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RIVERSIDE COUNTY, CALIFORNIA

## MASTER DECLARATION OF RESTRICTIONS

FOR

MORNINGSTAR ONE

TRACTS 29268, 29269, 29270 AND 29271

Covenants and restrictions, if any, based on race, color, religion, sex, handicap, familial status or national origin are deleted unless and only to the extent that said covenant (a) is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

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## MASTER DECLARATION OF RESTRICTIONS

THIS MASTER DECLARATION OF RESTRICTIONS is made as of this 20<sup>th</sup> day of May, 2002, by Brookfield Winchester LLC, a Delaware limited liability company (hereinafter referred to as "Declarant"), with reference to the following

### RECITALS:

A. Declarant is the owner of the real property located in the County of Riverside, California, which is more particularly described as follows:

Lots 1 through 123 of TRACT NO. 29268, in the County of Riverside, State of California, as shown by map on file in Book 312, Pages 85 through 93 of Maps, Records of Riverside County, California.

Lots 1 through 143 of TRACT NO. 29269, in the County of Riverside, State of California, as shown by map on file in Book 313, Pages 8 through 15 of Maps, Records of Riverside County, California.

Lots 1 through 127 of TRACT NO. 29270, in the County of Riverside, State of California, as shown by map on file in Book 312, Pages 94 through 102 of Maps, Records of Riverside County, California.

Lots 1 through 55 of TRACT NO. 29271, in the County of Riverside, State of California, as shown by map on file in Book 313, Pages 1 through 7 of Maps, Records of Riverside County, California.

B. This Declaration replaces in its entirety that certain Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Morningstar Ranch recorded on December 28, 2001 as Document No. 2001-648141 in the Official Records of the Riverside County Recorder ("Original Declaration"). The Original Declaration is hereby rescinded in its entirety.

C. Declarant proposes that the Home Sites be developed in phases for residential and other uses. If fully developed consistent with current planning approximately 448 residences may be constructed. Phasing is tentative and there is no guarantee or assurance that all areas within the Home Sites will be developed or developed in any particular sequence.

D. Three Neighborhoods are currently planned for Morningstar One, as described on **Exhibit "A"** attached hereto. Several separate Phases are planned within each of the Neighborhoods. Guest Builders may construct and market residences in certain Neighborhoods.

E. This Master Declaration encumbers all of the Home Sites. This Master Declaration also encumbers the MHOA Potential Maintenance Areas to the extent of Declarant's ownership interest in the same.

F. This Master Declaration will establish a Common Interest Development of the kind known as a Planned Development.

G. The following are "MHOA Potential Maintenance Areas":

Lots 124 through 126 of TRACT NO. 29268, in the County of Riverside, State of California, as shown by map on file in Book 312, Pages 85 through 93 of Maps, Records of Riverside County, California.

Lot 144 of TRACT NO. 29269, in the County of Riverside, State of California, as shown by map on file in Book 313, Pages 8 through 15 of Maps, Records of Riverside County, California.

Lots 128 and 129 of TRACT NO. 29270, in the County of Riverside, State of California, as shown by map on file in Book 312, Pages 94 through 102 of Maps, Records of Riverside County, California.

Lots 56 and 57 of TRACT NO. 29271, in the County of Riverside, State of California, as shown by map on file in Book 313, Pages 1 through 7 of Maps, Records of Riverside County, California.

It is intended that the MHOA Potential Maintenance Areas will be maintained by Valley-Wide Recreation & Park District Of Riverside County, California, a political subdivision of the State of California (the "District") unless maintenance of a MHOA Potential Maintenance Area is turned over to the Master Association pursuant to this Master Declaration. The Home Sites will be subject to the District's French Valley Landscape Maintenance Assessment.

H. Declarant has established the MORNINGSTAR ONE COMMUNITY ASSOCIATION, a nonprofit mutual benefit corporation ("Master Association"), as the entity which would become obligated to maintain the MHOA Potential Maintenance Areas should maintenance of any such area be turned over to the Master Association.

I. It is intended that the Master Association would become obligated to maintain the MHOA Potential Maintenance Areas or any portion of the same only if the District ceases such maintenance because it has insufficient funding to maintain the MHOA Potential Maintenance Areas, or any portion of those areas. For example, the Master Association would become obligated to perform maintenance should the District be unable to establish assessments which are sufficient to pay for such maintenance. One or more lots within the MHOA Potential Maintenance Areas, or maintenance easements, may be transferred to the Master Association, subject to the District's right and obligation to maintain such areas.

J. NOTICE IS HEREBY GIVEN THAT THE MASTER ASSOCIATION HAS NO RIGHT TO EXCLUDE THE PUBLIC FROM ANY OF THE MHOA POTENTIAL MAINTENANCE AREAS.

K. Before any Home Site is sold and conveyed to a Retail Buyer (defined below), Declarant wishes to impose the following plan of covenants and restrictions on Morningstar One.

L. In preparing this Declaration the law firm of Hecht, Solberg, Robinson,



Goldberg & Bagley LLP represented Declarant and not any Owner or the Master Association. For interpretation of this Declaration or for advice concerning it, an Owner or the Master Association should contact their own legal advisor.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the Home Sites MHOA Potential Maintenance Areas and has fixed and does hereby fix the following protective covenants and restrictions upon each and every ownership interest in the Home Sites MHOA Potential Maintenance Areas under which covenants and restrictions each ownership interest therein shall be hereafter, held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of said covenants and restrictions are for the purpose of protecting the value and desirability of and shall inure to the benefit of all of the Home Sites MHOA Potential Maintenance Areas, and shall run with and be binding upon and pass with the Home Sites MHOA Potential Maintenance Areas and each and every ownership interest therein and shall inure to the benefit of, apply to and bind the respective successors in title or interest of Declarant to the Home Sites MHOA Potential Maintenance Areas.

## **ARTICLE 1**

### **DEFINITIONS**

**Section 1.1** "Articles" shall mean and refer to the Articles of Incorporation of the Master Association as they may from time to time be amended.

**Section 1.2** "Board" shall mean and refer to the Board of Directors of the Master Association.

**Section 1.3** "Bylaws" shall mean and refer to the Bylaws of the Master Association as they may from time to time be amended.

**Section 1.4** "Cost Center Amenities" shall mean and refer to those Master Association maintained amenities which are located within the Cost Center Area and are likely to be used primarily by the Owners within the Cost Center Area. The instrument which identifies a Cost Center Area shall also identify the applicable Cost Center Amenities. Two examples of amenities which may be Cost Center Amenities are (i) private streets which are internal to a Cost Center Area and which generally serve primarily that area and (ii) a private park which generally serves a Cost Center Area but is isolated from other portions of the Home Sites and not likely to be used by Owners outside of the Cost Center Area. No Cost Centers are presently planned for Morningstar One.

**Section 1.5** "Cost Center Area" shall mean and refer to a portion of the Home Sites which has been designated to be within a specific Cost Center Area by a document, recorded with the County Recorder of the County of Riverside and signed by Declarant and each person who owns any portion of such area at the time the document designating the Cost Center Area is recorded. No Cost Center Areas are currently planned for Morningstar One.

**Section 1.6** "Cost Center Assessments" shall mean and refer to an additional component of Master Association regular assessments or special assessments to be assessed against those Home Sites which are within a particular Cost Center Area, for payment of the operating costs and reserves and other items applicable to the Cost Center Amenities within the Cost Center Area. Reference to "regular assessments" or "special assessments" in this Master

Declaration shall also refer to the Cost Center Assessments with respect to the Home Sites within a Cost Center Area for all purposes except **Section 4.3 (b)** below. Cost Center Assessments, for purposes of **Section 4.3 (b)** below, shall be deemed separate from the regular assessments. Imposition of a Cost Center Assessment shall not be deemed an increase in the regular assessment amount but instead an additional assessment and reference to "fifty percent (50%) of the Owners" in **Section 4.3 (b)** shall, with respect to Cost Center Assessments, refer to fifty percent (50%) of the Owners within the Cost Center. No Cost Center Assessments are currently planned for Morningstar One.

**Section 1.7** "County" shall mean and refer to the County of Riverside, California.

**Section 1.8** "Declarant" shall mean and refer to Brookfield Winchester LLC, a Delaware limited liability company. Declarant shall also refer to (i) the assigns of Declarant who are expressly assigned the rights of Declarant (any such assignment need not be of all of the rights of Declarant), and (ii) successors of Declarant who become successors by operation of law or by exercise of the remedies under a mortgage, deed of trust or deed in lieu of foreclosure.

**Section 1.9** "Delegate" shall mean and refer to the natural person selected to represent all the Class A Members within the Delegate District and to vote on their behalf, as further provided in this Master Declaration and in the Bylaws.

**Section 1.10** "Delegate District". Each group of Home Sites which are under the jurisdiction of the same Subassociation shall comprise a separate Delegate District. Those Home Sites, if any, which are not within the jurisdiction of any Subassociation shall be within the Delegate District described by documents executed by Declarant and recorded from time to time with the County Recorder of the County of Riverside. Declarant anticipates that there will be a separate Delegate District established for each Neighborhood within Morningstar One; however, some Delegate Districts may include more than one Neighborhood. The first three Delegate Districts are hereby designated as the Neighborhood A Delegate District, the Neighborhood B Delegate District and the Neighborhood C Delegate District which will include those respective Home Sites in Morningstar One described on **Exhibit "B"** attached to this Master Declaration.

**Section 1.11** "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has requested notice from the Master Association of those matters which such insurer or guarantor is entitled to notice of by reason of this Master Declaration or the Bylaws of the Master Association and who has provided the Master Association with the address to which such notice is to be sent and the Home Site number which is encumbered by a Mortgage in which it has an interest.

**Section 1.12** "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage on a Home Site who has requested notice from the Master Association of those matters which such holder is entitled to notice of by reason of this Master Declaration or the Bylaws of the Master Association and who has provided the Master Association with the address to which such notice is to be sent and the Home Site unit number which is encumbered by a Mortgage in which it has an interest.

**Section 1.13** "FHA" shall mean and refer to the Federal Housing Administration.

**Section 1.14** "FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

**Section 1.15** "FNMA" shall mean and refer to the Federal National Mortgage Association.

**Section 1.16** "GNMA" shall mean and refer to the Government National Mortgage Association.

**Section 1.17** "Guest Builder" shall mean and refer to the following persons if so designated by Declarant: Each person (including any legal entity) who acquires at least five (5) Home Sites within the Home Sites for the purpose of resale to the general public. "Guest Builder" shall not mean and refer to Declarant or any successive Declarant.

**Section 1.18** "Master Association" shall mean and refer to MORNINGSTAR ONE COMMUNITY ASSOCIATION, a nonprofit mutual benefit corporation, its successors and assigns.

**Section 1.19** "MHOA Potential Maintenance Areas" shall mean the land described in Recital F to this Master Declaration. The MHOA Potential Maintenance Areas are hereby declared to be "common area" as defined in California CIVIL CODE Section 1351(b). The Master Association's right and obligation to maintain MHOA Potential Maintenance Areas pursuant to this Master Declaration, is intended to benefit each of its Members with such benefit constituting an appurtenant mutual easement right for such maintenance to be performed pursuant to this Master Declaration. Should the Master Association acquire land or easements not described in Recital F, then the additional area shall also be deemed "Common Area" as defined in California CIVIL CODE Section 1351(b) and the term "MHOA Potential Maintenance Areas" shall apply to such additional area when the context of this Master Declaration so implies.

**Section 1.20** "Master Declaration" shall mean and refer to this Master Declaration of Restrictions as it may be amended from time to time.

**Section 1.21** "Member" shall mean and refer to each Owner entitled to membership in the Master Association pursuant to the Article herein entitled "MEMBERSHIP AND VOTING RIGHTS IN MASTER ASSOCIATION".

**Section 1.22** "Mortgage" shall mean and refer to a Deed of Trust as well as a mortgage.

**Section 1.23** "Mortgagee" shall mean and refer to the beneficiary of a Deed of Trust as well as the mortgagee of a mortgage encumbering a Home Site.

**Section 1.24** "Neighborhood" refers to the portion of the Home Sites designated by this Master Declaration as being within a Neighborhood. The portion of the Home Sites within a Neighborhood may be re-designated from time to time by Declarant.

**Section 1.25** "Owner" means and refers to the person or persons, firm, corporation, partnership or other entity who are alone or collectively the record owner of a fee simple title to a Home Site, including Declarant and Guest Builders, but excluding those having any such interest merely as security for the performance of an obligation. The term "Owner" shall include both the vendor and the vendee under an installment land sales contract (as described in Sections 2985 through 2985.6 of the California CIVIL CODE), as well as the holder of a leasehold estate having a term of ten (10) or more years, including renewal periods.

