as is practical, cause the Association Property to be repaired and reconstructed in a good workmanlike manner to its condition prior to such damage or destruction;

b. If the insurance proceeds available are at least ninety percent (90%) of the estimated cost of total repair and reconstruction to the Association Property, the Association shall, as promptly as practical, cause such Association Property to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between the insurance proceeds and the actual cost shall be levied by the Association as a Special Assessment against each of the Lots on an equal basis; and