

## **Cover Page for Homeowners Associations' Governing Documents**

"If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates State and Federal Fair Housing Laws and is void. Any person holding an interest in this property may request that the County Recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code."

Section 1352.5 of the Civil Code, effective January 1, 2000 requires community associations to put this cover page on the front of the Declaration (CC&Rs).

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*DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
(LAKESIDE AT THE RESORT)*

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
(LAKESIDE AT THE RESORT)**

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
(LAKESIDE AT THE RESORT)**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (LAKESIDE AT THE RESORT) (this "Declaration") is made by ARROWHEAD VILLAS LLC, a California limited liability company ("Declarant").

**P R E A M B L E:**

A. Declarant is the owner of certain real property located in the County of San Bernardino, State of California, described as follows:

Lot 1 of Tract No. 15333 as shown on a Subdivision Map filed in Book 264 at Pages 94 and 95 of Maps, in the Office of the San Bernardino County Recorder.

B. It is the desire and intention of Declarant to create a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the Property (as defined below) as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code, and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the condominiums created pursuant to the Davis-Stirling Common Interest Development Act.

C. Declarant hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including without limitation the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all Persons having or acquiring any right, title or interest in the Property, or any part thereof, and their successive owners and assigns.

D. Declarant, its successors, assigns and grantees, ~~covenant and agree that the undivided interest in the Common Area,~~ the membership in the Association, any easements conveyed therewith and the fee title to each respective Unit conveyed therewith shall

not be separated or separately conveyed, and each such undivided interest, membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit; provided, however, that this restriction upon the severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Property is suspended in accordance with Section 1359 of the California Civil Code and the provisions of Article X hereof. Any conveyance by an Owner of a Condominium, or any portion thereof, shall be presumed to convey the entire Condominium, together with a membership in the Association.

## ARTICLE I DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the following specified meanings.

1.1 Annexable Territory. Annexable Territory shall mean the real property, if any, described in Exhibit "A" attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Declaration pursuant to Article XVI hereof.

1.2 Architectural Committee or Committee. Architectural Committee or Committee shall mean the Architectural Review Committee created pursuant to Article IV hereof.

1.3 Articles. Articles shall mean the Articles of Incorporation of the Association filed or to be filed in the Office of the Secretary of State of the State of California, as said Articles may be amended from time to time.

1.4 Assessments.

1.4.1 Annual Assessments. Annual Assessment shall mean a charge against a particular Owner and his Condominium, representing a portion of the Common Expenses which are to be levied among all owners and their Condominiums in the Project in the manner and proportions provided herein.

1.4.2 Capital Improvement Assessments. Capital Improvement Assessment shall mean a charge which the Board may from time to time levy against each Owner and his Condominium, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Property. Such charge shall be levied among all of the Owners and their Condominiums in the Project in the same proportions as are Annual Assessments.

1.4.3 Reconstruction Assessments. Reconstruction Assessment shall mean a charge which the Board may from time



to time levy against a particular Owner and his Condominium, representing a portion of the cost to the Association for reconstruction of any Improvements on any of the Common Property. Such charge shall be levied among all of the Owners and their Condominiums in the Project in the same proportions as the relative interior square foot floor areas of the residential elements of the Units (as such areas are depicted in the Condominium Plan or Plans for the Project), expressed as percentages, and computed by dividing the interior square foot floor area of the residential element of each Unit by the total interior square foot areas of the residential elements of all Units in the Project.

1.4.4 Special Assessments. Special Assessment shall mean a charge against a particular Owner directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessments as provided for herein. Special Assessments shall not include any late payment penalties, interest charges or costs (including attorneys' fees) incurred by the Association in the collection of Annual, Capital Improvement and Reconstruction Assessments.

1.5 Association. Association shall mean THE LAKESIDE AT THE RESORT HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.6 Association Maintenance Funds. Association Maintenance Funds shall mean the accounts created for receipts and disbursements of the Association, pursuant to Article V hereof.

1.7 Association Property. Association Property shall mean all of the real and personal property and Improvements to which the Association shall hold fee title for the common use and enjoyment of the Members as provided herein. Association Property may be annexed to the Property pursuant to the provisions of Article XVI hereof. Association Property shall also include the Association's maintenance easement interest in certain boat docks (the "Boat Docks") as more particularly provided in Article XVIII of this Declaration entitled "BOAT DOCKS".

1.8 Beneficiary. Beneficiary shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee or Beneficiary.

1.9 Board or Board of Directors. Board or Board of Directors shall mean the Board of Directors of the Association.

1.10 Budget. Budget shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration.

1.11 Bylaws. Bylaws shall mean the Bylaws of the Association as such Bylaws may be amended from time to time.

1.12 Close of Escrow. Close of Escrow shall mean the date on which a deed is recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

1.13 Common Area. Common Area shall mean the entire Property, except the Units therein and the Association Property.

1.14 Common Expenses. Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Property (including without limitation, private streets, perimeter fencing, landscape areas, trash receptacles, the sewer lift station, Boat Docks, car ports and exterior surfaces of garages); unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments; the cost of maintenance of the recreational facilities on the Common Property; the costs of any and all utilities metered to, or otherwise charged against, more than one Unit and other commonly metered or assessed charges for the Property, including but not limited to water, sewer and drainage; the costs of trash collection and removal (as applicable); the cost of maintenance of clustered mailboxes and address identification signs; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all gardening, security and other services benefiting the Common Property; the costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; the costs of bonding of the members of the Board; taxes, special taxes, or assessments paid by the Association, including any blanket tax, special tax or assessment assessed against the Property; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the costs of any other item or items incurred by the Association, for any reason whatsoever in connection with the Property, for the common benefit of the Owners.

1.15 Common Property. Common Property shall mean the Common Area, Improvements owned or controlled by the Association and the Association Property.

1.16 Condominium. Condominium shall mean an estate in real property as defined in California Civil Code Section 1351(f),

and shall consist of an undivided fee simple ownership interest in the Common Area together with a separate ownership interest in fee in a Unit and all easements appurtenant thereto. Subject to the provisions of Section 11.5 hereof, the undivided fee simple interest in the Common Area shall be appurtenant to each Unit; and shall be a fraction having one (1) as its numerator and the number of Units on the Lot within the Property upon which the Unit is located as its denominator; and shall be held by the Owners of Condominiums in that Lot as tenants in common.

1.17 Condominium Plan. Condominium Plan shall mean the Recorded plan(s), as amended from time to time, for all or a portion of the Property.

1.18 County. County shall mean the County of San Bernardino, in the State of California, and its various departments, divisions, employees and representatives.

1.19 Declarant. Declarant shall mean ARROWHEAD VILLAS, LLC, a California limited liability company, its successors, and any Person to which it shall have assigned any of its rights hereunder by an express written assignment.

1.20 Declaration. Declaration shall mean this instrument as it may be amended from time to time.

1.21 Declaration of Annexation. Declaration of Annexation shall mean an instrument Recorded pursuant to Article XVI hereof to annex all or any portion of the Annexable Territory to the Property.

1.22 Deed of Trust. Deed of Trust shall mean a Mortgage as further defined herein.

1.23 DRE. DRE shall mean the California Department of Real Estate and any successors thereto.

1.24 Exclusive Use Common Area. Exclusive Use Common Area shall mean those portions of the Common Property over which exclusive easements are reserved for certain Owners (i.e. parking, patio and balcony areas) which are designed to serve a single Unit but located outside the boundaries of that Unit, in accordance with California Civil Code Section 1351(i).

1.25 Family. Family shall mean one or more natural persons related to each other by blood, marriage or adoption, or one or more natural persons not all so related, but who maintain a common household in a Residence.

1.26 Fiscal Year. Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

1.27 Improvements. Improvements shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, carports, recreational facilities, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, antennae, hedges, windbreaks, the exterior surfaces of any visible structure and the paint on such surfaces, planted trees and shrubs, poles, signs, and water softener fixtures or equipment.

1.28 Lot. Lot shall mean each parcel of residential property in the Property as shown with a separate and distinct number or letter on a final subdivision map or certificate of compliance, which has been duly recorded or filed in the Office of the County Recorder of the County.

1.29 Manager. Manager shall mean the Person employed by the Association pursuant to and limited by the provisions of this Declaration, and delegated the duties, power or functions of the Association as limited by this Declaration, the Bylaws and the terms of the agreement between the Association and said Person.

1.30 Member. Membership. Member shall mean any Person holding a membership in the Association, as provided in this Declaration. Membership shall mean the property, voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in the Restrictions.

1.31 Mortgage. Mortgage shall mean any Recorded mortgage or deed of trust or other conveyance of one or more Condominiums or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance.

1.32 Mortgagee, Mortgagor. Mortgagee shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust. Mortgagor shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

1.33 Notice and Hearing. Notice and Hearing shall mean written notice and a hearing before the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further provided in the Bylaws.

1.34 Owner. Owner shall mean the Person or Persons, including Declarant, holding fee simple interest to a Condominium. ~~The term "Owner" shall include a seller under an executory contract of sale but shall exclude Mortgagees.~~

1.35 Person. Person shall mean a natural individual or any other entity with the legal right to hold title to real property.

1.36 Project. Project shall mean that portion of the Property which is, from time to time, divided into Condominiums, including the Common Area and the Units therein. The Project is a "condominium project" as defined in Section 1351(f) of the California Civil Code.

1.37 Property. Property shall mean the real property described in Recital A of the Preamble of this Declaration and, subsequent to the annexation thereof pursuant to Article XVI herein, any additional real property which may become subject to this Declaration. The Property is a "common interest development" as defined in Section 1351(c) of the California Civil Code.

1.38 Record, File, Recordation. Record, File, or Recordation shall mean, with respect to any document, the recordation or filing of such document in the Office of the San Bernardino County Recorder.

1.39 Residence. Residence shall mean a Unit, intended for use by a single Family, together with any Exclusive Use Common Area reserved for the benefit of such Unit.

1.40 Restrictions. Restrictions shall mean this Declaration, the Articles, Bylaws and the Rules and Regulations of the Association from time to time in effect.

1.41 Rules and Regulations. Rules and Regulations shall mean the rules and regulations adopted by the Board pursuant to this Declaration or the Bylaws, as such Rules and Regulations may be amended from time to time.

1.42 Unit. Unit shall mean a separate interest in space as defined in Section 1351(f) of the California Civil Code and shall include all land within and all Improvements now or hereafter constructed within the boundaries of such Unit. Each Unit shall be a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the Condominium Plan and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and the boundaries of a building as constructed or reconstructed.

ARTICLE II  
THE LAKESIDE AT THE RESORT HOMEOWNERS ASSOCIATION

2.1 Organization of Association. The Association is or shall be incorporated under the name of THE LAKESIDE AT THE RESORT HOMEOWNERS ASSOCIATION, as a nonprofit corporation under the Nonprofit Mutual Benefit Corporation Law of the California Civil Code.