**Section 1.26 "Phase"** shall mean and refer to a group of Home Sites which is or has been made subject to this Master Declaration and is designated by Declarant as a separate Phase by a document executed by Declarant and recorded with the County Recorder of the County of Riverside. If a Guest Builder has record title ownership of the Home Sites at the time of such recordation, the document to be recorded shall also be signed by the Guest Builder. Should Declarant not have made a contrary designation, each group of Home Sites which have been made subject to this Master Declaration and are covered by a separate final subdivision public report issued by the California Real Estate Commissioner or otherwise recognized by the California Real Estate Commissioner as a separate Phase shall constitute a separate Phase. A Phase may also include such MHOA Potential Maintenance Areas so designated by Declarant.

**Section 1.27 "Home Sites"** shall mean and refer to that certain real property described in Recital A to this Master Declaration. Each lot described in Recital A (as the same be adjusted) is a separate Home Site.

A residential structure which includes a main residence and a "granny flat" (if any) shall be deemed a single Home Site unless shown otherwise on a condominium plan or subdivision map. Reference in this Master Declaration to a Home Site, means and refers to a Home Site which is in Morningstar One or which has been annexed to this Master Declaration.

**Section 1.28 "Retail Buyer"** means an Owner of a Home Site who acquires his or her Home Site by authority of a final subdivision public report issued by the Real Estate Commissioner of the State of California. "Retail Buyer" does not refer to Declarant or a Guest Builder.

**Section 1.29 "Subassociation"** shall mean and refer to a homeowners association (other than the Master Association) which is formed for a particular Neighborhood. Declarant does not contemplate that any Subassociations will be formed.

**Section 1.30 "VA"** shall mean and refer to the Department of Veterans Affairs.

## **ARTICLE 2**

### **MHOA POTENTIAL MAINTENANCE AREAS**

**Section 2.1 Status of Title to MHOA Potential Maintenance Areas.** Declarant hereby reserves on behalf of the Master Association the non-exclusive right and obligation to maintain the MHOA Potential Maintenance Areas; this easement is subject to the right of the District to exclusively maintain each such area unless and until the District turns over maintenance of such area to the Master Association pursuant to the turn over procedure set forth in this Article. Fee title to one or more lots within the MHOA Potential Maintenance Areas may be conveyed to the Master Association, subject to the right of the District to exclusively maintain such lot unless and until maintenance of the lot is turned over to the Master Association pursuant to the procedure set forth below. The easement reserved hereby in favor of the Master Association and any further transfers of MHOA Potential Maintenance Areas (in fee, easement or otherwise) are subject to this Master Declaration, together with those covenants, conditions, restrictions, easements, dedications and other encumbrances of record and reservations set forth on the instrument of conveyance.

**Section 2.2 Declarant's Right To Transfer and To Adjust MHOA Potential Maintenance Areas.** Declarant shall have the right to transfer to the Master Association, by separate deed, the interests in the MHOA Potential Maintenance Areas described in **Section 2.1** above. Declarant shall also have the right to unilaterally make adjustments in the boundaries of

the land described in **Recital F** above and to make additions and deletions to the MHOA Potential Maintenance Areas.

**Section 2.3 Maintenance Turn Over Procedure.** The Master Association shall become obligated to maintain an MHOA Potential Maintenance Area only if it receives a written notice from the District which is signed by an officer of the District and which complies with the following requirements:

(a) The notice shall contain the certification by an officer of the District that maintenance of the MHOA Potential Maintenance Area(s) is required because the District has insufficient funding to maintain those MHOA Potential Maintenance Area(s).

(b) The notice shall give the Master Association at least sixty (60) days prior notice of the date that maintenance will be turned over to the Master Association.

(c) The notice shall be sent by certified mail or personally delivered to an officer of the Master Association.

**Section 2.4 Continued Maintenance By MHOA.** In the event any portion of an MHOA Potential Maintenance Area is turned over to the Master Association for maintenance pursuant to **Section 2.3**, then the Master Association shall not, without the written approval of the Planning Director of the County of Riverside, cease maintaining that portion of MHOA Potential Maintenance Area.

**Section 2.5 Use of MHOA Potential Maintenance Areas.** It is not contemplated that the Owners will have any exclusive right to use any of the MHOA Potential Maintenance Areas. The Master Association shall not have the right to control any MHOA Potential Maintenance Area other than to maintain the area should the area be turned over to the Master Association for such maintenance pursuant to the procedure set forth in this Article.

**Section 2.6 Management And Control of a MHOA Potential Maintenance Area.** The provisions of this **Section 2.6** shall apply only if the Master Association were to obtain the right to manage and control the use of a MHOA Potential Maintenance Area (which Declarant does not contemplate occurring). Should the Master Association acquire the right to manage and control use of a MHOA Potential Maintenance Area, then the following provisions shall apply:

(a) The Master Association shall have the right to charge for reasonable admission and other fees for use of such areas and to adopt rules and regulations regarding use of the MHOA Potential Maintenance Areas. The Master Association shall have the right to enter into agreements which allow the use of the MHOA Potential Maintenance Areas by persons who are not Members on such terms and conditions as are acceptable to the Board.

(b) The Master Association shall have the right to suspend an Owner's voting rights and right to use of any portion of the MHOA Potential Maintenance Areas for any period during which any assessment against his or her Home Site remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations. No such suspension shall be effective unless the Owner has been given fifteen (15) days' prior notice of the suspension and the reasons therefor and the Owner has been given an opportunity to be heard by the Board, orally or in writing, not less than five (5) days prior to the effective date of the suspension. Notice may be given to the Owner by any method reasonably calculated to provide actual notice, but if given by mail must be given by first-class or registered mail sent to the last

address of the Owner shown on the records of the Master Association. In no event will the Master Association have the right to suspend the right of access of an Owner to his or her Home Site.

(c) The MHOA Potential Maintenance Areas shall be subject to any dedicated public rights and any third party easements or other rights which may exist of record. For example, the right to use the MHOA Potential Maintenance Areas shall be subject to the provisions of any open space easements or similar interests dedicated to the County of Riverside or any other governmental or quasi-governmental entity on any subdivision map (or otherwise) covering the Home Sites or any portion of the Home Sites.

(d) Use of the MHOA Potential Maintenance Areas shall be subject to the applicable ordinances of the County, easements in favor of the County and permits and approvals issued by the County. Notwithstanding any other provision hereof, all rights of the Master Association and Owners with respect to the MHOA Potential Maintenance Areas are subject to all limitations imposed by any open space easements dedicated to the County and all other items of record.

(e) The Master Association shall have the right to adjust boundaries between any MHOA Potential Maintenance Areas and any adjoining property subject to the approval of the adjoining property owner.

(f) The Master Association shall have the right to dedicate any of the MHOA Potential Maintenance Areas to any public agency or any public interest environmental or charitable organization.

(g) The Master Association shall have the right to grant easements or licenses over the MHOA Potential Maintenance Areas, including, but not limited to easements or licenses which allow an Owner the exclusive right to use a portion of the MHOA Potential Maintenance Areas adjoining the Owner's Home Site.

(h) Any Owner of a Home Site may delegate, in accordance with the Bylaws, his or her rights of enjoyment, if any, to the MHOA Potential Maintenance Areas to the members of his or her family, his or her tenants or contract purchasers who reside within his or her Home Site. However, no such delegation by an Owner will in any way extinguish, limit or otherwise release the Owner of any obligations or duties imposed on the Owner by this Master Declaration and other governing documents.

(i) Declarant and those persons which Declarant designates shall have:

(i) A non-exclusive easement over the MHOA Potential Maintenance Areas for the purpose of making repairs and for the purpose of constructing, marketing, leasing and maintaining any portion of the Home Sites and maintaining sales and construction offices; and

(ii) The right to the non-exclusive use of the MHOA Potential Maintenance Areas by Declarant and Guest Builders for the purpose of maintaining signs, flags and similar improvements reasonably appropriate for marketing any portion of the Home Sites. The rights under this **Subsection (ii)** shall continue for a period of not more than (A) ten (10) years after recordation of this Master Declaration or (B) the sale of all Home Sites to Retail Buyers, whichever shall first occur.

Declarant shall be obligated to restore any damage which results from exercise of these rights.

The use of the MHOA Potential Maintenance Areas by Declarant and its agents shall not unreasonably interfere with the use thereof, if any, by the Class A Members of the Master Association.

**Section 2.7** **Improvements.** The Master Association shall have the right, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving any MHOA Potential Maintenance Areas which have been turned over to the Master Association for maintenance, and with the assent of a majority of each class of Members, hypothecate any or all real or personal property owned by the Master Association. The right to make any such improvements are subject to the approval of the County.

### **ARTICLE 3**

#### **MEMBERSHIP AND VOTING RIGHTS IN MASTER ASSOCIATION**

**Section 3.1** **Organization of Master Association.** The Master Association is organized as a California corporation under the California Nonprofit Mutual Benefit Corporation Law and is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws and this Master Declaration. Neither the Articles nor the Bylaws shall be amended so as to be inconsistent with this Master Declaration. In the event that there should exist any ambiguity in any provision of the Articles or Bylaws, then the provision shall be construed, to the extent possible, so that the provision shall be consistent with this Master Declaration.

**Section 3.2** **Membership.** Each Owner (including Declarant and Guest Builders) of one or more Home Sites shall be a Member of the Master Association. Membership in the Master Association shall be subject to the terms and provisions of the Articles, Bylaws and the Board rules and regulations to the extent the provisions thereof are not in conflict with the provisions of this Master Declaration. Tenants of Home Sites will not be Members of the Master Association.

**Section 3.3** **Transfer of Membership.** Membership in the Master Association shall be appurtenant to the Home Site owned by each Owner, and transfer of the Home Site will automatically transfer the membership in the Master Association. A membership shall not be transferable or assignable, except to the person to whom title to the Home Site is transferred. Ownership of a Home Site shall be the sole qualification for membership in the Master Association. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Master Association.

**Section 3.4** **Notice of Transfer.** Each Owner shall inform the Master Association of the name of the purchaser of his or her Home Site upon transfer to the successive Owner and, in the event the Owner should fail or refuse to do, the Board shall have the right to record the transfer upon the books of the Master Association without such notice. The Master Association may levy a reasonable transfer fee limited to the Master Association's actual costs to change its records, as a special assessment against each new Owner and his or her Home Site to reimburse the Master Association for the administrative cost of recording the transfer of the membership to the new Owner in the records of the Master Association.

**Section 3.5** **Multiple Ownership.** When more than one person, partnership, corporation, firm or other entity owns a portion of the interest in a Home Site or when there is more

than one Owner of a Home Site (as in the case of the vendor and the vendee under an installment land sales contract, or as in the case of a leasehold estate exceeding ten (10) years) each such person shall be a Member and, at any duly constituted meeting of the Members in a Delegate District, the vote for the Home Site shall be exercised as they among themselves determine, but in no event shall more votes be cast with respect to any Home Site than could be cast if there were only one Owner. Unless the Board receives written objection in advance, if any Owner casts a vote, it will thereafter be conclusively presumed for all purposes that he or she was acting with the authority and consent of all other Owners of the respective Home Site.

**Section 3.6 Voting Classes.** The Master Association shall have three (3) classes of voting membership, as follows:

(a) **Class A.** Initially, Class Members shall be all Owners of Home Sites (excepting Declarant and Guest Builders). Each Class A Member shall be entitled to one (1) vote for each Home Site which he or she owns. No votes shall, however, be attributable to a Home Site until the Master Association's regular assessments have commenced against the Home Site pursuant to the Article below entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO MASTER ASSOCIATION". Declarant and Guest Builders shall become Class A Members with regard to Home Sites owned by Declarant or the Guest Builders upon the conversion of Declarant's or the Guest Builder's Class B membership to Class A membership as provided below.

(b) **Class B.** The Class B Members shall be Declarant and Guest Builders. The Class B Members shall be entitled to three (3) times the number of votes to which the Class B Members would have been entitled as Class A Members for the Home Sites owned by the Class B Members. No Class B votes shall, however, be attributable to a Home Site until the Master Association's regular assessments have commenced against the Home Site pursuant to the Article below entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO MASTER ASSOCIATION". The Class B membership shall forever cease as to all Home Sites and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(i) When the Master Association's regular assessments have commenced against an aggregate of 336 Home Sites.

(ii) On the fifth (5<sup>th</sup>) anniversary following the most recent conveyance to a Retail Buyer of the first Home Site in any Phase.

(iii) On the twenty-fifth (25<sup>th</sup>) anniversary of the first conveyance of a Home Site to a Retail Buyer.

A Class B Member shall have the right to cause earlier conversion of its membership to Class A by so notifying the Secretary of the Master Association in writing.

(c) **Class C.** In addition to other memberships it may hold, Declarant shall be the sole Class C Member of the Master Association. The Class C membership shall be considered a part of the Master Association's voting power for the sole purpose of the Class C Member electing a majority of the directors of the Master Association, and reference to "each class of membership" in this Master Declaration or in the Bylaws or the Articles shall not refer to Class C membership for any purpose other than election of Master Association directors. The directors shall be elected as set forth in the Bylaws. The Class C membership shall forever cease on the happening of any of the following events, whichever occurs earlier:



(i) When the Master Association's regular assessments have commenced against an aggregate of 336 Home Sites.

