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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
VILLA HERMOSA II**

A Residential Condominium Project

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EXHIBITS

Exhibit "A" Pre-Approved Patio Structures

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS, AND
RESERVATION OF EASEMENTS FOR
VILLA HERMOSA II

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND RESERVATION OF EASEMENTS is made this 14th day of December 2005, by Villa Hermosa II, a California corporation (hereinafter referred to as the "Declarant").

W I T N E S S E T H:

A. Declarant is the owner of that certain real property located in the City of Calexico, County of Imperial, State of California, more particularly described as:

Parcel 4 of Amended Parcel Map 058-752-37/38, in the City of Calexico, County of Imperial, State of California, recorded in Book 12, Page 37 of Parcel Maps, on file in the office of the County Recorder of Imperial County, depicted as Module 1 (including Condominium Units 100 through 137, inclusive, therein), on that certain Condominium Plan recorded on _____, 200_, as Instrument No. _____, in the Official Records of said County, together with an undivided _____(/_/) interest in _____ of said Condominium Plan.

(hereinafter referred to as "Phase 1").

B. Declarant desires to subdivide Phase I, as authorized by Section 66427 of the California Government Code, into "condominiums," as defined in Section 783 of the California Civil Code, and to develop Phase I (and any real property, including the "Annexation Property," as hereinafter defined, which is subsequently annexed to Phase 1 pursuant to the Article herein entitled "Annexation of Additional Property") as a common interest development, more particularly described in Section 1351(f) of the California Civil Code as a "condominium project" (hereinafter referred to as the "Project"), as more particularly described below.

C. Declarant deems it desirable to impose a general plan for the development, maintenance, improvement, protection, use, occupancy, and enjoyment of the Project, and to establish, adopt, and impose covenants, conditions, restrictions, easements, equitable servitudes, liens, and charges (hereinafter referred to as the

“Protective Covenants”) upon the Project for the purpose of enforcing, protecting and preserving the value, desirability, and attractiveness of the Project.

D. Declarant deems it desirable for the efficient enforcement, protection, and preservation of the value, desirability and attractiveness of the Project to create a corporation which shall be delegated and assigned the powers of administering and enforcing the Protective Covenants.

E. VH II HOMEOWNERS CORPORATION, a California nonprofit, mutual benefit corporation, has been or will be incorporated under the laws of the State of California for the purpose of exercising the aforesaid powers.

F. Declarant intends to convey Phase 1, and any and all real property annexed thereto, subject to the Protective Covenants set forth hereinbelow.

NOW, THEREFORE, pursuant to Sections 1350, et seq., of the California Civil Code, Declarant declares that it does hereby establish a general plan for the development, maintenance, care, improvement, protection, use, occupancy, management, and enjoyment of the Project, and that all or any portion of the Project shall be occupied, and improved, subject to the Protective Covenants set forth herein, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness, and desirability of the Project, in furtherance of said general plan for the Project. Each and all of the Protective Covenants shall run with the Project, and shall be binding upon all persons having any right, title or interest in the Project, or any portion thereof, their heirs, successors, and assigns, and shall inure to the benefit of and be binding upon Declarant, its successors, and assigns, all subsequent owners of all or any portion of the Project, together with their grantees, heirs, executors, administrators, devisees, successors, and assigns.

ARTICLE I

DEFINITIONS

Section 1. “Annexation Property” shall mean and refer to Modules 2 and 3 or Parcels 2 and 3, Parcel Map 058-752-37/38, and depicted on the Condominium Plan noted above, including all Improvements (as defined below) constructed thereon, all or any portion of which may be annexed to Phase I as set forth in the Article herein entitled “Annexation of Additional Property.”

Section 2. “Architectural Control Committee” shall mean and refer to the architectural committee created pursuant to the Article herein entitled “Architectural Control – Approval.”

Section 3. “Articles” shall mean and refer to the Articles of Incorporation of VH II HOMEOWNERS ASSOCIATION, as filed in the Office of the Secretary of State of the State of California, as such Articles may be amended, from time to time.

Section 4. “Assessments” shall be used as a generic term which shall mean and refer to the following:

(a) “Regular Assessment” shall mean and refer to the annual charge against each Owner and his respective Condominium representing a portion of the Common Expenses of the Association, levied in the manner and proportion as provided for herein;

(b) “Compliance Assessment” shall mean and refer to the personal charge against an Owner representing the costs incurred by the Association in the repair of any damage to the Association Property for which such Owner was responsible, the costs incurred by the Association in bringing such Owner and his Condominium into compliance with this Declaration, any amount due the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration, or any amount due the Association to reimburse the Association for administrative costs attributable to an Owner as provided herein;

(c) “Special Assessment” shall mean and refer to the charge against an Owner and his respective Condominium representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Association Property, of constructing or installing any capital improvements to the Association Property or of taking any extraordinary action for the benefit of the Association Property or the membership of the Association, pursuant to the provisions of this Declaration. In addition, Special Assessment shall mean and refer to a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessment as provided for herein; and

(d) “Special Benefit Assessment” shall mean and refer to a charge levied by the Association against an Owner and his respective Condominium to cover the expenses incurred by the Association in the operation, maintenance, repair and/or funding of reserves for a portion of the Project designated by Declarant or the Association as a “Special Benefit Area,” which expenses are allocable only to the Owners and their Condominiums within such an Area.

Section 5. “Association” shall mean and refer to VH II HOMEOWNERS ASSOCIATION, a California nonprofit, mutual benefit corporation, in which all Owners shall have a membership interest as more particularly described hereinbelow, provided that membership shall be limited to Owners. In the event the Association as a corporate entity is dissolved, a nonprofit unincorporated association shall forthwith and without further action or notice be formed to succeed to all of the rights and duties of said Association, as set forth herein. The affairs of such unincorporated association shall be governed by the By-Laws and this Declaration as if they were created for the purpose of governing the affairs of an unincorporated association.

Section 6. “Association Property” shall mean and refer to all personal property now or hereafter owned by the Association, and all that certain real property (and to all Improvements constructed thereon) owned in fee by the Association or over which the Association has an easement for the use, care or maintenance for the common use, benefit and enjoyment of all Members, as provided herein, but excepting therefrom the Condominium Units and the Common Area, or for such other purposes as may be permitted by this Declaration. Additional Association Property may be annexed as indicated in a subsequent document or in any Notice of Annexation recorded in the Office of the County Recorder, in accordance with the provisions of the Article herein entitled “Annexation of Additional Property.” The Association Property in Phase I of the Project is Module 1 shown and described on the Condominium Plan, excepting therefrom the agency right-of-ways, the Common Area, and the Condominium Units located therein.

Section 7. “Board” shall mean and refer to the Board of Directors of the Association, elected in accordance with the By-Laws of the Association and this Declaration.

Section 8. “By-Laws” shall mean and refer to the By-Laws of the Association which have been, or will be, adopted by the Board, as such By-Laws may be amended, from time to time.

Section 9. “City” shall mean and refer to the City of Calexico, and its various departments, divisions, employees and representatives.

Section 10. “Common Area” in Phase I shall mean and refer to that certain portion of Module 1 on the Condominium Plan, as defined in Section 1351(b) of the California Civil Code, and more particularly described as the residential condominium buildings depicted on the Condominium Plan designated as units 100 through 185, except the Condominium Units contained therein, and the real property underlying the condominium buildings. The lateral boundaries of the Common Area shall be the perimeter foundations of each condominium building. The lower vertical boundary of the Common Area shall be the lower ~~upper~~ vertical boundary of the residential condominium buildings shown on the Condominium Plan. The upper vertical boundary of the Common Area shall extend 50.00 feet from the lower vertical boundary. Portions of the Annexation Property may be designated as additional “Common Area” for a subsequent Phase in any Notice of Annexation, or other document, recorded in the Office of the County Recorder in accordance with the Article herein entitled “Annexation of Additional Property.”

Section 11. “Common Expenses” shall mean and refer to the actual and estimated costs to be paid by the Association for the following: (a) owning, maintaining, managing, operating, repairing, and replacing the Association Property and any portion of the Common Area maintained by the Association; (b) managing and compensation paid by the Association to managers, accountants, attorneys, and any Association employees; (c) providing utilities and other services to the Association Property, and, if

not separately metered, to the Condominium Units; (d) providing insurance as provided for herein; (e) paying that portion of any Assessment attributable to Common Expenses not paid by the Owner responsible for payment; (f) paying taxes for the Association; and (g) paying for all other goods and services designated by, or in accordance with, other expenses incurred by the Association for the benefit of all Owners. Additionally, the Common Expenses shall include adequate reserves, as the Board shall determine to be appropriate, for the repair and replacement of those elements of the Association Property and Common Area which must be repaired or replaced on a periodic basis, rather on a regular annual basis.

Section 12. “Condominium” shall mean an estate in real property, as defined in California Civil Code Section 1351(f), consisting of

(a) a separate interest in a Condominium Unit, together with an undivided fractional fee interest in the Common Area of that Phase of the Project of which the Condominium is a part, as more particularly described in Article III of this Declaration.

(b) an easement for ingress, egress and recreational use over portions of the Association Property in the Phase together with an easement over the Association Property in other Phases, with such easement not becoming effective to benefit a Phase until a Condominium is conveyed in the Phase benefited by the easement and such easement not becoming effective to burden a Phase until a Condominium in the Phase is conveyed to a retail purchaser.

(c) the Exclusive Use Common Area (as defined in Article III, Section 4 below) appurtenant to each Condominium Unit.

(d) A membership in the Association.

Condominiums in any subsequent Phase may be described in a Notice of Annexation which is recorded that affects such Phase.

Section 13. “Condominium Plan” shall mean and refer to that instrument entitled “Condominium Plan,” prepared in accordance with Section 1351(e) of the California Civil Code, as the same may be amended, from time to time, and recorded in the Office of the County Recorder, affecting one (1) or more Phases of the Project, and shall consist of: (a) a description or survey map of the Project, which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Common Area, each Unit and the Association Property, and (c) a certificate consenting to the recordation thereof signed and acknowledged by the record owner of fee title to the property included in the Condominium Plan, and by either the trustee or the beneficiary of each recorded deed of trust, and the mortgage of each recorded mortgage encumbering the property included in the Condominium Plan. The Condominium Plan shall be recorded prior to or concurrently with this Declaration.

Section 14. “Condominium Unit” shall mean and refer to the elements of a Condominium which are not owned in common with the Owners of the other Condominiums in the particular Phase in which the Condominium is located. Condominium Units in Phase I are more particularly described in the Article herein entitled “Description of the Condominiums” and in the Condominium Plan. Condominium Units in subsequent Phases shall be described in a Notice of Annexation and in the Condominium Plan. For purposes of this Declaration, the term “Condominium Unit” is deemed to be a “separate interest,” as defined in Section 1351(f) of the California Civil Code.

Section 15. “County” shall mean and refer to the County of Imperial, California, and its various departments, divisions, employees and representatives.

Section 16. “Declarant” shall mean and refer to Hermosa Homes, Inc., a California corporation, and to any person or entity acquiring all of Declarant's interest in the Project (including all of Declarant's rights and obligations as created and established herein) pursuant to a written assignment, deed or other instrument from Declarant which is recorded in the Office of the County Recorder. Any such instrument may include only certain specific rights and/or obligations of the Declarant and may be subject to such conditions as Declarant may impose in its sole discretion.

Section 17. “Declaration” shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and to all amendments to this Declaration as may be recorded, from time to time, in the Office of the County Recorder, in accordance with Section 1351(h) and Section 1353 of the California Civil Code.

Section 18. “DRE” shall mean and refer to the Department of Real Estate of the State of California, which administers the sale of subdivided lands pursuant to sections 11000, et seq., of the California Business and Professions Code, or any similar California statute hereinafter enacted.

Section 19. “Exclusive Use Common Area” shall mean those portions of the Association Property over which exclusive easements are reserved for the benefit of certain Owners, as described herein and shown on the Condominium Plan, including, without limitation, covered parking and back yards, as more particularly described in Article III, Section 4, in accordance with California Civil Code Section 1351(i), as the same may be amended, from time to time.

Section 20. “FHLMC” shall mean and refer to the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) created by Title III of the Emergency Home Finance Act of 1970, as amended, from time to time, including any successors thereto.

Section 21. “FNMA” shall mean and refer to the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title

VIII of the Housing and Urban Development Act of 1968, as amended, from time to time, including any successors thereto.

Section 22. “GNMA” shall mean and refer to the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successors thereto.

Section 23. “Improvements” shall mean and refer to all structures and appurtenances thereto of every kind, including, but not limited to, Condominium Units, open parking areas, pool, tot lot, private streets, street lights, entry gates, pavement, sidewalks, walls, fences, decorative or informative signs, retaining walls, mail kiosks, common trash receptacles, if any, screens, private utility line connections, poles, the exterior surfaces of any visible structure and the paint on such surfaces, signs, all Association Property, landscaping and irrigation systems. Improvements shall also mean and refer to all additions and/or modifications to the exterior of any condominium building (i.e., a separate building containing one or more Condominium Units), including, but not limited to, (a) painting the exterior of any condominium building or other structure, (b) changing the roofing material on any condominium building, and/or (c) building, constructing, installing, altering or planting, as the case may be, any spas, patio covers, patio slabs, decks, gazebos, screening walls or fences, shades, awnings, screen doors, exterior doors, skylights, solar heating panels, air conditioning and/or water softening or refining fixtures or systems, and all landscaping which left in its natural condition will grow to a height in excess of twenty feet (20’).

Section 24. “Member” shall mean and refer to every person or entity who holds membership in the Association, as more particularly set forth in the Article herein entitled “The Association,” and shall be synonymous with the term “Owner.”

Section 25. “Module” shall mean and refer to real property which is described and lettered on a recorded subdivision or parcel map, or Condominium Plan, as a separate three-dimensional volume. A module may include Condominium Units within it, but the Condominium Units do not constitute modules in and of themselves.

Section 26. “Mortgage” shall mean and include any mortgage or deed of trust, or other conveyance of a Condominium (or other portion of the Project) to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance, including an installment land sales contract (as described in Sections 2985 through 2985.6 of the California Civil Code, as same may be amended, from time to time). The term “Deed of Trust,” when used herein, shall be synonymous with the term “Mortgage.”

Section 27. “Mortgagee” shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a Deed of Trust or the vendor under an installment land sales contract, as the case may be, and the assignees of a Mortgagee, beneficiary or vendor.

Section 28. “Mortgagor” shall mean and refer to a person or entity who mortgages his or its Condominium to another, i.e., the maker of a Mortgage, and shall include a trustor of a Deed of Trust and the vendee under an installment land sales contract.

Section 29. “Notice and Hearing” shall mean and refer to written notice and the opportunity for a hearing before the Board or the Architectural Control Committee of the Association, as applicable, or other tribunal appointed by the Board in the manner provided in the By-Laws, at which the affected Owner shall have an opportunity to be heard in person, or by counsel at the Owner’s expense, in the manner provided herein and in the By-Laws.

Section 30. “Notice of Annexation” shall mean and refer to that certain instrument utilized to annex all or a portion of the Annexation Property, in accordance with the provisions of this Declaration, thereby subjecting said subsequent Phase to the provisions of this Declaration and to the jurisdiction of the Association, or to designate certain Condominium Units and real property as a separately numbered Phase.

Section 31. “Owner” shall mean and refer to the record Owner, or Owners if more than one (1), or the purchaser under an installment land sales contract of fee title to, or an undivided interest in, any Condominium in the Project. The term “Owner” shall include Declarant, the vendee under an installment land sales contract (as described in Sections 2985 through 2985.6 of the California Civil Code, as same may be amended, from time to time), and the holder of a leasehold estate having a term of ten (10) or more years, including renewal periods. The foregoing does not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation.

Section 32. “Phase” shall mean and refer to: (a) Phase 1, and (b) any remaining portion of Parcels 2, 3 and 4 designated as a Module on the Condominium Plan and improved with Condominiums or other Improvements which is (are) annexed to Phase I of the Project in accordance with this Declaration, and which is (are) subject to a separate Final Subdivision Public Report issued by the DRE, unless otherwise defined in such Notice of Annexation. Phase 1 consists of the Association Property and Common Area (generally described as Module 1 in the Condominium Plan), together with the Condominium Units constructed thereon.

Section 33. “Project” shall mean and refer to Phase I (and to all the Improvements, including the Condominium Units, constructed thereon), together with all Association Property, Common Area, and Annexation Property which are annexed to Phase I in accordance with the applicable provisions of this Declaration.

Section 34. “Rules and Regulations” shall mean and refer to the Rules and Regulations adopted by the Board pursuant to the By-Laws or this Declaration, as they may be amended, from time to time.

Section 35. "Application of Definitions. The aforesaid definitions shall be applicable throughout this Declaration, and to any supplements or amendments hereto filed or recorded pursuant to the provisions of this Declaration, and to any Notice of Annexation for a subsequent Phase, unless otherwise indicated or the context shall prohibit such application.

ARTICLE II

INTRODUCTION TO VILLA HERMOSA

Section 1. General Plan of Development. Villa Hermosa II is presently planned as a multi-phase condominium project, as defined in Section 1351(f) of the California Civil Code, which, if completed as planned, will consist of approximately eighty six (86) Condominiums and various recreational amenities. Recreational amenities may include a pool, and tot lot. The Project will be developed in accordance with California Civil Code, Sections 1350, et seq., and in substantial conformance with the development plan and plans submitted to and approved by the City and/or the DRE. The Association will maintain the Association Property and the Common Area and will be the management body for the project, as provided herein.

(a) As presently planned, Phase I will consist of approximately thirty eight (38) Condominiums, Association Property and Common Area. The thirty eight (38) Condominium Units will be completed prior to the first close of an escrow for the sale of a Condominium in Phase I. The Condominiums are more particularly described in the Article herein entitled "Description of the Condominiums." The Owners in Phase I will receive title to their respective Condominium Units, various easements (exclusive and nonexclusive, as set forth in this Declaration), an undivided one/thirty eighth (1/38th) interest in the Common Area depicted as Module 1 on the Condominium Plan, and a membership in the Association.

(b) As presently planned, subsequent Phases of the Project may be annexed or designated as more particularly set forth in this Declaration and the Condominium Units in such Phases may be of similar construction and appearance as the Condominium Units in Phase I. The Owners in subsequent Phases will receive title to their respective Condominium Units, various easements (exclusive and nonexclusive, as set forth in this Declaration and the Notice of Annexation recorded on said Phase), an undivided interest in the Common Area described in such Phase and a membership in the Association.

Section 2. Membership in Association. As more particularly set forth in this Declaration, each Owner of a Condominium in the Project shall automatically become a Member of the Association, and shall be obligated for the payment of Assessments to the Association. In addition, each Owner, his family members, lessees, tenants, guests, and invitees, will be entitled to the use and enjoyment of the Association Property within the project, in accordance with this Declaration, the By-Laws, and Rules and Regulations adopted by the Board.

Section 3. Annexation of Subsequent Phases Into the Association. At such time as future Phases are developed, if ever, Declarant may annex said Phases into the Association or designate the same pursuant to the terms and conditions set forth herein. If Declarant elects to annex or designate said Phases, a Notice of Annexation shall be recorded on each Phase, which shall serve to impose the Protective Covenants set forth herein upon such Phase and to subject such Phase to the jurisdiction of the Association. The voting rights in the Association and the Assessments levied by the Association shall be adjusted as set forth herein and in such documents.