2.2 Duties and Powers. The duties and powers of the Association are those set forth in the Declaration, the Articles and Bylaws, together with its general and implied powers of a nonprofit mutual benefit corporation, generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and in this Declaration. The Association shall further have the right to install or construct capital Improvements on the Common Property. The Association may at any time, and from time to time reconstruct, replace or refinish any Improvement or portion thereof upon the Common Property in accordance with the original design, finish or standard of construction of such Improvement; replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Property. The Association may employ personnel necessary for the effective operation and maintenance of the Common Property, including the employment of legal, management and accounting services. The Association shall additionally have the power but not the duty to enter into contracts with Owners or other persons to provide services or to maintain and repair Improvements within the Property and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration; provided, however, that any such contract shall provide for the payment to the Association for the costs of providing such services or maintenance. The Association and Owners shall comply with all provisions of the Master Declaration which apply to them.

2.3 Membership. Every Owner, upon becoming the Owner of a Condominium, shall automatically become a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases, at which time his Membership in the Association shall automatically cease. Ownership of a Condominium shall be the sole qualification for Membership in the Association. Membership in the Association shall not be assignable except to the Person to which title to the Unit has been transferred, and every Membership in the Association shall be appurtenant to and may not be separated from the fee ownership of such Unit. The rights, duties, privileges and obligations of all Members of the Association shall be as provided in the Restrictions.

2.4 Transfer. The Association membership of each Owner (including Declarant) shall be appurtenant to the Condominium

giving rise to such membership, and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon the transfer of title to said Condominium, and then only to the transferee of title to said Condominium. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium shall operate automatically to transfer the membership in the Association appurtenant thereto to the new owner thereof.

## 2.5 Membership/Voting.

2.5.1 Classes of Membership. The Association shall have two (2) classes of voting Membership.

Class A. Class A Members shall originally be all Owners except Declarant for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Condominium owned by such Class A Members and subject to assessment. Declarant shall become a Class A Member with regard to Condominiums owned by Declarant upon conversion of Declarant's Class B Membership as provided below. When more than one (1) Person owns any Condominium, all such Persons shall be Members. The vote for such Condominium shall be exercised in accordance with Section 2.5.2, but in no event shall more than one (1) Class A vote be cast for any Condominium.

Class B. The Class B Member shall be the Declarant who shall be entitled to three (3) votes for each Condominium owned. Class B Membership shall cease and be converted to Class A Membership on the happening of the earlier of the following events:

(1) The second (2nd) anniversary of the first conveyance of a Condominium within the Property; or

(2) The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member.

2.5.2 Joint Owners Disputes. The vote for each such Condominium must be cast as a unit, and fractional votes shall not be allowed. In the event that the joint Owners are unable to agree among themselves as to how their one vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a Condominium, it will thereafter be conclusively presumed for all purposes that the Owner(s) were acting with the authority and consent of all other Owners of the same Condominium. In the event more than one (1) vote is cast for a particular Condominium, none of said votes shall be counted and said votes shall be deemed void.

2.5.3 Election and Removal of Board of Directors - Cumulative Voting Features. Voting for members of the Board shall be by secret written ballot. Every Owner entitled to vote at any election of the Board may cumulate his votes and give

one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such Owner's Condominium(s) is (are) entitled, or may distribute his votes on the same principle among as many candidates as such Owner desires; provided, that the procedural prerequisites to cumulative voting set forth in Section 7615(b) of the California Corporations Code are satisfied. The entire Board or any individual director may be removed from office with or without cause by vote of the majority of the voting power of the Members. However, unless the entire Board is removed, no individual director shall be removed prior to the expiration of such director's term of office if the number of votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the most recent election of the director were then being elected. If any or all of the directors are so removed, new directors may be elected at the same meeting. Each director must be a Member of the Association or a representative of Declarant designated by Declarant.

2.5.4 Special Procedure. To assure resident Owners' representation on the Board, at least twenty percent (20%) of the directors on the Board shall have been elected solely by the vote of the Owners, other than Declarant, for so long as a majority of the voting power of the Association resides in Declarant. A director who has been elected to office solely by the vote of Members of the Association, other than Declarant, may be removed from office prior to the expiration of such director's term of office only by the vote of at least a simple majority of the voting power residing in Members, other than Declarant.

2.5.5 Commencement of Voting Rights. Except for the Declarant, voting rights attributable to the Condominiums shall not vest until assessments have been levied in accordance with the provisions of this Declaration; provided, the foregoing provisions shall not operate to preclude Declarant, solely for purposes of determining when Class B votes convert to Class A votes under Section 2.5.1 hereof, from being vested with Class B voting rights for each and every unsold Condominium set forth in the Condominium Plan(s) Recorded or to be Recorded. For example, if there are 50 sold Condominiums and the Condominium Plan(s) provides for 75 Condominiums, then the Declarant would be entitled to Class B voting rights for 25 Condominiums (75-50).

## 2.6 Repair and Maintenance by the Association.

### 2.6.1 Duties.

(a) Maintenance Standards. Subject to Article X pertaining to destruction of Improvements and Article XI pertaining to eminent domain, the Association shall paint, maintain, repair and replace the Common Property and Improvements thereon, including without limitation the Boat Docks, or shall



contract for such maintenance, repair and replacement to assure maintenance of the Common Property and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget on file with and approved by the DRE. However, the Association shall not be responsible for or obligated to perform those items of maintenance, repair or Improvement of the Units or those portions of Exclusive Use Common Area comprising interior garage space, patios, decks or balconies, the maintenance of which is the responsibility of the Owners as provided in Section 2.10. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property.

(b) Additional Maintenance. Association maintenance and repairs shall include, without limitation, the right, without obligation to paint, repair and maintain the exterior surfaces of any perimeter walls or fences or walls or fences abutting any Common Property.

(c) Termite Eradication. If the Board adopts an inspection and preventive 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 Unit, may require such Owner and occupants to temporarily relocate from such 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 the 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 Unit 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 preventive program as well as repairing and replacing the Common 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 Capital Improvement Assessments.

(d) Charges to Owners. All such costs of maintenance, repairs and replacements for the Property shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration. It shall be the affirmative duty of the Board of Directors to require strict compliance with all provisions of this Declaration and to cause the Property to be inspected by the Architectural Committee for any violation thereof. The cost of any maintenance, repairs or replacements by the Association which is not the responsibility of the Association or which arises out of, or is caused by, the act of an owner or such Owner's Family, tenants, guests, invitees, or agents shall, after

Notice and Hearing, be levied by the card as a Special Assessment against such Owner.

2.7 Unsegregated Real Property Taxes. To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if all of the Units in the Property are taxed under a blanket tax bill covering all of the Property, each Owner shall pay his proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated equally among the Owners and their Condominiums in the Property, based upon the total number of Units in the Property. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner in the Property a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his proportionate share of the tax installment and the potential additional charges to the owner for failure to comply. The Association shall pay the taxes on behalf of any owner who does not pay his proportionate share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill, which late charge results from the failure of the delinquent Owner to make timely payment of his proportionate share of the taxes. Until the Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Project, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Declarant.

2.8 Budgets and Financial Statements. The Board shall cause financial statements for the Association to be regularly prepared and copies to be distributed to each Member of the Association as follows:

(1) A pro forma operating budget, or a summary of same, for the immediately ensuing fiscal year shall be distributed not less than forty-five (45) days and not more than sixty (60) days before the beginning of such accounting year of the Association. The proforma operating budget and the summary, if applicable, shall include all of the following:

(A) A statement of estimated revenue and expenses on an accrual basis;

(B) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 2.9 herein;

(C) A statement as to whether the Board of Directors has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor; and

(D) A general statement setting forth the procedures used by the Board of Directors in the calculation and establishment of reserves to defray the costs of future repair, replacement or additions to the Common Property and Exclusive Use Common Area for which the Association is responsible.

(2) A balance sheet as of the last day of the fifth (5th) month following the month in which shall occur recordation of the first deed of a Unit and an operating statement for the period from the date of recordation of such first deed to the date of such balance sheet, shall be distributed within sixty (60) days after the date of such balance sheet. The operating statement shall include a schedule of assessments received and receivable identified by the description 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 each fiscal year.

(A) A balance sheet as of the end of such accounting year.

(B) An operating (income) statement for such accounting year.

(C) A statement of changes in financial position for such accounting year.

(D) Any information required to be reported under Section 8322 of the California Corporations Code.

(E) For any accounting year in which the gross income to the Association exceeds \$75,000, a copy of a review of the annual report set forth in items (i) through (iii) of this Section, prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountants.

If the report referred to above is not prepared by an independent accountant pursuant to California Civil Code Section 1365(b), it shall be accompanied by the certificate of an authorized Officer of the Association that the statements were prepared without audit from the books and records of the Association.

In lieu of the distribution of the proforma operating budget set forth in Paragraph 1 of this Section, the Board may

elect to distribute a summary of the proforma operating budget to all its Members with a written notice that the proforma operating budget is available at the business office of the Association or at another suitable location within the Property and that copies will be provided upon request and at the expense of the Association. If any Member requests copies of the proforma operating budget to be mailed to the Member, the Association shall provide the copies to the Member by first-class United States mail at the expense of the Association and mailed within five days of receipt of such request. The written notice that is distributed to each of the Members shall be in at least 10-point bold type on the front page of the summary of the statements.

The Board of Directors shall annually distribute, within sixty (60) days prior to the beginning of each accounting year, a statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of the assessments set herein, including the recording and foreclosing of liens against Owners' Condominiums.

The Board shall take the following actions not less frequently than quarterly:

- (i) Cause a current reconciliation of the Association's operating accounts to be made and review the same;
- (ii) Cause a current reconciliation of the Association's reserve accounts to be made and review the same;
- (iii) Review the current year's actual reserve revenues and expenses compared to the current year's budget;
- (iv) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts; and
- (v) Review an income and expense statement for the Association's operating and reserve accounts.

2.9 Reserve Study: At least once every three (3) years the Board shall cause a study of the reserve account requirements 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 budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of such review.

The study required by this Section shall at a minimum include:

- (a) Identification of the major components which the Association is obligated to repair, replace, restore, or

maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years.

(b) Identification of the probable remaining useful life of the major components identified in Paragraph (a) as of the date of the study.

(c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in Paragraph (a) during and at the end of its useful life.

