

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director
Prepared by Joseph R. Vacca, Principal Planner



DATE: April 22, 2010 (CC Meeting of 05/05/2010)

SUBJECT: Consider Status Update on Developer Turnover of Landscaped Slopes to the Meridian Hills Homeowner's Association for Maintenance, Tract Nos. 5187-1&2, Developer is Resmark Equity Partners, LLC, (ORA Ashford 94, LLC)

BACKGROUND

At the April 21, 2010 City Council meeting, several Meridian Hills residents raised the following concerns about their development during Public Comment:

- A history of poor maintenance of landscaped areas including the presence of weeds and lack of thriving plants, throughout the project, including LMD areas, (which have not been accepted as complete by the City) and Homeowner's Association (HOA) common areas currently controlled by the developer; and a belief that the developer has not been proactive in maintaining project landscaping. ***(City staff will continue to monitor this.)***
- Cracks and peeling paint on concrete of tennis and basketball courts and poor drainage of the recreation lot where the tennis and basketball courts are located. ***(City staff inspected these courts upon completion and found them to be acceptable with no cracks wider than the width of a dime. The current peeling of the paint is an HOA matter.)***
- Residential pool heaters that needed replacement on the HOA pool. ***(This is an HOA matter.)***
- The street paving final cap that took months and required several corrections on the part of the developer to complete. ***(The final cap on the street is acceptable to the City.)***
- Not enough control of HOA areas because the developer has the majority vote on the HOA board. ***(This is an HOA matter with additional information provided later in this report.)***
- Turnover of recently planted landscaped areas from developer's responsibility for maintenance to HOA for maintenance without a maintenance period or final City approval of landscaping. ***(This issue is addressed later in this report.)***

- Desire to separate water meters of future LMD, HOA and developer controlled landscaping areas. (***Separate water meters from LMD and HOA areas are required.***)
- Desire for additional vehicular access including the use of the second gated driveway. (***This is not warranted based on current traffic levels.***)
- Question on whether the developer can annex vacant lots into the HOA, and if that is in compliance with the Covenants, Conditions, and Restrictions (CC&R's) recorded for the project. (***This is an HOA matter with additional information provided later in this report.***)
- Question on whether the developer needs to provide an HOA resident board members with a budget analysis to determine the impacts or benefits of the developer's proposal to annex vacant lots into the HOA. (***This is an HOA matter.***)
- Lack of communication from developer to the HOA resident board members and resident members. (***This is an HOA matter.***)

After listening to the concerns, the City Council directed staff to provide a report about the City's role in reviewing landscaped areas within HOA areas and whether or not the CC&R's allow for the developer to annex vacant lots without City or homeowner approval.

DISCUSSION

HOA Landscaping

Typically, common landscaped areas within HOA areas are turned over by the developer to the HOA for maintenance upon the completion of each project phase. Prior to allowing development of homes within new communities, the City reviews and approves landscaping plans for common HOA areas, as typically conditioned on projects. As required in the City's Landscape Design Standards and Guidelines, staff inspects the installation of landscaping and irrigation of HOA common areas to ensure consistency with approved plans for final approval prior to the turnover of maintenance of common areas from developer to HOA.

Community Development and Parks and Recreation staff have received an email from the developer requesting City inspection of installed landscaping of Homeowner's Association slopes behind Shadow Wood Drive and Mammoth Peak Drive, and common landscape areas along the internal multi-use trail; as these areas are proposed for turn over from the developer to the Homeowner's Association for maintenance. Section 4.2 of the City's Landscape Design Standards and Guidelines provides City installation review requirements, as follows:

"4.2 Landscape Condition Compliance Review

Prior to completion of the landscaping and prior to final inspection, the City's landscape consultant shall inspect the site and certify that the landscape complies

with these standards and guidelines per the attached inspection schedule. The applicant shall notify the City a minimum of forty-eight (48) hours prior to inspection.

Upon completion of the installation of the landscaping and prior to final inspection, the applicant's landscape consultant shall inspect the site and certify that the landscape complies with these standards and guidelines. Certification shall be accomplished by completing the Certificate of Compliance checklist (Using Attachment VII, of the Landscape Design Standards and Guidelines, as provided with this letter). Concurrently or afterwards, the City's landscape consultant shall inspect the landscape planting and irrigation installations for final conformance with the approved plans and specifications. The applicant must also employ a certified backflow tester to certify the backflow device.

