

1.48 "Person" shall mean and refer to a natural individual, corporation, partnership, limited liability company, or any other entity with the legal right to hold title to real property.

1.49 "Phase of Development" shall mean the Initial Property and/or any portion of the Annexation Property that is subject to a Final Subdivision Public Report issued by the DRE annexing it to this Declaration.

1.50 "Phase of Development Common Areas" shall mean any portion of the Development to be maintained as Common Areas by the Association or a Project Association, but to be utilized solely by a select Owner or Owners of Lots within a particular Phase of Development (and the maintenance of which shall be funded through Phase of Development Assessments collected from such Owner(s)).

1.51 "Record" or "Recordation" shall mean recordation of any document or instrument in the Official Records.

1.52 "Retail Purchaser" shall mean any Owner of a Lot other than Declarant.

1.53 "Special Maintenance Areas" shall mean (1) those portions of the Development (including property owned by an Owner) which will be maintained by the Association, and (2) any other portions of the Development (including any property owned by the City) which pursuant to this Declaration or any other agreement (including, without limitation, any agreement between Declarant and the City with respect to the Development or any public rights-of-way within or in the vicinity of the Development) are contemplated or required to be maintained by the Association. Special Maintenance Areas may include parkway and street landscaping areas located within a public right-of-way within and adjacent to the boundaries, project monumentation, slopes, gates and/or walls/fencing located on individual Owners' Lots which are to be maintained by the Association in accordance with this Declaration. The initial Special Maintenance Areas are delineated on *Exhibit "D"* attached hereto and made a part hereof. Such Exhibit may be amended from time to time. Additional Special Maintenance Areas may be delineated in any Supplemental Declaration.

1.54 "Specific Plan" shall mean that certain Murdock Alberhill Ranch Specific Plan dated January, 1992, adopted by the City, as same has been or may be amended from time to time.

1.55 "Supplemental Declaration" shall mean those certain declarations of covenants, conditions and restrictions or similar instruments, annexing additional property extending the plan of this Declaration to such additional property as provided in the Article of this Declaration entitled "*Integrated Nature of the Covered Property.*"

1.56 "Unit" shall have the meaning set forth under the definition of "Lot" above.

1.57 "Warranty" shall have the meaning set forth in Section 18.1 hereof.

ARTICLE II MEMBERSHIP

2.1 Membership. Every Owner shall be a Member. The terms and provisions set forth in this Declaration, which are binding upon all Owners, are not exclusive, as Owners shall, in addition, be subject to the terms and provisions of the Articles, Bylaws, Design Guidelines, and

Association Rules to the extent the provisions thereof are not in conflict with this Declaration. Membership of Owners shall be appurtenant to, and may not be separated from, the interest of such Owner in any Lot. Ownership of a Lot shall be the sole qualification for Membership; *provided, however,* a Member's voting rights or privileges in the Common Areas may be regulated or suspended as provided in this Declaration, the Bylaws or the Association Rules. Except for Declarant, not more than one Membership shall exist based upon ownership of a single Lot.

2.2 Transfer. No Membership shall be transferred, pledged or alienated in any way, except that such Membership shall automatically be transferred to the transferee of the interest of an Owner required for Membership. Any attempt to make a prohibited Membership transfer is void and will not be reflected upon the books and records of the Association. The Association shall have the right to record the Membership transfer upon the books of the Association without any further action or consent by the transferring Owner.

2.3 Voting Rights. Except for Declarant, an Owner's right to vote shall not vest until the date Regular Assessments upon such Owner's Lot have been levied as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles, Bylaws and Association Rules.

2.4 Classes of Voting Membership. The Association shall have two (2) classes of voting Membership:

(a) **Class A.** Class A Members shall be all Owners except Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When more than one person owns a Lot required for Membership, each such person shall be a Member and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) **Class B.** The Class B Member shall be Declarant. Declarant shall be entitled to three (3) votes for each Developer Lot; *provided,* that solely for the purpose of counting votes in order to determine when Class B Membership shall cease and convert to Class A Membership as provided in subparagraph (i) below, Declarant shall be entitled to five (5) votes for each Developer Lot. Class B Membership shall cease and be converted to Class A Membership on the happening of the earliest of the following events:

(i) when the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership;

(ii) ten (10) years from the date of issuance of the most recent Final Subdivision Public Report with respect to any part of the Development (including the Annexation Property) (the "**Conversion Date**"); *provided* that if at the time of the Conversion Date less than seventy five percent (75%) of the projected Lots for the Development have been sold to Retail Purchasers, the Conversion Date shall be extended for consecutive two (2) year periods until at least seventy-five percent (75%) of the projected Lots for the Development have been sold to Retail Purchasers; or

(iii) fifteen (15) years after the Initial Sale Date.

2.5 Special Class A Voting Rights. Notwithstanding the provisions of this Article, if the Class A Members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration and the Bylaws to elect at least twenty percent (20%) of the total number of Directors on the Board, at any meeting of Members at which Directors are to be elected, then such Class A Members shall, by majority vote, among themselves, elect the number of Directors required to equal twenty percent (20%) of the total number of Directors on the Board. In the event twenty percent (20%) of the total number of Directors is equal to any fractional number, the number of Directors to be elected pursuant to the special Class A voting right shall be rounded to the next higher whole number.

2.6 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration or the Bylaws, any provision of this Declaration or the Bylaws which requires the vote or written assent of the voting power of the Association or any class or classes of Membership shall be deemed satisfied by either of the following:

(a) the vote, in person or by proxy, of the Owners constituting a quorum casting a majority of the votes at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members; or

(b) written consents signed by the Owners constituting a quorum casting a majority of the votes.

2.7 Special Declarant Representation Rights. Notwithstanding the provisions of this Article, until the Conversion Date, as set forth in Section 2.4(b)(ii) above, Declarant shall have the absolute authority to elect at least twenty percent (20%) of the total number of Directors on the Board.

ARTICLE III **COVENANT FOR MAINTENANCE ASSESSMENTS**

3.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner including the Declarant to the extent Declarant is an Owner as defined herein, of any Lot by acceptance of a deed or other conveyance, creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association: Regular Assessments, Special Assessments, Reimbursement Assessments, Capital Improvement Assessments, Remedial Assessments, Reconstruction Assessments, and Phase of Development Assessments. Such Assessments shall be fixed, established and collected from time to time as provided in this Declaration. The Regular, Special, Reimbursement, Capital Improvement, Reconstruction and Phase of Development Assessments, together with interest thereon, late charges, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a charge upon the Lot against which each such Assessment is made. Each such Assessment, including Remedial Assessments, together with such interest, late charges, costs and attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment becomes due. The personal obligation for delinquent Assessments shall not pass to the successors in title of an Owner unless expressly assumed by such successors. No Owner may waive or otherwise escape liability for Assessments by nonuse of the Common Areas or any part thereof, or abandonment of such Owner's Lot.