Section 4. Declarant's Exclusive Easement Rights to Complete Phases. Declarant hereby reserves the following easement rights in, on, over, under, upon, across and through each Phase. Until the first close of escrow to a retail purchaser of a Condominium in a Phase or until Declarant quitclaims its easement rights hereby reserved, only Declarant and those persons authorized by Declarant may enter the Phase. Declarant hereby reserves exclusive easements for access and all activities necessary or convenient in order to allow Declarant to complete all portions of each Phase, including all Improvements to the Condominiums and Association Property planned for such Phase. Declarant shall have the right to deny access to a Phase in which Declarant has exclusive easement rights by fencing the Phase. The exclusivity of Declarant's easement rights to a Phase shall expire upon the conveyance of a Condominium to a retail purchaser in the Phase and, thereafter, each Owner of a Condominium in the Phase and those other persons authorized by the Board shall also have the right to enter the Phase. Declarant's construction easements shall completely terminate as to a Phase upon completion of construction in the Phase and the close of escrow for the last Condominium located therein.

Section 5. Declarant's Use of Streets and Utilities. Declarant hereby reserves the right to use the private street system and any private utilities within the Project for, including, but not limited to, construction, access and connection of utilities by Declarant.

Section 6. Development Control. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, Declarant's right to complete the planning, development, grading, construction, advertising, marketing, leasing and sale of the Condominiums, and all other property within the Project (including any property which may be annexed thereto pursuant to the provisions of this Declaration), including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing of Condominiums in the Project: (a) complete construction of any Improvements in the Project; (b) redesign or otherwise alter the style, size, color or appearance of any Improvements in any portion of the Project owned by Declarant; (c) construct additional Improvements on any portion of the Project owned by Declarant; (d) subdivide, resubdivide, grade or re-grade any portion of the Project owned by Declarant; and (e) otherwise control all aspects of constructing the Improvements in the Project and of marketing and conveying Condominiums in the

Project. In furtherance thereof, Declarant hereby reserves, unto itself and its successors and assigns, for a period of five (5) years from recordation of this Declaration or until all condominiums in the Project are sold (and escrows closed), whichever shall first occur:

(a) A nonexclusive easement for ingress and egress in, on, over, under, across, and through the Project as necessary to construct the Condominium Units and all other Improvements;

(b) The exclusive right to maintain one (1) or more sales office(s), model complex(es), interior design, decorator center(s) and parking area for employees, agents and prospective buyers;

(c) The exclusive right to place reasonable signs, flags, banners, billboards or other forms of advertising on any portion of the Association Property (specifically including the project entry area) and/or Project owned or controlled by Declarant, as Declarant deems necessary, irrespective of size, color, shape or materials of such items;

(d) The right to determine, so long as Declarant owns an interest in the Project, the hours of operation, if any, of the Project entry gates;

(e) A nonexclusive right to utilize the Association Property and any guest or unassigned open parking spaces in connection with its program for the sale or leasing of Condominiums in the Project;

(f) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Module or Condominium owned by Declarant, as Declarant may, in its sole discretion, deem appropriate;

(g) The right to conduct any commercial activity upon any Module owned by Declarant which reasonably relates to the development, marketing, leasing or sale of the Condominiums or other property in the Project; and

(h) The right to utilize Association Property in the Project, and exclude therefrom Owners and their guests, for marketing, sales and promotional activities.

Each Owner hereby grants, upon acceptance of a deed to his Condominium Unit, an irrevocable special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Declaration.

Section 7. Non-Liability of Declarant. Nothing in this Article or elsewhere in this Declaration shall be understood or construed to compel Declarant to construct any subsequent Phase of the Project, nor to compel Declarant to annex said Phases into the Project. The purpose of this Article is merely to describe the legal relationship between the first and any subsequent Phases of the Project in the event all or any of such Phases shall be constructed and annexed into the Project.

Section 8. Irrevocable Limited Power of Attorney. Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, hereby irrevocably appoints Declarant as his attorney-in-fact, for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and hereby grants to Declarant an irrevocable limited power of attorney coupled with an interest for Declarant to act as his attorney-in-fact in connection with any modification to the development plans of all or any portion of the Project. Each Owner hereby acknowledges and agrees that this irrevocable limited power of attorney is: (a) retained for the benefit of the Declarant and not the Owner; and (b) created by Owner's acceptance of a Deed to a Condominium and as part of the consideration for the purchase and sale of a Condominium. Based on the foregoing, each Owner further acknowledges and agrees that this irrevocable limited power of attorney is "coupled with an interest" and, pursuant to Section 2356 of the California Civil Code, as same may be amended, from time to time, may not be terminated by: (a) the Owner's revocation of such limited power of attorney; (b) the Owner's death; or (c) the Owner's incapacity to contract. In furtherance thereof and subject to the limitations and restrictions set forth in this Article, Declarant shall have the right and power as a duly authorized attorney-in-fact following to perform any of the following actions:

(a) To prepare, execute, acknowledge and record any map or record of survey affecting the Project required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of the recording of this Declaration, or as thereafter amended, and any ordinances, rules or regulations of the City and any other governmental entities and authorities having jurisdiction over the Project in effect on the date of the recording of this Declaration, or as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(b) To prepare, execute, acknowledge and record any amendment to a Condominium Plan, including, without limitation, any amendments necessary to cause such Condominium Plan to conform with the Improvements as actually built, which may be required or permitted by the laws of the State of California as in effect on the date of the recording of this Declaration, or as thereafter enacted or amended, and any ordinances, rules and regulations of the City, and any other governmental entities and authorities having jurisdiction over the Project, as in effect on the date of the recording of this Declaration, or as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or

permitted by any federal, State and local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(c) To prepare, execute, acknowledge, and file for approval any application for zoning or setback changes or lot line adjustments, or variance or conditional use permits, or any other permits or reports required or permitted by the laws of the State of California in effect on the date of the recording of this Declaration, or as thereafter enacted or amended, and any ordinances, rules and regulations of the City, and any other governmental entities and authorities having jurisdiction over the Project, as in effect on the date of the recording of this Declaration, or as thereafter enacted or amended, or which may be required or permitted by any title insurer, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; and to execute, acknowledge, and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(d) To make applications for any property reports or public reports, or amendments thereto, or exemption from the requirements therefor required or permitted by federal and State statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, State and local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations;

(e) To deliver any public reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(f) To prepare, execute, acknowledge and file for approval any registration or application for any permit, approval, exemption, ruling or entitlement, which registration or application is required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration, and as hereafter enacted or amended by any federal, State and local governmental entities and authorities, and, in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body, and by any such laws and regulations; to appear before any such governmental bodies, and to execute and deliver any improvement agreements and bonds, and post deposits securing the performance of any such conditions and obligations; and do all other things now or thereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare, execute, acknowledge and record any deeds, waivers, releases, reconveyances or other documentation which may be permitted or required to clear title to any constructed or unconstructed Condominium Units in the Project; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish development of the Project.

Section 9. Mortgage Interest and Other Encumbrances to Take Subject to Power of Attorney. The acceptance or creation of any Mortgage or other encumbrance, whether or not voluntary, created in good faith or given for value, shall be deemed to be accepted or created subject to each of the terms and conditions of the power of attorney described hereinabove.

ARTICLE III

DESCRIPTION OF THE CONDOMINIUMS

Declarant, in order to establish a plan of Condominium ownership for Phase I, does hereby declare that it has divided, and does hereby divide, Phase I into the following freehold estates:

Section 1. Condominium Unit. Each Condominium Unit shall be a separate interest, as defined in Section 1351(f) of the California Civil Code, consisting of the following element in accordance with the plans and specifications for each Condominium Unit within Phase I, as more particularly shown and described on the Condominium Plan.

(a) Residential Airspace Element. The residential airspace element is bound by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of said element, and the airspace encompassed thereby, identified on the Condominium Plan by the letter "A" or "B" followed by its respective Condominium Unit number. The lower and upper boundaries of each residential airspace element are horizontal or sloped planes, the elevations of which are indicated in the diagrams and tables set forth in the Condominium Plan. The lateral boundaries of each residential airspace element are vertical planes at the limits of the horizontal dimensions shown in the Condominium Plan for each residential airspace element.

Each Condominium Unit includes both the portion of the building so described and the airspace so encompassed, all windows and doors of said Condominium Unit (including all locks, handles, latches, screens, weather-stripping and exterior doors) the forced air heating unit, the air conditioning compressor, if any, the hot water heater, all built-in appliances and fixtures, and the firebox portion of the fireplace in or servicing the Condominium Unit, if any, and the interior staircase, but the following are not a part of the Condominium Unit: bearing walls, columns, beams, floors, roofs, slabs, foundations, chimneys, fences, reservoirs, tanks, pumps, private on-site

sewer laterals and lines, common mailbox structures, irrigation equipment, fire sprinklers, including sprinkler heads which protrude into the airspace of the Condominium Unit, if any, and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting and other utility installations wherever located (except all utility installations and/or outlets thereof when located within the Condominium Units, including the internal and external telephone wiring designed to exclusively serve a Condominium Unit), sidewalks, retaining walls, poles, signs, Project monument sign, all landscaping located on the Association Property and all recreational amenities.

Section 2. Presumption of Boundaries of Condominium Units. In interpreting this Declaration, the Condominium Plan and all instruments of conveyance, the existing physical boundaries of the Condominium Unit, or of a Condominium Unit reconstructed in substantial accordance with the original Condominium Plan thereof, shall be conclusively presumed to be its boundaries, rather than the metes and bounds (or other description) expressed in this Declaration, Condominium Plan or instrument of conveyance, regardless of settling or lateral movement of the Condominium building and regardless of minor variances between the boundaries shown in the Condominium Plan, in the deed and/or in this Declaration, and the actual boundaries of the condominium building (i.e., a separate building containing one (1) or more Condominium Units).

Section 3. Common Area. A freehold estate consisting of an undivided fractional fee interest in a portion of the Project. The Common Area in Phase I shall mean and refer to that certain portion of Module 1 on the Condominium Plan, as defined in Section 1351(b) of the California Civil Code, and more particularly described as the residential condominium buildings depicted on the Condominium Plan designated as units 100 through 185, except the Condominium Units therein, and the real property underlying the condominium buildings. The lateral boundaries of the Common Area shall be the perimeter foundations of each condominium building. The lower vertical boundary of the Common Area shall be the upper vertical boundary of the residential condominium buildings shown on the Condominium Plan. The upper vertical boundary of the Common Area shall extend 50.00 feet from the lower vertical boundary.

Section 4. Exclusive Use Common Area. Exclusive Use Common Area shall mean and refer to those portions of the Association Property and/or Common Area which are reserved for the exclusive use of the Owners of particular Condominium Units. Each Exclusive Use Common Area constitutes an exclusive easement appurtenant to its assigned Condominium Unit, subject to the exclusive uses and purposes set forth herein. The Exclusive Use Common Area, and the Condominium Units within Phase I to which each such Area is appurtenant, is identified in the Condominium Plan as follows:

(a) Back Yard. The back yard bound by and contained within the exterior finished surfaces of the back yard perimeter walls and/or fences and doors, identified on the Condominium Plan by the letters "BY" followed by its respective Condominium Unit number, is hereby assigned to such Condominium Unit as shown in

the Condominium Plan. Subject to Board approval, an Owner may have the right to exclusively use portions of the Association Property or Common Area above or below the vertical limits of the Owner's back yard area.

(b) Covered Parking. The covered parking, identified on the Condominium Plan by the letters "CP" followed by its respective Condominium Unit number, is hereby assigned to such Condominium Unit as shown in the Condominium Plan.

It shall be the obligation of each and every Owner to keep his respective Exclusive Use Common Area in a neat, clean, safe and attractive condition at all times. Notwithstanding the foregoing, in the event the Declarant or the Association installs landscaping Improvements in the Exclusive Use Common Area back yard of a Condominium, such landscaping shall be maintained by the Association as determined by the Board. In addition, if the back yard of a Condominium is affected by the installation of such landscaping Improvements, the Owner of the affected Condominium shall not interfere with the maintenance of such landscaping by the Association nor shall that Owner cause any damage or destruction to such landscaping. In addition, the Association shall be responsible for painting and performing all routine maintenance and repairs of any structural components installed by Declarant in the Exclusive Use Common Area; provided, however, if any maintenance or repairs are required due to the willful or negligent acts or omissions of any Owner, his family, lessees, tenants, guests, or invitees, the Association shall levy a Compliance Assessment against the Owner for such costs.

Section 5. Undivided Fractional Fee Interest in Common Area. The interest in the Common Area hereby established and which shall be conveyed with each respective Condominium Unit is a one/thirty eighth (1/38th) undivided fractional fee interest. The above respective undivided fractional fee interest established and to be conveyed with the respective Condominium Units, as indicated above, cannot be changed. Declarant, for and on behalf of itself, and its successors, assigns and grantees, covenants and agrees that neither the Condominium Unit nor the respective undivided fractional fee interest in the Common Area shall be separately conveyed or encumbered. An otherwise valid conveyance or encumbrance referring only to the Condominium Unit shall also convey or encumber the respective undivided fractional fee interest in the Common Area. Any attempt to convey or encumber the undivided fractional fee interest in the Common Area without the respective Condominium Unit shall be null and void.

Section 6. Easements Over Association Property. Each Owner shall have a nonexclusive easement appurtenant to his Condominium for ingress, egress, use and enjoyment in, on, over, under, across, and through the Association Property, except those portions of the Association Property set aside as Exclusive Use Common Area, as provided for in this Declaration.

Section 7. Components of Condominium Ownership. Each Condominium includes: (a) a separate interest in a Condominium Unit, as defined in Section 1 hereinabove; (b) all easements, exclusive and nonexclusive, appurtenant to the respective Condominium Unit; (c) a one/thirty eighth (1/38th) undivided fractional fee interest in the Common Area in Phase 1; and (d) a membership in the Association.

Section 8. Condominium Numbering. The thirty eight (38) individual Condominium Units which are hereby established and which shall be individually conveyed are described and numbered on the Condominium Plan.

Section 9. Guest Parking Areas. Except as otherwise provided in this Declaration, any unassigned, open parking areas, shown and designated on the Condominium Plan shall be used for guest parking on a first come, first served basis.

Section 10. Reservation of Easements Over Association Property For Subsequent Phases. Declarant hereby reserves the right to grant nonexclusive easements over the Association Property in Phase I (except any portions of the Association Property set aside as Exclusive Use Common Area and except for any portions subject to the rights reserved by Declarant as set forth in this Declaration) in favor of each Owner of a Condominium in a subsequent Phase at such time as the annexation of such Phase becomes effective, and the Owners of the Condominiums described in this Declaration shall automatically obtain nonexclusive easements over all Association Property which is a part of such subsequent Phase, except any portion of the Association Property set aside as Exclusive Use Common Area or subject to rights reserved by Declarant.

ARTICLE IV

RESERVATION OF EASEMENTS AND OTHER PROPERTY RIGHTS IN THE ASSOCIATION PROPERTY

Section 1. Owners' Easements. Every Owner shall have a nonexclusive right and easement of access, use and enjoyment in and to the Association Property. Said right and easement shall be appurtenant to and shall pass with title to every Condominium, subject to the limitations set forth in Section 2 below.

Section 2. Limitations on Owners' Easement Rights. The rights and easements of access, use, and enjoyment set forth in Section 1 hereinabove shall be subject to the provisions of this Declaration, including, but not limited to, the following:

(a) The right of Declarant to designate additional Common Area and Association Property by recordation of one (1) or more Notices of Annexation, pursuant to the provisions of the Article herein entitled "Annexation of Additional Property";

(b) The right of the Association to reasonably limit the number of guests of Owners;

(c) The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Association Property, including the Exclusive Use Common Area;

(d) The right of the Association, in accordance with its Articles, By-Laws and this Declaration, to borrow money with the assent of sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, and/or to Mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, for the purpose of improving, altering, removing or repairing the Association Property and related facilities;

(e) The right of the Association to suspend the voting rights and rights and easements of any Member (and the persons depriving such rights and easements from any Member) to use and enjoy any recreational amenities on the Association Property for the period during which any Assessment against such Member's Condominium remains unpaid and delinquent, and, after Notice and Hearing, to impose monetary penalties or suspend such use rights and easements for a period not to exceed thirty (30) days for any noncontinuing violation of this Declaration or Rules and Regulations, it being understood that any suspension for either nonpayment of any Assessments or breach of such Rules shall not constitute a waiver or discharge of the Member's obligations to pay Assessments as provided herein;

(f) Subject to the terms and provisions of the Article herein entitled "Mortgagee Protection," the right of the Association to dedicate or transfer all or any part of the Association Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless: (1) an instrument approving said dedication or transfer is signed by two authorized officers of the Association attesting that Owners representing at least sixty-seven percent (67%) of the voting power of the Association, excluding Declarant, approved such action and is recorded in the Office of the County Recorder, and (2) a written notice of the proposed dedication or transfer is sent to every Owner not less than fifteen (15) days nor more than thirty (30) days in advance; provided, however, that the dedication or transfer of easements for utilities or for other public purposes consistent with the intended use of the Association Property shall not require the prior approval of the Members of the Association;

(g) The right of the Association to perform and exercise its duties and powers as set forth herein;

(h) The right of the Association to approve, which approval shall not be unreasonably withheld, and impose various conditions on the reasonable access to the Association Property for the purpose of allowing an Owner to maintain the internal and external telephone wiring designed to serve his particular Condominium Unit. In

addition, the right of the Association, acting through the Board, to reasonably restrict access to roofs, maintenance and landscaped areas, and similar areas of the Association Property;

(i) Other rights of the Association, the Architectural Control Committee, the Board, the Owners and Declarant with respect to the Association Property as may be provided for in this Declaration;

(j) Until construction, refurbishment, preparation for sale, or other related activity is completed on that portion of the Association Property located in Phases other than Phase I ("Future Phase Areas"), only Declarant and persons authorized by Declarant may enter the Future Phase Areas. Declarant hereby reserves an exclusive easement for construction, refurbishment, preparation for sale, or other related activity, access, ingress and egress over the Future Phase Areas to allow Declarant to complete construction, refurbishment, preparation for sale, or other related activity, concerning the Condominium Units and Association Property in such Future Phase Areas as planned by Declarant. Declarant's exclusive easement over the Future Phase Areas in any later Phase shall terminate upon the commencement of Assessments on Condominium Units in such later Phase. If the Association makes a demand against any bond posted by Declarant to ensure the completion of Improvements to the Association Property in the Project, the Association shall be entitled to landscape all or any portion of the Project containing such uncompleted Association Property; provided, however, that such landscaping shall only include grass, shrubs and other plantings, and walkways;

(k) The right of the Declarant, so long as Declarant has an ownership in the Project, to control any access gates for the Project;

(l) The right of the Association, acting through the Board, to grant, consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Association Property for purposes not inconsistent with the intended use of the Project as a residential condominium project; and

(m) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Association Property imposed by Declarant, the City or other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, including, but not limited to, the rights of the City or such other governmental agency having jurisdiction to use their vehicles or appropriate equipment over those portions of the Association Property designed for vehicular movement to perform municipal functions or emergency or essential public services or to impose occupancy restrictions.

Section 3. Delegation of Association Property Use Rights. Any Owner who resides within the Project may delegate his rights of use and enjoyment of the Association Property to the members of his immediate family and their guest and invitees. In the event an Owner has rented or leased his Condominium, his rights of use

and enjoyment of the Association Property shall be automatically delegated to his tenants or lessees for the duration of their tenancy, and the Owner shall forfeit any rights of use and enjoyment to the Association Property (except those portions reasonably necessary to access said Owner's Condominium to perform normal functions of a landlord) for the duration of such tenancy. With respect to an installment land sales contract, the seller under the contract shall be deemed to have delegated his rights of use and enjoyment to the Association Property to the purchaser under the contract.