A second inspection of residential common areas, commercial or industrial projects shall be conducted by the City's landscape consultant one year after certification to assure condition compliance including irrigation efficiency and plant viability."

Staff requested that the developer file a Certificate of Compliance checklist to be completed by the project's Landscape Architect of record, for the installed landscaping, along with a zoning clearance application and fee, requesting the City's inspection of landscaping and irrigation installation.

The developer has not submitted the required zoning clearance application, and therefore staff has not inspected the slopes. The areas are not associated with final approval of a project phase, so normally inspection would not occur at this time. However, because construction may not resume for months or years and the developer is proposing turnover of the slopes to the HOA for maintenance, staff believes that City inspection of the subject landscape areas should occur now. Once a zoning clearance application is filed requesting an inspection, along with sufficient deposit to cover staff time for review and inspection, staff would inspect the slopes and require any necessary corrections to ensure consistency with City approved landscaping plans. Staff would then conduct a follow-up inspection after a 90-day maintenance period to ensure survivability of new planting and to verify conformance with approved landscaping and irrigation plans.

Conveyance of Common Areas and Annexation of Vacant Lots to HOA

Rules governing the conveyance of common areas and annexation of property to the HOA are contained in the CC&R's. Although the original language in the CC&R's requires City staff review and approval as part of the project condition compliance monitoring, the City is not a party to CC&R's and has no authority in the approval or monitoring of the conveyance of common areas or annexations of property to the HOA. The City's only role in reviewing the CC&R's is to ensure they are consistent with all conditions of approval and terms of the Development Agreement. The CC&R's also require review and approval by the California Department of Real Estate before the close of escrow on the sale of any houses. The CC&Rs are between the HOA Board, the developer, and the members of the HOA.

Article 3, Section 17 on page 38 provides that the Declarant (developer) shall convey to the Association fee simple title, an easement, or a lease over the Association Property (common areas) in each Phase of the project. Such conveyance is required to occur "prior to" or concurrently with the sale of the first Lot in such Phase. The HOA is required to take title to the Association Property even if they are still disputing the character of the improvements on such property (Section 17d). In other words, it appears that the Developer can unilaterally transfer slopes, etc. to the HOA for maintenance if those slopes are within a Phase that already has retail home or lot sales.

With respect to the questions whether or not the developer can convey common areas or annex vacant lots into the HOA, the following sections of the CC&R's, provided in Attachment 2, address this issue. An interpretation of these provisions should be made by the parties to the CC&R's, and not the City.

ARTICLE III, Section 17; {pages 38, 39 & 40}

ARTICLE IV, Sections 1, thru 9; {pages 40, 41, 42 & 43}

ARTICLE VI, Section 7; {page 66}

ARTICLE XVI, Sections 1, thru 7; {pages 115, 116, 117 & 118}

FISCAL IMPACT

None.

STAFF RECOMMENDATION

Receive and file report.

Attachments:

1. Site Map
2. CC& Rs, ARTICLE III, Section 17; ARTICLE IV, Sections 1, thru 9; ARTICLE VI, Section 7; and ARTICLE XVI, Sections 1, thru 7

and access to the Community for purposes of installation, operation, maintenance, repair, inspection, replacement and removal of alarm system cabling and all related facilities and equipment. Such easements shall be freely transferable to any other person or entity for the purpose of providing such services. The exercise of all rights reserved hereunder shall not unreasonably interfere with the Owner's use and enjoyment of the Community.

Section 15. Reservation of Construction Rights. Without limiting the rights of Declarant set forth in Article II hereinabove, nothing in this Declaration shall limit the right of Declarant to establish additional licenses, easements and rights-of-way in favor of Declarant, utility companies, private purveyors of utility services or others as may, from time to time, be reasonably necessary for the development, maintenance and proper operation of the Community. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the Public Agencies. The foregoing rights of Declarant may be assigned by Declarant to any successor to all or part of Declarant's interest in the Community by an express assignment recorded in the Official Records of Ventura County.

Section 16. Reservation of Easements Over Association Property. Declarant hereby reserves the right to grant nonexclusive easements over the Association Property in favor of Owners of any Annexable Property which is annexed pursuant to this Declaration, and upon the recordation of a Notice of Annexation affecting all or any portion of the Annexable Property, the Owners described in this Declaration shall automatically obtain nonexclusive easements over all Association Property which is a part of said Annexable Property.

