

Manufactured Product(s) shall have the right to provide each Owner and the Association with any maintenance obligations, schedules, and/or practices (collectively, "Maintenance Requirements"). Each Owner shall be responsible to properly maintain such Owner's Lot (including all Manufactured Products therein) in accordance with the requirements of this Declaration and the Maintenance Requirements in accordance with California Civil Code Section 907. The Association shall be responsible to properly maintain all Common Areas in accordance with the requirements of this Declaration and the Maintenance Requirements in accordance with California Civil Code Section 907. Each Owner, by acceptance of a deed to a Lot, acknowledges that such Maintenance Requirements may be set forth in a Warranty and/or any homeowner's manual, operating instructions, and/or other owner's manual(s) provided by Declarant, the Association, and/or any manufacturer(s) of any Manufactured Product(s).

18.7 Similar Requirements of Civil Code Section 1375. California Civil Code Section 1375 sets forth a process which must be followed by homeowners' associations prior to filing complaints for damages against persons such as Declarant with respect to design and/or construction of common interest developments. Such process includes requirements to provide various notices and time to respond. To the extent that (i) the provisions hereunder are enforced by the Association, (ii) the provisions hereunder are substantially similar to such provisions in Section 1375 of the California Civil Code, and (iii) an action is subsequently commenced under Section 1375 of the California Civil Code, the Association shall be excused from performing the substantially similar requirements under Section 1375 of the California Civil Code.

18.8 No Impact on Code of Civil Procedure Section 411.35. California Code of Civil Procedure Section 411.35 requires that before claims for professional negligence may be filed against certain design professionals (*e.g.*, architects, engineers or land surveyors), the claimant's attorney must provide certification that (i) it has reviewed the applicable facts, consulted with experts, and concluded that there is a reasonable and meritorious cause for filing an action, or (ii) the attorney was unable to so consult with such experts (a) despite making at least three (3) good faith attempts, or (b) because of pending expiration of the applicable statute of limitations for filing of the claim. Nothing herein shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for matters not covered by California Civil Code Section 895 *et seq.*

ARTICLE XIX

JUDICIAL REFERENCE OF DISPUTES AND WAIVER OF JURY TRIAL/LITIGATION

19.1 JUDICIAL REFERENCE. EXCEPT FOR ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES (EACH A "DISPUTE") SUBJECT TO ANY APPLICABLE WARRANTY, ANY DISPUTE BY OR BETWEEN THE ASSOCIATION, ANY OWNER OR OWNERS, AND/OR ANY DEVELOPER PARTY ARISING FROM OR RELATED TO THIS DECLARATION, THE COMMON AREAS, ANY LOT, ANY DWELLING, THE SALE OF ANY LOT OR DWELLING, OR ANY TRANSACTION RELATED HERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY SHALL BE HEARD AND DETERMINED BY A REFEREE AS PROVIDED BY THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 TO 645.1. THE VENUE OF ANY PROCEEDING SHALL BE IN RIVERSIDE COUNTY, CALIFORNIA (UNLESS CHANGED BY ORDER OF THE REFEREE). IN A JUDICIAL

REFERENCE, THE DETERMINATION OF ALL MATTERS OF FACT AND LAW IS MADE BY A REFEREE, NOT BY A JUDGE OR JURY.

19.1.1 PROCEDURE FOR APPOINTMENT. THE PARTY SEEKING TO RESOLVE THE DISPUTE SHALL FILE IN COURT AND SERVE ON THE OTHER PARTY A COMPLAINT DESCRIBING THE MATTERS IN DISPUTE. SERVICE OF THE COMPLAINT SHALL BE AS PRESCRIBED BY LAW OR AS OTHERWISE PROVIDED IN THIS AGREEMENT. AT ANY TIME AFTER SERVICE OF THE COMPLAINT, ANY PARTY MAY REQUEST THE DESIGNATION OF A REFEREE TO TRY THE DISPUTE. THEREAFTER THE PARTIES SHALL USE THEIR BEST EFFORTS TO AGREE UPON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE UPON A REFEREE WITHIN TEN DAYS AFTER A WRITTEN REQUEST TO DO SO BY ANY PARTY, THEN ANY PARTY MAY PETITION THE PRESIDING JUDGE OF THE SUPERIOR COURT IN WHICH THE ACTION IS FILED OR THE SUPERIOR COURT JUDGE TO WHOM THE MATTER HAS BEEN ASSIGNED (THE "JUDGE") TO APPOINT A REFEREE. FOR THE GUIDANCE OF THE JUDGE MAKING THE APPOINTMENT OF THE REFEREE, THE PARTIES AGREE THAT THE PERSON SO APPOINTED SHALL BE A RETIRED JUDGE OR A LAWYER EXPERIENCED IN THE SUBJECT MATTER OF THE DISPUTE.

19.1.2 DECISION AND JURISDICTION OF REFEREE. THE REFEREE SHALL DECIDE ALL ISSUES OF FACT AND LAW SUBMITTED BY THE PARTIES FOR DECISION IN THE SAME MANNER AS REQUIRED FOR A TRIAL BY COURT, INCLUDING ALL LAW AND MOTION MATTERS, EX PARTE MATTERS AND DISCOVERY DISPUTES. THE REFEREE SHALL TRY AND DECIDE THE DISPUTE ACCORDING TO ALL OF THE SUBSTANTIVE, EVIDENTIARY AND PROCEDURAL LAW OF THE STATE OF CALIFORNIA. WHEN THE REFEREE HAS DECIDED THE DISPUTE, THE REFEREE SHALL PREPARE A REASONED STATEMENT OF DECISION AND JUDGMENT. THE JUDGMENT ENTERED BY THE SUPERIOR COURT SHALL BE APPEALABLE IN THE SAME MANNER AS ANY OTHER JUDGMENT.