(d) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

2.10 Repair and Maintenance by Owners. Each Owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, all portions of his Unit, in a clean, sanitary and attractive condition. It shall further be the duty of each Owner, at his sole expense, to keep the Exclusive Use Common Area over which an exclusive easement has been reserved for the benefit of such Owner free from debris and reasonably protected against damage, subject to the approval of the Architectural Committee; provided however the Association shall be responsible for maintaining: (i) the Boat Docks and (ii) the carports (but not the interior of the garages which shall be maintained by the Owners thereof). It shall further be the duty of each Owner to pay when due all charges for any utility service which is separately metered to his Unit. Subject to any required approval of the Architectural Committee, each Owner shall be responsible for maintaining those portions of any heating and cooling equipment and other utilities which are located within or which exclusively serve his Unit.

2.11 Use of Agent. The Board of Directors, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The maximum term of any such contract ("Management Contract") shall be one (1) year, unless a longer term is approved either by vote or written assent of a majority of the voting power of the Association, in which case the maximum term of the Management Contract shall be three (3) years. The maximum term of any contract providing for Declarant's services to the Association or the Project shall also be three (3) years. Each such contract for Declarant's services and each Management Contract shall provide for its termination by either party thereto without cause and without payment of a termination fee upon no more than ninety (90) days written notice to the other party.

2.12 Limitations on Powers of the Board.

(a) The Board shall not take any of the following actions without the prior vote or written consent of a majority of the Class A Members and the Class B Members, if any, in the Association.

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

(A) 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.

(B) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured.

(C) Lease agreements for laundry room fixtures 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 ownership interest of ten percent (10%) or more.

(D) An agreement for cable television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(E) An agreement 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.

(2) Incur aggregate expenditures for capital improvements to the Common Property in any accounting year in excess of five percent (5%) of the budgeted gross expenses of the Association for that accounting year.

(3) Pay compensation to members of the Board 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 an officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(4) Sell during any accounting 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 accounting year.

(5) Fill any vacancy on the Board created by the removal of a member of the Board.

(b) Notwithstanding anything herein contained to the contrary, any agreement for professional management of the Property, or any other contract providing for services by Declarant, must provide for termination by either party without cause or payment of a termination fee on not more than ninety (90) days written notice and a maximum contract term of three (3) years.

### ARTICLE III RIGHTS IN COMMON PROPERTY

3.1 Association Easement. The Association shall have an easement over the Common Property for performing its duties and exercising its powers described in this Declaration. The Association's obligations to maintain the Common Property shall commence on the date Annual Assessments commence on Condominiums within the Property.

3.2 Partition. Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Project seek any such judicial partition.

3.3 Members' Easements in Common Property. Subject to the provisions of this Declaration, every Member of the Association shall have, for himself, his Family, his tenants and guests, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Property, and such easements shall be appurtenant to and shall pass with title to every Condominium in the Project.

3.4 Extent of Members' Easements. The rights and easements of use and enjoyment of the Common Property created by this Declaration shall be subject to the Restrictions, which include, without limitation, the following:

(a) The right of the Board to suspend the rights and easements of any Member, and the Persons deriving such rights and easements from any Member, for use and enjoyment of any recreation facilities located on the Common Property, for any period during which the payment of any Annual, Special, Capital Improvement or Reconstruction Assessment against the Member and his Condominium remains delinquent, and, after Notice and Hearing as provided in the Bylaws, to suspend such rights and easements for the period set forth in the Bylaws for any violation of the Restrictions, it being understood that any suspension for either nonpayment of any Assessment or breach of the Restrictions shall

not constitute a waiver or discharge of the Member's obligation to pay assessments as provided in this Declaration;

(b) The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Property and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Property for the benefit of the Members of the Association;

(c) 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 Common Property for purposes not inconsistent with the intended use of the Property as a residential Condominium project;

(d) Subject to the provisions of this Declaration, the right of each Owner to the exclusive use and occupancy for the purposes designated in this Declaration or in any Recorded Declaration of Annexation of the Exclusive Use Common Area assigned to his respective Unit;

(e) The rights and reservations of Declarant as set forth in this Declaration;

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

(g) The right of the Association to reasonably limit the number of guests and tenants of the Owners using the Common Property;

(h) The right of the Association, acting through the Board, to establish uniform Rules and Regulations for the use of the Common Property; and

(i) The right of the Association to enter into agreements with Declarant entitling occupants of the Annexable Territory to use of the facilities on the Association Property.

3.5 Delegation of Use. Any Owner entitled to the right and easement of use and enjoyment of the Common Property may delegate his right and easement to his tenants, contract purchasers or subtenants who reside in his Condominium, subject to reasonable regulation by the Board.

3.6 Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, or effect the release of his Condominium from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning his Condominium.

3.7 Damage by Member. To the extent permitted by California law, each Member shall be liable to the Association for



any damage to the Common Property not fully reimbursed to the Association by insurance if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Member, his guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Common Property from the Member, or his or their respective Family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after Notice and Hearing as provided in the Bylaws, to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the Person for whom the Member may be liable as described above. In the case of joint ownership of a Condominium, the liability of the owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint owners to the contrary. After Notice and Hearing as provided in the Bylaws, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against such Member's Condominium, and may be enforced as provided herein.

#### ARTICLE IV ARCHITECTURAL REVIEW COMMITTEE

4.1 Members of Committee. The Architectural Review Committee, sometimes referred to herein as the "Architectural Committee" or the "Committee," shall be comprised of three (3) members. The initial members of the Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for the Property ("First Anniversary"). After the First Anniversary the Board may appoint and remove one (1) member of the Committee, and Declarant shall have the right and power at all times to appoint and remove a majority of the members of the Committee or to fill any vacancy of such majority, until the earlier to occur of (i) Close of Escrow for the sale of ninety percent (90%) of all the subdivision interests in the Property, or (ii) expiration of five (5) years following the date of original issuance of the Public Report for the Property, after which the Board shall have the power to appoint and remove all of the members of the Committee. Committee members appointed by the Board shall be from the membership of the Association, but Committee members appointed by Declarant need not be Members of the Association. The 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 conform harmoniously to the exterior design and existing materials of the buildings in the Property. Board members may also serve as Committee members.

4.2 Review of Plans and Specifications. The 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 in progress to assure its conformance with plans approved by the Committee. No construction, alteration, removal, relocation, repainting, demolishing, addition, installation, modification, decoration, redecoration or reconstruction of an Improvement, including landscaping, in the Property shall be commenced or maintained, 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 Committee and approved in writing by the Committee; provided, however, that any Improvement may be repainted without Committee approval so long as the Improvement is repainted the identical color which it was last painted. Without limiting the generality of the foregoing, the provisions of this Article apply to the construction, installation, alteration and modification of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714. The Owner submitting the plans and specifications ("Applicant") shall obtain a written, dated receipt therefor from an authorized agent of the Committee. Until changed by the Board, the address for the submission of such plans and specifications shall be the principal office of the Association. The Committee shall approve plans and specifications submitted for its approval only if it deems that the installation, construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Property or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. Declarant, and any Person to which Declarant may assign all or a portion of its exemption hereunder, need not seek or obtain Architectural Committee approval of any Improvements constructed on the Property by Declarant or such Person, as the case may be.

The Committee may condition its approval of proposals or plans and specifications for any Improvement (1) upon the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Property as a result of such work, (2) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (4) upon the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (5) upon the Applicant's agreement to reimburse the Association for the cost of maintenance, (6) upon the Applicant's agreement to complete the proposed work within a stated period of time, or (7) all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may

also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or stating additional factors which it will take into consideration in reviewing submissions. The Committee may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The 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 and description or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval. Decisions of the Committee and the reasons therefor shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval within forty-five (45) days after receipt by the Committee of all materials required by the Committee. Any application submitted pursuant to this Section shall be deemed approved unless written disapproval or a request for additional information or materials by the Committee shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the Committee of all required materials. The Applicant shall meet any review or permit requirements of the local governmental authorities prior to making any alterations or Improvements permitted hereunder.

4.3 Meetings of the Committee. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 4.8. In the absence of such designation, the vote or written consent of a majority of the Committee shall constitute an act of the Committee.

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

4.5 Compensation of Members. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

4.6 Inspection of Work. The Committee or its duly authorized representative may at any time inspect any work for which approval of plans is required under this Article ("Work"),

which right to inspect shall include the right to require any owner to take such action as may be necessary to remedy any noncompliance with the Committee-approved plans for the Work or with the requirements of this Declaration ("Noncompliance").

(a) Time Limit. The Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the latest to occur of the following events: (i) submittal of the plans for the Work to the Committee for its approval as provided in this Article; (ii) completion of the Work as provided in the Committee-approved plans; and (iii) written notice from the Owner to the Committee that the Work has been completed. This time limit for inspection and notification by the Committee shall be extended indefinitely if any of these conditions has not occurred. If the Committee fails to send a notice of Noncompliance to an owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

(b) Remedy. If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of notification from the Committee, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Board shall determine whether there is a Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a Notice of Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

4.7 Scope of Review. The Architectural Committee shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, solely on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The Committee shall also work closely with the architectural review committee established pursuant to the Master Declaration to ensure a coordinated review of any plans submitted to it.

4.8 Variances. The Committee may authorize variances from compliance with any of the architectural provisions of this

Declaration, including without limitation restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the Committee, and shall become effective upon Recordation. After Declarant has lost the right to appoint a majority of the members of the Committee, the Board must approve any variance recommended by the Committee before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. 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 property 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 use of his Residence.

4.9 Appeals. For so long as Declarant has the right to appoint and remove a majority of the members of the Committee, decisions of the Committee shall be final, and there shall be no appeal to the Board of Directors. When Declarant is no longer entitled to appoint and remove a majority of the members of the Committee the Board may, at its discretion, adopt policies and procedures for the appeal of Committee decisions for reconsideration by the Board. The Board shall have no obligation to adopt or implement any such appeal procedures, and in the absence of Board adoption of appeal procedures, all decisions of the Committee shall be final.

#### ARTICLE V ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

5.1 Personal Obligation of Assessments. Declarant, for each Condominium owned by it, hereby covenants and agrees to pay, and each Owner, by acceptance of a deed to a Condominium whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (1) Annual Assessments for Common Expenses, (2) Special Assessments, (3) Reconstruction Assessments and (4) Capital Improvement Assessments; such assessments to be established and collected as provided herein. The Association shall not levy or collect any Annual Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment that exceeds the amount necessary for the purpose for which it is levied. Except as provided in this Section 5.1, all such assessments (other than Special Assessments), together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the Condominium against which such assessment is made. Each such assessment (including Special Assessments), together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of the Condominium at the time when

the assessment fell due. This personal obligation cannot be avoided by abandonment of the Condominium or by an offer to waive use of the Common Property or the Exclusive Use Common Area. The personal obligation for delinquent assessments shall not pass to any new Owner ("Purchaser") unless expressly assumed by the Purchaser.