Section 4. Easements for Vehicular Traffic. In addition to the general right and easements for access, use and enjoyment granted herein, there shall be, and Declarant hereby reserves unto itself, and its successors and assigns, and grants to each and every Owner a nonexclusive easement appurtenant to his Condominium for vehicular traffic over the private streets and drives within the Project.

Section 5. Easements for Utilities. The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, electricity, gas, television cable and telephone lines, and other facilities, shall be governed by the following:

(a) Each respective utility company shall maintain all utility facilities and connections on the Project owned by such utility company; provided, however, that if any company shall fail to do so, it shall be the obligation of each Owner to maintain those facilities and connections located upon, within, or servicing (i.e., sewer/water laterals) such Owner's Condominium, and it shall be the obligation of the Association to maintain those facilities and connections located upon the Association Property and which provide service to more than one (1) Condominium (i.e., trunk/main line utilities). Notwithstanding the foregoing, internal and external telephone wiring designed to serve a single Condominium Unit, but located outside the boundaries of the Condominium Unit, shall be maintained by the Owner of said Condominium Unit. Additionally, the Association shall maintain, repair and replace any portion of Association Property that is damaged, destroyed or altered in any manner as a result of repair or maintenance work to utility facilities or connections performed by a utility company.

(b) Wherever sanitary sewer, water or gas connections, television cables, electricity or telephone lines are installed within the Project and it becomes necessary to gain access to said connections, cables and/or lines through a Condominium Unit owned by someone other than the Owner of the Condominium Unit served by said connections, cables and/or lines, the Owner of the Condominium Unit served by said connections, cables and/or lines shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter upon such other Condominium Unit or to have the utility companies enter upon such other Condominium Unit to repair, replace and generally maintain said connections, cables and/or lines.

(c) Whenever sanitary sewer, water or gas connections, television cables, electricity, or telephone lines are installed within the Project and said

connections, cables and/or lines serve more than one (1) Condominium Unit, the Owner of each Condominium Unit served by said connections, cables and/or lines shall be entitled to the full use and enjoyment of such portions of same as service his Condominium Unit.

(d) In the event of a dispute between Owners respecting the repair or rebuilding of the aforesaid connections, cables and/or lines, or the sharing of the cost thereof, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to the Board who shall decide the dispute, and the decision of the Board shall be final and conclusive on the Owners.

(e) Easements over the Project for the installation and maintenance of electric and telephone lines, water, gas, drainage and sanitary sewer connections and facilities, and television antenna cables and facilities, all as shown on the recorded map of the Project and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant, together with the right to grant and transfer the same.

Section 6. Easements for Maintenance of the Association Property. There is hereby created, granted, and reserved a nonexclusive easement in favor of the Association for ingress, egress and access in, on, over, under, across and through all portions of the Project as reasonably required by the Association to perform its maintenance obligations set forth in this Declaration. In the event it becomes necessary for the Association to enter upon any Condominium Unit or Exclusive Use Common Area for purposes of: (a) maintaining the Association Property; or (b) bringing an Owner and/or his Condominium into compliance with this Declaration, in accordance with the provisions set forth herein, the Association, and its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner and at a reasonable hour of the day, to enter upon or within such Owner's Condominium Unit for the performance of such work. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by such entry, the Association shall repair the same at its expense. Notwithstanding the foregoing, in the event of an emergency, such right of entry shall be immediate.

Section 7. Easements for Drainage. There are hereby created, granted and reserved over the Association Property (including the Exclusive Use Common Area) easements for drainage according to the established patterns for drainage created by the approved grading plans for the Project, as well as according to the actual, natural and existing patterns for drainage within, onto and off of the Project. Each Owner shall maintain his respective Exclusive Use Common Area back yard in such a manner to ensure that no water collects or ponds in any location adjacent to any walls or fences of any adjacent Condominium. Without limiting potential liability as a result of other activities or actions, each Owner shall be liable for any damage that occurs to a Condominium as a result of modifications to such Owner's respective Exclusive Use Common Area back yard. Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with the drainage patterns of waters over his Exclusive Use

Common Area back yard or, in the alternative, that in the event it is necessary and essential to alter said drainage patterns, he will make adequate provisions for proper drainage and submit such plans for written approval by the Architectural Control Committee. Notwithstanding the foregoing, each Owner covenants and agrees that he shall not alter, in any manner whatsoever, the grade of his back yard.

Section 8. Easements for Construction and Sales. Declarant hereby reserves, for a period of five (5) years from the recordation of this Declaration or until all Condominiums in the Project are sold (and escrows closed), whichever occurs first, nonexclusive easements for access, ingress, and egress in, on, over, across, under, and through the Project to carry on normal sales activity, including the operation of a models complex, sales office and parking area, and the display of promotional signs and exhibits in connection with the sale or lease of Condominiums in the Project.

Section 9. Reservation of Construction Rights by Declarant. In addition to the right reserved by Declarant to control development of the Project as set forth in the Article hereinabove entitled "Introduction to Villa Hermosa," nothing in this Declaration shall limit the right of Declarant to maintain temporary fences, limit access by Owners to portions of the Association Property, establish, reserve and/or grant additional licenses, easements and rights-of-way in favor of Declarant, utilities companies or others, from time to time, as may be reasonably necessary for the development of the Project. The foregoing rights established and reserved by Declarant shall be subject only to the applicable regulations and requirements of the City and the DRE.

Section 10. Easement for Public Service Uses. In addition to the foregoing easements over the Association Property, there are hereby created, established, and granted easements for public services, including, but not limited to, the right of police, fire, ambulance and other public services to enter upon any part of the Association Property and Condominium Units for purposes of serving the health and welfare of all Owners in the Project.

Section 11. Control of Association Property. Control of the Association Property (excluding those portions of the Association Property which are subject to the various rights reserved by Declarant as set forth in this Declaration) shall be turned over by Declarant to the Association prior to or simultaneously with the first close of escrow for the sale of a Condominium in the Project. The Association shall be obligated to undertake all maintenance responsibilities for the Association Property and Common Area when such property is conveyed by Declarant or when the City approves the Association Property Improvements as installed by Declarant, whichever is first to occur. Declarant is not obligated to install any Association Property Improvements other than those required pursuant to the Project approval requirements. 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 maintenance responsibilities therefore, the Association shall be obligated to accept control over the Association Property and Common Area and undertake maintenance responsibilities pending resolution of the dispute.

ARTICLE V

THE ASSOCIATION

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

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership, as follows:

Class A. Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium. The nonvoting co-Owner or co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly-owned Condominium.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned in the Project upon which Declarant is then paying the appropriate monthly Assessments provided for hereinbelow. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

- (a) The second anniversary of the close of escrow for the sale of the first Condominium in the most recent Phase of the Project; or
- (b) The fourth anniversary of the first close of an escrow in Phase I.

Any action by the Association which must have the approval of the membership of the Association before being undertaken shall require the vote or written assent of both a majority of the Class B membership as well as a majority of the Class A membership, so long as there are two (2) outstanding classes of membership, unless a specific provision of this Declaration or the By-Laws or Articles of the Association requires the approval of a greater percentage of the voting membership. Notwithstanding the foregoing, any action by the Association pursuant to the Article contained herein entitled "Enforcement of Bonded Obligations" shall only require a majority of the voting power of the Owners, other than Declarant.

Section 3. Special Voting Procedures for Election to the Board. The Declarant shall be entitled to solely elect a majority of the members of the Board until the first to occur of the following events:

- (a) The election of the Board immediately following the close of escrow by Declarant of at least sixty five (65) Condominiums in the Project; or
- (b) December 31, 2009.

In the event Declarant shall not have sold and closed escrows for at least sixty five (65) Condominiums by December 31, 2009, Declarant's right to elect a majority of the members of the Board shall be automatically extended until the aforesaid number of Condominiums have been sold, but in no event later than December 31, 2010.

Section 4. Adjustment of Voting Rights. The voting rights in the Association shall be adjusted on the first day of the month immediately following the first close of an escrow for the sale of a Condominium in each subsequent Phase of the Project.

Section 5. Vesting of Voting Rights. The voting rights attributable to any given Condominium in the Project, as provided for herein, shall not vest until the Assessments provided for hereinbelow have not levied by the Association against said Condominium.

Section 6. Suspension of Voting Rights. As more particularly set forth in the Article entitled "General Provisions," the Board shall have the authority, among other things, to suspend the voting rights of any Member to vote at any meeting of the Members for any period during which such Owner is delinquent in the payment of any Assessment, regardless of type, it being understood that any suspension for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for in this Declaration.

Section 7. Transfer. The Association membership held by any Owner of a Condominium shall not be transferred, pledged or alienated in any way, except as incidental to the sale of such Condominium. 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 Condominium, or to the Mortgagee (or third party purchaser) of such Condominium upon a foreclosure sale. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. The Association may levy a reasonable transfer fee against new Owners and their Condominiums (which fee shall be a Compliance Assessment chargeable to such new Owner) to reimburse the Association for the actual administrative cost of transferring the memberships to the new Owners on the records of the Association.

Section 8. 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 by the Owner of his Condominium; (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 the proxy. A 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 9. Record Dates. For the purposes 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 By-Laws.

ARTICLE VI

POWERS AND DUTIES OF THE ASSOCIATION

Section 1. Management Body. The Association is hereby designated as the management body of the Project. The Members of the Association shall be the Owners in the Project as provided herein, and the affairs of the Association shall be managed by a Board of Directors, as more particularly set forth in the By-Laws. The initial Board shall be appointed by the incorporator(s) or its/their successor(s). Thereafter, the Directors shall be elected as provided in the By-Laws.

Section 2. Powers. The Board, for and on behalf of the Association, shall have the right and power to do all things necessary to conduct, manage, and control the affairs and business of the Association. Subject to the provisions of the Articles, the By-Laws and this Declaration, the Board shall have all general powers and implied powers authorized under the California Corporations Code for nonprofit, mutual benefit corporations, to do any and all things that such a corporation may lawfully do which are necessary or proper, and shall have the following specific powers:

(a) Enforce the provisions of this Declaration and all contracts or any agreements to which the Association is a party;

(b) Acquire, manage, maintain, repair, and replace all Association Property and Common Areas and Improvements located thereon, including all personal property, in a neat, clean, safe, and attractive condition at all times, and to pay all utilities, gardening, and other necessary services for the Association Property and Common Area, all as more specifically set forth in the Article herein entitled "Repair and Maintenance";

(c) Maintain fire, casualty, liability, and fidelity bond coverage, and other insurance coverage pursuant to the terms of that Article herein entitled "Insurance," and distribute an annual notice regarding the Association's compliance with Civil Code Section 1365.9, as same may be amended, from time to time;

(d) Obtain, for the benefit of the Association Property, all commonly metered water, gas and electric services, refuse collection and cable (or master antenna) television service;

(e) Employ and retain a professional manager and/or management company to perform all or any portion of the duties and responsibilities of the Board and engage such other personnel (including attorneys and accountants) as necessary for the operation of the Project and administration of the Association;

(f) Pay all taxes and special assessments which would be a lien upon the entire Project, Common Area or the Association Property, and to discharge any lien or encumbrance levied against the entire Project or the Association Property;

(g) Pay for reconstruction of any portion of the Association Property damaged or destroyed;

(h) Delegate its powers;

(i) Adopt reasonable Rules and Regulations concerning the maintenance, improvement, use and/or occupancy of the Project;

(j) Enter into any Condominium when necessary in connection with maintenance or construction for which the Association is responsible; and

(k) Perform any and all other acts and things that a nonprofit, mutual benefit corporation organized under the laws of the State of California is empowered to do, which may be necessary, convenient or appropriate in the administration of its affairs for the specific purposes of meeting its duties as set forth in this Declaration.

Section 3. Duties. The Board shall perform and execute the following duties for and on behalf of the Association:

(a) Provide water, sewer, gas, electricity, garbage and trash collection, periodic drainage device clearing and other necessary utility services for the Association Property and Common Area (excepting therefrom the Exclusive Use Common Area), and, if not separately metered or provided, for the Condominium Units;

(b) Provide insurance for the Association and its Members in accordance with the provisions of the Article hereinbelow entitled "Insurance";

(c) Acquire, own, maintain and repair all portions of the Association Property and, if applicable, Common Area (and any Association Property annexed into the Project) in a neat, clean, safe, attractive, sanitary and orderly condition at all times. Without limiting the generality of the foregoing, the Association shall be responsible for maintaining the private streets, entry gates and related systems, if any, sidewalks, private on-site sewer lines (excluding laterals which serve individual Condominium Units), storm drains, drainage channels, debris basins and/or other similar drainage facilities, if any, in a condition comparable to the condition initially approved by the City;

(d) Contract for any other material, supplies, furniture, labor, services, maintenance, repairs, structural alterations and insurance which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law;

(e) Pay all real and personal property taxes and Assessments which the Association is required to pay for pursuant to the terms and provisions of this Declaration or by law, unless separately assessed to Owners; provided, however, that it shall be the obligation of each Owner to pay his respective share of the tax assessment levied on the Project prior to separate assessments by the tax assessor pursuant to Section 2188.6 of the California Revenue and Taxation Code, as same may be amended, from time to time;

(f) Cause a yearly inspection to be made, by a licensed engineer, of any slope areas and drainage devices (e.g., detention basin) located within the Project;

(g) Cause financial statements for the Association to be regularly prepared and copies distributed to each Member of the Association, regardless of the number of Members or the amount of assets of the Association;

(1) A pro forma operating statement (budget) for each fiscal year shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year, and shall contain the following information:

i) An itemized estimate of the Association's revenue and expenses, determined on an accrual basis;

ii) A summary, printed in bold type, of the current status of the Association's reserves, based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5 ("Study"), as may be amended, from time to time, setting forth the following:

(A) The current estimated replacement costs, estimated remaining life and the estimated useful life of the Association Property, together

with an explanation of the methods of funding being utilized by the Association to defray the costs of future repairs, replacements or additions to the Association Property;

- (B) As of the end of the fiscal year for which the Study was prepared, the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major Improvements to the Association Property;
 - (C) As of the end of the fiscal year for which the Study was prepared, the accumulated cash reserves actually set aside to repair, replace, restore or maintain such major Improvements to the Association Property; and
 - (D) The percentage that the current amount of accumulated cash reserves which have been set aside is of the current estimated amount of cash reserves which will be necessary.
- iii) A general statement setting forth the procedures utilized by the Association to calculate and establish reserves to defray the costs of future repairs, replacements, or additions to the Association Property Improvements; and
 - iv) A statement as to whether the Board has determined or anticipates that the levy of one (1) or more Special Assessments will be required to repair, replace or restore any major Improvements to the Association Property, or to provide adequate reserves therefor.

Notwithstanding the foregoing, in lieu of distributing the pro forma budget required hereinabove, the Board may elect to distribute a summary of the pro forma budget to all Members with a written notice, in at least 10-point bold type on the front page, that the pro forma budget is available at the business office of the Association, or at another suitable location within the Project, and that copies will be provided upon request and at the expense of the Association. If any Member requests that a copy of the pro forma budget required herein be mailed to said Member, the Association shall provide the copy to the Member by first-class mail at

the expense of the Association, and mailed within five (5) days of the receipt of said request;

- (2) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing for the first sale of a Condominium, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of Assessments received, and receivable, identified by the number of the Condominium and the name of the person or entity assessed;
- (3) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year;
 - i) A balance sheet as of the last day of the Association's fiscal year;
 - ii) An operating (income) statement for the fiscal year;
 - iii) A statement of changes in financial position for the fiscal year; and
 - iv) Any information required to be reported pursuant to Section 8322 of the California Corporations Code, as same may be amended, from time to time.

This annual report shall ordinarily be prepared by a licensee of the California Board of Accountancy, in accordance with generally accepted accounting principles, for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000.00). However, if for any reason the report is not prepared by a licensee of the California Board of Accountancy, said report shall be accompanied by a certificate from an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association;

- (4) A statement of the Association's policies and practices in enforcing its remedies against Members for nonpayment of Assessments, as set forth in the Article herein entitled "Effect of Nonpayment of Assessments; Remedies of the

Association,” which shall be distributed within sixty (60) days prior to the beginning of the fiscal year; and

- (5) The Board shall review on a quarterly basis, the following:
- i) A current reconciliation of the Association’s operating accounts;
 - ii) A current reconciliation of the amounts collected as reserves;
 - iii) The current year’s actual amounts collected as reserves and expenses compared to the current year’s budget;
 - iv) An income and expense statement for the Association’s operating and reserve accounts; and
 - v) The most current account statements prepared by the financial institutions where the Association maintains its operating and reserve accounts.

Withdrawal of funds from the Association’s reserve account shall require the signature of either: (i) two (2) members of the Board; or (ii) one (1) member of the Board and an Officer of the Association who is not also a member of its Board. As used in this Section, “reserve account” means moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components of the Association Property which the Association is obligated to repair or replace on a periodic basis, rather than on a regular annual basis. The Board shall not use any funds collected and budgeted as “reserve” moneys for any costs and/or expenses that are not related to repair and/or replacement costs for those elements of the Association Property that must be repaired and/or replaced on a periodic basis.

- (b) At least once every three (3) years, cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore or maintain is equal to or greater than one-half (1/2) of the gross Association budget for any fiscal year of the Association. The Board shall consider and implement the necessary adjustments as a result of such review. The

reserve study shall consider and include, at a minimum, the requirements set forth in Section 1365.5(d) of the California Civil Code, as the same shall be amended, from time to time;

- (c) Assume and pay out of the Association's provided for hereinbelow all costs and expenses incurred by the Association in connection with the performance and execution of all of the aforesaid powers and duties, and any other powers and duties the Association may assume as provided for in Section 4 hereinbelow.
- (d) Formulate, adopt, and enforce such Rules and Regulations as it may deem proper for the operation of the Association Property, as more particularly described below. Notice of adoption of any such Rules and Regulations and of any change, amendment or repeal thereof, shall be given in writing to each Member and shall be on file in the principal office of the Association. In the event of any conflict between such Rules and Regulations and this Declaration, this Declaration shall prevail.
- (e) Enforce all applicable provisions of this Declaration, the Articles, By-Laws, and such Rules and Regulations of the Association, and of all other documents pertaining to the ownership, use, management, and control of the Project;
- (f) Give notices in writing to FHLMC, FNMA and GNMA, and other lenders and investors participating in the financing of the sale of Condominiums in the Project, as required herein; and
- (g) Within ten (10) days of the mailing or delivery of a written request from an Owner, provide said Owner with a copy of this Declaration and the By-Laws and Articles for the Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees, and other charges therein as provided by this Declaration or other management documents of the Board as of the date of such request. The Board may impose a fee for providing the foregoing, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents. In addition, make available during normal working business hours or upon request under reasonable circumstances to any prospective purchaser of a Condominium, any Owner of a Condominium,

any first Mortgagee and the holder(s), insurer(s) and guarantor(s) of the first Mortgage on any Condominium, current copies of this Declaration, the Articles, the By-Laws, the Rules and Regulations, the membership register, including mailing addresses and telephone numbers, and all other books, records, and financial statements of the Association.