(ii) On the fifth (5<sup>th</sup>) anniversary following the most recent conveyance to a Retail Buyer of the first Home Site in any Phase.

(iii) On the tenth (10<sup>th</sup>) anniversary of the first conveyance of a Home Site to a Retail Buyer.

The Class C member shall have the right to cause early termination of the Class C membership or to reduce the number of directors which the Class C member is entitled to appoint by so notifying the Secretary of the Master Association in writing.

Anything herein stated to the contrary notwithstanding, this Section shall not be amended to affect Class B or C voting rights without Declarant's prior written consent.

### **Section 3.7     Voting by Delegates.**

(a)     **Delegates and Alternate Delegates from Subassociations.** The Home Sites shall be divided into Delegate Districts for purposes of casting Class A votes, as described in this Article and as described in the Section entitled "Delegate District" of the Article above entitled "DEFINITIONS". Each Delegate District which is comprised of Home Sites under the jurisdiction of a Subassociation shall be represented by the person elected by the Class A Members of the Subassociation as the Delegate. The Subassociation's Class A Members shall also designate another person to be an Alternate Delegate who shall have and shall exercise the powers and duties of the Delegate for that Delegate District whenever the Delegate is absent, disabled or unable to act. The Subassociation's Declaration of Restrictions and/or Bylaws may set forth the procedure whereby such Delegate and Alternative Delegate are elected by the members of the Subassociation who are Class A Members of the Master Association. Should such procedures not be set forth, the procedures set forth in this Section shall apply to election of the Delegates and Alternate Delegates.

(b)     **Delegates and Alternate Delegates if No Subassociation.** The District's Delegate and Alternate Delegate shall be selected as follows for any Delegate District comprised of Home Sites not within the jurisdiction of a Subassociation.

(i)     Each such Delegate District which is established for Home Sites not covered by a Subassociation shall hold an annual meeting of its Class A Members prior to the annual meeting of all Members of the Master Association. At the first meeting of each Delegate District's Class A Members and at each subsequent annual meeting, the Class A Members of such Delegate District shall elect (A) one (1) Delegate to the Master Association to exercise the Class A voting power of all of the Members within the Delegate District and (B) one (1) Alternate Delegate, who shall have and shall exercise the powers and duties of the Delegate for that Delegate District whenever the Delegate is absent, disabled or unable to act.

(ii)     The chairman of any meeting at which the Delegate and the Alternate Delegate are elected shall certify in writing to the Board the name and address of the Delegate and the Alternate Delegate elected, the time and place of the meeting at which the election occurred, and the Delegate District which the Delegate and the Alternate Delegate represent.

(iii) The Delegate and the Alternate Delegate shall continue in office for one (1) year or until their successors are elected, whichever is later, except that a Delegate or an Alternate Delegate may be removed without cause by the vote in person or by proxy at any duly constituted meeting of at least a majority of the Class A voting power of the Members in the Delegate District.

(iv) Only Members of the Master Association or, if a Member is a corporation or partnership or similar entity, the authorized agent of such entity, shall be eligible for election as a Delegate or an Alternate Delegate. Upon termination of any Delegate's or Alternate Delegate's membership in the Master Association, the Delegate's or Alternate Delegate's term of office shall immediately terminate and a new Delegate or Alternate Delegate shall be elected in his or her place.

(v) The Delegate and the Alternate Delegate shall be elected in accordance with the voting procedures set forth herein and in the Bylaws.

(c) **Number of Delegate Votes.** At each annual or special meeting of Members of the Master Association, each Delegate shall be entitled to cast the Class A voting power for all of the Home Sites located in the Delegate District represented by the Delegate against which the Master Association's regular assessments have commenced pursuant to the Article below entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO MASTER ASSOCIATION".

(d) **No Class B or C Votes.** No Delegate will have any authority to cast any votes except the Class A votes for his or her District. Declarant alone shall have the right to cast the Class C votes, and Declarant and each Guest Builder will have the right to cast their respective Class B votes at any annual or special meeting of Members of the Master Association or on any other applicable occasion. Nothing herein stated shall be deemed to prevent Declarant or any Guest Builder from appointing a proxy to cast votes.

(e) **Allocation of Delegate Votes.** A Delegate shall have the authority, in his or her sole discretion, to call a special meeting of the Members within his or her Delegate District for the purpose of obtaining instructions as to the manner in which he or she is to vote on any issue to be voted on by the Delegates. Thereafter, the Delegate representing the Delegate District shall cast all of the voting power in the Delegate District in the same proportion, as nearly as possible without counting fractional votes, as the Members in the Delegate District shall have cast their voting power "for" and "against" such issue in person or by proxy. With respect to all other voting issues, a Delegate shall cast his or her District's voting power in the manner as he or she may, in his or her sole discretion, deem appropriate, acting on behalf of all the Members owning Home Sites in his or her Delegate District. When a Delegate is voting in his or her own discretion, without instruction from the Members whom he or she represents, the Delegate may cast all of the votes which he or she represents as a unit, or the Delegate may apportion the votes and cast some votes in favor of a given proposition and some votes in opposition to the proposition. Each Delegate personally, and not by proxy, shall cast the votes which he or she represents. It will be conclusively presumed for all purposes of Master Association business that any Delegate casting votes on behalf of the Members owning Home Sites in his or her Delegate District has acted with the authority and consent of all the Members. All agreements and determinations lawfully made by the Master Association in accordance with the voting procedures established herein, and in the Bylaws, shall be deemed to be binding on all Members, and their successors and assigns.

**Section 3.8 Suspension of Voting Rights.** As provided in the Article above entitled "MHOA Potential Maintenance Areas", the Board shall have the authority, after notice and hearing,

to suspend the voting rights of any Member for any period during which the payment of any assessment against the Member and his or her Home Site remains delinquent. Any suspension of the voting rights of any Member for non-payment of any assessment shall not constitute a waiver or discharge of the Member's obligations to pay the assessments provided for herein. Suspension of a Class A Member's voting rights shall result in suspension of such Member's vote by the applicable Delegate.

**Section 3.9 Direct Vote of Members Required For Certain Matters.** Voting for the following matters shall be by Members of the Master Association who are Owners of Home Sites and not by their Delegates:

(a) A vote to approve assessment increases pursuant to the Section below entitled "Maximum Regular and Special Assessments" of the Article below entitled "COVENANT FOR MAINTENANCE ASSESSMENTS TO MASTER ASSOCIATION";

(b) A vote to approve an amendment to this Master Declaration pursuant to the Section below entitled "Amendments" of the Article below entitled "ADDITIONAL PROVISIONS";

(c) A vote to approve an amendment to the Bylaws pursuant to the Section of the Bylaws entitled "By Members" of the Article in the Bylaws entitled "AMENDMENTS".

(d) A vote to elect or remove a Delegate shall be by Members of the Delegate District to which such Delegate is to be elected or from which such Delegate is to be removed.

(e) A vote by the Members pursuant to the Section below entitled "Special Responsibilities of Master Association" of the Article entitled "ADDITIONAL PROVISIONS";

(f) A vote to approve the sale of property of the Master Association during any fiscal year having an aggregate fair market value in excess of five percent (5%) of the budgeted gross expenses of the Master Association for the fiscal year, pursuant to the Section of the Bylaws entitled "General Rights and Powers; Borrowing Money; Selling MHOA Potential Maintenance Areas";

(g) A vote to approve aggregate capital expenditures during any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Master Association for that fiscal year, pursuant to the Section of the Bylaws entitled "Restoration and Replacement; Capital Expenditures"; and

(h) A vote to approve a service or management contract with a term longer than one (1) year, pursuant to the Section of the Bylaws entitled "Goods and Services".

**Section 3.10 Limitation on Liability of Master Association's Directors and Officers.**

(a) **Claims Regarding Breach of Duty.** No director or officer of the Master Association shall be personally liable to any of the Master Association's members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any services required hereunder or under the Bylaws, provided that such director or officer acted in good faith, in a manner that such a person believes to be in the best interest of the Master Association and with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances. Without limiting the generality of

the foregoing, this standard of care and limitation of liability shall extend to matters including, but not limited to, the repair and maintenance of MHOA Potential Maintenance Areas.

(b) **Other Claims Involving Tortious Acts and Property Damage.** No director or officer of the Master Association shall be responsible to any Owner or any member of its family or tenants, guests, servants, employees, licensees, invitees, or any other person for any loss or damage suffered by reason of theft or otherwise of any article, vehicle or other item of personal property which may be stored by such Owner or other person on or within any Home Site or for any injury to or death of any person or loss or damage to the property of any other person caused by fire, explosion, the elements or any other Owner or person within the Home Sites, or by any other cause, unless the same is attributable to his or her own willful or wanton act of gross negligence. It is the intent of this section to provide volunteer directors and officers with protection from liability to the full extent permitted by California CIVIL CODE Section 1365.7, or comparable superseding statute, and to the extent this provision is inconsistent with said section, the CIVIL CODE shall prevail.

#### ARTICLE 4

### COVENANT FOR MAINTENANCE ASSESSMENTS TO MASTER ASSOCIATION

**Section 4.1 Covenant for Assessments.** Declarant, for each Home Site owned, hereby covenants, and each Owner of a Home Site by acceptance of a deed to the Home Site, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Master Association: (i) regular assessments and (ii) special assessments, such assessments to be established and collected as hereinafter set forth and as provided in the Bylaws. Any assessment shall be deemed delinquent if not paid within fifteen (15) days after it becomes due. The regular and special assessments, together with interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the assessment becomes due, costs, late charges equal to ten dollars (\$10.00) or ten percent (10%) of the delinquent assessment, whichever is greater, and reasonable attorney's fees, shall, except as stated below, be a continuing lien upon the Home Site against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Home Site at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner of a Home Site may exempt himself or herself from liability for assessments by abandonment of his or her Home Site or abandonment of any rights under this Master Declaration. Declarant shall pay all assessments levied by the Master Association against any Home Site owned by it at the same time, in the same manner and in the same amounts as any other Owner.

#### **Section 4.2 Purpose of Assessments.**

(a) **Generally.** The assessments levied by the Master Association shall be used exclusively to promote the health, safety and welfare of all the residents in all the Phases, to discharge the Master Association's obligations under this Master Declaration and the Bylaws, and to reimburse the Master Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Master Declaration and the rules and regulations adopted by the Board. The regular assessments shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the MHOA Potential Maintenance Areas, where appropriate, with respect to any such area in which maintenance has been turned over to the Master Association.

(b) **Possible Suspension of Reserves.** Reserves for certain items may be suspended for a limited period pursuant to a maintenance or subsidy agreement between Declarant or a Guest Builder and the Master Association, the terms of which have been approved by the California Department of Real Estate.

(c) **Cost Center Assessments.** The Cost Center Assessments component of the regular assessments levied by the Master Association against the Home Sites within a Cost Center Area shall be used exclusively for the operational costs and reserves applicable to the Cost Center Amenities within the Cost Center Area. Cost Center Assessments may include, without limitation, estimated or actual costs and expenses incurred by the Master Association in connection with administrating the Cost Center Area, maintaining, repairing and replacing the Cost Center Area amenities, obtaining and maintaining insurance coverage related to the Cost Center Area amenities, providing utility services to the Cost Center Area amenities and funding reasonable reserves for the repair or replacement of Cost Center Area amenities.

(d) **Cost Center Accounting.** The Master Association shall provide for separate accounting for funds which are collected and expended on behalf of Cost Center Area. The Master Association shall also provide for the reserve study and the annual review and disclosure of the reserves applicable to a Cost Center Area.

**Section 4.3 Maximum Regular and Special Assessments.** The Board shall levy regular and special assessments sufficient to perform the obligations of the Master Association as provided in this Master Declaration and the Bylaws; provided, however, except for assessment increases necessary for emergency situations:

(a) The Board may not increase the regular assessments for any fiscal year unless the Board has complied with the provisions of California CIVIL CODE §1365(a) with respect to the fiscal year, and

(b) The following increases in regular or special assessments shall require the approval of Owners affected by such increase casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and §7613 of the California CORPORATIONS CODE at which a quorum was present or participated:

(i) Annual regular assessments (including any applicable Cost Center component) which are in aggregate more than twenty percent (20%) greater than the annual regular assessments for the Master Association's preceding fiscal year; or

(ii) Special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Master Association for the fiscal year (excluding budgeted gross expenses for any Cost Center), or five percent (5%) of applicable budgeted gross expenses of a Cost Center of the Master Association for the fiscal year,

"Quorum" means, for purposes of this **Section 4.3**, more than fifty percent (50%) of the affected Owners.

Should the Board have temporarily suspended a portion of the regular assessments it has adopted, the termination of such suspension shall not be deemed an increase in the regular assessments for purposes of **Section 4.3 (b)**.