5.2 Maintenance Funds of Association. The Board of Directors shall establish no fewer than two (2) separate Association Maintenance Fund accounts, into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (1) an Operating Fund for current Common Expenses of the Association, (2) an adequate Reserve Fund for capital Improvements, replacements, painting and repairs of the Common Property (which cannot normally be expected to occur on an annual or more frequent basis), and for payment of deductible amounts for policies of insurance which the Association obtains as provided in Section 9.1 hereof, and (3) any other funds which the Board of Directors may establish to the extent necessary under the provisions of this Declaration. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such Fund are earmarked for specified purposes authorized by this Declaration.

5.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the owners, for the operation, replacement, improvement and maintenance of the Common Property, and to discharge any other obligations of the Association under this Declaration. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Board of Directors only for the purposes specified in this Article and in Section 1365.5(c) of the California Civil Code, as it may be amended from time to time. Nothing in this Declaration shall be construed in such a way as to permit the use of Association assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Property. Annual Assessments shall be used to satisfy Common Expenses of the Association.

5.4 Limitations on Annual Assessment Increases. The Board shall levy Annual Assessments in accordance with the following provisions:

(a) Maximum Authorized Annual Assessment for Initial Year of Operations. Until the first day of the Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Board may only levy an Annual Assessment per Lot in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Property in the most current Budget filed with and approved by DRE at the time Annual Assessments commence if the Board first obtains the approval of Members casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Members are represented ("Increase Election"); provided, however, that such limitation shall not apply if the increase in Annual Assessments is pursuant to a revised Budget filed with and approved by the DRE. Notwithstanding the foregoing, this Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 5.4(e).

(b) Maximum Authorized Annual Assessment for Subsequent Fiscal Years. Starting with the first Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Board may only levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year as follows:

(i) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (a) have distributed the Budget for current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (b) obtain the approval of Members casting a majority of votes in an Increase Election;

(ii) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Members casting a majority of votes in an Increase Election.

Notwithstanding the foregoing, this Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 5.4(e).

(c) Supplemental Annual Assessments. If the Board, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses for the Property for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in Sections 5.4(a) and (b) above and (e) below, the Board shall have the authority to levy, at any time by a majority vote, a supplemental Annual

Assessment reflecting a revision of the total charges to be assessed against each Condominium.

(d) Automatic Assessment Increases. Notwithstanding any other provisions of this Section 5.4, upon Declarant's annexation of any portion of the Annexable Territory pursuant to Article XVI, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Property in or abutting such Annexable Territory in accordance with the standards prescribed by the then current DRE Operating Cost Manual, or if the Operating Cost Manual is no longer maintained by the DRE, pursuant to standards prescribed by comparable maintenance cost guidelines prepared in accordance with prudent property management practices. However, such increase shall occur only if (i) the annexation of such Annexable Territory is permitted by the DRE, and (ii) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Property previously issued by the DRE.

(e) Emergency Situations. For purposes of Sections 5.4(a), 5.4(b) and 5.6, an "Emergency Situation" is any one of the following:

(1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible where a threat to personal safety on the Property is discovered; and

(3) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an assessment pursuant to this subparagraph (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the Notice of Assessment.

5.5 Annual Assessments/Commencement-Collection. The Board of Directors shall authorize and levy the amount of the Annual Assessment upon each Condominium, as provided herein, by majority vote of the Board. Annual Assessment shall commence on all Condominiums in the Property on the first day of the first calendar month following the first Close of Escrow for the sale of a Condominium in the Property. All Annual Assessments shall be assessed equally against the Members and their Condominiums based upon the number of Condominiums owned by each Member. Annual Assessments for fractions of any month involved shall be prorated. Declarant shall pay its full pro rata share of the Annual



Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via first-class mail to every Owner subject thereto, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due. From time to time the Board may determine that all excess funds in the Operating Fund be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Property, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

Declarant and any other owner of a Unit which has not been constructed shall be exempt from payment of that portion of the Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the Unit. The exemption shall include, without limitation, expenses and reserves relating to roof replacement, exterior maintenance, walkway and carport lighting, cable television, refuse disposal, and domestic water supplied to the Unit. Any such exemption from the payment of Annual Assessments shall be in effect only until the earlier to occur of (1) the recordation of a notice of completion of the building containing the Unit, (2) the occupation or use of the Unit, or (3) completion of all elements of the Condominium structures that the Association is obligated to maintain. \*

Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an Improvement on the Common Property, or (2) the placement of such Improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Improvement.

Each Member shall pay to the Association his Annual Assessment in installments at such frequency and in such amounts as established by the Board. Each installment of Annual Assessments may be paid by the Member to the Association in one check or in separate checks as payments attributable to deposits into specified Association Maintenance Funds. If any installment of an Annual Assessment payment is less than the amount assessed and the payment does not specify the Association Maintenance Fund or Funds 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 Annual Assessment has been satisfied, and second to the Reserve Fund.

Notwithstanding any other provisions of this Declaration or the Bylaws regarding the term and termination of contracts with Declarant for providing services to the Association, Declarant may enter into a written maintenance agreement with the Association under which Declarant shall pay all or any portion of the operating Common Expenses and perform all or any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Annual Assessments. Such maintenance agreement shall extend for a term and shall be on such conditions as are approved by the DRE, and may require Owners to reimburse Declarant, through the Association, for a portion of the costs expended in satisfaction of Common Expenses.

5.6 Capital Improvement Assessments. The Board of Directors of the Association may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement or other such addition upon the Common Property including fixtures and personal property related thereto; provided that any proposed Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceeds five percent (5%) of the Budgeted gross expenses of the Association for such Fiscal Year, shall require the vote or written consent of Members casting a majority of votes at an Increase Election. Notwithstanding the foregoing, the Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Budgeted gross expenses of the Association for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 5.4(e).

5.7 Delinquency. Any installment of an assessment provided for in this Declaration shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board of Directors of the Association. The Board shall be authorized to adopt a system pursuant to which any installment of Annual Assessments, Capital Improvement Assessments, Special Assessments, or Reconstruction Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys, fees) and late charges as provided herein, shall bear interest commencing thirty (30) days from the due date until paid at the rate of up to twelve percent (12%) per annum, but in no event more than the maximum rate permitted by law. The Board may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(c) (2). 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.

5.8 Creation and Release of Lien. All sums other than Special Assessments assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Condominium prior and superior to (a) any declaration of homestead Recorded after the Recordation of this Declaration, and (b) all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any Recorded mortgage or Deed of Trust with first priority or seniority over other Mortgages or Deeds of Trust) made in good faith and for value and Recorded prior to the date on which the "Notice of Lien" (described in this Section) against the respective Condominium was Recorded. The lien shall become effective upon Recordation by the Board or its authorized agent of a Notice of Assessment ("Notice of Lien") securing the payment of any Annual, Capital Improvement or Reconstruction Assessment or installment thereof, levied by the Association against any Condominium Owner as provided in Section 1367 of the California Civil Code. The Notice of Lien shall state (i) the amount of the assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and Recording the Notice of Lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a sufficient description of the Condominium against which the same has been assessed, (iv) the name and address of the Association, (v) the name of the Owner thereof, and (vi) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Lien shall be signed by any authorized officer or agent of the Association. The lien shall relate only to the individual Condominium against which the assessment was levied and not to the Property as a whole. Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board of Directors shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board of Directors may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and Recordation of the Notice of Release before Recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

5.9 Enforcement of Liens. It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by sale of the Condominium by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct

the sale as a trustee, after failure of the Owner to pay any Annual, Capital Improvement or Reconstruction Assessment, or installment thereof, as provided herein. The sale shall be conducted in accordance with the provisions of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any manner permitted by law. An action may be brought to foreclose the lien of the Association by the Board, or by any owner if the Board fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was Recorded; provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Owner affected thereby. The Association, through its agents, shall have the power to bid on the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, and the defaulting Owner shall be required to pay the reasonable rental value for such Unit during any period of continued occupancy by the defaulting owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

5.10 Priority of Assessment Lien. The lien of the assessments provided for herein, including interest and costs (including attorneys' fees), shall be subordinate to the lien of any previously Recorded first Mortgage upon one or more Condominiums. 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 shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from liens for any assessments thereafter becoming due. When the Beneficiary of a first Mortgage of record or other purchaser of a Condominium obtains title pursuant to a judicial or nonjudicial foreclosure of the first Mortgage, such Person, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such Person. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Owners of the Condominiums including such Person, his successors and assigns.

5.11 Initial Contribution. Upon acquisition of the record title to a Lot from Declarant, each Owner shall contribute to the capital of the Association an amount equal to two (2) month's Annual Assessment. This amount shall be deposited by the

buyer into the purchase and sale escrow and disbursed therefrom to the Association. This amount shall not be considered an advance payment of assessments and may not be used by Declarant to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association.

ARTICLE VI  
PROPERTY EASEMENTS AND RIGHTS OF ENTRY

6.1 Easements.

(a) Access. Declarant expressly reserves for the benefit of the Owners reciprocal, nonexclusive easements for access, ingress and egress over all of the Common Property, including any private streets or driveways currently existing in the Property or subsequently added to it, which easements may be conveyed by Declarant to Owners and to the Association for so long as Declarant owns any interest in the Property or the Annexable Territory. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by all Owners and their guests, tenants and invitees residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Condominium in the Project. Declarant also expressly reserves to itself, its successors and assigns, for the benefit of any owners of all or a portion of the Annexable Territory, nonexclusive easements for access, ingress and egress over all of the Common Property, including any private streets or driveways currently existing in the Property or subsequently added to it, which easements may be conveyed by Declarant to the owners of all or a portion of the Annexable Territory for so long as Declarant owns any interest in the Property or the Annexable Territory.

(b) Maintenance and Repair. Declarant expressly reserves and hereby grants for the benefit of the Board of Directors and all agents, officers and employees of the Association, nonexclusive easements over the Common Property (including the Exclusive Use Common Area) as necessary to maintain and repair the Common Property, and to perform all other tasks in accordance with the provisions of this Declaration.

(c) Exclusive Use Common Area. Declarant expressly reserves for the benefit of certain Owners exclusive easements over the Property for use of the Exclusive Use Common Area, either shown and assigned on the Condominium Plan or Plans for the Project, or assigned in the individual grant deeds of the respective Units, or, with respect to parking spaces not designated on the Condominium Plan, assigned by the Association.

(d) Utility Easements. Declarant expressly reserves the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and disposal of the Property.

Such right of Declarant shall expire upon the Close of Escrow for the sale of all Condominiums in the Property. There is hereby reserved to the Declarant for the benefit of certain Owners, easements in and over portions of Units for the purpose of accommodating utility lines benefitting neighboring Units. No Owner shall interfere with such utility lines.