Section 4. Discretionary Powers. The Board, at its option, may assume, perform and execute the following powers and duties for an on behalf of the Association:

(a) Retain the services of a manager for the Project and provide such other personnel as the Association deems necessary and proper to assist in the operation of the Association and/or management of the Association Property, regardless of whether such other personnel are employed directly by the Association or otherwise;

(b) Remove or replace any Improvement that extends into the Association Property under authority of an easement which access to a utility line underneath such Improvement is requested by any utility company; provided, however, that the cost shall be assessed against the Owner of the Condominium involved as a Compliance Assessment in the Association Property without legal right to do so;

(c) Incur any liability or pay any costs or expenses for a single Condominium or Owner thereof; provided, however, that in the event the Association does incur any such liability or pay any such costs or expenses, the amount thereof shall be specially assessed against the Owner of such Condominium as a Compliance Assessment; provided further, however, that nothing herein shall permit the Association to assess the Owners for any new Improvements to the Association Property except as otherwise provided in this Declaration;

(d) Subject to the limitations set forth in this Article, contract for any other material, furniture, labor, services, maintenance, repairs, structural alterations, for insurance, or pay any taxes or Assessments which, in the opinion of the Board, shall be necessary or proper for the operation of the Association Property for the benefit of the Owners or for the enforcement of this Declaration; and

(e) Enter into a maintenance or subsidy agreement with Declarant, at Declarant's sole discretion, to reduce the financial obligations of Owners in the Project for Assessments.

Section 5. Notification by Association of Defects. The Board agrees that in the event of any alleged defect in any improved Association Property or Common Area which the Association believes the Declarant may be responsible, the Board will provide Declarant with written notice of such defect, Declarant shall have a reasonable

opportunity to inspect such alleged defect, and if Declarant agrees with the Board (or otherwise elects to perform the work) to repair, replace or otherwise cure any defect in workmanship and/or material. The Association acknowledges and agrees that Declarant (or its authorized agents) shall be entitled, at its sole discretion, to determine the material and methods to be used in affecting such repair, replacement, or cure.

Section 6. Limitations on Contracts. Except as otherwise provided herein, no contract entered into by the Association, or the Board acting for and on behalf of the Association, may run for a term longer than one (1) year, except with the vote or written assent of a majority of the voting power of the Association and a majority of the votes residing in Members, other than the Declarant.

Section 7. Delegations of Duties. In the event that the Association shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the members of its Board shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

Section 8. Right of Entry for Emergency. The Board, any person authorized by the Board or any Owner may enter any Condominium in the event of an emergency involving illness or potential danger to life or property. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

Section 9. Right of Entry for Repairs. The Board, or any person authorized by the Board, shall have the right to enter, upon reasonable notice, any Condominium to affect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Association Property or an adjoining Condominium. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Association shall repair the same at its expense.

Section 10. Limitations on Board Action. The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the voting power of the Association and a majority of the votes residing in Members, other than the Declarant:

(a) Entering into a contract with a third person, wherein the third person will furnish goods or services for the Association Property or the Association for a term longer than one (1) year, with the following exceptions:

- (1) A management contract, the terms of which have been approved by the Department of Veterans Affairs;

- (2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;
- (3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-rate cancellation by the insured;
- (4) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration, provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect interest of ten percent (10%) or more; and
- (5) Agreements for sale or lease of burglar alarm and fire alarm equipment installation and services of not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) Incurring aggregate expenditures for capital improvements to the Association Property in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(d) Paying compensation to Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or

(e) Filling a vacancy on the Board created by the removal of a Director.

Section 11. Licenses, Easements and Rights-of-Way. The Board, for and on behalf of the Association, is authorized and empowered to grant such licenses, easements, and rights-of-way for sewer lines, water lines, underground conduits, storm drains, roadways and other public utility purposes over those portions of the Association Property upon which no building or other structure has been erected as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Association Property or for the preservation of the health, safety, convenience and welfare of the Owners. Such licenses, easements and rights-of-way may be granted at any time prior to twenty-one (21) years after the death of the individuals who have

signed this Declaration and their issue who are in being as of the date hereof, and the right to grant such licenses, easements and rights-of-way is hereby expressly reserved.

Section 12. New Improvements. Except as otherwise provided in this Declaration, the Association may construct new improvements or additions to the Association Property, or demolish existing Improvements, provided that in the case of any Improvement, addition or demolition involving a total expenditure in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the written consent or vote of a majority of the Owners (other than the Declarant) in the Project as to the maximum total cost therefor shall first be obtained, and provided that no Condominium shall be altered or damaged by any such demolition or construction without the consent of the Owner thereof. The Board shall levy a Special Assessment against all Owners in the Project for the cost of such work.

Section 13. Association Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which may include the establishment of a system of fines and penalties enforceable as Compliance Assessments. The Rules and Regulations shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Association property, the Exclusive Use Common Area, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Condominiums consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Control Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or By-Laws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended, or repealed, shall be available at the principal office of the Association, or other location determined by the Board, to each Owner upon request. In the event of any conflict between any such Rules and Regulations, and any other provisions of this Declaration, or the Articles or By-Laws, the provisions of the Rules and Regulations shall be deemed to be superseded.

Section 14. Nonliability and Indemnification.

(a) General Limitation. Except as specifically provided in this Declaration or as required by law, no right, power or responsibility conferred on the Board or the Architectural Control Committee by this Declaration, the Articles or the By-Laws shall be construed as a duty or obligation charged upon the Board, the Architectural Control Committee, any individual member of the Board or the Architectural Control Committee, or any other officer, employee or agent of the Association. No such person shall be liable to any party (other than the Association or a

party claiming in the name of the Association) for injuries or damage resulting from such person's acts or omissions within that such person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damage result from such person's willful or malicious conduct. No such person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious conduct.

(b) Personal Liability Limitation. No person who suffers injury, including, but not limited to, bodily injury (including, without limitation, emotional distress or wrongful death) or property damage or loss as a result of the tortious act or omission of a volunteer Board member or volunteer Association officer shall recover damages from such Board member or officer if all the following conditions are satisfied:

- (1) At the time the act or omission occurred, the Board member or officer resided in the Project as either a tenant or an Owner of two (2) or fewer Condominiums;
- (2) The act or omission was performed within the scope of the Board member's or officer's Association duties;
- (3) The act or omission was performed in good faith;
- (4) The act or omission was not willful, wanton or grossly negligent; and
- (5) The Association maintained and had in effect at the time the act or omission occurred, and at the time a claim was made, one (1) or more policies of insurance which included coverage for general liability for the Association and individual liability of officers and directors of the Association for negligent acts or omissions in such capacity, and both types of coverage were in the amount of at least One Million Dollars (\$1,000,000.00).

(c) Indemnification. The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his official acts, provided that:

- (1) The Board determines that such person acted in good faith and in the manner such person reasonably believed to be in the best interests of the Association;

- (2) In the case of a criminal proceeding, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances.
- (3) Any determination of the Board required under this Section must be approved by a majority vote of a quorum consisting of directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such majority of a quorum of the Members of the Association, provided that the person to be indemnified shall not be entitled to vote. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs or devisees of any person entitled to such indemnification.

ARTICLE VII

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Regular Assessments; (b) Special Assessments; (c) Compliance Assessments; (d) Special Benefit Assessments; and (e) such other assessments as the Association may periodically establish. The Regular and Special Assessments, together with a reasonable late charge as may, from time to time, be established by the Board in accordance with California law, interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge against and a continuing lien upon the Condominium against which each such Assessment is levied, and shall also be the personal obligation of the Owner of such property at the time when the Assessment came due. Each Compliance Assessment levied against a Condominium, together with interest, costs, reasonable late charges and reasonable attorneys' fees for the collection thereof, shall be the personal obligation of the Owner of the property at the time of the Assessment. The personal obligation for delinquent Assessments shall not pass to the successors in title unless expressly assumed by them.

Section 2. Purpose of Regular Assessments; Levy and Collection. The Regular Assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the residents in the Project and to maintain, repair, replace, and improve the Association Property, and any other Improvements of areas which the Association is obligated to maintain, as provided herein. The Association, by and through its Board, shall levy and collect Assessments from the Owner of each Condominium in the Project in an amount sufficient to cover all of the Common Expenses incurred by the Association in connection with the performance and execution

of the powers and duties set forth in this Declaration, the By-Laws and Articles. In connection therewith, the Association shall not impose or collect Assessments, penalties or fees that exceed the amount reasonably necessary for the purpose or purposes for which they were levied. Nothing in this Declaration shall be construed in such a way as to prohibit the use of Association Assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Project. The Assessments levied by the Association shall be adjusted at such time as the annexation of an additional Phase becomes effective. Regular Assessments may be collected on a monthly installment basis.

Section 3. Regular Assessments – Basis. Regular Assessments payable to the Association shall be assessed equally against all Owners of Condominiums. Each Owner's proportionate share of the Common Expenses for any fiscal year of the Association shall be a fraction, the numerator of which shall be the number of Condominiums owned by such Owner, and the denominator of which shall be the total number of Condominiums in the Project which are subject to Assessment. Until the first day of the fiscal year of the Association immediately following the first close of an escrow for the sale of a Condominium in the Project to an Owner, the maximum Regular Assessment shall be as set forth in the Association budget reviewed and approved by the DRE. Notwithstanding the commencement for payment of Regular Assessments, or any other provisions of this Declaration, Declarant and any other Owner of a Condominium which does not include a structural Improvement for human occupancy shall be exempt from the payment of that portion of any Assessment (e.g., Regular Assessment) which is for the purpose of defraying operating expenses and reserves directly attributable to the existence and/or use of such structural Improvements. This exemption shall include, but shall not necessarily be limited to, that portion of any Assessment attributable to roof replacement, exterior maintenance, exterior walkway and carport lighting, refuse disposal, cable television, and domestic water supplied to Condominiums. This exemption shall be in effect only until the earliest to occur of: (a) the recordation of a notice of completion for the structural Improvements; (b) the occupation or use of the Condominium; or (c) the completion of all elements of the Association Property which the Association is obligated to maintain. Declarant and any Owner shall also be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of any Association Property facilities that are not complete at the time Assessments commence. This latter exemption shall only be in effect as to a particular Association Property facility until the earlier of: (a) the recordation of a notice of completion for such Association Property facility; or (b) the placement into use of the particular Association Property facility. Subject to the limitations of California Civil Code Section 1366, as same may be amended, from time to time, from and after the first day of the fiscal year immediately following the conveyance of the first Condominium to an Owner, the maximum Regular Assessment may be increased subject to the following limitations:

(a) Increases in Regular Assessments for any fiscal year which are less than or equal to twenty percent (20%) above the maximum Regular Assessment for

the immediately preceding fiscal year may be approved by the Board, provided that the Board shall: (1) comply with the provisions set forth in Section 1365(a) of the California Civil Code with respect to the distribution of the pro forma operating budget of the Association for the forthcoming fiscal year; or (2) obtain the approval of Members, constituting a quorum, casting a majority of affirmative votes at a meeting or an election of the Association conducted in accordance with California Corporations Code Sections 7510, et seq., and Sections 7613, et seq. For purposes of this entire Section 3, a quorum means more than fifty percent (50%) of the Members of the Association;

(b) Increases in Regular Assessments for any fiscal year which are greater than twenty percent (20%) above Regular Assessments for the immediately preceding fiscal year may be approved by the Board only after the Board obtains the approval of Members, constituting a quorum, casting a majority of affirmative votes at a meeting or election of the Association, conducted in accordance with Sections 7510, et seq., and Section 7613 of the Corporations Code; and

(c) The Assessment increases limitation set forth in Subsection (b) above does not apply to increases in Assessments related to emergency situations, which shall be deemed to include the following:

- (1) Extraordinary expenses required by an order by a court of competent jurisdiction;
- (2) Extraordinary expenses for the maintenance or repair of Association Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and
- (3) Extraordinary expenses necessary to repair or maintain the Association Property that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event that the Board increases the Regular Assessment above twenty percent (20%) pursuant to this Subparagraph (3), the Board shall distribute written notice concerning said increase to all Owners and a copy of a resolution adopted by the Board setting forth: (i) the necessity of the extraordinary expenses; and (ii) the justification why said expenses were not reasonably foreseeable at the time the most recent budget was prepared. For the purposes of calculating whether an increase to Regular Assessments exceeds twenty percent (20%), the term "Regular Assessments" shall be deemed to include the amount assessed against each Condominium by the Association as a Regular Assessment, plus any amount paid by the Declarant as a subsidy or pursuant to any

subsidy or maintenance agreements, to the extent such subsidy payments offset an amount which would otherwise be paid by Owners as Regular Assessments.

The Board may fix the Regular Assessment at an amount not in excess of the maximum Regular Assessment. So long as Declarant is offering Condominiums for sale pursuant to a Final Subdivision Public Report, the Regular Assessment may not be decreased by ten percent (10%) or more without the express prior written consent of the Declarant and the DRE. Notwithstanding the foregoing, following the annexation of a subsequent Phase of the Project, pursuant to the provisions set forth in this Declaration, the maximum Regular Assessment may be automatically increased (or decreased) for all Condominiums in the Project on the first day of the month following the first close of an escrow for the sale of a Condominium in said Phase without any approval of the Members of the Association to the amount recommended by the DRE in connection with its review and processing of the Association budget for such Phase. The Association may, upon ratification by a majority of the Board, enter into an agreement with Declarant, its successors or assigns, to reduce or abate Assessments, upon such terms and conditions as may be agreed to by the parties.

Section 4. Special Assessments for Capital Improvements.

(a) In addition to the Regular Assessments authorized above, the Board may not, subject to the limitations of California Civil Code Section 1366, without the vote or written approval of Members constituting a quorum (which shall mean more than fifty percent (50%) of Owners of the Association) casting a majority of affirmative votes at a meeting or election of the Association, conducted in accordance with Sections 7510, et seq., and 7613 of the Corporations Code, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The five percent (5%) limitation shall not apply to increases in Special Assessments related to an emergency situation which shall be deemed to include the following:

- (1) Extraordinary expenses required by an order by a court of competent jurisdiction;
- (2) Extraordinary expenses for the maintenance or repair of Association Property that is necessary to remedy any dangerous condition in the Project that represents a threat of damage or injury to any person or property; and
- (3) Extraordinary expenses necessary to repair or maintain the Association Property that could not have been reasonably anticipated by the Board at the time the most recent Association budget was prepared. Notwithstanding the foregoing, in the event the Board levies any Special

Assessment that exceeds the five percent (5%) limitation pursuant to this Subparagraph (3), the Board shall distribute written notice concerning said Special Assessment to all Owners and a copy of a resolution adopted by the Board setting forth: (i) the necessity of said Special Assessment; and (ii) The justification why said Special Assessment was not reasonably foreseeable at the time the most recent budget was prepared. Except as provided in Subsection (b) below, every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments.

(b) A Special Assessment levied against Owners to raise funds for the reconstruction or major repair of the Condominium Units, if applicable, in the Project shall be levied on the basis of the ratio of the square footage of the floor area of the Condominium Unit to be assessed, to the square footage of the floor area of all Condominium Units to be assessed.

Section 5. Compliance Assessments. A Compliance Assessment may not be characterized nor treated as an assessment which may become a lien against the Owner's Condominium enforceable by a sale in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code; provided, however, the foregoing shall not apply to any Compliance Assessment imposed against an Owner consisting of a reasonable late payment penalty for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments.

Section 6. Special Benefit Assessments. Special Benefit Assessments shall mean and refer to a charge levied by the Association against an Owner and his respective Condominium to cover the expenses incurred by the Association in the operation, maintenance, repair and/or funding of reserves as to a portion of the Project designated as a "Special Benefit Area," which expenses are allocable only to Owners within such an Area. These expenses chargeable to Owners in a Special Benefit Area may include, without limitation, the following:

(a) Maintenance, management, operation, repair and replacement of particular Improvements within the Special Benefit Area;

(b) Utilities or services for the benefit of Owners within the Special Benefit Area;

(c) Reasonable reserves, as deemed appropriate by the Board, for repair and replacement of any Improvements maintained by the Association within a Special Benefits Area; and

(d) Unpaid Special Benefit Assessments.

The Association shall distribute to Owners within any Special Benefit Area a pro forma operating statement and budget for the upcoming fiscal year which shall estimate the expenses attributable to the Special Benefit Area, and shall set forth the amount and payment schedule of the Special Benefit Assessments.

Section 7. Notice of Increase in Assessments. The Board shall provide to the Owners, by first class mail to the address on file with the Association, notice of any increase in Regular, Special and/or Special Benefit Assessments not less than thirty (30) nor more than sixty (60) days prior to such increase becoming due.

Section 8. Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments provided for herein shall commence on the first day of the month following the close of escrow for the first sale of a Condominium in Phase 1. The first Regular Assessments shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the By-Laws. The Board shall fix the amount of the Regular Assessment against each Condominium at least thirty (30) days but not more than sixty (60) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject to the provisions hereinabove.

Section 9. Collection of Assessments. Except as otherwise provided above, Regular and Special Assessments shall be levied at a uniform rate for all Condominiums and may be collected on a monthly basis. If any installment of a Regular Assessment is less than the amount assessed and the payment does not specify the Association funds or fund into which it should be deposited, the receipt by the Association from that Member shall be credited in order of priority first to the operating fund, until that portion of the Regular Assessment has been satisfied, and second to the reserve fund. Compliance and Special Benefit Assessments shall be due thirty (30) days after such Assessment has been levied.

Section 10. Certification of Payment. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Condominium have been paid. If a certificate states that Assessments have been paid, such certificate shall be conclusive evidence of such payment.

Section 11. Delivery by Owner. Each Owner of a Condominium shall, as soon as practicable prior to the transfer of title to the Condominium or the execution of a real property sales contract, as defined in California Civil Code, Section 2985, or as may be amended, from time to time, give to the prospective purchaser a copy of this Declaration and copies of the By-Laws and Articles of the Association, the most recent financial statement, a true statement, in writing, from the Board as to the amount of any delinquent Assessments and information relating to penalties, attorneys' fees and other charges authorized by this Declaration on the condominium as of the date the statement is issued, and any change in the Association's current Assessments and fees which

have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Section 12. Delivery of Statement. Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, respectively, provide the Owner of a Condominium with a copy of this Declaration and copies of the By-Laws and Articles of the Association, together with a true statement in writing as to the amount of any delinquent Assessments, penalties, attorneys' fees and other charges authorized by this Declaration on the Condominium as of the date of the request, the most recent financial statement and any change in the Association's current Assessments and fees which have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section. The Board may impose a fee for providing such documents and statements, but in no event shall the fee exceed the reasonable cost to prepare and produce the requested documents.

Section 13. Reserves. The Regular Assessments shall include reasonable amounts, as determined by the Board, collected as reserves for the future periodic maintenance, repair and replacement of all or a portion of the Association Property, or any such other purpose determined by the Board. All amounts collected as reserves shall be deposited by the Board in a separate bank account for the purposes for which they were collected, and are to be segregated from and not commingled with any other funds of the Association. The expenditure of such funds shall be limited to the repair and replacement of those elements of the Association Property which must be repaired or replaced according to a reserve study, and shall occur in accordance with Section 1365.5 of the California Civil Code, as same may be amended, from time to time.

Section 14. Offsets and Waiver Prohibited. No Owner may waive or otherwise avoid liability for the Assessments provided for herein for any reason whatsoever, including, but not limited to, non-use of the Association Property or abandonment of his Condominium, nor shall any Owner be entitled to any offset against any Assessment provided for herein for any reason whatsoever, including, but not limited to, any expenditure made by such Owner for or on behalf of the Association.

Section 15. Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments herein:

- (a) All property dedicated to and accepted by a local public authority;
- (b) All property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of California, however, no land or Improvements devoted to dwelling use shall be exempt from said Assessment; and
- (c) Any Association Property owned in fee by the Association.