19.1.3 DISCOVERY. DISCOVERY SHALL BE ALLOWED AND CONDUCTED UNDER THE SUPERVISION OF THE REFEREE PURSUANT TO THE PROVISIONS OF THE CALIFORNIA CODE OF CIVIL PROCEDURE AND THE CALIFORNIA RULES OF COURT.

19.1.4 A STENOGRAPHIC RECORD OF THE TRIAL AND OTHER PROCEEDINGS IS TO BE MADE, BUT WILL BE CONFIDENTIAL EXCEPT AS NECESSARY FOR POST-HEARING MOTIONS AND APPEALS.

19.2 COOPERATION. THE PARTIES SHALL DILIGENTLY COOPERATE WITH ONE ANOTHER AND THE REFEREE TO RESOLVE THE DISPUTE AND SHALL PERFORM SUCH ACTS AS MAY BE NECESSARY TO OBTAIN A PROMPT AND EXPEDITIOUS RESOLUTION OF THE DISPUTE.

19.3 ALLOCATION OF COSTS. THE COSTS OF THE PROCEEDING SHALL INITIALLY BE BORNE BY THE PARTIES TO THE DISPUTE, BUT THE PREVAILING PARTY IN THE PROCEEDING SHALL BE ENTITLED TO RECOVER, IN ADDITION TO ANY OTHER FEES OR COSTS ALLOWED BY THIS AGREEMENT, ITS CONTRIBUTION

FOR THE REASONABLE COSTS OF THE REFEREE AS AN ITEM OF RECOVERABLE COSTS. IF EITHER PARTY REFUSES TO PAY HIS SHARE OF THE COSTS OF THE PROCEEDING AT THE TIME REQUIRED, THE OTHER PARTY MAY DO SO IN WHICH EVENT THAT PARTY WILL BE ENTITLED TO RECOVER (OR OFFSET) THE AMOUNT ADVANCED. NOTWITHSTANDING THE FOREGOING, IF DECLARANT IS A PARTY TO THE REFERENCE, THE FEES TO INITIATE THE REFERENCE SHALL BE ADVANCED BY THE DECLARANT, AND SUBSEQUENT FEES AND COSTS OF THE REFERENCE AND/OR THE REFEREE SHALL BE BORNE EQUALLY BY THE PARTIES TO THE REFERENCE; *PROVIDED, HOWEVER*, THE FEES AND ANY OTHER FEES AND COSTS OF THE REFERENCE AND/OR THE REFEREE SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE REFEREE.

19.4 Limitation on Expenditures/Notice to Members. The Association shall not incur litigation and/or judicial reference expenses, including, without limitation, attorneys' fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the voting power of the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article XI hereof, (ii) enforce the architectural control provisions contained in Article V hereof, or (iii) collect any unpaid assessments levied pursuant to this Declaration. The Association must provide written notice to all of its Members of its intent to pursue any legal action, cause of action, proceeding, or judicial reference against Declarant or its agents, employees, consultants, contractors or subcontractors (collectively, "Declarant's Agents," and, together with Declarant, the "Developer Parties," and each, individually, a "Developer Party"). The foregoing notice shall (at a minimum) include (1) a description of the Alleged Defect, (2) a description of the attempts of Declarant to correct such Alleged Defect and the opportunities provided to Declarant to correct such Alleged Defect, (3) a certification from an engineer licensed in the State of California that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer, (4) for geologic claims, a certification from a geologist licensed in the State of California that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such geologist, (5) the estimated cost to repair such Alleged Defect, (6) the name and professional background of the attorney retained by the Association, as applicable, to pursue the claim against Declarant and a description of the relationship between such attorney and (i) any members of the Board and (ii) any geologists, engineers or other consultants used to evaluate the Alleged Defects (if any), (7) a description of the fee arrangement between such attorney and the Association, (8) the estimated attorneys' fees and expert fees and costs necessary to pursue the claim against Declarant and the source of the funds which will be used to pay such fees and expenses, (9) the estimated time necessary to conclude the action against Declarant, and (10) an affirmative statement from the Board that the action is in the best interests of the Association and their Members. The failure to provide the foregoing notice shall not prejudice any lawsuits filed by the Association.

19.5 Use of Proceeds. In the event the Association, Board, or any Owners(s) (collectively, "Claimant") initiates any legal action, cause of action, proceeding, or judicial reference against Declarant and/or any of Declarant's Agents alleging damages (1) for the costs of repair or replacement of all or any portion of the Development, including any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, any judgment or award in

connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Association recovers any funds from Declarant (or any other person or entity) to repair an Alleged Defect, any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund as applicable.

ARTICLE XX **ANNUAL INSPECTION**

20.1 Duty to Inspect. It shall be the duty of the Board to have the Common Areas inspected at least once each year.

20.2 Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Common Areas are being maintained adequately in accordance with the standards of maintenance established in Sections 6.2 and 7.1 hereof, (ii) identify the condition of the Common Areas and any Improvements thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future.

20.3 Scope of Inspection. All of the Common Areas and Improvements thereon including, but not limited to, the exterior and structural integrity of all structures, gates, walls, walkways, irrigation systems, landscaping, and drainage devices shall be inspected.

20.4 Experts and Consultants. The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Article.

20.5 Report to Owners. The Board shall have a report of the results of the inspection of the Common Areas required by this Article prepared. The report shall be furnished to Owners within the time set forth for furnishing Owners with the budget described in California Civil Code Section 1365.5. The report shall, at a minimum, include the following:

- (a) a description of the condition of the Common Areas, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;
- (b) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the DRE Approved Budget;
- (c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;
- (d) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;
- (e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and
- (f) such other matters as the Board deems appropriate.