Section 17. Transfer of Association Property to Association.

(a) Conformance with Plan of Development. Declarant shall convey to the Association fee simple title to, an easement over or leasehold interest in, the Association Property in each Phase of the Community, if any, prior to or concurrently with the first Close of Escrow for the sale of a Lot in such Phase. Such conveyance shall be subject to the Protective Covenants set forth in this Declaration and to any other matters of record or apparent at the time of conveyance. All such conveyances shall be made in conformity with Declarant's general plan for the development of the Community, as such general plan may be modified, from time to time by Declarant, in its sole discretion.

(b) Completion of Association Property. In the event that Improvements proposed to be constructed within the Association Property have not been completed as of the recordation of the Notice of Annexation for such Improvements, as evidenced by a valid Notice of Completion recorded in the Official Records of Ventura County, the completion of such Improvements shall be assured in accordance with Section 11018.5 of the California Business and Professions Code, or any similar statute hereinafter enacted, and the applicable regulations of the DRE.

(c) Commencement of Association Responsibilities. The Association's responsibility to maintain the Association Property in each respective Phase of the Community shall commence upon the latter of: (1) first day of the month following the first Close of Escrow for the sale of a Lot in such Phase to a bona fide purchaser; or (2) recordation of the grant deed conveying the Association Property to the Association. The Association's responsibility to maintain the Maintenance Areas in each respective Phase shall commence upon the first day of the month following the first Close of Escrow for the sale of a Lot in such Phase. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain or warrant the landscaping or other Improvements on the Association Property (or Maintenance Areas) for a specified period in which said contractors or sub-contractors shall perform such maintenance, the Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors shall not serve to postpone the commencement of Assessments pursuant to this Declaration, nor entitle an Owner to any offset or reduction in the amount of such Assessments.

(d) Character of Improvements to Association Property; Disputes. The nature, design, quality and quantity of all Improvements to the Association Property (and Maintenance Areas) shall be determined by Declarant, in its sole discretion. The Association shall be obligated to accept title to the Association Property and to undertake all maintenance responsibilities for the Association Property (and Maintenance Areas) when fee title, easement or other rights are conveyed and/or maintenance responsibilities are tendered by Declarant pursuant to subparagraphs (a) and (c) above. In the event that a dispute arises between Declarant and the Association with respect to the nature, design,

quality or quantity of the Improvements, or the acceptance of m responsibilities therefor, the Association shall be obligated to accept title to over the Association Property and undertake maintenance responsibilities resolution of the dispute.

ARTICLE IV
THE ASSOCIATION

Section 1. Membership. Every person or entity who or which is an Owner, as defined in this Declaration, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest in any Lot in the Community merely as security for the performance of an obligation.

Section 2. Classes of Membership. The Association shall have three (3) classes of membership, as follows:

(a) **Class A Members.** Initially, the Class A Members shall be all of the Owners (other than Declarant) of Lots in the Community which are subject to the levy on Assessments. Declarant shall not be a Class A Member for so long as the Class B membership shall exist. Upon the conversion of the Class B membership as provided below, Declarant shall become a Class A Member with respect to the Lots owned by Declarant which are subject to the levy of Assessments. The Class A Members who own a Lot which is subject to the levy of Assessments are entitled to one (1) vote for such Lot. When a Lot is owned by more than one (1) Owner, the vote for such Lot shall be exercised as such Owners determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot. The Association shall recognize the vote cast by a co-Owner, unless another co-Owner shall cast a conflicting vote, in which case both votes shall be null and void and not recognized by the Association.

(b) **Class B Member.** The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Lot it owns in the Community which is subject to the levy of Assessments. The Class B membership shall cease and shall be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(1) The second anniversary of the first Close of Escrow for the sale of a Lot pursuant to the original issuance by the DRE of the most recently issued Final Subdivision Public Report for a Phase of the Community; or

(2) The fourth anniversary of the first Close of Escrow for the sale of a Lot pursuant to the original issuance by the DRE of the Final Subdivision Public Report for the first Phase of the Community.

The Class B Member shall have no right to vote in the election of the Directors until the expiration of the three year terms of the Class C Directors, as referenced below.

(c) Class C Member. The Class C Member shall be Declarant. The Class C Member shall be entitled, by its sole vote, to elect a majority of the members of the Board of Directors (e.g., two [2] Directors of a three [3] member Board) of the Association at the first annual meeting of Members of the Association. Each Class C Director shall have a three (3) year term. The Class C membership shall automatically terminate after the first annual meeting of Members of the Association; provided, however, the Class C membership will not terminate for purposes of Declarant's right to replace any Class C Director for the unexpired portion of the original three (3) year term of that directorship, or to elect a majority of Directors if the Board is increased to more than three (3) members.

Unless a specific provision of the Articles, the Bylaws or this Declaration requires the approval of a greater percentage, any action taken by the Association which must have the approval of either (i) the Members of the Association, or (ii) the "total voting power" of the Association, before being undertaken shall require the vote or written assent of at least a majority of the Class B Members and at least a majority of the Class A Members, so long as both the Class A and Class B memberships exist. At such time as the Class B membership ceases and converts to Class A membership as provided above, any action taken by the Association which must have the approval of either (i) the Members of the Association, or (ii) the "total voting power" of the Association, before being undertaken shall require the vote or written assent of at least a majority of all Class A Members and at least a majority of the Class A Members other than the Declarant. Notwithstanding the foregoing, any action by the Association pursuant to the

Article in this Declaration entitled "Enforcement of Bonded Obligations" shall only require a majority of the voting power of the Members, other than the Declarant.

Section 3. Special Voting Procedures for Election of Directors. So long as the Class B or Class C memberships shall remain in effect, the Class A Members shall be entitled to solely elect at least twenty percent (20%) of the members of the Board.

Section 4. Vesting of Voting Rights. The voting rights attributable to any given Lot in the Community shall not vest until the Assessments provided for in this Declaration have been levied by the Association against such Lot.

Section 5. Adjustment of Voting Rights. The voting rights in the Association shall be adjusted upon the annexation of a subsequent Phase, as provided for in this Declaration. Such adjustment shall become effective upon the first Close of Escrow for the sale of a Lot in such Phase.

Section 6. Transfer. The Association membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Lot and the membership shall be automatically transferred upon the sale of such Lot. In the event of such sale, the Association membership may only be transferred, pledged or alienated to the bona fide purchaser or purchasers of the Lot, or to the Mortgagee (or third-party purchaser) of such Lot upon a foreclosure sale, deed in lieu or other remedy set forth in the Mortgage. Any attempt to make a prohibited transfer is void and will not be reflected in the books and records of the Association.

Section 7. Proxies. Votes may be cast in person or by proxy. Proxies must be filed with the Secretary before the appointed time for each meeting. Every proxy shall be revocable and shall automatically terminate upon the earliest of the following: (a) the conveyance of a Lot by the Owner; (b) the date of automatic termination, if any, specified in the proxy, but not to exceed three (3) years from the date of issuance of the proxy; or (c) eleven (11) months from the date of issuance of the proxy, if no automatic termination date is specified in the proxy. Any form of proxy or written ballot distributed to the membership of the Association shall afford an Owner the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon at the meeting for which said proxy was distributed, except it shall not be mandatory that a candidate for election to the Board be named in a proxy. The proxy or written ballot shall provide that, where the Owner specifies a choice, the vote shall

be cast in accordance with that choice. In addition, the proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it shall be valid.

Section 8. Record Dates. For the purpose of determining Members entitled to notice of any meeting, to vote or to exercise any other rights in respect of any lawful action, the Board may fix, in advance, record dates as provided in the Bylaws.

Section 9. Declarant's Extended Rights to Inspect and Copy Association Books and Records, Audit Financial Records, Attend Meetings, and Receive Distributions of Minutes. In addition to Declarant's rights as an Owner and a Member of the Association as provided in the Association Documents, for so long as Declarant owns any portion of the Community or the Annexable Property and continuing until the tenth (10th) anniversary of the Close of Escrow for the sale of the last Lot in the Community pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE, Declarant shall be entitled to do each of the following: (i) during normal business hours, inspect and copy, at Declarant's cost and expense, all Association books and records (including, without limitation, all financial statements and maintenance books and records); (ii) conduct an independent audit of the Association's financial books and records, at Declarant's cost and expense; (iii) receive timely notice of, attend and speak at all regular and special meetings of the Board and all regular and special meetings of the Members (and any comments made by Declarant at any such meeting shall be accurately noted in the minutes prepared for such meeting); and (iv) upon delivery of written request to the Association and subject to reimbursement by Declarant of the copying and mailing costs incurred by the Association, receive all distributions of minutes, proposed minutes or summary of minutes of meetings of the Board and meetings of the Members.

Section 10. Fair Election Procedures. The Board shall adopt Rules and Regulations in accordance with the procedures prescribed by California Civil Code Section 1357.100 et seq., which do all of the following:

(a) Campaign Material. The Board shall ensure that if any candidate for election or Member advocating a point of view is provided access to any Association media, newsletters or Internet Web sites during a campaign for purposes that are reasonably related to that election, equal access shall be provided to all candidates and Members advocating a point of view, including those not endorsed by the Board, for purposes that are reasonably related to the election. The

~~Section 6. Notice of Increase in Assessments. The Board shall provide notice by first class mail to the Owners of any increase in Regular or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to such increase becoming due.~~

Section 7. Date of Commencement of Regular Assessments: Due Dates.
Subject to the terms of any maintenance and/or subsidy agreement entered into between the Association and Declarant and except as otherwise provided below, Regular Assessments shall commence as to all Lots within a Phase of the Community on the first day of the month after the occurrence of either of the following: (i) the first Close of Escrow for the sale of a Lot to a bona fide purchaser in such Phase pursuant to a transaction requiring the issuance of a Final Subdivision Public Report issued by the DRE; or (ii) the conveyance of any Association Property in such Phase to the Association. Thereafter, for each subsequent Phase, Regular Assessments shall commence on the first day of the month after the occurrence of either of the following events: (a) the first Close of Escrow for the sale of a Lot to a bona fide purchaser in such subsequent Phase; or (b) the conveyance of any Association Property in such Phase to the Association. The first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year as set forth in the Bylaws. The Board shall fix the amount of the Regular Assessment at least thirty (30) days in advance of each Regular Assessment period.

Notwithstanding the foregoing, the conveyance of any Lot in the Community which is being used by Declarant as a model home, sales office, design center or for other sales and/or marketing purpose (collectively referred to as a "Model Home") shall not serve to commence the levy of Regular Assessments or any other Assessments against such Model Home. Regular Assessments and all other Assessments shall be suspended against such Model Home until the first day of the month following the earlier of the following events: (i) Declarant has discontinued using such Lot as a Model Home and any construction to convert the Model Home back to a habitable Lot has been completed; or (ii) any Lot which is not a Model Home and which is in the same Phase as such Model Home has been sold (and the escrow closed) to a member of the general public pursuant to a transaction requiring the issuance of a Final Subdivision Public Report. During the period of time a Model Home is not subject to the levy of Assessments as provided herein, Declarant shall, at its sole cost and expense, maintain such Model Home and keep same in an as-new condition.

Section 3. Effect of Amendments. No amendment of the Association Documents shall affect the rights of any Mortgagee whose lien was created prior to recordation of such amendment, unless such Mortgagee consented thereto in writing, or is deemed to have consented thereto as provided herein.

Section 4. Amendments to Conform With Mortgage Requirements. It is the intent of Declarant that the Association Documents and the Community in general meet all requirements necessary to purchase, guarantee, insure or subsidize any Mortgage of a Lot in the Community by FHLMC, FNMA and GNMA. In furtherance of said intent, Declarant may amend this Declaration without the consent of the Members at any time after the Close of Escrow for the first sale of a Lot in the Community by recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with the requirements of the DRE, FHLMC, FNMA and/or the GNMA; provided, however, that any such amendment shall be effective only if Declarant mails a copy of the amendment to all of the foregoing entities which are, or have agreed to be, a holder, insurer or guarantor of a first Mortgage, and does not, within thirty (30) days thereafter, receive a notice of disapproval from any such entity. Said amendments shall not be recorded by Declarant until after the expiration of such thirty (30) day period.

ARTICLE XVI

ANNEXATION OF ADDITIONAL PROPERTY

Additional property may be annexed to and become subject to this Declaration as set forth in this Article.

Section 1. Annexation Pursuant to Approval. Any person or entity who owns any real property (other than the Annexable Property) and who desires to annex said property to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may record a Notice of Annexation as described in Section 3 of this Article, upon obtaining the approval in writing of: (a) the Declarant so long as Declarant owns any portion of the Property and/or Annexable Property; and (b) the Association pursuant to the vote or written assent of sixty-seven percent (67%) of the total voting power of the Association.