Section 16. Capitalization of Association. Each purchaser of a Condominium in only Phase 1 shall contribute to the working capital of the Association an amount equal

to one/sixth (1/6) the amount of the then Regular Assessment for his respective Condominium (e.g., 2 months). Said amount shall be deposited by each purchaser into his respective escrow for the purchase of his Condominium from Declarant and shall be disbursed by the escrow holder to the Association at the close of escrow for the sale of the Condominium. Prior to the expiration of six (6) months after the first close of an escrow for the sale of a Condominium in Phase 1, Declarant shall deposit with a neutral escrow holder an amount equal to one/sixth (1/6) of the Regular Assessment required by the Association for any and all Condominiums in Phase 1 which are not yet sold or otherwise in escrow for the sale thereof. Escrow holder shall promptly remit these funds to the Association. Thereafter, upon the close of each escrow for the sale of a Condominium for which the capitalization fee was prepaid by Declarant, escrow holder shall remit to Declarant, and not to the Association, the capitalization fee collected from the buyer-Owner of said Condominium at the close of each escrow. This capital contribution shall in no way be deemed to be a prepayment of any portion of the Regular Assessment obligation of said Owners to the Association.

ARTICLE VIII

EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION

Section 1. Effect of Nonpayment of Assessments: Remedies of the Association. Any Regular, Special, Special Benefit or Compliance Assessment not paid within fifteen (15) days after the due date shall be deemed delinquent and the Owner shall be required to pay: (a) reasonable costs of collection, including reasonable attorneys' fees; (b) a reasonable late charge not exceeding ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater, or as may, from time to time, be established by the Board in accordance with California law; and (c) interest on all sums imposed under this Section at an annual percentage rate not to exceed twelve percent (12%) commencing thirty (30) days after the Assessment was due. The Board, for and on behalf of the Association, may commence legal action against the Owner personally obligated to pay the same or, in the case of a Regular, Special or Special Benefit Assessment, may foreclose the lien against the Owner's interest in the Owner's Condominium. The Association, its successors or assigns, shall have the right and power to bring all actions at law or to pursue lien foreclosure against any Owner for purposes of collecting such delinquent Assessments. The Association need not accept any tender of a partial payment of an installment of an Assessment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter.

Section 2. Notice of Delinquent Assessments. No action shall be brought to foreclose a lien for delinquent Assessments or to proceed under the power of sale herein unless at least thirty (30) days has expired following the date a Notice of Delinquent Assessments is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of said Condominium, and a copy thereof is recorded by

the Association in the Office of the County Recorder. Said Notice of Delinquent Assessments must recite a good and sufficient legal description of any such Condominium, the record Owner or reputed Owner thereof, the total amount due and payable as provided herein, and the name and address of the principal office of the Association, and, in the event of a nonjudicial foreclosure, as provided in Section 3 below, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice shall be signed and acknowledged by the President, or Vice President, and the Secretary, or assistant Secretary, of the Association. The lien shall continue until fully paid or otherwise satisfied.

Section 3. Foreclosure Sale. Any foreclosure sale provided for above is to be conducted by the Board, its attorney or other persons authorized by the Board, in accordance with the provisions of Sections 2924, 2924(a), 2924(b), and 2924(c) of the California Civil Code applicable to the exercise of powers of sale in Mortgages and deeds of trust, as same may be amended, from time to time, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Condominium at a foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

Section 4. Curing of Default. Upon the timely curing of any default for which a Notice of Delinquent Assessments or lien was filed by the Association, the officers thereof are hereby authorized to file or record, as the case may be, an appropriate release of such Notice upon receipt of payment from the defaulting Owner of a reasonable fee to be determined by the Association to cover the costs of preparing and filing or recording such release.

Section 5. Cumulative Remedies. The Association's remedies for nonpayment of Assessments, including, but not limited to, an action to recover a money judgment, Assessment lien and right of foreclosure and sale, are cumulative and in addition to and not in substitution of any other rights and remedies which the Association and its assigns may have hereunder or at law, included filing a notice of non-compliance.

Section 6. Mortgagee Protection. Notwithstanding all other provisions hereof, no lien created hereunder nor any breach of the terms and provisions of this Declaration, nor the enforcement of any term or provision hereof, shall defeat or render invalid the rights of any Mortgagee under any recorded first Mortgage or deed of trust upon a Condominium made in good faith and for value; provided, that after such Mortgagee or other person or entity obtains title to such Condominium by judicial or nonjudicial foreclosure, such Condominium shall remain subject to this Declaration and the payment of Assessments which fall due subsequent to the date of taking title.

ARTICLE IX

USE RESTRICTIONS

The Condominium Units and Association Property shall be occupied and used only as set forth hereinbelow.

Section 1. Private Dwelling. Each Condominium Unit shall be used as a private dwelling and for no other purpose, except such temporary uses as shall be permitted by Declarant while the Project is being developed and Condominiums are being sold by Declarant; provided, however, that Declarant reserves the right, for a period of five (5) years from recordation hereof or until all Condominiums in the Project are sold (and escrows closed), whichever shall first occur, to carry on normal sales activity on the Project, including the operation of models, sales office, design center and parking area, provided Declarant shall not unreasonably interfere with any other Owner's use of the Association Property.

Section 2. Association Property Use. Use of the Association Property shall be subject to the provisions of this Declaration, the Rules and Regulations and to any additional limitations imposed by the Association.

Section 3. Conduct Affecting Insurance. Nothing shall be done or kept in any Condominium Unit or in the Association Property which will increase the rate of insurance on the Association Property without the approval of the Association. No Owner shall permit anything to be done or kept in his Condominium Unit or in the Association Property which will result in the cancellation of insurance on the Association Property or which would be in violation of any law. If, by reason of the occupancy or use of said premises by the Owner, the rate of insurance to the Association Property shall be increased, the Owner shall become personally liable for the additional insurance premiums.

Section 4. Liability for Damage to the Association Property. Each Owner shall be liable to the Association, pursuant to the laws of the State of California, for any and all costs and expenses which may be incurred by the Association to repair any damage to the Association Property which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, tenants, lessees or their respective guests or invitees, whether minor or adult. After approval by a majority of the Board, any such costs and expenses shall be levied by the Board either as a Special or Compliance Assessment against such Owner. The Association may, after Notice and Hearing as provided in the By-Laws, levy a Special or Compliance Assessment against said Owner equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Owner or person for whom the Owner may be liable.

Section 5. Signs. Subject to the provisions of California Civil Code, Sections 712 and 713, as same may be amended, from time to time, no sign of any kind shall be displayed to the public view on or from any Condominium Unit or the Association

Property without the approval of the Association, except such signs as may be used by Declarant for a period of time not to exceed five (5) years from recordation hereof in connection with the development of the Project and sale of Condominiums, and except one (1) "for sale," "for lease," or "for exchange" sign of reasonable size on any Condominium Unit. Only professional signs shall be allowed and an Owner or his agent may not post any signs or advertising at an entrance to the Project or in the Association Property (other than in such Owner's Exclusive Use Common Area). In addition to the foregoing, all signs permitted under this Section shall conform with the City's sign ordinance, if any, and with all applicable governmental regulations.

Section 6. Maintenance of Animals. No animals of any kind shall be raised, bred, or kept in any Condominium Unit, Exclusive Use Common Area or in the Association Property, except that common domesticated dogs, cats, birds, enclosed in bird cages, fish or other household pets may be kept in each Condominium Unit in reasonable numbers so long as there is no external evidence thereof; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose and shall not exceed any weight limitations, if any, established by the Board. As used in this Declaration, "reasonable numbers" shall ordinarily mean two (2) total pets (excluding fish) per Condominium Unit; however, the Board may determine that a reasonable number in any instance may be more or less than two (2). Each Owner shall be responsible for cleaning up any excrement or other unclean or unsanitary condition caused by said animal in the Project. While walking or exercising an animal in the Project, the Owner thereof shall, at all times, have readily available means to clean-up any excrement or other unclean or unsanitary conditions caused by said animal. All permissible pets belonging to Owners, tenants, lessees or guests, must be kept within an enclosed area or on a leash being held by a person capable of controlling the animal. The Association, upon the approval of two-thirds (2/3) of the Board, shall have the right to prohibit maintenance of any animal within the Project which constitutes a private nuisance to any other person. Every person bringing an animal upon or keeping an animal in the Project shall be liable pursuant to the laws of the State of California to each and all persons for any injury or damage to persons or property caused by such animal.

Section 7. Quiet Enjoyment. No Owner shall permit or suffer anything to be done in the Project or kept upon such Owner's Condominium which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises (e.g., inappropriate use of horns) or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Notwithstanding the foregoing, until Declarant closes escrow for the last Condominium in the last Phase of the Project, but not exceeding five (5) years from the recordation of this Declaration, the Declarant's efforts in selling the Condominiums may interfere with the Owners' quiet enjoyment of the Condominiums, however, each Owner acknowledges this and waives any claims against the Declarant for nuisance due to any activity related to constructing selling or marketing the Condominiums. Each Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to said

premises, and shall remove all rubbish, trash and garbage from his Condominium Unit. All clothes lines, refuse containers, woodpiles, storage boxes, tools and equipment shall be prohibited from any Condominium unless obscured from view by a fence or appropriate screen approved by the Architectural Control Committee provided for hereinbelow.

Section 8. Structural Changes. There shall be no structural alteration, modification, or construction to the exterior of a Condominium Unit, fence or other structure whatsoever in the Project without the prior written approval of the Board or its designated Architectural Control Committee, as required herein, except such works of construction by Declarant during the development of the Project.

Section 9. Patio Structures. Installation of patio structures in the Exclusive Use Common Area back yards is prohibited, except a structure which is consistent with the design parameters set forth on Exhibit "A" attached hereto.

Section 10. Improvements. There shall be no construction, alteration or removal of any Improvement in the Project (other than those repairs or rebuilding permitted under the Article entitled "Damage or Destruction to the Association Property") without the approval of the Architectural Control Committee, as set forth hereinbelow. No Improvement shall be constructed upon any portion of any Association Property, other than such Improvements as shall be constructed: (a) by the Declarant (or a person or entity to whom Declarant assigns its rights as developer), (b) by the Association as provided herein, or (c) by an Owner, involving nonstructural Improvements to his Exclusive Use Common Area, as may be permitted by the Architectural Control Committee in accordance with the Article herein entitled "Architectural Control – Approval." Each Owner assumes all risks which may result from improvements he makes to his Exclusive Use Common Area and Condominium Unit, and each Owner indemnifies and holds harmless the Association, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorneys' fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of such improvements.

Section 11. Windows. No window in any Condominium Unit shall be covered in whole or in part, inside or outside, with aluminum foil, newspaper, paint, tint or any other material reasonably deemed inappropriate for such use by the Architectural Control Committee; provided, however, an Owner may use plain white sheets to cover windows for a period not to exceed three (3) months after the close of escrow pending the installation of drapes, curtains, shutters or other appropriate interior window coverings. Subject to review and approval by the Architectural Control Committee, an extension of three (3) months may be provided. In the event an Owner has installed appropriate window coverings for all windows facing the street, the Architectural Control Committee shall automatically grant such Owner a three (3) month extension to obtain necessary window coverings for the back windows of his Condominium.

Section 12. Commercial Activity. No business, commercial, manufacturing, mercantile, storage, vending or industrial operations of any kind shall be conducted in or upon any Condominium Unit or the Association Property, except such temporary uses as shall be permitted by Declarant while the Project is being constructed and Condominiums are being sold by the Declarant. Notwithstanding the foregoing, this Section shall not preclude professional administrative occupations without external evidence thereof, for so long as such occupations are conducted in conformance with all applicable governmental ordinances and merely incidental to the use of the Condominium Unit as a residence. In no event, however, shall any Owner or the Association use a Condominium Unit as an office for the rental, resale or leasing of Condominiums without the prior written consent of Declarant.

Section 13. Parking. All vehicles in the Project shall be parked in accordance with the following:

(a) All streets within the Project are subject to the Protective Covenants of this Declaration, as well as all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over the Project. Any unassigned open parking spaces shall be available exclusively, on a first-come, first-served basis, to Owners, guests and visitors;

(b) Except as may be otherwise expressly permitted by the Association pursuant to duly adopted Rules and Regulations, or approved by a governmental agency exercising appropriate jurisdiction, other than in designated parking areas, is prohibited;

(c) Except as otherwise permitted by the Association, as set forth herein, no Owner shall park any vehicle of any type, including, but not limited to, passenger, commercial, and/or recreational vehicles, on any portion of the Project whatsoever (including guest parking spaces), except wholly within said Owner's respective covered parking. No covered parking may be sold or assigned to, or retained in ownership of, any person not an Owner, and no covered parking may be rented or leased to a non-Owner except in connection with the rental or lease of a Condominium;

(d) Each Owner shall keep his/her covered parking readily available for parking of his/her respective vehicle, and shall not store any goods or materials therein nor use any portion thereof for any other use, if such storage or use would prevent said Owner from parking his/her vehicle therein;

(e) No Owner shall conduct any repairs to any motor vehicle of any kind whatsoever in his/her covered parking or upon any portion of the Association Property, except for emergency repairs thereto and then only to the extent necessary to enable the vehicle to be moved to a proper repair facility; and

(f) Any Owner having two (2) or more vehicles registered to such Owner, or to the members of his family, may apply to the Association for special parking

permits to park vehicles in any unassigned parking areas, subject to Rules and Regulations which may be adopted by the Board, in its sole and absolute discretion. Notwithstanding the foregoing, nothing herein shall require the Board to adopt such Rules and Regulations to accommodate the parking of two (2) or more vehicles.

Section 14. Regulation of Parking. Subject to the rights of the Association, through its officers, committees and agents, the Board is hereby empowered to establish “parking” and “no parking” areas within the Association Property, in accordance with Section 22658.2 of the California Vehicle Code, or any similar statute hereafter enacted, as well as to enforce these parking limitations by all means lawful for such enforcement, including, but not limited to, the levying of fines and the citing and towing of vehicles. The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above limitations whether the same shall belong to any Owner or a member of his family or to any tenant, lessees, guest, or invitee of any Owner. Charges for such towing and storing shall be assessed against the Owner of the Condominium which is responsible for the violation of such restrictions, and such assessment may be enforced as a Compliant Assessment.

Section 15. Compliance with Management Documents. All Owners shall comply with all of the Protective Covenants as set forth herein, with the provisions of the Articles and the By-Laws, and with all Rules and Regulations of the Association.

Section 16. Solar Heating. All Owners shall have the right to place and maintain equipment and facilities related to the installation and maintenance of individual solar heating systems. The installation and maintenance of any solar system by an individual Owner shall be subject to all applicable zoning regulations, the Uniform Building Code and City associated ordinances and a reasonable review by the Architectural Control Committee for compliance with the architectural standards adopted by the Association.

Section 17. Antennas. No Owner shall install, or cause to be installed, any television, radio, “Citizens Band” (C.B.) antenna, satellite dish or other similar electronic receiving or broadcasting device on the exterior of any Condominium Unit or elsewhere within the Association Property, unless approved in writing by the Architectural Control Committee.

Section 18. Water Softeners. No Owner shall install any on-site regenerative water softener within any portion of the Project.

Section 19. Irrigation Water. Untreated river water may be used for irrigation purposes throughout the Project. This water is not safe for drinking water and should not be used for any purposes other than irrigation.

Section 20. Leasing. No Owner shall be permitted to rent or lease his Condominium for transient or hotel purposes or for a period of less than thirty (30) days. All rental and lease agreements shall be in writing and shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, By-

Laws, Articles and Rules and Regulations, and that any failure by the tenant or lessee to comply with the terms of such documents shall constitute a default under such agreement. Other than the foregoing, there are no restrictions on the right of an Owner to rent or lease his Condominium.

Section 21. Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon the Association Property or Exclusive Use common Area, nor shall oil wells, tanks, tunnels or mineral excavations be permitted upon the Association Property or Exclusive Use Common Area. No derrick or other structure designed for use in boring for oil, water or natural gas shall be erected, maintained or permitted within the Project.

Section 22. Trash. Each Owner shall place all rubbish, trash, garbage or other waste material in garbage cans, garbage bags or other closed containers approved by the City or other appropriate agency. All such garbage cans and other containers shall be stored in an area which is obscured from view from the Association Property and each Owner shall use his best efforts to assure that no odor shall arise therefrom so as to be unreasonably offensive to any adjacent Condominium or other portion of the Project, or to otherwise be unsanitary, unsightly, offensive or detrimental to any other residents in the Project. In the event trash is collected from each individual Condominium, sanitary containers shall be placed on the sidewalks/streets no earlier than 5:00 p.m. on the evening prior to the trash pick-up day and removed from the sidewalk/street within twelve (12) hours after pickup.

Section 23. Exemption of Declarant. Nothing in this Article or elsewhere in this Declaration shall limit, restrict, abridge or control, in any manner whatsoever, the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Condominiums and all other property within the Project (including any property which may be annexed thereto pursuant to the provisions of this Declaration), including, without limitation, the following specific rights, which may be exercised by Declarant, or by its agents and employees, in conjunction with such development and marketing, for a period of five (5) years from the date of recordation of this Declaration, or until all Condominiums in the Project are sold (and escrows closed), whichever shall first occur:

(a) The right to maintain and operate one (1) or more advertising, sales or leasing office(s) located upon any Association Property without payment of rent or approval of the Association;

(b) The right to post and display from any Association Property any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items;

(c) The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Association Property, as Declarant may, in its sole

discretion, deem appropriate; provided that in the event Declarant removes any Association-owned Improvement from any Association Property without the express prior written consent of the Board, Declarant shall replace such Improvement with an Improvement of substantially similar value, appearance and utility necessitating the removal of the Improvement;

(d) The right to conduct any commercial activity upon any Association Property which reasonably relates to the development, marketing, leasing, or sales of the Condominiums in the Project;

(e) The right to park vehicles upon any Association Property; and

(f) The right to use drives within the Project, which right shall also extend to prospective purchasers or lessees of the Condominiums or of other property within the Project.

All or any portion of the rights of Declarant herein and elsewhere in this Declaration may be assigned by Declarant to any success-in-interest in the Project, including the Annexation Property, by an express written assignment recorded in the Office of the County Recorder.

Section 24. No Easements For View Purposes; Disclaimer. Neither the City, the Declarant nor the Architectural Control Committee, nor the members, representatives, employees or consultants of any of the foregoing, have made any representations whatsoever concerning the view, if any, that a particular Condominium or other Improvement thereon will enjoy. There are no express or implied easements whatsoever appurtenant to any Condominium for view purposes or for the passage of light and air across any other Condominium or any property not within the Project, regardless of whether such Condominium is owned by Declarant. Each Owner accepting a deed to a Condominium hereby expressly acknowledges and agrees that the walls and fences constructed by Declarant and further construction, both within the Project and in the immediate vicinity of the Project may impair the view from such Owner's Condominium, and each Owner hereby expressly consents to any such impairment. Each Owner further acknowledges and understands that property surrounding the Project may be developed or redeveloped in accordance with applicable City standards. Concerns pertaining to the future development of surrounding property shall be addressed with the City.

Section 25. Landscaping and Back Yard Improvements. Any improvements or flatwork in an Owner's Exclusive Use common Area back yard must be approved in writing by the City and the Architectural Control Committee. All portions of the Exclusive Use Common Area of a particular Owner's Condominium shall be landscaped by the Owner thereof in accordance with Rules and Regulations promulgated by the Board. Thereafter, such landscaping shall be maintained by the Owner in a clean, safe and attractive condition according to such Rules and Regulations promulgated by the Board and the Association.