**Section 4.4**    **Emergency Situations.** For purposes of **Section 4.3**, each of the following shall be deemed an emergency situation:

- (a)        An extraordinary expense required by an order of a court;
- (b)        An extraordinary expense necessary to repair or maintain any Phase(s) or any part of it for which the Master Association is responsible where a threat to personal safety is discovered;
- (c)        An extraordinary expense necessary to repair or maintain any Phase(s) or any part of it for which the Master Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under Section 1365 of the California CIVIL CODE. However, prior to the imposition or collection of an assessment under this **Subsection**, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members of the Master Association with the notice of assessment.

**Section 4.5**    **Certain Items Not Included.** Sums assessed against Owners pursuant to the Section below entitled "Non-Lien Assessments (Compliance)" shall not be considered in calculating the increases in assessments.

**Section 4.6**    **Special Assessments For Cost Center Areas.** Special assessments may also be levied against the Home Sites within a Cost Center Area when they are directly related to the Cost Center Amenities within such Cost Center Area.

**Section 4.7**    **Due Dates; Certification of Payment Status.** The due dates shall be established by the Board. The Master Association shall, within ten (10) days of delivery of a written request and for a fee which does not exceed the Master Association's reasonable cost to prepare and reproduce the certificate, furnish a certificate signed by an officer of the Master Association or its agent setting forth whether the assessments on a specified Home Site have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

**Section 4.8**    **Non-Lien Assessments (Compliance).** The Master Association may also impose a special assessment against any Member as a monetary penalty and/or to reimburse the Master Association for costs incurred in bringing a Member and/or his or her Home Site or tenants into compliance with the provisions of this Master Declaration, the Articles, the Bylaws or the Master Association rules and regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California CORPORATIONS CODE, as set forth in the Bylaws; provided, however, that except to the extent such special assessment is to reimburse the Master Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Home Site and shall be assessed only against the Owner which is or was in non-compliance. This Section does not refer to charges imposed against an Owner which are late payment charges allowed by California law for delinquent assessments, nor charges to reimburse the Master Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

**Section 4.9**    **Schedule of Monetary Penalties.** If the Master Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this

Master Declaration or the rules of the Master Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with the authorization for Owner discipline set forth in this Master Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

**Section 4.10 Rate of Assessments.** Both regular and special assessments shall be in a uniform amount except as follows.

(a) **Non-lien Assessments.** The Section above entitled "Non-Lien Assessments (Compliance)" is an exception to the requirement that assessments be uniform.

(b) **Model Homes.** The Section below entitled "Model Homes" is an exception to the requirement that assessments be uniform.

(c) **Cost Center Assessments.** In addition to the other components of regular assessments, the Home Sites within a Cost Center Area will be subject to the Cost Center Assessments applicable to the Cost Center Area. The Cost Center Assessments shall be uniform for all Home Sites within a Cost Center Area.

**Section 4.11 Date of Commencement of Regular Assessments.** The regular assessments shall commence as to all the Home Sites in a Phase on the first (1<sup>st</sup>) day of the month following the conveyance of the first Home Site to Retail Buyer in that Phase.

**Section 4.12 Earlier Commencement of Assessments If Specified.** Anything herein stated to the contrary notwithstanding, Declarant shall have the right but not the obligation to cause earlier dates of commencement of assessments (regular and special) as to particular Home Sites by so declaring in a document executed by Declarant and filed with the County Recorder of the County of Riverside. Any such document must also be executed by the record title owner of the Phase if the Phase or any portion of the Phase is not owned by Declarant as of the date of such recordation.

**Section 4.13 Due Dates.** The Board shall fix the amount of the regular assessment in advance of each regular assessment period, but may change the assessment amount on any subsequent occasion, subject to the limitations stated in this Master Declaration. Written notice of any changes to regular assessments or of any special assessment shall be sent to every Owner by first class mail not less than thirty (30) days nor more than sixty (60) days prior to the change in regular assessment or the special assessment becoming effective. The due dates shall be established by the Board. Initially the regular assessments shall be billed on an annual basis, however, the Board may change the billing to a quarterly or monthly basis.

**Section 4.14 Model Homes.** Conveyance of a Home Site which is being used by Declarant or a Guest Builder for model home, sales office, design center, construction office or similar purposes (any of which uses are referred to in this Section as "Model Home") shall not commence the regular assessments against such Home Site or other Home Sites within the Phase until discontinuance of use of such Home Site as a Model Home or conveyance of any non-Model Home Site in the Phase to a Retail Buyer, whichever first occurs. During the period of time commencing on the first (1<sup>st</sup>) day of the month after conveyance of a Home Site being used by Declarant as a Model Home and ending on the date regular assessments commence against such

Home Site Declarant or the Guest Builder (as applicable) shall be solely responsible to maintain all portions of the Phase in which a Home Site is being used as Model Home. The Board shall have the right to inspect the areas being maintained by Declarant pursuant to this Section to determine that such maintenance meets reasonable standards.

**Section 4.15 Effect of Non-Payment of Assessments; Remedies of the Master Association.** Any assessment made in accordance with this Master Declaration shall be a debt of the Owner of a Home Site from the time the assessment is due. The Master Association shall have the right to impose a late charge on delinquent assessments equal to ten dollars (\$10.00) or ten percent (10%) of the assessment, whichever is greater. Delinquent assessments shall also bear interest at the rate of twelve percent (12%) per annum commencing thirty (30) days after the assessment becomes due.

Before the Master Association may place a lien upon a Home Site to collect a debt which is past due, the Master Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Master Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees and the collection practices used by the Master Association, including the right of the Master Association to the reasonable costs of collection. Any payments toward such a debt shall be first applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

At any time after any assessments levied by the Master Association affecting any Home Site have become delinquent and provided the Board has complied with the requirements set forth in the preceding paragraph, the Board may file for recording with the County Recorder of the County of Riverside a notice of delinquency as to such Home Site which notice shall state all amounts which have become delinquent with respect to such Home Site and the costs (including attorney's fees), interest and late charges which have accrued thereon, the amount of any assessments relating to such Home Site which is due and payable although not delinquent, a description of the Home Site with respect to which the delinquent assessments are owed, the name of the record or reputed record Owner of such Home Site and the name and address of the trustee authorized by the Master Association to enforce the lien by sale. Such notice shall be signed by the President or Vice President and by the Secretary or Assistant Secretary of the Master Association and mailed in the manner set forth in CIVIL CODE Section 2924(b) to all record owners of the Owner's interest in the project no later than ten (10) calendar days after recordation of the notice of delinquency.

**Section 4.16 Lien Rights.** Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Article, the amounts delinquent, as set forth in such notice, together with the costs of collection (including, but not limited to, attorney's fees), late charges and interest accruing thereon, shall (except as provided in **Section 4.8** above) be and become a lien upon the Home Site described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Home Site following such recording, and all costs (including attorney's fees), late charges and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Home Site prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.



**Section 4.17 Notice of Release.** In the event the delinquent assessments and all other assessments which have become due and payable with respect to a Home Site together with all costs (including attorney's fees), late charges and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

**Section 4.18 Foreclosure Procedure; Power of Sale.** After expiration of thirty (30) days following the recording of a lien created pursuant to this Article, each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924 *et seq.* and Section 1367 of the California CIVIL CODE, and to that end a power of sale is hereby conferred upon the Master Association. The Master Association, acting on behalf of the Owners, shall have the power to bid for the Home Site at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

**Section 4.19 Subordination of the Lien to First Deeds of Trust and First Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Home Site. Sale or transfer of any Home Site shall not affect the assessment lien. However, the sale or transfer of any Home Site pursuant to judicial or non-judicial 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 Home Site from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Home Site obtains title to the same as a result of foreclosure, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the assessments by the Master Association chargeable to such Home Site which became due prior to the acquisition of title to such Home Site owned by such acquirer. The unpaid share of assessments shall be deemed to be common expenses collectible from all of the Owners including such acquirer, his or her successors and assigns.

**Section 4.20 Estoppel Certificate.** The Master Association shall furnish, pursuant to the Section above entitled "Maximum Regular and Special Assessments", a certificate signed by an officer of the Master Association or the Master Association's management agent setting forth whether the assessments on a specified Home Site have been paid. A properly executed certificate of the Master Association as to the status of assessments against a Home Site is binding upon the Master Association as of the date of its issuance.

**Section 4.21 Personal Liability of Owner.** No Owner may exempt himself or herself from personal liability for assessments levied by the Master Association, nor release the Home Site owned by him or her from the liens and charges hereof by waiver of the use or enjoyment of any of the MHOA Potential Maintenance Areas or by abandonment of his or her Home Site.

**Section 4.22 Taxation of Master Association.** Any taxes which are assessed against the MHOA Potential Maintenance Areas or the personal property of the Master Association shall be added to the regular assessments and, if necessary, a special assessment may be levied in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**Section 4.23 Uncompleted Facilities.** The Board may exclude from Master Association regular assessments or suspend those portions of assessments which are for the purpose of

defraying expenses and reserves directly attributable to the existence of improvements to be maintained by the Master Association but which are not complete at the time of the assessment or for which the Master Association's obligation has not otherwise commenced. Any such exemption from assessments shall be in effect only until commencement of the Master Association's obligation to maintain the improvements.

**Section 4.24 Assessment Amounts May Differ From Budget.** Because it is not presently contemplated that the Master Association will be required to maintain an MHOA Potential Maintenance Areas, the initial budget does not include sums for such maintenance. The Master Association's assessments would increase substantially over budgeted assessments were MHOA Potentially Maintained Areas to be turned over to Master Association for maintenance. Also, the Master Association's phased budget may show that the budgeted regular assessment amounts change as assessments commence against additional Phases within the Home Sites during the period in which the Home Sites are being developed and marketed. However, the Board shall have the right to reasonably vary the regular assessment amounts from the budgeted assessment amounts. It is anticipated that the Board may decide to not change or to delay the changes in the regular assessment amounts as assessments commence against subsequent Phases in order to avoid the confusion and administrative burden which would result from multiple changes in the regular assessment amounts. In doing so, the Board may decide to adopt "level assessments" which will be the same assessment amount for several Phases regardless of the fact that the budgeted assessments might be greater or lesser in amount than the level assessment.

## **ARTICLE 5** **INSURANCE AND CONDEMNATION**

### **Section 5.1 Insurance.**

(a) **General Liability Insurance.** The Master Association shall obtain a comprehensive general liability and property damage insurance policy insuring the Master Association and the Owners against liability incident to ownership or the Master Association's maintenance or use of the MHOA Potential Maintenance Areas. The limits of such insurance shall not be less than \$3 Million covering all claims for death, personal injury and property damage arising out of a single occurrence. The insurer issuing such insurance shall have rating by A.M. Best of "A, Class V" or better with no modified occurrences and as admitted by Best's Insurance Guide. The policy shall not contain a cross-suit exclusion clause which would abrogate coverage should litigation ensue between insureds.

(b) **Officers And Directors.** Section 1365.7 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Master Association who reside in a Home Site, provided that certain requirements, as set forth in the Code section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Master Association in specified amounts. The Master Association shall maintain the insurance which satisfies the requirements of the Code to limit the liability of volunteer officers and directors of the Master Association.

(c) **Fidelity Bond.** The Master Association shall maintain a fidelity bond in an amount equal to at least the estimated maximum amount of funds, including reserves, in custody of the Master Association or its management agent at any given time; provided, however, the fidelity bond shall not be less than a sum equal to three (3) months' aggregate regular assessments on all Home Sites subject to assessments, including reserve funds. The fidelity bond shall name

the Master Association as obligee and insure against loss by reason of the acts of the Board, officers and employees of the Master Association, and any management agent and its employees, whether or not such persons are compensated for their services.

(d) **MHOA Potential Maintenance Areas Insurance.** The Master Association shall obtain the following fire insurance covering the MHOA Potential Maintenance Areas if and when a building with a replacement value of \$10,000 or more, in 2002 dollars, becomes located on the MHOA Potential Maintenance Areas and if the Master Association obtains the exclusive right to use the building (no such exclusive right to use is planned by Declarant). A master fire insurance policy with glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the MHOA Potential Maintenance Areas buildings, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The maximum deductible amount shall be the lesser of \$10,000 or one percent (1%) of the policy face amount. Any proceeds from such insurance shall be payable to the Master Association for the benefit of the Owners and their Mortgagees.

(e) **If Coverage Not Available.** If in any event any insurance policy, or endorsement thereof, required by this Article is for any reason not reasonably available, then the Master Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Master Association's insurance coverage.

(f) **Copies of Policies; Provisions.** Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Master Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall provide that they shall not be cancellable by the insurer without first giving at least thirty (30) days' prior notice in writing to the Master Association and the servicer of each first Mortgage which requests such notice, and shall contain a waiver of subrogation by the insurers against the Master Association, Board and Owners.

(g) **Annual Insurance Review.** The Board shall review the insurance carried by the Master Association at least annually, for the purpose of determining the amount of the insurance referred to in this Article. The Board may obtain a current appraisal of the full replacement value of any improvements owned by the Master Association, without deduction for depreciation, by a qualified appraiser, prior to each annual review. Notwithstanding the requirement for annual review, the insurance policies carried by the Master Association shall, to the extent possible, provide for automatic adjustments of coverage levels to reflect the changes in costs resulting from inflation.