Section 2. Annexation Pursuant to General Plan. Declarant may, without the assent of the Association or its Members, annex all or any part of the Annexable Property

described in **Exhibit "B"** to this Declaration so as to make such Annexable Property part of the Community and subject to this Declaration, provided and on condition that:

(a) The development of the Annexable Property shall be in substantial conformance with the overall general plan of development for the Community originally submitted to and approved by the Public Agencies; and

(b) A Notice of Annexation, as described in Section 3 of this Article, is recorded on the portion of the Annexable Property being annexed.

Section 3. Notice of Annexation. The annexation of additional property authorized under this Article shall be made by recording a Notice of Annexation, or similar instrument, covering said property. The Notice of Annexation shall include at least the following:

(a) A reference to this Declaration, which shall include the date of recordation and the instrument number for the recordation of this Declaration in the records of the County Recorder for Ventura County;

(b) A statement that this Declaration shall apply to such portion of the Annexable Property as set forth herein;

(c) A description of the portion of the Annexable Property being annexed; and

(d) A description of any additional Association Property and/or Maintenance Areas, (including, but not limited to, the Fuel Modification Zones and Association Walls) located in the Annexable Property.

A Notice of Annexation may annex solely Association Property and/or Maintenance Areas so long as such annexation would not violate the provisions in this Declaration regarding increases in Regular Assessments. A Notice of Annexation may contain such complementary additions to and modifications of the Protective Covenants set forth in this Declaration which are necessary to reflect the different character, if any, of the Annexable Property and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the Protective Covenants set forth in this Declaration.

Section 4. Parties to Notice of Annexation. For so long as Declarant has the right to annex all or any portion of the Annexable Property into the Community without the approval of the Association, each Notice of Annexation covering property owned by Declarant shall be executed only by Declarant.

Section 5. Effective Date of Annexation. A Notice of Annexation recorded on a subsequent Phase shall become effective immediately upon the first Close of Escrow for the sale of a Lot in said Phase. Thereafter, the rights, obligations, privileges, duties and liabilities of the Owners of Lots in said Phase shall be governed by this Declaration. In the case of the annexation of only Association Property, the Notice of Annexation shall become effective concurrently with the recordation of the deed conveying such Association Property to the Association. A Notice of Annexation which annexes only a Maintenance Area shall become effective immediately upon recordation of such Notice of Annexation.

Section 6. Amendments to a Notice of Annexation. Notwithstanding any other provisions of this Declaration to the contrary, a Notice of Annexation may be revoked, amended and/or restated solely by the Declarant at any time prior to such Notice of Annexation becoming effective as set forth herein. After a Notice of Annexation has become effective, it may be amended by the requisite affirmative vote of Members (and first Mortgagees, if applicable) in only such Phase, rather than by the vote of all Members of the Association (and first Mortgagees, if applicable) in the Community on the following conditions:

(a) Such amendment applies only to the Annexable Property described in said Notice of Annexation; and

(b) Such amendment shall in no way contradict, revoke or otherwise alter any of the Protective Covenants set forth in this Declaration.

Section 7. Right of De-Annexation. Declarant shall have the right to revoke a Notice of Annexation and de-annex a Phase that was previously annexed into the Community so as to delete said Phase from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that each and all of the following conditions are satisfied: (i) no escrow has closed for the sale of a Lot in the Phase being deannexed; (ii) Declarant has not exercised any vote attributable to any Lot in the Phase being deannexed; (iii) Assessments have not commenced as to any Lot in the Phase being deannexed; (iv) no Association Property in the Phase being deannexed has been conveyed to the Association; and (v) a Notice of De-annexation

is executed by Declarant and recorded with the County Recorder. Additionally, the Association shall have the right to deannex any portion of the Association Property which it owns so as to delete said portion from the scheme of this Declaration and from the jurisdiction of the Association in furtherance of a conveyance of such portion of the Association Property pursuant to Section 2 of Article III of this Declaration.

ARTICLE XVII

ENFORCEMENT OF BONDED OBLIGATIONS

Section 1. Enforcement of Bonded Obligations. In the event that the Improvements to the Association Property have not been completed prior to the issuance of a Final Subdivision Public Report by the DRE for a Phase of the Community, and the Association is obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure a performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

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

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