Section 26. Screen Doors. No Owner shall install any screen door in any portion of the Condominium Unit unless such Owner has written approval from the Architectural Control Committee.

Section 27. No Warranty of Enforceability. While Declarant has no reason to believe that the restrictive covenants contained in this Article or elsewhere in this Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Condominium in the Project in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof, and, by acquiring the Condominium, agrees to hold Declarant harmless from any injury or damage therefrom.

Section 28. Vehicle Usage in Association Property. Subject to this Declaration, each Owner shall have the right to modify his/her Condominium Unit and the route over the Association Property leading to the front door of his/her Condominium Unit, at his/her sole cost and expense, in order to facilitate access to his/her Condominium Unit by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons.

Section 29. Rights of Handicapped. Subject to this Declaration, each Owner shall have the right to modify his/her Condominium Unit and the route over the Association Property leading to the front door of his/her Condominium Unit, at his/her sole cost and expense, in order to facilitate access to his/her Condominium Unit by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons.

ARTICLE X

REPAIR AND MAINTENANCE

Section 1. Repair and Maintenance by Association. Without limiting the generality of the Article herein entitled "Powers and Duties of the Association," and except as otherwise provided in this Declaration, the Association shall have the duty to maintain, in a neat, clean, safe, sanitary, attractive, and orderly condition at all times, the Association Property and Common Area designated in this Declaration or in any subsequent Notice(s) of Annexation. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Association Property. Without limiting the generality of the foregoing, such Association Property maintenance shall include:

- (a) Trimming, fertilizing and cutting all landscape areas to keep such areas free of weeds, dead vegetation and debris;
- (b) Cleaning any debris from Association Property drainage swales or devices;

(c) Pruning trees, as appropriate, to avoid impeding pedestrian traffic along walkways and/or sidewalks;

(d) Repairing significant cracks, potholes or other hazards in the private streets;

(e) Performing all necessary tasks required to conform with applicable City and/or State regulations; and

(f) Painting, maintaining, repairing, restoring, replacing and landscaping (as the case may be) the following:

- (1) The exterior surfaces of all condominium buildings in the Project, including the perimeter walls, roofs, doors (all repairs to such doors shall be at the expense of the respective Owner unless otherwise agreed to by the Board), the perimeter walls and/or fences enclosing the back yard area (i.e., the exterior portions of the walls and/or fences, whether block, brick, wood or wrought iron, specifically excluding any wall or fence (excepting the firebox portion of the fireplace located within the residential element of the Condominium Unit) and chimneys, and any air conditioner or forced air heating unit pads only located outside the Condominium Unit;
- (2) Private streets, (including any necessary signage and striping), parkways and streetscapes, natural and manufactured slopes and Project perimeter fences and walls;
- (3) Open parking areas and sidewalks and the structural integrity of the covered parking;
- (4) Private on-site sewer, storm drains and utilities, and drainage facilities and devices (explicitly excluding therefrom that portion of the sewer lateral from the Condominium to the clean-out structure);
- (5) All recreational amenities and all furnishings, equipment and other personal property owned by the Association, including janitorial responsibilities;
- (6) All Association Property lighting facilities; and
- (7) Monument signs, if any, located on the Association Property;

(g) An inspection and preventive program for the prevention and eradication of infestation by wood-destroying pests and organisms in the Association Program. In connection with the inspection and prevention program for the prevention and eradication of infestation by wood-destroying pests and organisms, the Association, upon reasonable notice (which shall be given no less than fifteen (15) days nor more than thirty (30) days before the date of temporary relocation) to each Owner and the occupants of his/her Condominium Unit, may require such Owner and occupants to temporarily relocate from such Condominium Unit in order to accommodate efforts by the Association to eradicate such infestation. The notice shall state the reason for the temporary relocation, the date and time of beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Condominium by such entry by the Board or by any person authorized by the Board shall be repaired by the Board as a Common Expense of the Association. All costs involved in maintaining the inspection and prevention program as well as repairing and replacing the Association Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood-destroying pests or organisms shall be a Common Expense subject to the restrictions applicable to Special Assessments or Special Benefit Assessments; and

- (g) All other areas, facilities, furnishings and Improvements of whatever nature as may, from time to time, be requested by the vote or written consent of three-fourths (3/4) of the voting power of the Members.

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.

Section 2. Repair and Maintenance by Owner. Except as otherwise provided in Section 1 above regarding the Association's maintenance obligations, every Owner shall have the duty to perform the following so as to keep his respective Condominium Unit and Exclusive Use Common Area in a neat, clean, safe, sanitary, attractive and orderly condition at all times:

(a) Paint, maintain, repair, replace, restore, decorate, tile, finish, plaster and/or landscape, or cause to be so maintained, repaired, replaced, restored, decorated, tiled, finished, plastered and/or landscaped (as the case may be), the following:

- (1) The interior surfaces of the walls, ceilings and floors of his Condominium Unit. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the condominium buildings shall be pierced or otherwise altered or repaired without the prior written approval of the plans for

the alteration or repair by the Architectural Control Committee.

- (2) All window glass, screens, if any, and all interior doors and the structural integrity of the exterior doors (including locks, latches, weather-stripping and thresholds);
- (3) All interior lighting fixtures, all exterior light bulbs controlled by a switch inside the Condominium Unit, and all interior plumbing fixtures, including bathtubs, shower stalls, toilets and sinks, heating, cooling equipment and other utilities (e.g., sewer and water lines) which are located within or which exclusively serve said Owner's Condominium Unit;
- (4) All internal and external telephone wiring designed to serve his Condominium Unit;
- (5) All kitchen appliances, forced air heating units, the air conditioning unit, the hot water heater and the firebox portion of the fireplace in his Condominium Unit, if any, which are located within or service his Condominium Unit; and
- (6) The back yard, excluding those portions maintained by the Association, if any, and any landscaping located therein, but including the interior portions of the walls and/or fences enclosing the back yard and covered parking, whether the surfaces be block, brick, wood or wrought iron).

(b) In the event any Owner shall fail to perform his/her maintenance obligations as set forth herein, the Association shall have the right, but not the duty, to cause such maintenance to be performed. If the Board elects to cause such maintenance work to be performed, the cost thereof shall be assessed against said Owner as a Compliance Assessment.

Section 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 Association 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.

Section 4. Levy of Compliance Assessments. In the event the Association shall incur any costs or expenses due to the failure of any Owner to perform his maintenance obligations as set forth herein, or in order to repair any damage to the Association Property due to any negligent acts or omissions or willful misconduct on the part of an Owner, or any member of his family, his guests, invitees, tenants or lessees,

or their guests or invitees, the Association shall have the right, but not the duty, to cause such maintenance or repairs to be performed. If the Board elects to cause such maintenance or repair work to be performed, after Notice and Hearing as provided in the By-Laws, the cost thereof shall be assessed against said Owner as a Compliance Assessment.

ARTICLE XI

ARCHITECTURAL CONTROL – APPROVAL

Section 1. Exemptions From Architectural Control. Except as otherwise provided herein, all Improvements shall be subject to architectural approval by the Association in accordance with the provisions of this Declaration. Notwithstanding the foregoing, Declarant shall be exempt from compliance with any of the provisions of this Article as they may relate to the original construction and development of the Project by Declarant in accordance with the plans approved by the City; provided, however, if Declarant shall desire to construct any Improvements to the exterior of a Condominium Unit after such Condominium Unit has been completed and approved by the City, Declarant shall obtain approval for such Improvement from the City and, provided further, if Declarant shall retain a Condominium for personal use, any Improvements to such Condominium shall be subject to architectural approval pursuant to this Article.

Section 2. Architectural Control. Except for the purposes of proper maintenance and repair, and except as otherwise permitted hereunder, no person shall build, construct, erect or install any Improvement, or modify the exterior appearance of his/her Condominium Unit or Exclusive Use Common Area, until all conditions which may be imposed by the City have been satisfied and until any and all plans and specifications required pursuant to this Article shall have been submitted to and approved in writing by the Architectural Control Committee. For the purposes of this Section, the term “exterior” shall mean any outside wall, outside surface, roof, outside door, balcony or other outside structure which is visible to others in the Project and/or to the public.

Section 3. Architectural Control Committee. The Architectural Control Committee is hereby authorized with the rights and powers set forth in this Article. Said Committee shall consist of three (3) members, and each initial member shall serve until the first election of the Board. The Declarant shall appoint all of the original members of the Architectural Control Committee, and replacements thereto. After one (1) year from the date of the issuance of the Final Subdivision Public Report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of the Condominiums in the Project have been sold, or until the fifth anniversary date of the original issuance of the Final Subdivision Public Report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. All members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Control

Committee by the Declarant, however, need not be members of the Association. In the event of the failure or inability of any member of the Architectural Control Committee to act, the remaining members shall designate a successor who shall serve for the remainder of the term of the member he replaces. No member of the Architectural Control Committee shall be liable to any person for his decisions or failure to act in making decisions as a member of the Architectural Control Committee. Declarant may, in its discretion and at any time, assign to the Association by written assignment its powers of removal and appointment with respect to the Architectural Control Committee, subject to such terms and conditions regarding the exercise thereof as Declarant may impose.

Section 4. Meetings of The Architectural Control Committee. The Architectural Control Committee shall meet, from time to time, as necessary to perform its duties hereunder. The Architectural Control Committee may, by a majority vote of the members thereof and the Board, delegate any of the Committee's rights and responsibilities hereunder to one (1) or more duly licensed architects, who shall have full authority to act on behalf of the Architectural Control Committee on all matters so delegated.

Section 5. Architectural Approval – Review of Plans and Specifications. The Architectural Control Committee shall have the right and duty to promulgate reasonable standards against which to examine any request made pursuant to this Article, in order to ensure that the proposed plans are in conformance with and are harmonious to the exterior design and existing materials of the Condominium Units in the Project. The Architectural Control Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration, and perform such other duties as, from time to time, shall be assigned to it by the Board, including the inspection of construction and progress to ensure its conformance with the plans approved by the Architectural Control Committee. No construction, alteration, grading, addition, excavation, modification, decoration, redecoration or reconstruction of an Improvement shall be commenced or maintained by any Owner 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 the Architectural Control Committee. The initial address for submission of such plans and specifications, until changed by the Architectural Control Committee, shall be:

Architectural Control Committee
"Villa Hermosa II"
13047 Golden Way
Poway, California 92064-0550

The Architectural Control Committee shall approve the plans and specifications submitted for its approval only if it deems that: (a) the construction, alterations or additions contemplated thereby and the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole; (b) the appearance of any structure affected thereby will be in harmony with the surrounding structures; (c) the

construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Association Property, or the enjoyment thereof by the Owners; and (d) the upkeep and maintenance thereof will not become a burden on the Association. Without limiting the generality of the following, the Architectural Control committee may condition its approval of proposals or plans and specifications for any Improvement: (a) on such changes therein as it deems appropriate, (b) upon the agreement by the person submitting the same to grant appropriate easements to the Association for the maintenance of the Improvement, (c) upon the person submitting same to furnish the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be recorded against the Association Property as a result of such work, (d) upon agreement by the person submitting same to complete the proposed work within a stated period of time, or (e) upon the agreement of the person submitting the same to reimburse the Association for the cost of such maintenance, or all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving the submission.

The Architectural Control Committee may also issue rules or guidelines setting forth procedures for submission of plans for approval, requiring a payment of a fee to the Association to accompany each submission of plans and specifications, or additional factors which it will take into consideration in reviewing submissions.

The Architectural Control 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, landscape plans and description or samples of exterior material and colors.

Section 6. Decisions of the Architectural Control Committee. Until receipt by the Architectural Control Committee of any required plans and specifications, and such other information as may be required in Section 5 above, the Architectural Control Committee may postpone review of any plans submitted for approval. Decisions of the Architectural Control Committee and the reasons therefor should be transmitted by the Architectural Control Committee to the applicant, at the address set forth in the application for approval, within forty-five (45) days after receipt by the Architectural Control Committee of all plans, specifications and materials required. Any application submitted pursuant to the provisions of Section 5 above shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Control Committee shall have been transmitted to the application within forty-five (45) days after the receipt by the Architectural Control Committee of all required materials.

Section 7. Submittal to Public Agencies – Right of Architectural Control Committee to Review. Upon obtaining the written approval of the Architectural Control Committee for the written approval of the Architectural Control Committee for the proposed Improvement, if such Improvement requires a building permit, the Owner shall thereafter submit the plans and specifications to all appropriate governmental agencies in accordance with their respective requirements. In the event that all approvals by the

governmental agencies necessary for the issuance of a building permit are not obtained within six (6) months after the date of approval by the Architectural Control Committee, the Architectural Control Committee shall have the right, but not the obligation, to review all previously approved plans and specifications. In addition, in the event that the governmental agencies require modifications to the plans and specifications previously approved by the Architectural Control Committee, the Owner shall submit to the Architectural Control Committee all modifications to the plans and specifications previously approved by the Architectural Control Committee, which shall have the right to review and to impose further conditions on any such modification.

Section 8. Conflicts Between Governmental Agencies and Architectural Control Committee. In the event of any conflict in the conditions of approval of any proposed Improvement imposed by the governmental agencies and the Architectural Control Committee, the more restrictive of such conditions shall be controlling. Further, nothing herein shall limit the Architectural Control Committee from imposing conditions of approval of any proposed Improvements which are more restrictive than conditions that may be imposed by the appropriate governmental agencies.

Section 9. No Waiver of Future Approvals. The approval of the Architectural Control Committee to any submissions for any work done, or proposed to be done, or in connection with any other matter requiring the approval or consent of the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent of any similar proposals, plans and specifications, drawings or other matters subsequently or additionally submitted for approval.

Section 10. Compensation of Members. The members of the Architectural Control Committee shall receive no compensation for services rendered, other than reimbursement by the Association, pursuant to Board approval, for expenses incurred in the performance of such members' duties hereunder.

Section 11. Variances. Where circumstances such as topography, location of buildings, location of landscaping or other matters require, the Architectural Control Committee, by the vote or written assent of a majority of the members thereof and the Board, may allow reasonable variances as to any of the Protective Covenants contained in this Declaration or provisions under the rules and regulations promulgated by the Architectural Control Committee, on such terms and conditions as it shall require. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose, except as to the particular Condominium and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the Owner's use of his Condominium, including, but not limited to, zoning ordinances, lot setback lines or requirements imposed by the City or other governmental authority.

Section 12. Inspection of Work. Upon consent of the Owner, which consent shall not be unreasonably withheld, any member or authorized representative of the Architectural Control Committee may, at any reasonable hour and upon reasonable

notice, enter and inspect any Condominium which has been the subject matter of an approval of a submission for an Improvement to his/her Condominium. Such entry shall be made with as little inconvenience to the Owner as reasonably possible, and any damage caused thereby shall be repaired by the Association. If the Architectural Control Committee finds that such work was not done in substantial compliance with the approved plans and specifications, it shall notify the Owner in writing of such noncompliance, specifying the particulars of noncompliance and shall require the Owner to remedy the same within thirty (30) days from the date of notification of such noncompliance. If a noncompliance exists, the Board, after Notice and Hearing, may levy a Compliance Assessment against such Owner for the costs of removing or remedying such noncompliance.

Section 13. Non-Liability of Architectural Control Committee. Neither Declarant, the Association, the Board or the Architectural Control Committee, or the members or designated representatives thereof, shall be liable for damages to any Owner submitting plans or specifications to them for approval, or to any Owner in the Project affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance, unless due to willful misconduct or bad faith of the Architectural Control Committee. The Architectural Control Committee's approval or disapproval of a submission shall be based solely on the considerations set forth in this Article, and in such rules and regulations as may be promulgated by the Architectural Control Committee, and the Architectural Control Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety and conformance with building or other codes.

Section 14. Appeal. In the event plan and specifications submitted to the Architectural Control Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Architectural Control Committee. The Board shall submit such request to the Architectural Control Committee for review, and the written recommendations of the Architectural Control Committee will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. The failure by the Board to render a decision within said forty-five (45) day period shall be deemed a decision in favor of the party making such submission.

Section 15. Approval of City. Approval of any proposed or existing Improvement by the Architectural Control Committee or the Board, or the completion of any Improvement, shall not be construed to warrant or represent in any way that the Improvement was approved by or complies with the minimum standards of the City. Similarly, approval of any proposed or existing Improvement by the City shall not be construed to constitute approval of such Improvement by the Architectural Control Committee or the Board.

ARTICLE XII

DAMAGE OR DESTRUCTION TO THE ASSOCIATION PROPERTY

Section 1. Restoration of Damaged Association Property. Except as otherwise provided in Section 2 hereinbelow, damage to or destruction of all or any portion of the Association Property shall be handled in the following manner:

(a) In the event of damage to or destruction of the Association Property, and the insurance proceeds are sufficient to effect total restoration, the Association shall, as promptly as is practical, cause the Association Property to be repaired and reconstructed in a good workmanlike manner to its condition prior to such damage or destruction.

(b) If the insurance proceeds available are at least ninety percent (90%) of the estimated cost of total repair and reconstruction to the Association Property, the Association shall, as promptly as practical, cause such Association Property to be repaired and reconstructed in a good workmanlike manner to its condition prior to the damage or destruction, and the difference between the insurance proceeds and the actual cost shall be levied by the Association as a Special Assessment against each of the Owners and their Condominiums, based on the ratio of the square footage of the floor areas of all Condominiums to be assessed.

(c) If the insurance proceeds available are less than ninety percent (90%) of the estimated cost of total repair and reconstruction to the Association Property, the Owners shall, by the written consent or vote of a majority of the Owners, determine whether: (1) to restore the Association Property as promptly as practical to its condition prior to the damage or destruction, and to raise the necessary funds over and above the insurance proceeds available by levying Assessments against each of the Condominiums on an equal basis; or (2) to restore the Association Property in a way which utilizes all available proceeds and an additional amount not in excess of ten percent (10%) of the estimated cost of total reconstruction and repair to the Association Property, and which is assessable as provided above to all Condominiums, but which is less expensive than restoring the Association Property to its condition prior to the damage or destruction.

Section 2. Election by Owners Not to Restore Damaged Association Property.

(a) Notwithstanding the provisions set forth in Section 1 hereinabove, in the event sixty-seven percent (67%) of the Owners, other than Declarant, and sixty-seven percent (67%) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) have given their prior written approval, the Owners may elect not to rebuild or restore the Association Property and to disburse the available insurance proceeds to the general fund of the Association.

(b) In the event the Owners shall have so voted not to rebuild the Association Property, the Association Property shall be cleared and landscaped and the cost thereof shall be paid for out of the available insurance proceeds prior to their distribution to the general fund of the Association.

(c) In the event the Owners shall have so voted not to rebuild the Association Property, unless the City shall agree to the contrary, it shall be the obligation of the Association and each of the Owners to rebuild the private streets, if any, utilities and open spaces, at least to the extent said streets, utilities and open spaces were accepted initially by the City, if at all, in lieu of payment of fees due pursuant to law.

Section 3. Restoration of Damaged Condominium Units. Restoration and repair of any damage to the interior or exterior of any individual Condominium Unit, including, without limitation, all interior walls, lighting fixtures, plumbing fixtures, cabinets, furniture and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Condominium Unit so damaged. In the event of a determination to rebuild the adjoining portion of the Association Property also damaged or destroyed, such interior repair and restoration shall be completed as promptly as practicable in a lawful and workmanlike manner, and in accordance with the plans approved by the Board or its designated Architectural Control Committee, as provided for in this Declaration.

Section 4. Architectural Approval of Restoration Plans; Design and Variance. In connection with the restoration and repair of any damage to the interior of any individual Condominium Unit, the Owner thereof may apply for approval to the Architectural Control Committee for reconstruction, rebuilding or repair of his Condominium Unit in a manner which will provide for an exterior appearance and design different than that which existed prior to the date of the casualty. Application for such approval shall be made in writing, together with full and complete plans and specifications, working drawings and elevations showing the proposed reconstructions and the end result thereof. The Architectural Control Committee shall grant such approval only if the design proposed by the Owner would result in a finished Condominium Unit in harmony of exterior design with the other Condominium Units in the Project. Failure of the Architectural Control Committee to act within thirty (30) days after receipt of such a request in writing, coupled with the drawings and plot plans showing full and complete nature of the proposed change, shall constitute approval thereof.

Section 5. Distribution of Excess Insurance Proceeds. In the event any excess insurance proceeds remain after the reconstruction or clearance of the damaged or destroyed Association Property by the Association, pursuant to this Article, the Board, in its sole discretion, may retain such excess insurance proceeds to all the Association or distribute such excess insurance proceeds to all Owners, subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies carried by the

Association. In the absence of any such rights, the rights of an Owner and the Mortgagee of his Condominium Unit as to each such distribution shall be governed by the provisions of the Mortgage encumbering said Condominium Unit.

Section 6. Special Assessments for Restoration Purposes. All amounts collected pursuant to Special Assessments, as provided for herein, shall only be used for the purposes set forth in this Article, and shall be deposited by the Board in a separate bank account to be held in trust for such purposes.

ARTICLE XIII

CONDEMNATION

Section 1. Distribution of Awards. Subject to the limitations set forth in the Article herein entitled "Mortgagee Protection," a condemnation award affecting all or any portion of the Association Property of the Project which is not apportioned among the Owners by court judgment, or by agreement between the condemning authority and each of the affected Owners in the Project, shall be distributed among the affected Owners (and their respective Mortgagees) based upon the relative fair market values of all Condominiums prior to the award, as determined by an independent, qualified, professional real estate appraiser. All first Mortgagees shall have the right to participate in any condemnation proceedings.

Section 2. Distribution of Awards – Association Property. A condemnation award affecting all or any portion of the Association Property shall be remitted to the general fund of the Association.

Section 3. Board of Directors as Attorney-in-Fact. All Owners hereby appoint the Board of the Association as their special attorney-in-fact to handle the negotiations, settlements and agreements pertaining to any condemnation affecting only the Association Property.

ARTICLE XIV

COVENANT AGAINST PARTITION

Section 1. General Covenant against Partition. Except as otherwise provided in this Section, the Common Area shall remain undivided and there shall be no judicial partitions thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in a Condominium.

Section 2. Judicial Partition of the Project. The Owner of a Condominium in the Project may maintain a partition action as to the entire Project as if the Owners of all the Condominiums in the Project were tenants-in-common in the entire Project in the same proportion as their interests in the Common Area. The court shall order partition

under this Article only by sale of the entire Project and only upon the showing of one (1) of the following:

(a) More than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part was rendered unfit for its prior use and the Project has not been rebuilt or repaired substantially to its state prior to the damage or destruction;

(b) Three-fourths (3/4) or more of the Project is destroyed or substantially damaged, and at least sixty-seven percent (67%) of the Owners (other than Declarant) and sixty-seven percent (67%) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) oppose repair or restoration of the Project; or

(c) The Project has been in existence more than fifty (50) years, is obsolete and uneconomical, and at least sixty-seven percent (67%) of the Owners (other than Declarant) and sixty-seven percent (67%) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) oppose repair or restoration of the Project.

Section 3. Board of Directors' Power of Sale in Event of Judicial Partition. Declarant, for itself and on behalf of each and every present and subsequent Owner of one (1) or more Condominiums with the Project, hereby appoints the Board as its and their attorney-in-fact to sell the entire Project for the benefit of all of the Owners thereof when partition of the Project may be seventy-five percent (75%) of the voting power of the Board (or two-thirds (2/3) if only a three (3) member Board); and (c) be exercisable only after recordation of a certificate by the Board, which shall provide that said power is properly exercisable hereunder, and which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE XV

INSURANCE

Section 1. Required Insurance Coverage. The Association, acting by and through the Board, shall obtain for the Association, and shall maintain and pay the premiums for the following insurance coverage.

(a) Casualty and Fire Insurance. A policy or policies of casualty and fire insurance, with extended coverage endorsement in an amount equal to as near as possible to the full current replacement cost (without deduction for depreciation or co-insurance) of the Association Property, together with all Improvements located therein (except Improvements made by an Owner to the Exclusive Use Common Area). Said policies shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests shall appear. The coverage does not need to include land, foundations, excavations or other items normally excluded from such coverage. Such policy or policies must contain, if required and if obtainable:

- (1) An agreed amount and Inflation Guard Endorsement;
- (2) Construction Code Endorsements (such as Demolition Cost Endorsement);
- (3) A Contingent Liability From Operation of Building Laws Endorsement;
- (4) An Increased Cost of Construction Endorsement, if there is a construction code provision which would become operative and require changes to undamaged portions of the buildings within the Association Property;
- (5) Any other Special Condominium Endorsements that may be available or required.

(b) Public Liability Insurance. A policy or policies of full coverage public liability insurance (with cross-liability endorsement, if obtainable) insuring the Association, the Board, the Owners, the City and the Declarant, and the agents and employees of each of the foregoing, against any liability to the public or to any Owner, his family, invitees, and/or tenants, arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Association Property and Condominium Units, and from lawsuits related to employment contracts in which the Association is a party. The limits of liability under this Section shall be set by the Board and shall be reviewed at least annually by the Board, and increased or decreased at the discretion of the Board; provided, however, that said limits shall not be less than One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons and property damage arising out of a single occurrence; provided further, if FHLMC and/or FNMA participate in the financing of Condominiums in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and/or FNMA regulations.

(c) Worker's Compensation Insurance. Worker's compensation insurance to the extent necessary to comply with any applicable laws.

(d) Fidelity Bonds. Officer's and director's errors and omissions insurance and fidelity bonds naming all persons signing checks or otherwise possessing fiscal responsibilities on behalf of the Association, including, but not limited to, officers, Directors, trustees and employees of the Association, and officers, employees and agents of any management company employed by the Association who handle or are responsible for the Association funds. Such coverage shall be in an amount deemed reasonably appropriate by the Association, but shall not be less than the estimated maximum funds in custody of the Association, or twenty-five percent (25%) of the estimated annual operating expenses of the Project, plus reserves, whichever is greater. In addition, if the Association enters into an agreement for professional

management of the Project, the Association shall require such firm to submit evidence of such firm's fidelity bond coverage to the same extent as the Association's coverage.

Section 2. Optional Insurance Coverage. The Association, acting at its option and by and through the Board, may purchase such other insurance as it may deem necessary or appropriate, including, but not limited to, earthquake insurance, flood insurance, plate glass insurance, policy coverage amounts consistent with Civil Code Section 1365.9 and for such other risks as may be associated with condominium projects similar in construction, location and use.

Section 3. Notice of Cancellation of Insurance. All policies of insurance (including fidelity bonds) maintained by the Association, pursuant to this Article, shall contain a provision that coverage under said policies may not be canceled, terminated, allowed to expire by their own terms or be substantially modified by any party without at least thirty (30) days prior written notice to the Board and to such Owners and such first Mortgagees who have filed written requests with the Association for such notice. A list of such Owners and such first Mortgagees shall be made available by the Association to the insurance carrier upon request.

Section 4. Review of Coverage. The Board shall annually determine whether the amounts and types of insurance coverage that it has obtained pursuant to this Article shall provide adequate coverage for the Project, based upon the then current construction costs, insurance practices in the area in which the Project is located, and all other factors which may indicate that either additional insurance coverage or increased coverage under existing policies is necessary or desirable to protect the interests of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain same.

Section 5. Waiver by Owners. As to all policies of insurance maintained by the Association which will not be voided or impaired thereby, each Owner hereby waives and releases all claims against the Association, the Board and the Declarant, and the agents and employees of each of the foregoing, and all other Owners with respect to any loss covered by such insurance, whether or not caused by the negligence of, or breach of, any agreement by said persons, but only to the extent of the insurance proceeds received in compensation for such loss.

Section 6. Premiums, Proceeds and Settlement. Insurance proceeds for all blanket insurance coverage and any other insurance coverage which the Board has determined is necessary to protect the interests of the Association, the Owners and their respective Mortgagees shall be a Common Expense to be included in the Regular Assessments levied by the Association. In the event of any damage or destruction to the Association Property, all insurance proceeds paid to the Association shall be disbursed in accordance with the provisions of the Article herein entitled "Damage or Destruction to the Association Property" or, in the event of any other loss, the proceeds shall be disbursed as the Board shall deem appropriate, subject to the limitations set

forth in the Article herein entitled "Mortgagee Protection." The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. A majority of the Board must sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on the Association and its members.

Section 7. Rights and Duties of Owners to Insure. Each Owner may obtain insurance on his Condominium, personal property and on all other property and improvements within his Condominium Unit. Nothing herein shall preclude any Owner from carrying any public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring inside his individual Condominium Unit or elsewhere upon the Project. If obtainable, such liability insurance coverage carried by an Owner shall contain a waiver of subrogation of claims against the Declarant, the Association and the Board, and their agents and employees, and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 8. Trustee for Policies. The Association is hereby appointed and shall be deemed trustee for the interests of all insureds under the policies of insurance maintained by the Association. All insurance proceeds under such policies shall be paid to the Board, as trustees, and the Board shall have full power to receive such funds on behalf of the Association, the Owners and their respective Mortgagees, and to deal therewith as provided for in this Declaration.

Section 9. Mortgage Clause. All insurance policies should have the "standard mortgage clause," or equivalent endorsement, providing that coverage of a Mortgagee under the insurance policy will not be adversely affected or diminished by an act or neglect of the Mortgagor, which is commonly accepted by private institutional mortgage investors in the area in which the Project is located, unless such coverage is prohibited by applicable law. Mortgages owned by FNMA must name as a Mortgagee either FNMA or the servicer for the Mortgages held by FNMA encumbering the Condominiums. When a servicer is named as the Mortgagee, its name should be followed by the phrase "its successors and assigns." If the Mortgage is owned in whole by FHLMC, the name of the servicer of the Mortgage followed by the phrase "its successors and assigns, beneficiary" should be named as Mortgagee instead of FHLMC. The mortgage clause should be endorsed to fully protect FHLMC's interests or the interest of FHLMC and the servicer where applicable. If FHLMC must be named as Mortgagee, the endorsement should show the servicer's address in lieu of FHLMC's address. A mortgage clause in favor of Mortgagees holding Mortgages on Condominiums is not required on a policy insuring the Association Property.

Section 10. Compliance With Requirements of FHLMC and FNMA. Notwithstanding the provisions of this Article, the Association shall obtain and maintain in effect such policies of insurance meeting all requirements of FHLMC and FNMA established by those entities for condominium projects for so long as any of such agencies continue to be a Mortgagee, Owner, insurer or guarantor of a Mortgage in the Project, except to the extent such coverage is not available or has been waived, in writing, by such agencies.

ARTICLE XVI

MORTGAGEE PROTECTION

Section 1. Mortgage Protection Provisions. Notwithstanding any other provision in this Declaration to the contrary, in order to induce FHLMC and FNMA and other lenders and investors to participate in the financing of the sale of Condominiums in the Project, the following provisions contained within this Article are added hereto, and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. The Declaration, the Articles and the By-Laws for the Association are hereinafter collectively referred to in this Article as the "Constituent documents."

(a) The right of an Owner to sell, transfer or otherwise convey his Condominium shall not be subject to any right of first refusal or any similar restriction in favor of the Association;

(b) The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Condominium. The sale or transfer of any Condominium shall not affect the Assessment lien; however, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage or pursuant to any remedies provided for in the Mortgage shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Condominium from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the Mortgage, or foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage will not be liable for any unpaid Assessments or charges which occurred prior to the acquisition of title to such Condominium by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Condominiums, including the mortgaged Condominium);

(c) Except as provided by statute in case of condemnation or substantial loss to the Condominium Units and/or Association Property, unless sixty-seven percent (67%) of the Owners, other than Declarant, and sixty-seven percent (67%) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

- (1) By act or omission, seek to abandon or terminate the Project;
- (2) Record or file any amendment which would change the pro rata interest or obligations of any Condominium for purposes of: (i) levying Assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Area;
- (3) Partition or subdivide any Condominium, except as provided in the Article herein entitled "Covenant Against Partition"; provided, however, that no Condominium may be partitioned or subdivided without the prior written approval of the first Mortgagee for such Condominium;
- (4) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any or all of the Association Property. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Association Property by the Project shall not be deemed a transfer within the meaning of this clause;
- (5) Use hazard insurance proceeds for losses to the Project (whether to Condominium Units or to Association Property) for other than repair, replacement or reconstruction;
- (6) Effect any decision of the Association to terminate professional management and assume self-management of the Project, where such professional management was previously a requirement by a holder, insurer or guarantor of any first Mortgage;
- (7) By act or omission, change, waive, or abandon any provisions of this Declaration, or enforcement thereof, pertaining to architectural design of the Condominiums or the maintenance and operation of the Association Property within the Project, including, without limitation, sidewalks, fences and landscaping within the Project; and
- (8) Fail to maintain fire and extended coverage on the insurable Association Property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value thereof.

(d) All taxes, Assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to individual Condominiums, and not to the Project as a whole;

(e) No provision of the constituent documents shall be interpreted to give the Owner of a Condominium, or any other party, priority over any rights of the first Mortgagee of the Condominium pursuant to its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Condominium Units and/or the Association Property;

(f) The Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs, and replacement of those elements of the Association Property that must be replaced on a periodic basis, and shall be payable in regular installments, rather than by Special Assessments;

(g) Each holder, insurer or guarantor of a first Mortgage who has filed with the Association a written request for notice shall be entitled to timely written notice of any:

- (1) Condemnation or eminent domain proceeding, and any loss or taking resulting from such proceeding which affects the Project, or any portion thereof;
- (2) Substantial damage or destruction to the Project, or any portion thereof, when such loss exceeds Ten Thousand Dollars (\$10,000.00);
- (3) Default in the performance by an individual Owner of any obligation under the constituent documents which is not cured within sixty (60) days after the Association learns of such default;
- (4) Lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;
- (5) Abandonment or termination of the Project; and
- (6) Proposed action that requires the consent of a specified percentage of eligible Mortgagees.

(h) Any agreement for professional management of the Project or any contract providing for services of the Declarant may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Any such agreement must provide for termination by either party with or without cause and without payment

of a termination fee on thirty (30) days' or ninety (90) days' or less, respectively, written notice;

(i) In the event of substantial damage to or destruction of any Condominium Unit or any part of the Association Property, the first Mortgagee for such Condominium will be entitled to timely written notice of any such damage or destruction;

(j) A first Mortgagee of a Condominium in the Project will, upon request, be entitled to:

- (1) Examine the books and records of the Association during normal business hours;
- (2) Require from the Association an annual audited financial statement of the Project for the previous fiscal year (without expense to the holder, insurer or guarantor requesting said statement), however, if an audited financial statement is not available, any Mortgage holder may be allowed to have an audited financial statement prepared, at its own expense; and
- (3) Receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

(k) Each Owner shall notify the Association, in writing, within ten (10) days after the close of escrow for the purchase of his Condominium of the name and address of his first Mortgagee, and, thereafter, each Owner shall promptly notify the Association of any changes of name or address for his first Mortgagee;

(l) Each Owner hereby authorizes a first Mortgagee on a Condominium to furnish information to the Board concerning the status of any such first Mortgage;

(m) In the event any portion of the Association Property encroaches upon any Condominium Unit or any Condominium Unit encroaches upon the Association Property as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists; and

(n) First Mortgagees of Condominium Units may, jointly or singularly, pay taxes or other charges which are in default and which may have become a lien on the Association Property, and may pay overdue premiums on hazard insurance policies or secured new hazard insurance coverage on the lapse of a policy for the Association Property, and first Mortgagees paying such payments shall be owed immediate

reimbursement therefor from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement.

Section 2. Violation of Mortgagee Protection Provisions. No breach of any of the foregoing Protective Covenants shall cause any forfeiture of title or reversion, or bestow any right of re-entry whatsoever, but in the event that any one (1) or more of these Protective Covenants shall be violated, the Declarant, its successors and assigns, or the Association or any Owner of a Condominium in the Project may commence a legal action in any court of competent jurisdiction to enjoin or abate said violation and/or to recover damages; provided, however, that any such violation shall not defeat or render invalid the lien of any Mortgage made in good faith and for value as to said Condominium. Said Protective Covenants shall be binding upon and effective against any Owner of said Condominium, or a portion thereof, whose title thereto is acquired by foreclosure, a trustee sale, or otherwise.

Section 3. Effect of Amendments. Except as may otherwise be provided herein, no amendment of this Declaration, or the Articles or the By-Laws of the Association shall affect the rights of any Mortgagee whose lien was created prior to the recordation of such amendment.

Section 4. Amendments to Conform With Mortgagee Requirements. It is the intent of Declarant that this Declaration, and the Articles and By-Laws of the Association, and the Project in general, meet all requirements necessary to purchase, guarantee, insure and subsidize any Mortgage of a Condominium in the Project by the FHLMC and the FNMA. 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 Condominium in the Project by recording a writing 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 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 XVII

ENFORCEMENT OF BONDED OBLIGATIONS

Section 1. Enforcement of Bonded Obligations. In the event that the improvements of the Association Property have not been completed prior to the issuance of a Final Subdivision Public Report by the DRE, and the Association is obligated 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) 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) 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 By-Laws 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.

(c) The only Members entitled to vote at such meeting of Members shall be the Owners, other than Declarant. A vote at such meeting of a majority of the voting power of such Members, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

ARTICLE XVIII

ANNEXATION OF ADDITIONAL PROPERTY

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

Section 1. Phased Development of the Project. As set forth in Article II herein entitled "Introduction to Villa Hermosa II," Declarant intends to develop the Project in a series of Phases which may be annexed to the Project. However, Declarant is under no obligation to continue development of the Project.

Section 2. Annexation Pursuant to General Plan. All or any part of the real property described as Annexation Property herein may be annexed to Phase I and added to the scheme of this Declaration and subjected to the jurisdiction of the Association without the assent of the Association or its Members, provided and on condition that:

(a) Any annexation pursuant to this Section shall be made prior to three (3) years from the date of the original issuance by the DRE of the most recently issued Final Subdivision Public Report for the immediately preceding Phase of the Project;

(b) The development of the Annexation Property shall be in substantial conformance with the overall general plan of development for the Project originally submitted to and approved by the City and the DRE: and

(c) A Notice of Annexation, as described in Section 4 of this Article, shall be recorded covering the Annexation Property.

Section 3. Annexation Pursuant to Approval. Upon obtaining the approval in writing of the Association pursuant to the vote or written assent of two-thirds (2/3) of the total votes residing in the Association Members, other than the Declarant, the owner of any property who desires to annex said property to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file of record a Notice of Annexation, as described in Section 4 of this Article.

