

ARTICLE 17

ENFORCEMENT OF BONDED OBLIGATIONS

17.1 Enforcement of Bonded Obligations. In the event that the Improvements to the Association Property have not been completed prior to the issuance of a Final Subdivision Public Report by the DRE, and the Association is obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant to complete such Improvements, the following provisions shall apply:

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

b. In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Members, but in any event, such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting signed by Members representing five percent (5%) of the total voting power of the Association; and

c. The only Members entitled to vote at such meeting of Members shall be the Owners, other than Declarant or Merchant Builders. A vote at such meeting of a majority of the voting power of such Members, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE 18

INTEREST AND EXEMPTION OF DECLARANT

18.1 Exemption of Declarant and Merchant Builders. Nothing in this Declaration shall limit and no Owner, or the Association shall do anything to interfere with the right of Declarant and Merchant Builders to complete excavation and grading and construction of Improvements to and on any portion of the Project, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant and

Merchant Builders deem advisable in the course of development of the Project so long as any Lot in the Project owned by Declarant and/or Merchant Builders remains unsold. Such right shall include, but not be limited to, grading work as may be approved by any agency having jurisdiction, and erecting, constructing and maintaining on the Project such structures, signs and displays as may be reasonably necessary for the conduct of its business of completing the work and selling the same. This Declaration shall not limit the right of Declarant or Merchant Builders, at any time prior to acquisition of title on a Lot by a purchaser from Declarant or Merchant Builders, to establish on that Lot additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may, from time to time, be reasonably necessary to the proper development and disposal of the Project. Prospective purchasers, Declarant and Merchant Builders shall have the right to use all and any portion of the Association Property for access to the sales office of Declarant or Merchant Builders, provided that such use shall not unreasonably interfere with the rights of Members to use and enjoy the Association Property. Declarant and Merchant Builders may install structures on Lots owned by Declarant in the Project as model homes or sales offices. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant (which approval may be withheld, in Declarant's sole and absolute discretion), as the master developer of the Project, will be required before any amendment to this Article shall be effective.

Notwithstanding any other provisions of the Association Management Documents, until such time as neither Declarant nor any Merchant Builders are entitled to add Annexation Property to the Project without the consent of the Owners pursuant to the Article herein entitled "Annexation of Additional Property," or neither the Declarant nor any Merchant Builder owns any Lots in the Project or within the Annexation Property, whichever occurs last, the following actions, before being undertaken by the Members or the Association, shall first be approved in writing by Declarant:

- a. Any amendment or action requiring the approval of first Mortgagees, pursuant to this Declaration, or specifically requiring the approval of Declarant pursuant to the section entitled "Amendments" of the Article herein entitled "General Provisions";
- b. The annexation to the Project of real property other than the real property described as Annexation Property in Exhibit "B" to this Declaration;
- c. A levy of a Special Assessment for the construction of new facilities not originally included in the Association Property; or
- d. Any significant reduction of Association maintenance of Association Property or other services ordinarily contemplated in the Association budget.

18.2 Reservation of Rights. Nothing in this Declaration shall limit the right of Declarant and Merchant Builders to alter or modify the Residences still owned by Declarant or Merchant Builders, or to construct such additional Improvements as Declarant deems advisable prior to the completion of Improvements in the Project and within the Annexation Property. Such rights shall include, but shall not be limited to, erecting, constructing,

maintaining and repairing within the Project model home complexes, real estate sales offices and other structures, signs, banners and displays as may be reasonably necessary for the proper development, disposition and sale of the real property and Improvements within the Project. Declarant or Merchant Builders shall repair any damage to and complete any restoration of Improvements within the Project caused or necessitated by such activities of Declarant of Merchant Builders.

18.3 Assignment of Declarant's Rights. Declarant shall have the right to assign any or all of its rights and obligations in this Declaration to any successor by an assignment expressed in a recorded instrument, including, without limitation, a deed, lease, option agreement, land sale contract or other instrument of assignment, as the case may be, transferring such interest if such assignee agrees in writing with Declarant to accept such assignment. No Merchant Builder may assign any or all of its rights and obligations in this Declaration without the prior written approval of Declarant, so long as Declarant owns one or more Lots or Association Property within the Project or the Annexation Property.

ARTICLE 19

GENERAL PROVISIONS

19.1 Enforcement.

a. The Association, pursuant to the provisions set forth in Sections 1354 and 1363(c) of the California Civil Code, and any successor or complementary statute, the City and any Owner of a Lot in the Project, including the Declarant, shall have the right to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Association), including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation. It is expressly agreed and acknowledged by Declarant, any Merchant Builder and by each Owner thereafter that the Association and not the City is responsible for enforcing the provisions of the Association Management Documents. Any judgment rendered in any action or proceeding to enforce this Declaration shall include an award of reasonable attorneys' fees and costs to the prevailing party in the action or proceeding;

b. The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest;