

every other Owner agrees by acquiring title to its Lot, that it will not bring any action or suit against the Association or any member of the Board or the ACC to recover any such damages.

ARTICLE 10

REPAIR AND MAINTENANCE

10.1 Repair and Maintenance by the Association. Without limiting the generality of the Article herein entitled "Powers and Duties of the Association," the Association shall have the duty to maintain, landscape, repair, improve, restore and replace all Improvements upon the Common Property, as designated in this Declaration or in any subsequent Notice of Annexation which may be recorded, from time to time, in a neat, clean, safe, attractive and orderly condition at all times, including, without limitation, the following:

a. Manage, operate, control, maintain, repair, restore, replace and make necessary improvements to the Common Property, in such a manner as to avoid the reasonable determination of a duly authorized official of the County that a public nuisance has been created by the absence of adequate maintenance, such as to be detrimental to public health, safety or general welfare, or that such a condition of deterioration or disrepair causes harm or is materially detrimental to property values or improvements within the boundary of the Project, to surrounding property, or to property or improvements within three hundred (300) feet of the Project. The Association shall maintain the Common Property, including without limitation, the following:

- (1) all Project entry monuments, lighting and landscaping Improvements;
- (2) slopes, retaining walls, landscaping and irrigation improvements;
- (3) drainage improvements including drain inlets, outlets, diverters, V-ditches, brow ditches and similar drainage services;
- (4) all Project Walls (and fences) designated for maintenance by the Association in this Declaration and/or in Notices of Annexation; and
- (5) landscaped public parkways and street median areas designated for maintenance in this Declaration and/or in Notices of Annexation.

b. All other areas, facilities, equipment, services or aesthetic components of whatsoever nature as may come up from time to time, be requested by the vote or written consent of a majority of the voting power of the Association.

Any Exhibits depicting or delineating maintenance areas or obligations of the Association are for illustrative purposes only. The "as-built" condition of all such maintenance areas and obligations as installed and constructed by Declarant shall be controlling.

The cost of any maintenance and repair by the Association which is a result of neglect, negligence or willful misconduct by an Owner, or such Owner's tenants, guests, agents and invitees, shall, after Notice and Hearing, be levied by the Board as a Compliance Assessment against such Owner. Except as otherwise provided herein, all costs and expenses for such maintenance above shall be a Common Expense and shall be paid out of the general operating fund of the Association.

10.2 Repair and Maintenance by Owner. Except as the Association shall be obligated to maintain and repair as may be provided in this Declaration, every Owner shall:

a. Maintain, repair, restore and replace, as and when necessary, all Improvements, including the Residence located on such Lot, and the roofs, patios, patio covers, decks, deck covers, balconies, windows, window frames, screens, locks and doors of his Residence, landscaping, slopes, berms and irrigation improvements, concrete drainage swales, subdrain outlets, yard drains and all other Improvements located on such Owner's Lot not otherwise designated as Common Property in a neat, clean, safe and attractive condition at all times; and

b. Maintain the interior surfaces of all Project Walls and fencing adjacent to the side yard or rear yard boundaries of the Lot;

c. Maintain, repair and replace as and when necessary, all tubular steel fencing adjacent to the side yards and rear yards of the Lot; and

d. Maintain all yard areas within the Lot in a neat and attractive condition, and shall periodically replace, when necessary, the trees, plants, grass and other vegetation originally installed on such Lot. The Board may adopt Rules and Regulations proposed by the Architectural Review Committee to regulate landscaping permitted within the Project. In the event that any Owner shall fail to install and maintain landscaping, including all slope areas within the Lot, in conformance with the Rules and Regulations, or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, after Notice and Hearing, may enter such Owner's property for the purpose of remedying the condition, and such Owner shall promptly reimburse the Association for the cost thereof. Such cost may be levied by the Board as a Compliance Assessment.

10.3 Maintenance of Public Utilities. Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities or public utilities which are located within easements in the Common Property owned by such public utilities. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

10.4 Party Walls. Each wall or fence which is placed on the property line between two (2) Lots (defined to exclude Common Property) shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply. A party wall shall be considered to adjoin and abut against a property line dividing the Lots from the bottom of the foundation over the full length and height of any such wall. Those Owners who have a party wall which adjoins their Lots and effectively creates the boundary line between such Lots shall equally have the right to use such party wall, except that each shall have the exclusive right to the use of the interior surface of the party wall facing such Owner's Residence. Neither Owner shall drive nails, screws, bolts or other objects more than half way through any party wall, interfere with the adjacent Owner's use and enjoyment of the party wall, or impair, in any way, the structural integrity of the party wall. In the event that any portion of such party wall, except the interior surface of one (1) side, is damaged or destroyed from any cause, other than the act or negligence of either party, it shall be repaired or rebuilt at their joint expense.

10.5 Damage and Destruction Affecting a Residence. If all or any portion of any Lot or Residence is damaged or destroyed by fire or other casualty, the Owner of such Lot shall either (i) rebuild, repair or reconstruct the Lot and the Residence thereon in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the ACC, or (ii) clear the Lot of all debris as soon as reasonably possible after the casualty and install landscaping on the Lot without rebuilding the Residence in a manner approved by the ACC. The Owner of any such damaged Lot or Residence and the ACC shall proceed with all due diligence, and the Owner shall cause reconstruction or landscaping to commence within six (6) months after the damage occurs. Completion of such construction or landscaping shall occur within twelve (12) months after such damage occurs, unless prevented by causes beyond such Owner's reasonable control.

ARTICLE 11

CONDEMNATION

11.1 Distribution of Awards - Common Property. A condemnation award affecting all or any portion of the Common Property shall be remitted to the general fund of the Association.

11.2 Board of Directors as Attorney-in-Fact. All Owners hereby appoint the Board as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Common Property.

11.3 Notice to Owners and Mortgagees. The Board, immediately upon learning of any taking by eminent domain of any Common Area, or any threat thereof, shall promptly notify all Owners whose Lots are subject to assessment, and all holders of first mortgages on such Owner's Lots.