(e) Encroachments. Declarant, the Association and Owners of contiguous Residences shall have a reciprocal easement appurtenant to each of the Residences over the Residences and the Common Property for the purpose of (1) accommodating any existing encroachment of any wall, roof, eave, balcony or patio of any Improvement, and (2) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the Improvements or any other portion of the Project housing their respective Units. Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of the same over all of the Common Property are specifically reserved for the benefit of the Owners. Declarant expressly reserves for the benefit of the Common Property and for the benefit of the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and upon the Common Property. The foregoing easements shall not unreasonably interfere with each Owner's use and enjoyment of adjoining Residences.

(f) Completion of Improvements. Declarant expressly reserves for its benefit the right and easement to enter the Property to complete any Improvement which Declarant deems desirable to implement Declarant's development plan.

(g) Party Wall Easement. Declarant hereby reserves to itself, its successors and assigns, with the right to grant and transfer to all Owners, reciprocal easements for access, ingress and egress in, to and upon Units which are connected to each other by a common wall for the purpose of maintenance and repair of such party walls, provided, however, that any entry upon an adjoining Unit must be conducted in a reasonable manner, at reasonable times and after reasonable notice to the Owner thereof. Any damage to said adjoining Unit caused as a result of such an entry shall be borne by the Owner so entering said adjoining Unit and causing such damage.

(h) Drainage Easements. There is hereby reserved to the Declarant together with the right to transfer and grant same, easements in and over portions of Units for the purpose of (1) accommodating drainage over, across and upon the easement area for water drainage from any adjacent Unit, and (2) installing any drainage pipes or other devices to accommodate or facilitate drainage from any neighboring Units. No Owner shall interfere with the operation of such drainage or drainage devices.

(i) Driveway Easements. There is hereby reserved to the Declarant together with the right to transfer and grant

same, reciprocal driveway easements, over all Units which contain portions of driveways which service more than one Unit for the purposes of pedestrian and vehicular ingress, egress and access, and for the backing, maneuvering and turning of vehicles. Such easements shall be subject to the following:

(1) no improvement, automobile or other vehicle, wall, curb, fence, grade differential, barrier or physical condition or personal property, shall be constructed, stored, placed or permitted to remain in, on, or upon any driveway, which unreasonably interferes with ingress, egress and access, whether by the Owner of the Unit over which the common driveway is located (the "Servient Tenement") or the Owner of the neighboring Unit which shares the use of such common driveway (the "Dominant Tenement");

(2) with respect to each easement, the Owner of the Servient Tenement and the Owner of the Dominant Tenement shall be jointly responsible for repairing and maintaining or causing to be repaired or maintained, such portion of the driveway which is used by both Units in a good, safe and usable condition. The expense of such repair and maintenance shall be shared by such parties in equal proportions. Notwithstanding the foregoing, any repair or maintenance for damage to any portion of such driveway, occurring due to causes not constituting normal wear and tear, shall be the sole responsibility of the party, or parties, causing such damage and said party, or parties, shall repair such damage within a reasonable time following the occurrence of such damage. The repair and maintenance required by this Paragraph shall include, but not be limited to:

(A) maintaining paved surfaces in a smooth and evenly covered condition with a type of surfacing material originally installed or a substitute equal in quality, use and durability to such original material;

(B) removing all papers, debris, leaves, and other refuse and sweeping, or washing, to the extent necessary to maintain an orderly condition; and

(C) the repair and reconstruction of any damage resulting from fire, earthquake or other casualty.

(j) Off-Site Easements Which Benefit the Property. Declarant expressly reserves for the benefit of itself and the Owners and, subject to the rights of Declarant reserved herein, hereby grants to the Association the easements (the "Off-Site Easements") contained in the documents and easement agreements (the "Off-Site Easement Agreements") described in Exhibit B attached hereto and made a part hereof subject to the terms and conditions of such Off-Site Easement Agreements. The Off-Site Easements include, without limitation, the easement rights described as "Condominium Property Easements" in that certain Declaration of Reciprocal Easements (the "REA") recorded

December 12, 1996 as Document No. 19960456039 in Official Records of San Bernardino County subject to the terms and conditions of the REA. The REA includes without limitation, easements for access to certain beach areas and easements for ingress and egress over the internal roads and entrances of the "Hotel Property" described in the REA. Subject to the provisions of this Declaration, the easements may be used by all Owners and their guests, tenants and invitees residing on or temporarily visiting the Property.

(k) Off-Site Easements Which Burden the Property.

Each Owner and the Association acknowledges and agrees that its interest in the Property and all easements appurtenant thereto is subject to all easements and other matters of record ("Encumbrance") which encumber the Property and such easements. The Encumbrances include, without limitation, the easements in favor of the Arrowhead Lake Association for the members of the Burnt Mill Beach Club which own docks on the shoreline west of the Property for the following purposes: (i) pedestrian ingress and egress over and along an existing twelve foot (12') walkway (the "Burnt Mill Shoreline Easement") on the west side of the Property as generally depicted on Exhibit C and more particularly described in that certain document entitled "Easement for Ingress and Egress (Village Easement)" recorded on October 31, 1975 in Book 8796 at Page 202 in Official Records of San Bernardino County (ii) non-exclusive use of the four parking spaces (the "Shared Parking Spaces") as generally depicted on Exhibit C and as more particularly described in that certain document entitled "Roadway, Walkway and Temporary Parking Easement" (the "Burnt Mill Parking and Access Agreement") recorded August 31, 1984 as Document No. 84-210589 in Official Records of San Bernardino County (which provides in part that one (1) of the Shared Parking Spaces shall be available for handicap parking and the other three (3) Shared Parking Spaces are to be made available on a non-exclusive basis for loading and unloading purposes) and (iii) pedestrian ingress and egress over an approximately five foot (5') walkway between the Shared Parking Spaces and the Burnt Mill Shoreline Easement as generally depicted on Exhibit C and more particularly described in the Burnt Mill Parking and Access Agreement.

6.2 Rights of Entry. The Board of Directors shall have a limited right of entry in and upon the Common Property and the interior of all Units for the purpose of inspecting the Project, and taking whatever corrective action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Declaration. However, such entry upon the interior of a Unit shall be made, except to effect emergency repairs or other emergency measures, only after three (3) days prior written notice to the Owner of such Unit. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or Improvements required to be maintained or repaired by the Owners. Nothing in this Article shall in any manner limit the right of the Owner to exclusive occupancy and control over the interior of his Unit. However, an Owner shall permit a right of entry to the Board of Directors or



any other person authorized by the Board of Directors, as reasonably necessary, such as in case of any emergency originating in or threatening his Unit, whether the Owner is present or not. Any damage caused to a Unit by such entry by the Board of Directors or by any person authorized by the Board of Directors shall be repaired by the Association as a Common Expense of the Association. Furthermore, an Owner shall permit other Owners, or their representatives, to enter his Residence for the purpose of performing required installations, alterations or repairs to the mechanical or electrical services to a Residence, provided that such requests for entry are made in advance and entry is made at a time reasonably convenient to the Owner whose Unit is to be entered; and provided further, that the entered Unit is left in substantially the same condition as existed immediately preceding such entry. In case of an emergency, such right of entry shall be immediate. Any damage caused to a Unit by such entry by an Owner or its representative shall be repaired by such Owner. Upon receipt of reasonable notice from the Association (which shall in no event be less than fifteen (15) days nor more than thirty (30) days) each Owner shall vacate his Unit in order to accommodate efforts by the Association to perform any other maintenance or repairs pursuant to the Declaration. The Board shall have the right of entry to the Units and the right to remove Owners from their Units, as necessary, to accomplish its duties as provided herein. The cost of performing any such maintenance or repairs shall be a Common Expense of the Association; however, each owner shall bear his own costs of temporary relocation. If the Association acts to eradicate any wood destroying pests or organisms, then the procedure established in Section 2.6 shall control.

6.3 Easements for Construction, Sales, Resales, Customer Service and Related Purposes. Declarant, on behalf of itself, its agents, employees, contractors, subcontractors, invitees, successors, assigns and other authorized personnel, reserves unto itself for a period of time extending until the date on which one hundred percent (100%) of all Condominiums which may be constructed on the Property are sold, a non-exclusive easement in, over, under and through each and every part of the Common Property together with the right to transfer and grant the same without the consent of any other person or entity for the following purposes:

(a) Completion of original development of all portions of the Property including, without limitation, the Condominiums;

(b) Marketing, and selling Condominiums and Improvements constructed on the Property;

(c) Customer relations and providing post-sale customer service;

(d) Leasing and reselling of Condominiums and Improvements constructed on the Property; and

(e) Redesigning and/or contracting any portion of the Property; provided, that the Declarant's exercise of its redesign right shall be aesthetically consistent with the then existing theme of the Project.

In connection with each of the foregoing purposes the Declarant shall have the right: (i) to perform any and all architectural, engineering, construction, excavation, blasting, landscaping or related work and activities; (ii) to store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (iii) to display signs and erect, maintain and operate, for sales, resales and administrative purposes, model Condominiums and a fully staffed customer relations, services and sales and/or resales office complex within the Property; (iv) to perform maintenance, repair and replacement work on, and to make custom improvements, alterations and additions to uncompleted Improvements and (v) to take such other action consistent with such easements. No Owner (other than Declarant) shall enter any construction of future area within the Property or the Annexable Territory or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction.

6.4 Use by Declarant. Declarant and its agents and representatives shall have a non-exclusive easement for use of the Common Property and the facilities thereof for display and exhibit purposes in connection with the sale and resale of Condominiums within the Property, which easement Declarant expressly reserves until escrows have closed on one hundred percent (100%) of the Condominiums on the Property and the Annexable Territory. Declarant shall have an easement over all of the Common Property for ingress, egress and parking for Declarant, its agents, employees and prospective buyers, so long as Declarant shall own a portion of the Property or the Annexable Territory. No such use by Declarant shall unreasonably restrict the Owners in their use and enjoyment of the Common Property or the facilities thereon.

#### ARTICLE VII DECLARANT'S RIGHTS AND RESERVATIONS

Nothing in the Restrictions shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or resubdivide any portion of the Property, record any Condominium Plans(s) for all or a portion of the Property owned by Declarant or the Association or to complete Improvements to and on the Common Property or any portion of the Property owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Property so long as Declarant owns any portion of the Property. The rights of Declarant hereunder shall

include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices anywhere on the Property as may be necessary for the conduct of its business of completing the work and disposing of the Condominiums by sale, resale, lease or otherwise. Each owner by accepting a deed to a Condominium hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Condominium in the Project by a purchaser from Declarant to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant may use any Condominiums owned by Declarant as model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain Architectural Committee approval of any Improvement constructed or placed on any portion of the Property by Declarant. The rights of Declarant hereunder and elsewhere in these Restrictions may be assigned by Declarant to any successor in interest to any portion of Declarant's interest in any portion of the Property by a written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Article shall be effective. Each Owner hereby grants, upon acceptance of his deed to his 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 Article and these Restrictions. Declarant and its prospective purchasers of Condominiums shall be entitled to the nonexclusive use of the Common Property and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to its prospective purchasers, to dispose of the Property as provided herein. Declarant, its successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Property which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property. The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor.