(h) **Loan Purchaser Requirements.** The Master Association shall continuously maintain in effect casualty and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements, if any, applicable to the Home Sites, as established by FHA, VA, FNMA, GNMA or FHLMC so long as any of the foregoing agencies is a Mortgagee or Owner of a Home Site within the Home Sites, except to the extent such coverage is not available or has been waived in writing by FHA, VA, FNMA, GNMA and FHLMC, as applicable.

(i) **Additional Insurance.** The Master Association may obtain such additional insurance coverage as its Board deems appropriate, including, but not limited to, coverage of its directors and officers.

(j) **Owners' Insurance.** It is not intended that the Master Association insurance policies cover any Home Site and each Owner is responsible to obtain his or her own casualty and general liability insurance covering his or her Home Site. Each Owner shall obtain and maintain, at his or her own expense, fire insurance coverage as may be required by the Owner's institutional Mortgagee or, if no institutional Mortgage encumbers the Home Site, fire insurance in an amount not less than the replacement cost of the structure.

**Section 5.2 Condemnation.** In the event the MHOA Potential Maintenance Areas or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer, if any, shall be paid to and belong to the Master Association.

## ARTICLE 6

### MASTER ASSOCIATION MAINTENANCE RESPONSIBILITIES

**Section 6.1 Areas to be Maintained.** Commencing from the date that maintenance obligations are turned over to the Master Association for a particular area pursuant to **Section 2.3** above, the Master Association shall maintain and provide for the maintenance of that portion of the MHOA Potential Maintenance Areas, including, but not limited to, facilities and improvements within open space lots offered for dedication to the County. Such maintenance by the Master Association shall continue until such time, if ever, that the District, the County, another assessment district or a community facilities district or other public agency assumes such maintenance.

**Section 6.2 Level of Maintenance.** From and after turn over of maintenance obligations to the Master Association, the Master Association shall be obligated to maintain such areas (including public areas) to the level of maintenance at least equal to the level of maintenance performed by the District.

**Section 6.3 Right To Enter.** The Master Association shall have the right to enter onto any Home Site as may be necessary for the construction, maintenance or emergency repair of the MHOA Potential Maintenance Areas or, if necessary, for the benefit of the Owners in common or to maintain areas which the Owner fails to maintain. Any damage caused by the entry of the Master Association onto a Home Site shall be repaired by the Master Association at its expense. It is not intended that this Section give the Master Association the right to enter inside any residence except during emergencies.

**Section 6.4 Maintenance Agreements.** The Master Association may enter into agreements with Declarant, Guest Builders or others which provide for the maintenance of MHOA Potential Maintenance Areas.

## ARTICLE 7

### MAINTENANCE BY OWNERS AND SUBASSOCIATIONS

**Section 7.1 Obligation To Maintain.** No Home Site or improvement anywhere within any Phase shall be permitted to fall into disrepair or an unsightly condition, and each Owner shall keep his or her Home Site free from weeds and all debris and shall keep all improvements located on his or her Home Site in good condition and repair. All landscaping shall be maintained in a healthy and thriving condition, free from weeds, trash and debris, and maintained in good appearance at all times. The Board shall have the right to determine whether a Home Site or its

improvements have fallen into disrepair or an unsightly condition for purposes of this Section and the Board's decision shall be final and binding on the respective Owner.

**Section 7.2**     **Indemnification of Master Association.** Each Owner, personally and for its family members, contract purchasers, tenants, guests and invitees, agrees to indemnify each and every other Owner and the Master Association, and to hold harmless such Owners and the Master Association from, and to defend him against, any claim of personal injury or property damage occurring within the residence or Home Site of that Owner arising out of the failure of the Owner to maintain the Home Site as set forth herein, except where another Owner's or the Master Association's negligence or willful misconduct is the sole and exclusive cause of any claim, demand or cause of action.

**Section 7.3**     **Master Association's Right To Maintain Owners' Home Sites.** In the event that any Owner or Subassociation shall in the Board's opinion permit any property, which is the responsibility of such Owner or Subassociation to maintain, to fall into a dangerous, unsafe, unsightly or unattractive condition as determined by the Board, then the Board shall have the right to demand that such condition be remedied. Should the condition not be remedied within fifteen (15) days, the Board shall have the right, but not the obligation, to correct the condition, and to enter upon the portion of the Home Sites which has fallen in such condition for the purpose of doing so. The Owner or Subassociation, as the case may be, shall promptly reimburse the Master Association for the cost of such corrective action, including, but not limited to the Master Association's court costs and reasonable attorney's fees should the Board determine it is in its best interests to obtain a court order allowing such entrance by the Board's representatives.

**Section 7.4**     **Drainage Facilities.** Unless the Master Association or a Subassociation has assumed the maintenance of the same, the Owner of a Home Site shall be responsible to maintain all drainage facilities, including, but not limited to concrete terrace drains, located on that Home Site.

**Section 7.5**     **Walls and Fences.** The interior surface of a fence or wall located between two Home Sites shall be maintained by the respective Owners and the respective Owners shall share equally in the cost of repairing or replacing the structure of any such fence except for (i) damage caused by one such Owner or (ii) fences or walls the maintenance of which has been assumed by a Subassociation or the Master Association. Should an Owner cause any damage to a fence or wall, such Owner shall be solely responsible to repair the same.

**Section 7.6**     **No Encroachment or Modification of Walls Owned by the County or District.** No Owner shall modify or supplement any wall or other improvement located on land owned by the County or the District or within the MHOA Potential Maintenance Areas nor shall any Owner install or construct any improvements which encroach on land owned by the County or the District or within the MHOA Potential Maintenance Areas.

**Section 7.7**     **Subassociation Maintenance.** Each Subassociation shall require all improvements under its jurisdiction or ownership to be kept in good condition, appearance and repair.

**Section 7.8**     **Owners To Notify Master Association.** In the event any Owner believes the Master Association has permitted any MHOA Potential Maintenance Areas which have been turned over to the Master Association for maintenance to become dangerous as a result of poor maintenance, the Owner has the duty to immediately report such dangerous condition to the Master Association.

## ARTICLE 8

### MASTER ARCHITECTURAL COMMITTEE

**Section 8.1** **MAC.** Reference in this Master Declaration to the "Master Architectural Committee" or "MAC" shall mean and refer to each Master Architectural Committee established pursuant to this Article.

#### **Section 8.2** **Possible Multiple Master Architectural Committees.**

(a) There shall initially be only one Master Architectural Committee established for the Home Sites (the Master Architectural Committee for Morningstar One); however, the Board may, from time to time, establish additional Master Architectural Committees to exercise jurisdiction over particular geographic areas of the Home Sites (*e.g.*, a Master Architectural Committee may be established for a certain Neighborhood). No portion of the Home Sites shall be subject to the jurisdiction of more than one Master Architectural Committee. Therefore, if a portion of the Home Sites is subject to the jurisdiction of a separate Master Architectural Committee established for that area, it shall not be subject to the jurisdiction of the Master Architectural Committee for Morningstar One. However, portions of the Home Sites may be subject to an architectural committee of a Subassociation in addition to the jurisdiction of the Master Architectural Committee.

(b) Any additional Master Architectural Committee shall be designated by the Board and evidenced by the President of the Master Association signing, acknowledging and recording a notice of Master Architectural Committee designation which: (i) names the MAC, and (ii) legally describes the portion of the Home Sites over which the particular MAC will have jurisdiction.

**Section 8.3** **Members of the Master Architectural Committee.** Each Master Architectural Committee shall consist of from three (3) to five (5) members; however, the number of members may be increased by resolution of the Board. The members of the Master Architectural Committee may be removed at any time without cause by the person appointing the member under the authority granted by this Article. Unless changed by resolution of the Board, the address of the Master Architectural Committee for all purposes, including the submission of plans for approval, shall be at the principal office of the Master Association as designated by the Board pursuant to the Bylaws. Members of the Master Architectural Committee shall serve until such time as the member has resigned or been removed by the party which appointed the member. Members of the MAC need not be Owners. The Master Association is specifically authorized to reasonably compensate a professional property manager, architect, or other similar professional for service as a member of the MAC.

**Section 8.4** **Rights of Appointment.** Declarant may, at its sole option, appoint all of the original members of the Master Architectural Committee, and all replacements, until three (3) years following the first conveyance of a Home Site to a Retail Buyer. Thereafter, the Board shall have the right to appoint one member of the Master Architectural Committee, and Declarant may, at its sole option, appoint the remaining members until (i) an aggregate of 336 Home Sites have been sold and closed escrow to Class A Members or (ii) until the tenth (10<sup>th</sup>) anniversary of the first conveyance of a Home Site to a Retail Separate to a Retail Buyer, whichever occurs first. Thereafter, the Board shall have the right to appoint all the members of the Master Architectural Committee. Members of a Master Architectural Committee need not be Members of the Master Association.

## **Section 8.5 Architectural Review Procedures.**

(a) **Review of Plans and Specifications.** Except as otherwise stated in this Master Declaration, no building, addition, hardscaping, landscaping, irrigation system, swimming pool, spa, fence, wall, exterior lighting or similar improvement (any of which is referred to as an "Improvement"), including any exterior changes (e.g., changes in color scheme) or alterations in any existing Improvement, shall be commenced, erected or maintained upon any (i) Home Site or (ii) common area areas within jurisdiction of a Subassociation until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to and approved in writing by the Master Architectural Committee.

(b) **Scope of Review.** At its discretion, the Master Architectural Committee may limit the scope of its review and exclude certain Improvements from its review. For example, the Master Architectural Committee may decide to exclude from review certain or all back yard Improvements. Also, the Master Architectural Committee may decide not to review any Improvements within areas of the Home Sites which are subject to architectural review by Boards of Directors of Subassociations or architectural review committees established by Subassociation Declarations. The Master Architectural Committee shall not be responsible for reviewing, nor shall its approval be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes, special use permits, site approvals or other governmental requirements.

(c) **Criteria.** In rendering its decisions, the MAC may consider whether the construction, alterations or additions contemplated in the location indicated will be detrimental to the appearance of the Home Sites as a whole, whether the appearance of any structure affected thereby will be in harmony with the surrounding structures, whether the construction thereof will detract from the beauty and attractiveness of the Home Sites as a whole, and whether the upkeep and maintenance thereof will become a burden on the Master Association or any applicable Subassociation. The MAC may consider whether any additions to the structure of a home will be architecturally compatible with the existing structures as well as the surrounding area.

(d) **No Obligation To Preserve View or Privacy.** Neither the MAC nor Declarant makes any representation that any view or privacy from any Home Site will be protected and neither the MAC nor the Declarant has any obligation to maintain, protect, enhance or preserve any view from any Home Site or other portion of the Home Sites.

(e) **Guidelines; Deposit.** The Master Architectural Committee may from time to time adopt and promulgate guidelines ("Guidelines") which, among other matters, may set forth design and architectural standards and procedural requirements for the submission of plans for review. The Master Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Unless such rules are complied with, the plans and specifications shall not be deemed received. The Guidelines may require a reasonable deposit (not to exceed \$800.00 in 2002 dollars) to accompany each application for approval which may be used by the Master Architectural Committee to (i) hire consultants and otherwise pay out of pocket expenses incurred by its review, (ii) to pay the costs of clean up from construction, should the Owner fail to do so, and (iii) to pay the costs of repairing any portion of any Phase which may be damaged from construction of the Improvements. The applicant for plan approval shall be responsible to reimburse the Master Architectural Committee for any such out of pocket expenses reasonably incurred by the Committee, regardless of whether such expenses exceed the deposit amount.

(f) **Subassociation Architectural Controls.** The jurisdiction of the Master Architectural Committee over construction in any Phase shall be in addition to that of any architectural committee established under any Subassociation Declaration, and any work or Improvement may require the approval of both any such architectural committee and the Master Architectural Committee. Furthermore, any Improvements to common area portions of the Home Sites under the ownership or management and control of a Subassociation shall be subject to the architectural controls herein set forth. However, the Master Architectural Committee shall have the right to exclude from its jurisdiction any particular Improvements, including, but not limited to, Improvements reviewed by an architectural committee established under a Subassociation Declaration.

(g) **Approvals May Be Conditioned.** The Master Architectural Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement by the person submitting the same to grant appropriate easements to the Master Association for the maintenance thereof, or to reimburse the Master Association for the cost of maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving any material submitted.

(h) **Period for Approvals.** Decisions of the Master Architectural Committee and the reasons therefor shall be transmitted to the applicant at the address set forth in the application for approval within ninety (90) days after receipt by the Master Architectural Committee of all materials required by the Master Architectural Committee. Any application submitted pursuant to this Section shall be deemed approved unless written disapproval, conditional approval or a request for additional information or materials by the Master Architectural Committee shall have been delivered to the applicant within ninety (90) days after the date of receipt by the Master Architectural Committee of all required materials. Upon completion of the contemplated Improvement, the applicant shall give written notice to the Master Architectural Committee of such completion and, for purposes hereof, the date of receipt of the written notification by the Master Architectural Committee shall be deemed to be the date of completion of the Improvement.