Section 4. Notice of Annexation. The annexation of additional property authorized under this Article shall be made by filing of record a Notice of Annexation, or similar instrument, covering said additional property, and the Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional property. The 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 annexed 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 5. Effective Date of Annexation. Any Notice of Annexation recorded on a Phase of the Project shall become effective immediately upon:

(a) The first close of an escrow for the sale of a Condominium in a Phase, as evidenced by the recordation of the first instrument of conveyance for said Condominium; or

(b) The conveyance of any Association Property in said Phase to the Association, whichever first occurs.

Section 6. Right of De-Annexation. Declarant hereby reserves the right to de-annex any property which may be annexed to the Project pursuant to this Declaration, and to delete said property from the scheme of this Declaration and from the jurisdiction of the Association, provided and on condition that the de-annexation shall be made prior to the first close of an escrow for the sale of a Condominium in the property to be de-annexed.

Section 7. Amendments to Notices of Annexation. Notwithstanding any other provisions in this Declaration to the contrary, a Notice of annexation may be amended by the requisite affirmative vote of Members (and first Mortgagees, if applicable), as set forth in the Article herein entitled “General Provisions,” in only the annexed property described in said Notice of Annexation rather than all Members (and first Mortgagees, if applicable) in the Project on the following conditions:

(a) Such amendment applies only to the Annexation 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.

ARTICLE XIX

RIGHT OF CITY TO COMPEL PERFORMANCE

Section 1. Rights of City. The Association shall indemnify and hold the City harmless for any damages resulting from the Association’s maintenance of the Association Property. Notwithstanding any other provision regarding maintenance responsibilities, the City is hereby granted the right, but in no event the duty, to enforce the maintenance obligations of the Owners and the Association for the Association Property described in this Declaration, to the extent that the Association Property is maintained in a manner which complies with all applicable City, State and federal ordinances, statutes and regulations, and which does not create or perpetuate nuisances, health or safety hazards. In the event of a breach of the maintenance provisions contained in this Section, the City shall give written notice of such breach and the Association shall remedy such breach within thirty (30) days of receipt of such written notice by the City. The Association recognizes that it has the primary responsibility for enforcement of its maintenance responsibilities that are contained in this Declaration, and unequivocally guarantees to institute and expeditiously prosecute any required legal action to obtain compliance with the provisions contained in this Article. The City, in enforcing the provisions contained in this Article, shall be entitled to all the rights and remedies of an Owner or of the Association. The City, shall to the extent allowable by law, be entitled to all expenses of enforcement, including the enforcement by private legal counsel, and shall have the authority to lien the subject property (including individual Condominiums of Owners, if applicable) if the Association does not pay the City for all expenses of correction and enforcement. All funds obtained by lien or other legal proceedings by the City shall be utilized by the City to repay the City for the costs of correcting the breach after costs of expenses of enforcement shall first have been deducted.

Notwithstanding the foregoing, no such amendment or modification to this Declaration which would affect the terms and provisions of this Declaration as it relates to maintenance responsibilities of the Association or which would terminate or materially

impair the rights of the City as set forth in this Declaration, shall be effective without the prior written consent of the City.

In the event the Association fails to act to cause an Owner to undertake any repair, maintenance or landscaping required under this Declaration, then the City, after Notice and Hearing as hereinafter provided, shall have the right to enter upon any Association Property at reasonable times in order to accomplish such repair, maintenance or landscaping and to assess such charges as a Special Benefit Assessment to the affected Owner or Condominium. Prior to entering upon any Association Property, the City shall send written notice to the Owner specifying the maintenance, repair or landscaping which is required to be performed and shall provide an opportunity for the Owner to be heard before the appropriate body of the City. Said notice shall be given at least fifteen (15) days prior to said hearing.

ARTICLE XX

GENERAL PROVISIONS

Section 1. Enforcement.

(a) The Association, the City or the Owner of any Condominium in the Project, including the Declarant, shall have the right to enforce, by proceedings at law or in equity, all of the Protective Covenants now or hereafter imposed by this Declaration and the By-Laws, respectively (and the Rules and Regulations duly adopted by the Association), including, without limitation, the right to record notices of non-compliance or violations, prosecute a proceeding at law or in equity against the person or persons who have violated, or are attempting to violate, any of said Protective Covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or recover damages for said violation.

(b) The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the Association, or by its successors in interest.

(c) The remedies herein provided for breach of the Protective Covenants contained in this Declaration or the provisions of the By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(d) The failure of the Association or any Owner to enforce any of the Protective Covenants contained in this Declaration, the provisions of the By-Laws or any Rules or Regulations shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the Protective Covenants contained in this Declaration or of the provisions of the By-Laws shall not affect or impair the lien or charge of a bona fide Mortgage or deed of trust made in good faith and for value on any Condominium; provided, however, that any subsequent Owner of such property shall be bound by said Protective Covenants and the provisions of the By-Laws, whether or not such Owner's title was acquired by foreclosure, a trustee's sale or otherwise.

(f) The Board, for and on behalf of the Association, may assess monetary penalties against an Owner as a Compliance Assessment and/or temporarily suspend said Owner's voting rights and right to use any recreational facilities, for the period during which any Assessment against said Owner's Condominium remains unpaid; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(g) The Board, for and on behalf of the Association, may temporary suspend an Owner's voting rights and right to use any recreational facilities for a period not to exceed thirty (30) days for any infraction of the Association's Rules and Regulations; provided, however, the requirements for Notice and Hearing set forth in the By-Laws shall be followed with respect to the accused Owner before a decision to impose discipline is reached.

(h) In addition to the above general rights of enforcement, the City shall have the right, through its agents and employees, to enter upon any part of the Project for the purpose of enforcing all applicable codes and/or local ordinances, including the California Vehicle Code, and is hereby granted an easement over the Project for that purpose.

Section 2. Severability. Invalidation of any one of these Protective Covenants by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

Section 3. Term. The Protective Covenants set forth in this Declaration shall run with and bind the Project, and shall inure to the benefit of the Association and be enforceable by the Board or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time said Protective Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners agreeing to terminate said Protective Covenants, in whole or in part, has been recorded within one (1) year prior to the termination of the initial fifty (50) year term, or within one (1) year prior to the termination of any successive ten (10) year period.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance of the Project. The Article and Section headings have been inserted for

convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Singular Includes Plural. Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

Section 6. Amendments.

(a) Amendments by Declarant. Prior to the sale of a Condominium to a member of the public, in accordance with a Final Subdivision Public Report issued by the DRE, this Declaration may be amended, restated or terminated by an instrument executed by Declarant.

(b) Amendments by Association. This Declaration may be amended only by an affirmative vote of Owners representing not less than sixty-seven percent (67%) of the Class A voting power and the Class B voting power of the Association. At such time when the Class B membership shall cease and be converted to Class A membership, any and all amendments to this Declaration shall be enacted by requiring the vote or written assent of Owners representing both: (1) sixty-seven percent (67%) of the total voting power of the Association, and (2) sixty-seven percent (67%) of the votes of Members, other than the Declarant; provided, however, that the percentage of the voting power necessary to amend a specific provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under said provision. Any Owner or the Association may petition the Superior Court of the County for an order reducing the necessary percentage required under this Section to amend this Declaration. The procedure for affecting this petition is set forth in Section 1356 of the California Civil Code, as the same may be amended, from time to time.

(c) Approval of Mortgagees. In addition to the rights of first Mortgagees, as set forth in the Article herein entitled "Mortgagee Protection," in the event that FNMA participates in the financing of Condominiums in the Project, the written consent of not less than fifty-one percent (51%) of the first Mortgagees shall be required for any amendment of a "material" nature. An amendment which affects or purports to affect any of the following is considered material:

- (1) The legal status of the Project as a common interest development;
- (2) Voting rights;
- (3) Assessments, assessment liens or the priority of assessment liens, including the levy and collection thereof, enforcement provisions for nonpayment and subordination of liens for nonpayment;

- (4) Reserves for maintenance, repair and replacement of Association Property;
- (5) Responsibility for Association Property maintenance and repair;
- (6) Reallocation of interests in the Association Property or rights to use the Association Property;
- (7) Boundaries of any Condominium;
- (8) Convertibility of Association Property into Condominium Units or Condominium Units into Association Property;
- (9) Expansion or contraction of the Project, or addition, annexation or de-annexation of additional property to or from the Project;
- (10) Insurance of fidelity bonds;
- (11) Leasing of Condominiums;
- (12) Restrictions on alienation, including, but not limited to, rights of first refusal;
- (13) Any decision by the Association to establish self-management, if professional management was previously required by an eligible first Mortgagee or legal documents governing the Project;
- (14) Restoration or repair of the Project in a manner other than as specified in this Declaration;
- (15) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; and
- (16) Mortgagee protection provisions as set forth in that Article hereinabove entitled "Mortgagee Protection," and such other provisions in this Declaration for which the consent of Mortgagees shall be required or which are expressly for the benefit of Mortgagees, insurers or guarantors of Mortgages.

An addition or amendment to this Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. In the event the Association is considering termination of the legal status of the Project for reasons other than the substantial destruction or condemnation of the Project, then sixty-seven

percent (67%) of the first Mortgagees must agree to said termination. Notwithstanding the foregoing, in the event any first Mortgagee receives a written request, delivered by certified or registered mail with return receipt requested, from the Board to approve any amendment to this Declaration, and such first Mortgagee does not deliver a negative response in writing to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved such proposed amendment.

(d) **Recordation of Amendments.** An amendment made in accordance with the provisions set forth hereinabove shall be effective when executed by the President and Secretary of the Association, who shall certify that the amendment has been approved by the membership, and where appropriate, by the first Mortgagees, in the percentages set forth hereinabove, and recorded in the Office of the County Recorder. Upon such recordation, the amendment shall be effective and binding upon all Owners and all Mortgagees, regardless of whether such Owner or such Mortgagee consented to such amendment.

Section 7. Encroachments. None of the rights and obligations of the Owners created herein or by the deed shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful conduct of said Owner.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by registered or certified mail, it shall be deemed to have been delivered forty-eight (48) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of such notice, or to the Condominium Unit of such person if no address has been given to the Association. If such notice is not sent by regular or certified mail, it shall be deemed to have been delivered when received. Such address may be changed, from time to time, by notice in writing to the Association.

Section 9. Attorney's Fees. If any Owner defaults in making a payment of Assessments or in the performance or observance of any provision of this Declaration, and the Association has obtained the services of an attorney in connection therewith, the Owner covenants and agrees to pay to the Association any costs or fees incurred, including reasonable attorneys' fees, regardless of whether legal proceedings are instituted. In case a suit is instituted, the prevailing party shall recover the cost of the suit, in addition to the aforesaid costs and fees.

Section 10. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association

or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the Protective Covenants established by this Declaration governing the Project, together with the covenants and restrictions established upon any other property as one plan.

Section 11. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents or employees, in connection with the Project, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness or intended use or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant, from time to time, with the DRE.

Section 12. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or By-Laws of the Association, the terms and provisions of this Declaration shall prevail.

Section 13. Procedures for Adjudicating Claims Against Declarant.

A. Design or Construction Defect Claims:

Actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Project against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof, or otherwise defined in Civil Code sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with Civil Code §§ 895 through 945.5, and Civil Code §§ 1375 and 1375.05, as such sections may be amended, revised or superseded, from time to time. If a Claim is subject to pre-litigation procedures in Civil Code §§ 910 through 938, or any successor statutes, each Member, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the prelitigation procedures of Civil Code §§ 910 through 938. Notices of Claims shall specify all of the matters as set forth in Civil Code § 1368.4 and/or Civil Code §§ 910 through 938, as applicable, and any successor statutes or laws. The Association and not the individual Members shall have the power to pursue any Claims for alleged construction defects in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration. Any recovery by the Association with respect to any damage to or defect in the Common Area or other improvements or property within the Project that the Association is obligated to maintain or repair under this Declaration shall be utilized solely for the purpose of paying for the costs of obtaining the recovery and for correcting such damage or defect. If the Claim is not resolved by and pursuant to the prelitigation procedures of under Civil Code §§ 910

through 938, subject to the provisions of Civil Code §§ 1375 and 1375.05, then notwithstanding the provisions of California Code of Civil Procedure § 1298.7, the Claim shall be resolved in accordance with the provisions of Section 13C of this Declaration (Judicial Reference) and Section 13D of this Declaration (Arbitration of Disputes).

B. Notices to Members of Legal Proceedings Against Declarant:

In accordance with Civil Code § 1368.4, at least 30 days prior to filing any civil action, including arbitration, against Declarant or other developer of the Project for alleged damage to (i) the Common Area, (ii) the Association Property, (iii) all or portions of Units which the Association is required to maintain, or (iv) the Units which arises from or is integrally related to alleged damage to the Common Area or all or portions of the Units which the Association is required to maintain, the Board shall provide written notice to each Member specifying each of the following: (1) That a meeting will take place to discuss problems that may lead to the filing of a civil action; (2) The options, including civil actions, that are available to address the problems; and (3) The time and place of the meeting. [**California Civil Code § 1368.4(a)**]. If the Association has reason to believe that the applicable statute of limitations will expire before the Association is able to give notice, hold the meeting and file the civil action, the Association may file the civil action first and then give the notice within thirty (30) days after filing of the action.

C. Judicial Reference for Certain Disputes:

For any action by the Association against the Declarant, any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Project, or any element thereof ("Developer Parties"), subject to the provisions of Civil Code §§ 895 through 938, Civil Code § 1375 and Civil Code § 1375.05, or any other action by the Association or any Owner against the Declarant, except as otherwise provided herein, such claim shall be submitted to Judicial Reference as hereinafter provided: (1) The dispute shall be submitted to binding general judicial reference pursuant to California Code of Civil Procedure §§ 638(1) through 645.1, or any successor statutes thereto pertaining to proceedings under judicial reference ("Judicial Reference"). The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the Judicial Reference proceeding. Declarant shall not be required to participate in the Judicial Reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share the fees and costs of the Referee for the Judicial Reference proceeding as determined by the Referee. (2) The Referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise: (a) If the Declarant is a party to the Judicial Reference, then any fee to initiate the Judicial Reference shall be paid by Declarant, provided however, that the cost of the judicial reference shall ultimately be borne as

determined by the Referee; (b) The proceedings shall be heard in Imperial County, California; (c) The Referee must be a neutral and disinterested party who is a retired judge or a licensed attorney with at least ten (10) years' experience in relevant real estate matters; (d) Any dispute regarding the selection of the Referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction; (e) The Referee may require one or more pre-hearing conferences; (f) The parties shall be entitled to discovery, and the Referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge; (g) A stenographic record of the Judicial Reference proceedings shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals; (h) The Referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; (i) The Referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge; (j) The Referee shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of the Judicial Reference; and (k) The statement of decision of the Referee upon all of the issues considered by the Referee shall be binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the Referee shall be appealable as if rendered by the court. (l) If submission of a disputed matter referenced in this section to Judicial Reference is not permitted under the then applicable law, then notwithstanding California Code of Civil Procedure § 1298.7, if the dispute is not resolved through mediation, each Member, the Association and Declarant shall resolve such dispute exclusively through binding arbitration conducted in accordance with the Commercial Arbitration Rules of Judicial Arbitration and Mediation Services ("JAMS") pursuant to Section 13D of this Declaration. (3) Judicial Reference shall only proceed for any matter that is subject to the requirements of California Civil Code § 1354 after the parties have attempted to reasonably comply with the alternative dispute resolution requirements set forth in California Civil Code § 1354, as same may be amended from time to time.

D. Arbitration of Disputes:

If a dispute is the subject of binding arbitration under this Declaration, the following shall apply: (1) costs and fees of the arbitration, including ongoing costs and fees of the arbitration shall be paid as agreed by the parties, and, if the parties cannot agree, as determined by the arbitrator; provided, however, if the Declarant is a party to the arbitration, then any fee to initiate arbitration shall be paid by Declarant, but the cost of arbitration shall ultimately be borne as determined by the arbitrator; (2) a neutral and impartial individual shall be appointed to serve as arbitrator, with the arbitrator to be selected by mutual agreement of the parties. If the parties are unable to agree on an arbitrator within fifteen (15) days after any party initiates the arbitration, a neutral and impartial arbitrator shall be selected by JAMS. In selecting the arbitrator, the provisions of §§ 1297.121 of the Code of Civil Procedure shall apply. An arbitrator may be challenged for any of the grounds listed in § 1297.121, or in § 1297.124 of the Code of Civil Procedure; (3) venue of the arbitration to be in Imperial County, California; (4) the arbitration shall commence in a prompt and timely manner in accordance with (i)

the Commercial Rules of the JAMS, or if the rules do not specify a date by which arbitration is to commence, then (ii) by a date agreed upon by the parties, and if they cannot agree as to a commencement date, (iii) a date determined by the arbitrator. The arbitrator shall apply California substantive law in rendering a final decision. The arbitrator shall have the power to grant all legal and equitable remedies and award compensatory damages. When the arbitrator is prepared to make the award, the arbitrator shall first so inform the parties, who shall have ten (10) days to attempt to resolve the matter by a binding agreement between them. If the parties resolve the matter, the arbitrator shall not make any award. If the parties do not so resolve the matter within the ten (10) day period, the arbitrator shall make the award on the eleventh day following the arbitrator's notice of being prepared to make the award; (5) the arbitration shall be conducted in accordance with the Commercial Rules of the JAMS; (6) the arbitration shall be conducted and concluded in a prompt and timely manner; (7) the arbitrator shall be authorized to provide all recognized remedies available in law or equity for any cause of action that is the basis of arbitration; (8) A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The parties agree to be bound by the decision of the arbitrator, which shall be final and non-appealable; (9) Preliminary Procedures: If state or federal law requires an Owner, the Association or Declarant to take steps or procedures before commencing an action in arbitration, then the Owner, the Association or Declarant must take such steps or follow such procedures, as the case may be, before commencing the arbitration. For example, any claim or Disputes pursuant to California Civil Code §§ 895 et seq., as hereafter amended may be subject to the non-adversarial procedures set forth in California Civil Code §§ 910 through 938, prior to the initiation of any arbitration. In addition, nothing contained herein shall be deemed a waiver or limitation of the provisions of California Civil Code §§ 1368.4, 1375, 1375.05 or 1375.1; (10) Participation by Other Parties. An Owner, the Association and Declarant, to such extent any such party is defending a claim in the arbitration, may, if it chooses, have all necessary and appropriate parties included as parties to the arbitration; (11) Federal Arbitration Act. Because many of the materials and products incorporated into the home are manufactured in other states, the development and conveyance of the Property evidences a transaction involving interstate commerce and the Federal Arbitration Act (9 U.S.C. §§ 1 et seq.) now in effect and as it may be hereafter amended will govern the interpretation and enforcement of the arbitration provisions set forth herein; (12) **AGREEMENT TO ARBITRATE AND WAIVER OF JURY TRIAL.**

a. ARBITRATION OF DISPUTES. BY EXECUTING THIS DECLARATION, DECLARANT AND BY ACCEPTING A DEED TO ANY PORTION OF THE PROPERTY, EACH OWNER AND THE ASSOCIATION SHALL BE DEEMED TO HAVE AGREED TO HAVE ANY DISPUTE DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT AND THE CALIFORNIA ARBITRATION ACT, TO THE EXTENT THE CALIFORNIA ARBITRATION ACT IS CONSISTENT WITH THE FEDERAL ARBITRATION ACT, AND DECLARANT, THE ASSOCIATION AND EACH OWNER ARE GIVING UP ANY RIGHTS DECLARANT, THE ASSOCIATION AND EACH OWNER MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. DECLARANT,

EXHIBIT 'A'
APPROVED PATIO DESIGN

See Attached Patio Cover Design Sheets 1 thru 8.