#### ARTICLE VIII RESIDENCE AND USE RESTRICTIONS

All of the Property shall be held, used and enjoyed subject to the following limitations and restrictions and the exemptions of Declarant set forth in this Declaration.

8.1 Single Family Residences. That portion of the Unit comprising the "residential elements" shall be used as a residence for a single Family and for no other purpose. In no event shall any Unit be used in violation of applicable zoning restrictions, including without limitation, zoning restrictions which limit lodging in any particular Unit to no more than ten (10) persons. Any lease affecting all or a portion of a Unit shall be subject to all of the provisions of this Declaration.

8.2 Parking and Vehicular Restrictions.

(a) Authorized Vehicles. The following vehicles are Authorized Vehicles: motorized land vehicles designed and used primarily for noncommercial passenger transport, such as automobiles, passenger vans designed to accommodate ten (10) or fewer people, two-wheel motorcycles, and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles.

(b) Prohibited Vehicles. The following vehicles are Prohibited Vehicles: recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, etc.), buses or vans designed to accommodate more than ten (10) people, vehicles having more than two (2) axles, trailers, inoperable vehicles or parts of vehicles, aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board. Prohibited vehicles shall not be parked, stored or kept on any public or private street within, adjacent to or visible from the Property or any other Common Property parking area unless specifically authorized by the Board.

(c) General Restrictions. Subject to the restriction on Prohibited Vehicles, all vehicles owned or operated by or within the control of an Owner or a resident of an Owner's Unit and kept within the Property shall be parked in the garage or covered parking area which is a part of such Owner's Condominium. No repair, maintenance or restoration of any vehicle shall be conducted on the Property.

(d) Parking Regulations. The Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the parking areas not assigned to individual Units, including without limitation designating "parking," "guest parking," and "no parking" areas thereon; and shall have the power to enforce all parking and vehicle use regulations applicable to the Property, including the power to remove violating vehicles from any of the Property pursuant to California Vehicle Code Section 22658.2 or other applicable statute. If the Board fails to enforce any of the parking or vehicle use regulations, the County may, but need not, enforce such regulations in accordance with state and local laws and ordinances.

8.3 Nuisances. No noxious or offensive activities shall be carried on upon the Property or on any public street abutting or visible from the Property. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents, shall be placed or used in any such Residence. Noisy or smoky vehicles, large power equipment and large power tools, off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Project, and objects which create or emit loud noises or noxious odors shall not be located, used or placed on any portion of the Property or on any public street abutting or visible from the Property, or exposed to the view of other Owners without the prior written approval of the Architectural Committee. The Board shall have the right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner shall permit or cause anything to be done or kept upon the Property or on any public street abutting or visible from the Property which may increase the rate of insurance on Units or on the Property, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners, nor commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Residence. Each Owner shall be accountable to the Association and other owners for the conduct and behavior of children and other family members or persons residing in or visiting his Unit. Any damage to the Common Property, personal property of the Association, or property of another owner, caused by such children or other family members shall be repaired at the sole expense of the owner of the Unit where such children or other family members or persons are residing or visiting.

8.4 Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Property or on any public street abutting or visible from the Property, or shown or displayed from any Residence, without the prior written consent of the Architectural Committee; provided, however, that the restrictions of this Section shall not apply to any sign or notice of customary and reasonable dimension which states that the Residence is for rent or sale, so long as it is consistent with the standards promulgated by the Architectural Committee in accordance with Section 4.2 hereof. Such sign or notice may be placed within a Unit, and may also be placed upon the Common Property with the prior written approval of the Architectural Committee; provided that the location of such sign or notice on the Common Property shall be within an area specifically established by the Committee for such purpose. This Section shall not apply to any signs used by Declarant or its agents in connection with the sale of Condominiums or the construction or alteration of the Units or Common Property, traffic and visitor parking signs installed by Declarant, and traffic and parking control signs installed with the consent of the Board. Notwithstanding the foregoing, nothing

contained in this Section shall be construed in such manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the County.

8.5 Antennae. No radio station or shortwave operators of any kind shall operate from any Unit or any other portion of the Property unless approved by the Architectural Committee. With the exception of any master antenna maintained by the Association, no exterior radio antenna, "C.B." antenna, television antenna, earth receiving station, satellite dish or other antenna of any type shall be erected or maintained anywhere in the Property unless approved by the Architectural Committee.

8.6 Inside and Outside Installations. No outside installation of any type, including but not limited to clotheslines, shall be constructed, erected or maintained on any Residence, excepting antennae installed by Declarant as a part of the initial construction of the Property and except as may be installed by, or with the prior consent of the Architectural Committee. No balcony, patio or deck covers, wiring, or installation of air conditioning, water softeners, or other machines shall be installed on the exterior of the buildings of the Project or be allowed to protrude through the walls or roofs of the buildings (with the exception of those items installed during the original construction of the Project) unless the prior written approval of the Architectural Committee is secured. Outdoor patio or lounge furniture, plants and barbecue equipment may be maintained pursuant to rules and procedures of the Architectural Committee. The type and color of all exposed window coverings shall be subject to the prior written approval of the Architectural Committee. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to any Residence shall be commenced without the prior written approval of the Architectural Committee. Nothing shall be done in any Unit or in, on or to the Common Property which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided herein. There shall be no alteration, repair or replacement of wall coverings within Units which may diminish the effectiveness of the sound control engineering within the buildings in the Project. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Condominium Unit for such Owner, and any owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

8.7 Animal Regulations. No livestock, reptiles, insects, poultry or other animals of any kind shall be raised, bred or kept in any Residence except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages may be kept as

household pets within any Residence provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes. As used in the Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per Residence; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Board shall have the right to limit the size of pets and may prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property must be either kept within an enclosure, an enclosed balcony or on a leash held by a person capable of controlling the animal. Furthermore, any Owner shall be liable to each and all remaining Owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by such Owner or by members of his family, his tenants or his guests. It shall be the duty and responsibility of each such owner to clean up after such animals which have used any portion of the Property or on any public street abutting or visible from the Property.

8.8 Business or Commercial Activity. No part of the Property shall ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including without limitation any activity for which the provider is compensated in any way or receives any form of consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license; except Declarant, its successors and assigns may use any portion of the Property for a model home site and display and sales offices in accordance with Articles VI and VII hereof. The provisions of this Section shall not preclude any of the above-described activities without external evidence thereof, provided that all of the following conditions are fulfilled: (a) such activities are conducted in conformance with all applicable governmental ordinances; (b) the patrons or clientele of such activities do not visit the Unit or park automobiles or other vehicles within the Property; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Unit; (d) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (e) such activities are consistent with the residential character of the Property and conform with the provisions of this Declaration.

8.9 Rubbish Removal. Trash, garbage, or other waste shall be disposed of by residents of the Project only by depositing the same into trash containers designated for such use by the Board of Directors. No portion of the Property shall be used for the storage of building materials, refuse or any other materials, except that building materials may be kept on any balcony, deck, patio or parking space temporarily during construction which has been previously approved by the Architectural Committee. No

clothing, household fabrics or other unsightly articles shall be hung, dried or aired on any portion of the Property, including the interior of any Residence, so as to be visible from other Residences or the street. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor. The cost of trash collection and removal and trash bin rentals shall be borne by the Association and shall constitute a portion of the Common Expenses.

8.10 Further Subdivision. Except as otherwise provided herein, no Owner shall physically or legally subdivide his Unit in any manner, including without limitation any division of his Unit or his Condominium into time-share estates or time-share uses; provided, however, that this provision shall not be construed to limit the right of an Owner (1) to rent or lease all of his Unit by means of a written lease or rental agreement subject to the restrictions of this Declaration; (2) to sell his Condominium; or (3) to transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by the lessee of the Unit to comply with the terms of this Declaration, the Bylaws of the Association or the Rules and Regulations shall constitute a default under the lease or rental agreement. Notwithstanding the foregoing, no Unit in the Project may be partitioned or subdivided without the prior written approval of the Beneficiary of any first Mortgage on that Unit. This Section may not be amended without the prior written approval of the Beneficiaries of at least seventy-five percent (75%) of the first Mortgages of Condominiums in the Project.

8.11 Drainage. There shall be no interference with or alteration of the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Architectural Committee. For the purpose hereof, "established" drainage is defined as the drainage which exists at the time of the first Close of Escrow for the sale of a Condominium in the Property, or that which is shown on any plans approved by the Architectural Committee. All drainage of water from any Unit shall drain or flow into adjacent streets or alleys and shall not be allowed to drain or flow upon, across, or under any other portion of the Property unless an easement for such purpose is granted.

8.12 Water Supply System. No individual water supply or water softener system shall be permitted in any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any applicable water district and other applicable governmental authorities. Any sewage disposal system shall be installed only after approval by the Architectural Committee and any governmental health authority having jurisdiction.

8.13 View Obstructions. No vegetation or other obstruction shall be planted or maintained upon any patio or



balcony in such location or of such height as to unreasonably obstruct the view from any other Residence in the vicinity thereof. If there is a dispute between Owners concerning the obstruction of a view from a Residence, the dispute shall be submitted to the Architectural Committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the Architectural Committee, be removed or otherwise altered to the satisfaction of the Architectural Committee, by the Owner of the Residence upon which the obstruction is located. Any item or vegetation maintained upon any patio or balcony, which item or vegetation is exposed to the view of any Owner, shall be removed or otherwise altered to the satisfaction of the Architectural Committee, if it determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. If an Owner fails to perform necessary pruning, trimming, or thinning, the Association shall have the right, after Notice and Hearing, to enter upon such Residence for the purpose of performing such work. The Architectural Committee shall ensure that the vegetation on the Common Property maintained by the Association is cut frequently, that the view of any Owner is not unreasonably obstructed.

8.14 Rights of Handicapped. Subject to the provisions of Article IV of this Declaration, each Owner shall have the right to modify his Residence and the route over the Common Property leading to the front door of his Residence, at his sole cost and expense, in order to facilitate access to his Residence by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons.

## ARTICLE IX INSURANCE

### 9.1 Duty to Obtain Insurance; Types.

(a) Public Liability. The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered acceptable to FNMA (not less than \$2 million covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members (including without limitation, the activities of the Association's officers and directors acting in such capacity in compliance with the requirements of Section 15.7 below), with respect to the Common Property.

(b) Fire and Casualty Insurance. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Property.

(c) Fidelity Bonds. Fidelity bond coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the Manager of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than the sum equal to one fourth (1/4) of the Annual Assessments on all Condominiums in the Project, plus reserve funds.