(i) **Variances.** The Master Architectural Committee may authorize variances from compliance with any of the architectural provisions or restrictions of this Master Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. All variances must be evidenced in writing, must be signed the Master Architectural Committee, and shall become effective upon execution. If a variance is granted, no violation of the covenants and restrictions contained in this Master Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Master Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the applicant's obligation to comply with all governmental laws and regulations affecting his or her use of the property, including, but not limited to, zoning ordinances, conditions and requirements of special use permits and site plan approvals, setback lines or any other requirements imposed by any governmental authority.

(j) **No Waiver of Future Approvals.** The approval by the Master Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Master Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval of or to consent to any similar proposals, plans and specifications, drawings or any matter whatsoever that is subsequently or additionally submitted for approval.



(k) **Correction of Defects.** Inspection of work and correction of defects therein may proceed as follows:

(i) The Master Architectural Committee or its duly authorized representative may at any time inspect any Improvement, or change or alteration thereof, for which approval of plans is required under this Article; provided, however that the Master Architectural Committee's right of inspection shall terminate sixty (60) days after the Owner (or Subassociation, if it manages or controls the area in question) shall have given written notice of the completion of the work to the Master Architectural Committee, provided that such Improvement was actually completed as of the date of such notification. If, as a result of its inspection, the Master Architectural Committee finds that the Improvement, or change or alteration thereof, was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Master Architectural Committee, it shall notify the Owner (or Subassociation, if applicable) in writing of the failure to comply with this Article within thirty (30) days after the inspection, specifying the particulars of non-compliance ("Notice of Non-Compliance"). The Master Architectural Committee shall have the authority to require the Owner (or Subassociation, if applicable) to take such action as may be necessary to remedy the non-compliance.

(ii) If upon the expiration of thirty (30) days from the date of the Notice of Non-Compliance the Owner or Subassociation (whichever is applicable) shall have failed to remedy the non-compliance, then the Master Architectural Committee shall notify the Board in writing of such failure and the nature thereof, and the estimated cost of correcting or removing the same. The Board shall then have the right at its option either to pursue such remedies against the Owner or Subassociation as it may have in any court of competent jurisdiction or to determine whether there is a non-compliance after notice and hearing, in the manner as may be set forth in the Master Architectural Committee's Guidelines. If a non-compliance is determined to exist at the notice and hearing, the Owner or Subassociation, as applicable, shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Board ruling is delivered to the Owner or Subassociation. If the Owner or Subassociation does not comply with the Board ruling within such period, the Board, at its option, may record a Notice of Non-Compliance against the real property in which the non-compliance exists, remove the non-complying Improvement, or remedy the non-compliance; and the Owner shall reimburse the Master Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner or Subassociation to the Master Association, the Board may levy a special assessment against the Owner or Subassociation for reimbursement. The right of the Master Association set forth in this Subsection to remove any Improvement or remedy the non-compliance shall be in addition to all other rights and remedies which the Master Association may have at law, in equity or under this Master Declaration.

(iii) As to any Improvements constructed in compliance with this Article, the Master Association shall, upon written request, provide to the Owner thereof (or to the Subassociation with respect to areas it manages and controls) a notice (the "Notice of Compliance") in recordable form, signed by the President and the Secretary of the Master Association, evidencing such compliance. The Notice of Compliance, when recorded, shall be conclusive evidence of compliance with the provisions of this Article as to the Improvements described in the recorded Notice of Compliance.

(iv) The Master Architectural Committee shall adopt a procedure by which a prospective Owner intending to erect Improvements on any portion of the Home

Sites may submit and obtain advance approval by the Master Architectural Committee for the prospective Owner's plans prior to the purchase of the property.

**Section 8.6** **Meetings of the Master Architectural Committee.** The Master Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Master Architectural Committee may from time to time by resolution unanimously adopted in writing designate a "Committee Representative" (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Master Architectural Committee. In the absence of such designation, the vote of a majority of the members of the Master Architectural Committee or the written consent of a majority of the members of the Master Architectural Committee shall constitute an act of the Master Architectural Committee.

**Section 8.7** **Notice of Appointment.** Whenever a member of the Master Architectural Committee is appointed or removed while both Declarant and the Board have rights of appointment, written notice to the other party of such appointment or removal shall be given by the party appointing or removing the member.

**Section 8.8** **Diligence In Construction.** Each Owner shall cause to be completed in a timely and diligent manner any Improvements which are commenced on such Owner's Home Site. The Guidelines may establish the maximum time periods for such completion.

**Section 8.9** **Exemptions.** This Article shall not apply to Declarant or any Guest Builder. Notwithstanding any other provision of this Master Declaration to the contrary, Declarant and Guest Builders need not seek or obtain Master Architectural Committee approval for any Improvement constructed or placed by Declarant or Guest Builders on any portion of the Home Sites (including any revision or remodeling), regardless of whether such areas are owned by them. Neither this Section nor the Section above entitled "Rights of Appointment" shall be amended without Declarant's prior written consent.

## **ARTICLE 9**

### **ANNEXATION**

Additional real property may be annexed to the Home Sites or to this Master Declaration upon the vote or written assent of two-thirds (2/3) of the voting power of Members of the Master Association, excluding the vote of Declarant. Upon such approval, the owner of the property wishing it to be annexed may file of record a Notice of Declaration of Annexation which shall extend the scheme of this Master Declaration to such property. Such vote may be exercised by the Delegates.

## **ARTICLE 10**

### **USE RESTRICTIONS**

**Section 10.1** **In General.** Each Home Site shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemptions of Declarant and Guest Builders set forth herein. The Master Architectural Committee in accordance with the Article above entitled "MASTER ARCHITECTURAL COMMITTEE" may waive in whole or in part any of the following limitations and restrictions if the strict application thereof could be unreasonably or unduly harsh under the circumstances. Any such waiver or interpretation may be issued by the Master Architectural Committee regardless of whether the party seeking the waiver is exempt from the Article

entitled "MASTER ARCHITECTURAL COMMITTEE". Any such interpretation or waiver of the following provisions shall be in writing or shall be contained in written Guidelines promulgated from time to time by the Master Architectural Committee.

The provisions of this Master Declaration are in addition to the requirements of the County's regulations, permits, approvals and ordinances and the Master Association and each Owner must comply with such County requirements.

**Section 10.2 Residential Use.** No Home Site shall be used except for residential purposes. "Home Site" and "residential purposes" are intended to have broad meanings and to encompass the use of all structures and areas within the Home Site including, but not limited to, the building, yards, pools, decks, gazebos, patio covers, recreational courts and guest houses (when permitted). Notwithstanding this Section, Declarant and each Guest Builder shall have the right to use any Home Sites owned or leased by them for model homes, sales offices, rental offices and similar uses until all Home Sites have been sold by Declarant and each Guest Builder. Nothing stated in this Section shall disallow a Home Site from being used for such home businesses as may be allowed by applicable County zoning controls, permits and regulations provided that such uses are otherwise in compliance with the provisions of this Master Declaration.

**Section 10.3 Solar Panels, Antennae, Satellite Dishes.** Rooftop panels installed for the collection of solar energy for domestic hot water shall be permitted on roofs at locations that maximize the southerly exposure for the collection of solar energy. Solar panels installed to serve recreational pools and spas shall be permitted but shall not be located on any section of the roof surface or other portion of a Home Site which is viewable from a public or private street, unless location elsewhere would significantly increase the cost of the system or significantly decrease its efficiency.

No lines, wires, antennae, satellite dish or other devices for the reception, communication or transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon any Home Site unless the same is contained in conduits or cables constructed, placed or maintained underground or is otherwise not visible to other residents or to the public. The MAC may impose conditions to the approval of the installation of a television or radio antenna or a satellite dish. However, in considering whether to approve an antenna or to impose requirements on such approval, the MAC shall not violate any applicable law or regulation. For example, as of the date of the Master Declaration, Part 1 of Title 47 of the Code of Federal Regulations and statutes of the State of California both limit certain antenna restrictions.

The MAC shall have jurisdiction to disapprove any outside apparatus on a Home Site which it, in its sole discretion, determines will be unsightly from any other Home Site, open space or public or private street.

Nothing herein stated shall be deemed to forbid the installation and use of temporary power or telephone services or other improvements if incident to the construction of improvements approved by the MAC.

The MAC shall have jurisdiction to disapprove any outside apparatus which it, in its sole discretion, determines will be unsightly from any other Home Site, open space or public or private street.

**Section 10.4 No Time-Share Projects.** No Home Site 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 Master Architectural Committee.

**Section 10.5 Signs.** No sign, poster, billboard, advertising device or other display of any kind shall be displayed to the public view except (i) such signs as may be used by Declarant and Guest Builders, and their successors, in connection with the development of the Home Sites and the sale or leasing of Home Sites and (ii) one sign on each Home Site advertising the same for sale or lease provided the sign is of customary and reasonable dimensions. The right of any Guest Builders to display any signs under this Section shall be subject to the Guest Builder obtaining the prior written consent of Declarant.

**Section 10.6 Animals.** No animals of any kind shall be raised, bred or kept on the Home Sites, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Master Declaration. A "reasonable number" as used in this Section shall ordinarily include no more than the lessor of (i) the number of household pets allowed by the County or (ii) an aggregate of three (3) dogs and cats per household. However, the Board shall have the right to reasonably determine whether the types and number of pets in a particular situation constitute a reasonable number of pets pursuant to this Section. The Board may make any such determination conditional on the Board not later determining that the pets constitute a nuisance. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Home Sites must be either kept within an enclosure, an enclosed yard or on a leash being held by an individual capable of controlling the animal. Each Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Home Sites by the Owner or by members of his or her family, his or her tenants or his or her guests; and it shall be the duty and responsibility of each Owner to immediately clean up any waste from his or her animals.

**Section 10.7 Nuisances.** Nothing shall be done on any Home Site which is or may become an annoyance or nuisance to the other occupants of a Home Site. For example, no external bells or horns shall be permitted other than usual and customary burglar alarm systems. Each Owner and Subassociation, where applicable, shall take appropriate steps to prevent the accidental tripping of any alarm system which may be installed on the Owner's Home Site or controlled by the Subassociation respectively. Ordinary and usual techniques of construction of Improvements permitted hereunder shall not be deemed a nuisance. Any violation of the Section above entitled "Animals" or ordinances or regulations of the County is hereby declared to be a nuisance.

**Section 10.8 Drainage.** The following mutual and reciprocal easements are hereby reserved appurtenant to each of the Home Sites. Easements are hereby reserved for the flow of water over and through the established drainage of each Home Site and no Owner of a Home Site will in any way interfere with the established drainage of his or her Home Site from adjoining or other Home Sites or other property unless adequate provisions have been made for proper drainage. "Established drainage" is defined as the drainage which existed at the time the final grading of the Home Site was originally completed. "Established drainage" refers to both surface drainage and subsurface drainage, if any.

Any Owner who changes the drainage of his or her Home Site shall be responsible for any damages which might result to the property of such Owner, the property of the Master Association or to the property of any third party.

Each Owner will permit free access by other affected Owners and by the Master Association to slopes and drainage ways located on the Owner's Home Site if such access becomes necessary for the maintenance or permanent stabilization of slopes or maintenance of the drainage system or facilities which benefit other portions of the Home Sites.

**Section 10.9 No Hazardous Activities.** No activities shall be conducted on any portion of the Home Sites, and no improvements shall be constructed on Home Sites which are or might be unsafe or hazardous to any person or property. Reasonable and customary construction activities by Declarant, any Guest Builder or any Owner shall not be deemed to constitute hazardous activities.

**Section 10.10 Unsightly Articles.** No unsightly articles shall be permitted to remain on any Home Site so as to be visible from any other portion of the Home Sites. Without limiting the generality of the foregoing, all refuse, garbage and trash shall be kept from public view at all times. Trash for pick up shall be placed in covered, sanitary containers of good condition. Such container shall be placed in public view on Home Sites no earlier than the evening before pick up and shall be removed from public view on the day of pick up. No clotheslines shall be installed on any Home Site in such a manner as to be within public view. No clothing or household fabrics shall be hung, dried or aired outside any residence and 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 on any Home Site, except within an enclosed structure or otherwise appropriately screened from public view.

**Section 10.11 No Temporary Structures.** No tent, shack or other temporary building, improvement or structure shall be placed upon any Home Site except with the approval of the Master Architectural Committee. This Section shall not apply to temporary structures which are reasonable and customary to facilitate construction activities on any Home Site.

**Section 10.12 Garages; Vehicular Restrictions.** Except for model homes and sales or leasing offices used by Declarant or Guest Builders and unless the Master Architectural Committee rules otherwise, no Owner of a Home Site shall convert his or her garage to any use which prevents its use for vehicular parking of the number of automotive vehicles used by the occupants of the Home Site. The occupants of a Home Site shall not park vehicles on driveways except to the extent that the occupants possess more vehicles than can be accommodated in the garage. Nothing stated in this Section is intended to disallow Declarant or a Guest Builder from offering a garage conversion program (e.g. converting a three car garage to a two car garage) with respect to Home Sites built and sold by Declarant or the Guest Builder.

A dune buggy, boat or other water vehicle (and trailer) not exceeding thirty-five feet (35') in length and eight feet (8') in height on a trailer, a camper whether attached or detached and a van may be parked on a Home Site in areas designated by the Master Architectural Committee. Any such vehicle must be kept in good repair and in clean and good appearance.

No mobile home, motor home or commercial vehicle which cannot fit within an Owner's garage shall be kept on any Home Site. Commercial vehicles shall be permitted for construction purposes, for purposes of making deliveries and similar purposes.

No dismantled or wrecked vehicle or equipment shall be parked, stored or deposited in the Home Sites within public view and no vehicle shall be repaired in the Home Sites within public view. No noisy or smoky vehicles or off-road unlicensed vehicles shall be operated within the Home Sites.

No Owner or occupant of a Home Site shall park his or her vehicle in any area where parking is disallowed by the County.

**Section 10.13 Installation of Front Yard Landscaping.** Unless Declarant or a Guest Builder has done so, each initial Owner of a Home Site improved with a residence at the time the Owner acquired title shall, within three (3) months after acquiring ownership prepare and submit to the applicable Master Architectural Committee a landscaping plan for the front yard of his or her Home Site. If such plan is disapproved, a revised plan(s) shall be submitted no more than thirty (30) days after such disapproval, until a plan has been approved by the Master Architectural Committee. Each such Owner shall install the improvements shown on the approved landscape plan within six (6) months after the Owner acquires title to a Home Site.

**Section 10.14 Installation of Rear Yard Improvements.** Unless Declarant or a Guest Builder has done so, each initial Owner of a Home Site improved with a residence at the time the Owner acquired title shall, within nine (9) months after acquiring ownership prepare and submit to the applicable Master Architectural Committee an improvement plan for the rear yard of his or her Home Site. If such plan is disapproved, a revised plan(s) shall be submitted no more than thirty (30) days after such disapproval, until a plan has been approved by the Master Architectural Committee. Each such Owner shall install the improvements shown on the approved plan within twelve (12) months after the Owner acquires title to a Home Site.

**Section 10.15 Basketball Hoops.** No basketball hoops, backboards or similar apparatus, including but not limited to portable apparatus, shall be placed anywhere on a Home Site within public view without approval by the MAC. No such apparatus shall be placed closer than fifteen (15) feet from neighboring residential buildings (regardless of whether the apparatus is within public view) without MAC approval.

**Section 10.16 Back Yards; No Sheds.** Each Owner will keep and maintain the back yard of his or her Home Site in good appearance and condition. No sheds shall be placed on a Home Site within public view without MAC approval.

**Section 10.17 Compliance With County Requirements.** Each Owner shall comply with all applicable zoning, use permit and other County requirements.

**Section 10.18 Owners Responsible for Damage.** Should any Owner or such Owner's employees, agents or contractors cause any damage to sidewalks, curbs or other County property or rights of way, or to any MHOA Potential Maintenance Areas, such Owner shall immediately and fully repair such damage at the Owner's expense. In the event such damage is repaired by the County or the District, the Master Association, Declarant or any Guest Builder, the Owner shall immediately reimburse such party for the full costs of repair.

**Section 10.19 Construction, Leasing and Sales Activities.** The development, construction, marketing and sales activities of Declarant, each Guest Builder are exempt from the covenants, restrictions and limitations set forth in this Article. None of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Master Declaration shall be applied to the development, construction, marketing or sales or leasing activities of Declarant or any Guest

Builder or construed in such a manner as to prevent or limit development, construction, marketing, leasing or sales activities by Declarant or any Guest Builder.

**Section 10.20 Owners May Not Change MHOA Potential Maintenance Areas.** No Owner shall have any right whatsoever to make any change or improvement to the MHOA Potential Maintenance Areas and no Owner shall cause any damage to the MHOA Potential Maintenance Areas. Each Owner shall be liable to the District, the County and the Master Association and the other Owners for any damage to any of the MHOA Potential Maintenance Areas that may be sustained by reason of the negligence of that Owner, that Owner's family members, contract purchasers, tenants, guests, or invitees.

**Section 10.21 Burning.** There shall be no exterior fires whatsoever except barbecue fires located only upon the Owner's Home Site and contained within receptacles designed for such purpose. Otherwise, outside fires are not permitted unless prior written approval is given by the Master Association and such Owner acts in compliance with all local governmental fire safety and permit regulations. No Owner shall permit any condition to exist on his or her Home Site, including, without limitation, trash piles or weeds, which creates a fire hazard or is in violation of local fire regulations and any applicable fuel modification and brush management requirements.

**Section 10.22 Open Space and Fire Suppression Zones.** Each Owner, each Subassociation and the Master Association shall at all times comply with any applicable open space or fire suppression requirements and restrictions which may be imposed by the County or the District or other political subdivision, including, but not limited to, restrictions on development in buffer/open space easements. For example, no private development shall be allowed which is inconsistent with any open space restriction which is dedicated to the County on any final subdivision map nor on any open space lot owned by the County or the District or which the District has the right to maintain except as maybe specifically permitted by the County or District.

## **ARTICLE 11**

### **RIGHTS OF LENDERS**

**Section 11.1 Payments of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the MHOA Potential Maintenance Areas, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their deeds of trust. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the MHOA Potential Maintenance Areas, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Master Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Master Association.

**Section 11.2 Priority of Lien of Mortgage.** No breach of the covenants, restrictions or limitations herein contained shall affect, impair, defeat or render invalid the lien or charge of any first Mortgage made in good faith and for value encumbering any Home Site, but all of said covenants, restrictions and limitations shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Home Site.

**Section 11.3 Curing Defaults.** A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Master Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

**Section 11.4 Approval of Eligible Mortgage Holders.** Except as provided by statute, unless at least sixty-seven percent (67%) of the Eligible Mortgage Holders (based on one vote for each Home Site encumbered by the first Mortgage) have given their prior written approval or unless Delegates holding at least sixty-seven percent (67%) of the Class A voting power have given their prior written approval, the Master Association shall not be entitled to do any of the following by act or omission:

- (a) Seek to abandon or terminate the project.
- (b) Change the pro rata interest or obligations of any Home Site in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership in the MHOA Potential Maintenance Areas. This Subsection does not apply to annexations of additional portions of the Home Sites pursuant to this Master Declaration.
- (c) Partition or re-subdivide a Home Site which has been encumbered by a Mortgage held by an Eligible Mortgage Holder.
- (d) Seek to abandon, partition, subdivide, encumber, sell or transfer MHOA Potential Maintenance Areas which consists of recreation areas (this requirement does not apply to areas which are MHOA Potential Maintenance Areas only for maintenance purposes). Reasonable boundary adjustments and granting of easements for public utilities or other public purposes consistent with the intended use of the MHOA Potential Maintenance Areas is not a transfer within the meaning of this Subsection.
- (e) Use hazard insurance proceeds for losses to any portion of the Home Sites (whether Home Sites or MHOA Potential Maintenance Areas) for other than the repair, replacement or reconstruction of the same.

**Section 11.5 Termination of Legal Status.** Except as provided by statute, any action to terminate the legal status of the project after substantial destruction or condemnation occurs must be agreed to by at least fifty-one percent (51%) of the Eligible Mortgage Holders (based on one vote for each Home Site encumbered by the first Mortgage) and Delegates and others holding at least sixty-seven percent (67%) of the total voting power of the Master Association. Termination of the legal status of the project for reasons other than substantial destruction or condemnation of the project must be agreed to by at least sixty-seven percent (67%) of the Eligible Mortgage Holders (based on one vote for each Home Site encumbered by the first Mortgage). Any Mortgagee of a first Mortgage shall be deemed to have agreed to such termination if such Mortgagee of a first Mortgage fails to submit a written response to any written proposal for termination within thirty (30) days after such Mortgagee of a first Mortgage receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

**Section 11.6 Restoration of MHOA Potential Maintenance Areas.** Any restoration or repair of any MHOA Potential Maintenance Areas by the Master Association after partial



condemnation or damage due to an insurable event shall be performed substantially in accordance with this Master Declaration and original plans and specifications unless other action is approved by at least sixty-seven percent (67%) of the voting power of the Master Association and Eligible Mortgage Holders of Mortgages on at least fifty-one percent (51%) of the Home Sites then subject to assessment by the Master Association (with one vote attributable to each Home Site and which are subject to Mortgages held by Eligible Mortgage Holders.)

**Section 11.7 Professional Management.** Declarant shall have the right to require the Master Association to obtain the services of a professional property manager to assist in the discharge of the Master Association's duties. Furthermore, when professional management has been previously required by either Declarant or any Eligible Mortgage Holder, whether such entity became an Eligible Mortgage Holder at that time or later, any decision to establish self-management by the Master Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Master Association and the approval of Eligible Mortgage Holders of Mortgages on Home Sites who represent at least fifty-one percent (51%) of the votes of Home Sites which are subject to Mortgages held by Eligible Mortgage Holders. The term of any agreement for professional management shall not exceed one (1) year and any agreement for professional management or any other contract providing for services by Declarant must provide for termination by either party without cause or payment of a termination fee upon ninety (90) days or fewer written notice.

**Section 11.8 Notice to Eligible Mortgagees.** Upon written request to the Master Association identifying the name and address of the holder and the Home Site number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Home Site on which there is a first Mortgage held by such Eligible Mortgage Holder.

(b) Any default in the performance by an Owner subject to a first Mortgage held by such Eligible Mortgage Holder of any obligation under this Master Declaration, the Bylaws or the rules and regulations of the Board, including any delinquency in the payment of assessments or charges owed by an Owner, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Master Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified above.

**Section 11.9 Documents to be Available.** The Master Association shall, within ten (10) days of delivery of a written request and for a fee which does not exceed its reasonable cost to prepare and reproduce the items, make available to Owners and Mortgagees, and holders, insurers or guarantors of any first Mortgage, current copies of this Master Declaration, the Bylaws, Articles, rules and regulations concerning the project and the books, records and financial statements of the Master Association. The Master Association shall also make such items available to prospective purchasers. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. Any Eligible Mortgage Holder or Eligible Insurer or Guarantor shall be entitled to have an audited financial statement for the immediately preceding fiscal year prepared after submission of a written request for the same. Any such financial statement so requested shall be furnished within one hundred twenty (120) days of the Master

Association's fiscal year end provided the request was made within a reasonable time prior to such date.

**Section 11.10 Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Master Declaration, the provisions of this Article shall control.

## **ARTICLE 12**

### **DRAINAGE SYSTEMS**

**Section 12.1 Surface and Subsurface Drainage Systems.** Surface or subsurface drainage systems that serve more than one Home Site ("Drainage Systems") may be installed within some of the Home Sites. The approximate location of each Drainage System may be shown on a separately recorded document ("Drainage Declaration"). If recorded, each Drainage Declaration would generally: (i) describe the type of Drainage System (e.g., subsurface or brow ditch), (ii) include a plat which shows the approximate location of the Drainage System, (iii) describe the specific Home Sites within that Drainage System, (iv) incorporate by reference the provisions of this Article, and (v) be signed by Declarant or the Guest Builder.

**Section 12.2 Easements.** Reciprocal and mutual non-exclusive easements, appurtenant to each Home Site which utilizes a Drainage System, are hereby created, granted and reserved over, under, upon and across each Home Site within which a Drainage System has been installed, to drain water through the Drainage System, and the Owner of each such benefitted Home Site shall have the right and easement to drain water through the Drainage System. The location of such easement shall be in the actual location of Drainage System as installed.

**Section 12.3 Maintenance of Drainage System.** Unless a drainage system is subject to maintenance by the Master Association or a Subassociation, the Owner of each Home Site within which a Drainage System has been installed shall keep that portion of the Drainage System which is located on his or her Home Site in good repair and working condition and free from obstructions and shall not interfere with the proper operation of the same. However, nothing herein stated is intended to disallow a Subassociation Declaration from requiring a Subassociation to maintain a particular Drainage System, nor is anything herein stated intended to disallow Declarant from designating certain drains as being subject to Master Association maintenance.

## **ARTICLE 13**

### **ADDITIONAL PROVISIONS**

**Section 13.1 Enforcement.** The Master Association, Declarant, any Guest Builder and any other Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, covenants, limitations and reservations now or hereafter imposed by the provisions of this Master Declaration. Failure by the Master Association, Declarant, any Guest Builder or any Owner to enforce any covenants, restrictions, limitations or reservations herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The County and the District shall have the right, but not the obligation, to enforce those provisions set forth in this Master Declaration which are in favor of the County or the District, respectively, or in which the County or the District has an interest, including, but not limited to, the maintenance obligations of the Master Association and the maintenance obligations of Owners.

**Section 13.2 Severability.** Should any provision in this Master Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

**Section 13.3 Amendments.**

(a) **By Declarant.** Until commencement of the Master Association's regular assessments, this Master Declaration may be amended or terminated by Declarant by the recording of an instrument for such purpose with the County Recorder of the County of Riverside.

(b) **By Members.** Except as may otherwise be stated in this Master Declaration, this Master Declaration may be amended at any time and from time to time by an instrument in writing signed by the Master Association's secretary certifying that (i) at least sixty-six and two-thirds percent (66-2/3%) of the Class B voting power and (ii) not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of Class A membership of the Master Association have approved such amendment, any which amendment shall become effective upon the recording thereof with the Office of the County Recorder of the County of Riverside, California. After conversion of the Class B membership in the Master Association to Class A membership, this Master Declaration may be amended at any time and from time to time by an instrument in writing signed by the Master Association's secretary certifying that Delegates who hold not less than (i) sixty-six and two-thirds percent (66-2/3%) of the total voting power of the Master Association, and (ii) at least sixty-six and two-thirds percent (66-2/3%) of the voting power of Members of the Master Association other than Declarant and Guest Builders have approved such amendment. The percentage of voting power necessary to amend a specific clause or provision of this Declaration shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause.

(c) **Amendments Material to Mortgagees.** Anything herein stated to the contrary notwithstanding, no material amendment may be made to this Master Declaration without the prior written consent of fifty-one percent (51%) or more of the Mortgages held by Eligible Mortgage Holders (based upon one vote for each Home Site encumbered by the Mortgage); provided, further, that so long as there remains Class B membership in the Master Association, any material amendment to this Master Declaration shall require the prior approval of the VA if the VA has reviewed and approved the Master Declaration as a requirement of guarantying a First Mortgage. In such event, a draft of any amendment should be submitted to the VA for its approval prior to approval of the amendment by the membership of the Master Association. Normally "material amendment" shall mean any significant amendments to provisions of this Master Declaration governing any of the following subjects:

- (i) voting rights;
- (ii) increases in the Master Association's regular assessments that raise the amount assessed during the previous fiscal year by more than twenty-five percent (25%), of assessment liens or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair and replacement of MHOA Potential Maintenance Areas;
- (iv) responsibility for maintenance and repairs;

(v) reallocation of interests in or the rights to use MHOA Potential Maintenance Areas or elements of ownership;

(vi) redefinition of the boundaries of Home Sites;

(vii) convertibility of Home Sites into MHOA Potential Maintenance Areas and vice versa (other than non-material boundary adjustments);

(viii) annexation and deannexation;

(ix) hazard or fidelity insurance requirements;

(x) imposition of any restrictions on the leasing of Home Sites;

(xi) imposition of any restrictions on an Owner's right to sell or transfer his or her Home Site; or

(xii) any provisions that expressly benefit holders of first Mortgages.

An amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification or for making a change which is of no practical significance. Any Mortgagee of a first Mortgage shall be deemed to have approved an amendment to this Declaration if such Mortgagee of a first Mortgage fails to submit a written response to any written proposal for an amendment within thirty (30) days after such Mortgagee of a first Mortgage receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

(d) **County's Right To Approve.** This Master Declaration shall not be terminated, "substantially amended", nor shall property be de-annexed from this Master Declaration absent the prior written consent of the Planning Director of the County of Riverside or the County's successor-in-interest. A proposed amendment shall be considered "substantial" if it affects the extent, usage or maintenance of the MHOA Potential Maintenance Areas established by this Master Declaration.

(e) **Amendments To Specific Clauses.** Notwithstanding the above provisions, the percentage of the voting power necessary to amend a specific clause or provision in the Declaration shall not be less than the percentage of affirmative votes necessary for action to be taken under that clause or provision.

(f) **Amendment To Cost Center Provisions.** In addition to the other applicable requirements for amendment set forth in this Article, there shall be no amendment to any provisions of this Master Declaration or in the instrument which is recorded to establish a Cost Center Amenity, Cost Center Area or Cost Center Assessment without the approval of a majority of the voting power of the Owners who are subject to the Cost Center Assessments.

(g) **Reduction of Required Percentage.** The percentage of membership votes or written consents required to amend the Declaration may be reduced under certain circumstances by Court Order obtained pursuant to California CIVIL CODE §1356.

**Section 13.4 Master Declaration Controls.** The provisions of this Master Declaration shall control in the event of any conflict between this Master Declaration, the Articles of

Incorporation or Bylaws of the Master Association or the rules and regulations of the Master Association.

**Section 13.5 Extension of Master Declaration.** Each and all of these covenants, restrictions, limitations and reservations shall run with and bind the land for a term of sixty (60) years from the date this Master Declaration is recorded, after which date they shall automatically be extended for successive periods of ten (10) years, unless Master Association Members having sufficient voting power to amend this Master Declaration have executed and recorded at any time within six (6) months prior to the end of said sixty (60) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a written instrument in which it is agreed that said restrictions shall terminate at the end of said sixty (60) year period or at the end of any such ten (10) year period.

**Section 13.6 Encroachment Easements.** The following easement is hereby reserved by Declarant, subject to all items of record, including, but not limited to, the general utility easements of record: An easement is hereby reserved in favor of each Home Site over adjoining areas for the purpose of accommodating encroachments due to design, construction, engineering errors, errors in construction, settlement or shifting of the building, roof overhangs, architectural or other appendants and drainage of water from roofs. There shall be easements for the maintenance of encroachments so long as they shall exist; provided, however, that no easement is created in favor of an Owner if the encroachment occurred due to the willful misconduct of the Owner. In the event a structure is partially or totally destroyed and then rebuilt or repaired, the minor encroachments over adjoining areas shall be permitted and there shall be easements for maintenance of encroachments so long as they shall exist.

**Section 13.7 Cost Center Easements.** Declarant hereby reserves in favor of the Master Association easements to maintain those portions of a Cost Center Area which are subject to maintenance by the Master Association and pursuant to this Master Declaration or other recorded instrument.

**Section 13.8 Easement to Inspect and Test.** Declarant reserves easements to enter any Home Site, including the interior of the residence and the yard, to inspect those areas and to conduct destructive testing referred to in California CIVIL CODE § 1375(d). However, Declarant shall notify the Owner of the Home Site of at least three alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and Declarant shall give the Owner the opportunity to specify which date and time is acceptable to the Owner. Should the Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Owner. Alternatively, Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorney's fees and be deemed the "prevailing party" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing.

**Section 13.9 Special Responsibilities of Master Association.** In the event that the improvements to be installed by Declarant or a Guest Builder to the MHOA Potential Maintenance Areas have not been completed prior to the issuance by the California Real Estate Commissioner of a Final Subdivision Public Report covering the applicable Phase, and in the further event that the Master Association is the obligee under a bond to secure performance by Declarant or a 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 Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Master Association has given an extension in writing for the completion of any such improvement, then the 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 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 Master Association (excluding the voting power of Declarant and Guest Builders), the Board shall call a special meeting of the Members of the Master Association to consider the question of overriding the decision of the Board or of requiring the 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 Master Association, excluding the vote of Declarant and Guest Builders, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Master Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Master Association. Nothing in this Section shall imply that the VA has approved or will approve any such bonding arrangement.

**Section 13.10** **Litigation.** In the event of litigation arising out of or in connection with this Master Declaration, the prevailing party (including, but not limited to, an Owner, the Master Association, Declarant, and a Guest Builder) shall be entitled to receive costs of suit and such sum for attorney's fees as the Court deems reasonable.

**Section 13.11** **Conflicts Between Master Declaration and Subassociation Declaration.** This Master Declaration shall be deemed to supersede any Subassociation Declaration in the event of and to the extent of any conflicts between this Master Declaration and any Subassociation Declaration. No architectural committee established pursuant to a Subassociation Declaration shall make rulings or establish architectural standards which conflict with the Guidelines of the Master Architectural Committee (as such Guidelines may change from time to time).

**Section 13.12** **Documents Provided To Prospective Purchasers.**

(a) **By Owners.** Each Owner, other than Declarant, shall, as soon as practicable before transfer of title to a Home Site, provide to the prospective purchaser the disclosures, information and documents required by law, including the following items and any others required by California CIVIL CODE §1368:

- (i) A copy of the Articles, Bylaws and Master Declaration.
- (ii) A copy of the most recent financial statements of the Association distributed pursuant to CIVIL CODE §1365.
- (iii) A true statement in writing from an authorized representative of the Association as to the amount of the Master Association's current annual and special assessments and fees as well as any assessments levied upon the Home Site which are unpaid as of the date of the statement. The statement shall also include true information on late charges, fines, penalties, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Lot pursuant to CIVIL CODE §1367.

(iv) A copy or a summary of any notice previously sent to the Owner pursuant to subdivision (h) of CIVIL CODE §1363 that sets forth any alleged violation of the Association's governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the Master Association's right to enforce the governing documents against the owner or the prospective purchaser of the Home Site with respect to any violation. This paragraph shall not be construed to require the Master Association to inspect an Owner's Home Site.

(v) Should the Master Association given Declarant notice of a claim pursuant to CIVIL CODE §1375, a copy of the preliminary list of defects provided to each member of the Master Association, unless the Master Association and the Declarant subsequently enter into a settlement agreement or otherwise resolve the matter and the Master Association complies with CIVIL CODE §1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(vi) A copy of the latest information provided for in CIVIL CODE §1375.1 (entitled "Settlement agreements regarding alleged defects; notice of resolution to members on records; disclosures").

(vii) Any change in the Master Association's current annual and special assessments and fees which have been approved by the Master Association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this Section.

(b) **By the Master Association.** Upon written request to the Master Association it shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy of the requested Master Association items specified in (i) through (vii) above. The Master Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument as of the date first herein above written.

Brookfield Winchester LLC, a Delaware limited liability company

By [Signature]  
Its VICE PRESIDENT

By [Signature]  
Its SECRETARY

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

On May 20, 2002 before me, Patricia Ann Blount,  
Notary Public in and for said State, personally appeared E. DALE GLEED AND ELIZABETH ZEPEDA  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

WITNESS my hand and official seal.

Signature [Signature]



(Seal)



## **EXHIBIT "A"**

### **Description of Neighborhoods**

#### **Neighborhood A:**

Lots 1 through 143 of TRACT NO. 29269, in the County of Riverside, State of California, as shown by map on file in Book 313, Pages 8 through 15 of Maps, Records of Riverside County, California.

#### **Neighborhood B:**

Lots 1 through 127 of TRACT NO. 29270, in the County of Riverside, State of California, as shown by map on file in Book 312, Pages 94 through 102 of Maps, Records of Riverside County, California.

#### **Neighborhood C:**

Lots 1 through 123 of TRACT NO. 29268, in the County of Riverside, State of California, as shown by map on file in Book 312, Pages 85 through 93 of Maps, Records of Riverside County, California.

Lots 1 through 55 of TRACT NO. 29271, in the County of Riverside, State of California, as shown by map on file in Book 313, Pages 1 through 7 of Maps, Records of Riverside County, California.

## **EXHIBIT "B"**

### **Delegate Districts**

#### **Neighborhood A Delegate District:**

Lots 1 through 143 of TRACT NO. 29269, in the County of Riverside, State of California, as shown by map on file in Book 313, Pages 8 through 15 of Maps, Records of Riverside County, California.

#### **Neighborhood B Delegate District:**

Lots 1 through 127 of TRACT NO. 29270, in the County of Riverside, State of California, as shown by map on file in Book 312, Pages 94 through 102 of Maps, Records of Riverside County, California.

#### **Neighborhood C Delegate District:**

Lots 1 through 123 of TRACT NO. 29268, in the County of Riverside, State of California, as shown by map on file in Book 312, Pages 85 through 93 of Maps, Records of Riverside County, California.

Lots 1 through 55 of TRACT NO. 29271, in the County of Riverside, State of California, as shown by map on file in Book 313, Pages 1 through 7 of Maps, Records of Riverside County, California.

**SUBORDINATION AGREEMENT**

BANK OF AMERICA, N.A., being the beneficiary under that certain deed of trust recorded in the Office of the County Recorder of Riverside County, California on June 10, 2002 as Document No. 2002-314357, hereby declares that the lien and charge of said deed of trust, and any amendments thereto, are and shall be subordinate and inferior to the Master Declaration of Restrictions for Morningstar One to which this Subordination Agreement is attached.

BANK OF AMERICA, N.A.

By: Carla A. Wells  
Title: Vice President

By: Kathryn Oliver  
Title: VICE PRESIDENT

STATE OF CALIFORNIA )  
COUNTY OF San Diego ) ss.

On October 10, 2002 before me, Peggy J. French, Notary Public in and for said State, personally appeared Carla A. Wells and Kathryn Oliver

\_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Peggy J. French



(Seal)