(d) Insurance Required by FNMA, GNMA and FHLMC. The Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements for condominium projects established by FNMA, GNMA and FHLMC, so long as any of which is a Mortgagee or Owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA and FHLMC, as applicable.

(e) Other Insurance. The Board of Directors shall purchase such other insurance, as necessary,, including but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.

(f) Beneficiaries. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein.

(g) Required Endorsements. If available and commercially reasonable, the Association shall obtain the following policy endorsements: (i) Guaranteed Replacement Cost Endorsement, (ii) Inflation Guard Endorsement, (iii) Building Law or Ordinance Endorsement, and (iv) Special Condominium Endorsement.

9.2 Waiver of Claim Against Association. As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board of Directors and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

9.3 Right and Duty of Owners to Insure. It is the responsibility of each Owner to provide insurance on his personal

property and upon all other property and Improvements within his Unit for which the Association has not purchased insurance in accordance with Section 9.1 hereof. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to person or property occurring inside his individual Unit or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of 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.

9.4 Notice of Expiration Requirements. If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be canceled, terminated, materially modified or allowed to expire by its terms, without ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Beneficiary, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be canceled or substantially modified without ten (10) days prior written notice to any insurance trustee named pursuant to Section 9.6 and to each FNMA servicer who has filed a written request with the carrier for such notice.

9.5 Insurance Premiums. Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Annual Assessments levied by the Association and collected from the Owners. That portion of the Annual Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the Reserve Fund, to be used solely for the payment of premiums of required insurance as such premiums become due.

9.6 Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 9.1 of this Article shall be paid to the Board of Directors as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article X of this Declaration. The Board is hereby granted the authority to

negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 10.4 of this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

9.7 Actions as Trustee. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of seventy-five percent (75%) of the first Mortgages held by first Mortgagees who have filed requests under Section 10.4. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

9.8 Annual Insurance Review. The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Section 9.1 above. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Property except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

9.9 Required Waiver. All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) subrogation of claims against the Owners and tenants of the owners;
- (b) any defense based upon coinsurance;
- (c) any right of setoff, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;

(d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;

(e) any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

(f) notice of the assignment of any owner of his interest in the insurance by virtue of a conveyance of any Condominium; and

(g) any right to require any assignment of any Mortgage to the insurer.

9.10 Distribution of Insurance Information. The Association shall distribute a summary of the Association's insurance policies within 60 days preceding the beginning of the Association's fiscal year. The summary shall include the following information about each policy:

- (A) The name of the insurer.
- (B) The type of insurance.
- (C) The policy limits of the insurance.
- (D) The amount of deductibles, if any.

The Association shall, as soon as reasonably practical, notify the Members by first-class mail if any of the policies described above have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy, the Association shall immediately notify the Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

The summary shall contain, in at least 10-point boldface type, the following statement: "This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any Association Member may, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members

should consult with their individual insurance broker or agent for appropriate additional coverage."

## ARTICLE X DESTRUCTION OF IMPROVEMENTS

10.1 Restoration of the Property. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Property, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article IX hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Architectural Committee have been approved in writing by sixty-seven percent (67%) of the Owners and by the Beneficiaries of fifty-one percent (51%) of first Mortgages upon the Condominiums. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment shall be levied by the Board of Directors to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("Conditions to Reconstruction") have first been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Property is approved by the affirmative vote or written consent of sixty-seven percent (67%) of the owners and by the written consent of the Beneficiaries of fifty-one percent (51%) of the first Mortgages on the Condominiums in the Project; and (b) within six (6) months after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("Reconstruction Certificate"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than eighty-five percent (85%) of the estimated cost of restoration and repair, it shall be conclusively presumed that the Owners have determined not to proceed with restoration and repair and not to allow the Board to levy a Reconstruction Assessment, in which case the Owners may proceed as provided in Section 10.2 below.

10.2 Sale of Property and Right to Partition. No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the

Project, or any part thereof, except as provided in Section 1359 (b) of the California Civil Code as amended or in any successor statute. For purposes of Subsection 4 of said Section 1359 (b), partition may occur only if all of the following conditions are satisfied: (a) either or both of the Conditions to Reconstruction described in Section 10.1 above have failed to occur; and (b) within six (6) months after the date on which destruction occurred, restoration or repair has not actually commenced; and (c) the Owners of sixty-seven percent (67%) of the Condominiums in the Project approve the partition by vote or written consent. In such event, the Association, acting through a majority of the Board, shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners and such other documents and instruments as may be necessary for the Association to consummate the sale of the Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately prior to such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is hereby authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. Notwithstanding the foregoing, the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing herein shall be deemed to prevent partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Units and for the benefit of all other Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

10.3 Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to Section 9.1 of this Declaration, restoration and repair of any damage to the interior of any individual Residence, including without limitation all fixtures, cabinets 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 Residence so damaged. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this Article, such interior

repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

10.4 Notice to Owners and Listed Mortgagees. The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Property, shall promptly notify all owners and Beneficiaries, insurers and guarantors of first Mortgages on Condominiums in the Project, who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Unit, shall promptly notify any Beneficiary, insurer or guarantor of any Mortgage encumbering such Unit who has filed a written request for such notice with the Board.

## ARTICLE XI EMINENT DOMAIN

11.1 Eminent Domain. The term "taking" as used in This Article shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Unit owners and their Mortgagees, and shall be distributed to such owners and Mortgagees as provided in this Article.

11.2 Project Condemnation. If there is a taking of an interest in all or part of the Project such that the ownership, operation and use of the Project in accordance with the provisions of this Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the Owners of Units (a) not taken, or (b) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively, the "Remaining Units") do not by affirmative vote of at least one-third of their voting power approve the continuation of the Project and the repair, restoration and replacement to the extent feasible of the Common Property and the Remaining Units, then the Board shall proceed with the sale of that portion of the Project which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.2.

11.3 Condemnation of Common Property. If there is a taking of (a) all or any portion of the Common Area, or any interest therein, other than the taking of an undivided interest therein taken as a result of the taking of a Condominium, or (b) all or any portion of the Association Property (other than Exclusive Use Common Area), or any interest therein, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.



11.4 Condemnation of Exclusive Use Common Area. If there is a taking of all or any portion of an Exclusive Use Common Area which is not taken in connection with the taking of all or any portion of the Unit to which it is appurtenant, the award in condemnation shall be paid to the Owner of the Unit to which the taken Exclusive Use Common Area was appurtenant; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

11.5 Condemnation of Condominiums. If there is a taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

11.6 Condemnation of Portions of Units.

(a) Minor Takings Within Limits. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (ii) restoration of such Units can be accomplished at a cost less than or equal to the sum of (A) the amount of the condemnation awards for such takings plus (B) any amounts the owners of the taken Units wish to contribute to restoration plus (C) an amount less than or equal to five percent (5%) of the Budgeted gross expenses of the Association for that Fiscal Year (collectively, the "Allowable Cost"), then the Board shall contract for such restoration and levy a Reconstruction Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards in excess of the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their Condominiums; provided, however, that such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

(b) Minor Takings Exceeding Limits. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is substantially and adversely affected, and (ii) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a Special Meeting of the Members. If more than fifty percent (50%) of the Members are represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Reconstruction Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to

such restoration, then the Board shall contract for such restoration and levy a Reconstruction Assessment, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration.

(c) Major Takings. If the requisite approval is not obtained at the Special Meeting referred to in Section 11.5(b), or if there is a taking of a portion of one or more Units such that the Units are not capable of being restored such that the intended use of the Units as residential dwellings is substantially and adversely affected, then the award in condemnation shall be paid to the Owners of the taken Units; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units razed. The remaining portions of the taken Units and appurtenant Exclusive Use areas shall become part of the Common Property, and the Owners of such taken Units, by acceptance of the award allotted to them in taking proceedings, hereby relinquish (i) to the Association such remaining portion of the taken Units and appurtenant Exclusive Use Common Area, (ii) to the other Owners in the Property, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area. Each Owner relinquishing his interest pursuant to this Section shall, at the request of the Board and at the expense of the Association, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit or Residence shall not be liable for assessments under this Declaration which accrue on or after the date such Owner accepts his condemnation award.

11.7 Portions of Awards in Condemnation Not Compensatory for Value of Real Property. Those portions of awards in condemnation which do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

11.8 Notice to Owners and Mortgagees. The Board, upon learning of any taking affecting a material portion of the Property, or any threat thereof, shall promptly notify all Owners and those Beneficiaries, insurers and guarantors of Mortgages on Condominiums in the Project who have filed a written request for such notice with the Association. The Board, upon learning of any taking affecting a Unit, or any threat thereof, shall promptly notify any Beneficiary, insurer or guarantor of a Mortgage encumbering such Unit who has filed a written request for such notice with the Association.

ARTICLE XII  
RIGHTS OF MORTGAGEES

12.1. Mortgagee Rights. Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Deed of Trust upon one (1) or more Condominiums made in good faith and for value, provided that after the foreclosure of any such Deed of Trust such Condominium(s) shall remain subject to this Declaration, as amended. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with first priority over other Mortgages or Deeds of Trust on a Condominium, and "first Mortgagee" shall mean the Beneficiary of a first Mortgage. For purposes of any provision of this Declaration or the other Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval shall be determined based upon one (1) vote for each Condominium encumbered by each such first Mortgage.

12.2. Special Mortgagee Provisions.

(a) A first Mortgagee at its written request is entitled to written notification from the Association of the following: (i) any default by the Owner of the Condominium which is subject to a mortgage or deed of trust in favor of said Mortgagee (the "Secured Condominium") of such Owner's obligations under the Condominium documents which is not cured within sixty (60) days; (ii) any condemnation or casualty loss that affects either a material portion of the Property or the Secured Condominium; (iii) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action that requires the consent of a specified percentage of eligible Mortgagees.

(b) Any first Mortgagee who comes into possession of a Condominium pursuant to the remedies provided in the mortgage or deed of trust, or foreclosure of the mortgage or deed of trust, or deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal."

(c) Any first Mortgagee who comes into possession of a Condominium pursuant to the remedies provided in the mortgage or deed of trust or foreclosure of the mortgage or deed of trust shall take such Condominium free from any claims for unpaid assessments (including Annual, Special, Remedial and otherwise) or charges against the encumbered Condominium which accrue prior to the time such Mortgagee comes into possession of the Condominium.

(d) First Mortgagees shall have the right to examine the books, records and financial statements of the Association.

(e) An adequate reserve fund for replacement of the Common Area improvements must be established and must be funded by regular monthly payments rather than by Special Assessments.

(f) All taxes, assessments and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominiums and not to the Property as a whole.

(g) Notwithstanding anything to the contrary which may be set forth in this Declaration, the Articles or the Bylaws, unless at least seventy-five percent (75%) of the first Mortgagees (based upon one (1) vote for each first mortgage owned) have given their prior written approval, the Association shall not:

(1) by act or omission, seek to abandon or terminate the Condominium regime;

(2) change the pro-rata interest or obligations of any Condominium for:

(A) purposes of levying assessments or charges or allocating distribution of hazard insurance proceeds or condemnation awards, and for

(B) determining the pro-rata share of ownership of each Unit in the Common Area;

(3) partition or subdivide any Condominium;

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Owners shall not be deemed a transfer within the meaning of this clause;

(5) use hazard insurance proceeds for losses to any portion of the Property (whether to Units or to the Common Area) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Area of the Property;

(6) amend this Declaration so as to defeat the obligations of the Association to maintain the Common Area in a first-class condition and good state of repair, or which would defeat the assessment procedures which assure the collection of funds for such maintenance;

(7) amend this Declaration with respect to the following matters:

(A) voting rights;

- (B) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;
- (C) reductions in reserves for maintenance, repair and replacement of Common Areas;
- (D) responsibility for maintenance and repairs;
- (E) reallocation of interests in the general or exclusive use Common Areas, or rights to their use;
- (F) redefinition of any Unit boundaries;
- (G) convertibility of Units into Common Areas or vice versa;
- (H) expansion or contraction of the Property, or the addition, annexation, or withdrawal of property to or from the Property;
- (I) hazard or fidelity insurance requirements;
- (J) imposition of any restrictions on the leasing of Units;
- (K) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (L) restoration or repair of the Property (after damage or partial condemnation) in a manner other than that specified in the Declaration;
- (M) establishment of self management (if professional management was previously required); and

(8) amend any part of this Section 12.11.

(h) The Association shall give the Federal National Mortgage Association ("FNMA") or the Federal Home Loan Mortgage Corporation ("FHLMC") notice in writing of any loss to, or taking of, the Property if such loss or taking exceeds Ten Thousand

Dollars (\$10,000.00), or if damage to a Unit covered by a mortgage purchased in whole or in part by FHLMC or FNMA exceeds One Thousand Dollars (\$1,000.00).

12.3. General Mortgagee Provisions.

(a) Any Owner may encumber his Condominium by deed of trust or mortgage.

(b) A Mortgagee who acquires title by foreclosure or deed in lieu of foreclosure shall not be obligated to cure any breach of this Declaration which is noncurable or of a type which is not feasible to cure or which is not practical to cure and does not materially affect the Association or any other Owners.

(c) It is intended that any loan to facilitate the resale of any Condominium after foreclosure or deed in lieu of foreclosure is a loan made in good faith and for value and entitled to all of the rights and protections afforded to Mortgagees hereunder.

(d) No amendment to this Section 12.12 shall affect the rights of the Mortgagee under any mortgage or trust deed recorded prior to recordation of such amendment who does not join in the execution thereof.

(e) Because of its financial interest in a Condominium, a Mortgagee may appear (but may not vote) at meetings of the Owners and the Board to draw attention to violations of this Declaration which have not been corrected or made the subject of remedial proceedings or assessments.

(f) A Mortgagee is authorized to furnish information to the Board concerning the status of any loan encumbering a Condominium.

(g) All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the Mortgagees as insured parties, as their interest may appear.

(h) The Board shall immediately give written notice to any Mortgagee who has requested such notice in writing, when the Owner of the Condominium encumbered in favor of such Mortgagee has been in default under the terms hereof for a period of sixty (60) days.

(i) In the event of any conflict between any provision of this and any other provision in this Declaration, the language contained herein shall control.

(j) The Reserve Fund described in Article V of this Declaration must be funded by regularly scheduled monthly,

quarterly, semiannual or annual payments rather than by large special assessments.

ARTICLE XIII  
DURATION AND AMENDMENT

13.1 Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date of Recordation hereof, after which the term shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination satisfying the requirements of an amendment to this Declaration as set forth in Section 13.2 is Recorded. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Unit from the concomitant Membership in the Association, as long as this Declaration shall continue in full force and effect. The provisions of this Article are subject to the provisions of Sections 10.2 and 11.5 of this Declaration.

13.2 Termination and Amendment.

(a) Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting or election of the Association at which a proposed amendment is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of Members of the Association, and (ii) sixty-seven percent (67%) of the voting power of the Association residing in Members other than Declarant, provided that the specified percentage of the voting power of the Association necessary to amend a specified Section or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision.

(b) In addition to the required notice and consent of Members and Declarant provided above, the Beneficiaries of fifty-one percent (51%) of the first Mortgages on all the Condominiums in the Project who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

(1) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers or guarantors of first Mortgages as provided in Articles V, IX, X, XI, XII and XIII hereof.

(2) Any amendment which would necessitate a Mortgagee after it has acquired a Condominium through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(3) Any amendment which would or could result in a Mortgage being canceled by forfeiture, or in a Condominium not being separately assessed for tax purposes.

(4) Any amendment relating to the insurance provisions as set out in Article IX hereof, or to the application of insurance proceeds as set out in Article X hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(5) Any amendment which would or could result in partition or subdivision of a Condominium Unit in any manner inconsistent with the provisions of this Declaration.

(6) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if such Condominium is proposed to be sold, transferred, or otherwise conveyed.

(c) Termination of this Declaration shall require approval by the Members as provided in subsection (a) of this Section 13.2. No such termination shall be effective unless it is also approved in advance either by fifty-one percent (51%) of the Beneficiaries of the first Mortgages on all of the Condominiums in the Project (if said termination is proposed by reason of the substantial destruction or condemnation of the Project) or by sixty-seven percent (67%) of such Beneficiaries (if said termination is for reasons other than such substantial destruction or condemnation).

(d) Each Beneficiary of a first Mortgage on a Condominium in the Project which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the Beneficiary fails to submit a response to the notice within thirty (30) days after the Beneficiary receives the notice.

(e) A copy of each amendment shall be certified by at least two (2) officers of the Association, and the amendment shall be effective when a Certificate of Amendment is Recorded. The Certificate, signed and sworn to by two (2) officers of the Association that the requisite number of Owners and mortgagees have either voted for or consented in writing to any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The certificate reflecting any termination or amendment which requires the written consent of any of the Beneficiaries of first Mortgages shall include a certification that the requisite approval of such first Mortgagees has been obtained.

(f) Notwithstanding any other provisions of this Section 13.2, at any time prior to the first anniversary of the



first Close of Escrow for the sale of a Condominium within the Property, Declarant may unilaterally amend this Declaration by Recording a written instrument which effects the amendment and is signed and acknowledged by Declarant provided such amendment does not materially and adversely affect the rights and obligations of the Owners.

(g) Notwithstanding any other provisions of this Section 13.2, for so long as Declarant owns any portion of the Property, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of DRE, FNMA, GNMA or FHLMC then in effect.

13.3 Protection of Declarant. The prior written approval of Declarant, as developer of the Property, will be required before any amendment which would impair or diminish the rights of Declarant to complete the Property or sell or lease Condominiums therein in accordance with this Declaration shall become effective. Notwithstanding any other provisions of the Restrictions, until such time as Declarant no longer owns any Condominiums in the Property, the following actions, before being undertaken by the Association, shall first be approved in writing by Declarant:

(a) Any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Sections 13.2;

(b) The annexation to the Property of real property other than the Annexable Territory pursuant to Section 16.2;

(c) The levy of a Capital Improvement Assessment for the construction of new facilities not constructed on the Common Property by Declarant; or

(d) Subject to Section 5.4 regarding limitations on Annual Assessment increases, any significant reduction of Association maintenance or other services.

#### ARTICLE XIV ENFORCEMENT OF CERTAIN BONDED OBLIGATION

14.1 Consideration by Board of Directors. If (1) the Common Property Improvements are not completed prior to the issuance of the Final Subdivision Public Report for the Property by the DRE for the sale of Condominiums in the Project, and (2) the Association is obligee under a bond or other arrangement ("Bond") required by the DRE to secure performance of the commitment of Declarant to complete such Improvements, 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 such

Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Property Improvement, the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed, within thirty (30) days after the expiration of the extension.

14.2 Consideration by the Members. A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of the Association. A vote of a majority of the voting power of the Association residing in Members other than 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 this decision by initiating and pursuing appropriate action in the name of the Association.

#### ARTICLE XV GENERAL PROVISIONS

##### 15.1 Enforcement of Restrictions.

15.1.1 Violations Identified by the Association. If the Board determines that there is a violation of any provision of the Restrictions, or the Architectural Committee determines that an Improvement which is the maintenance responsibility of an Owner is in need of installation, maintenance,, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the Architectural Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Architectural Committee.

If an Owner does not perform such corrective action as is required by the Board and the Architectural Committee within the allotted time, the Board, after Notice and Hearing, may undertake to remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment. Such Special Assessment shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Declaration.

If the violation involves nonpayment of any type of Assessment, then the Board shall be entitled to collect

such delinquent Assessment pursuant to the procedures set forth in Article V.

15.1.2 Violations Identified by an Owner. In the event that an Owner alleges that another Owner, his family, guests or tenants, is violating the Restrictions (other than nonpayment of any type of Assessment), the owner must first submit the matter to the Board pursuant to the Notice and Hearing procedure established in the Bylaws before the complaining Owner may resort to judicial reference for relief with respect to the alleged violation.

15.1.3 Reference. In the event of a dispute between or among (a) Declarant, its builders, general contractors or brokers, or their agents or employees, and any Owner(s) or the Association, or (b) any Owner, and another Owner, or (c) the Association, and any Owner regarding any controversy or claim between the parties, including any claim based on contract, tort, or statute, arising out of or relating to the rights or duties of the parties under the Restrictions or the design or construction of the Project (excluding disputes relating to the payment of any type of Assessments), the matter will be heard by a reference in accordance with Section 15.13 of this Declaration so long as the requirements of Sections 15.1.1 and 15.1.2 above have been met, if they are applicable.

15.1.4 Legal Proceedings. Failure to comply with any of the terms of the Restrictions by an Owner, his family, guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof. Provided, however, that the procedures established in Sections 15.1.1, 15.1.2, and 15.1.3 above must first be followed, if they are applicable.

15.1.5 Limitation on Expenditures. The Association shall not incur litigation expenses, including without limitation attorneys, fees, where the Association initiates legal proceedings or is joined as a plaintiff in legal proceedings without the approval of a majority of the voting power of the Association, excluding the voting power of any Owner who would be a defendant in such proceedings. Such approval shall not be necessary if the legal proceedings are initiated to (i) enforce the use restrictions contained in Article VIII hereof, (ii) enforce the architectural control provisions contained in Article IV hereof, or (iii) collect any unpaid assessments levied pursuant to this Declaration.

15.1.6 Schedule of Fines. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an owner for the failure of such owner, or of a resident of or visitor to such Owner's Unit, to comply with any provisions of the Restrictions. Such fines or

penalties may only be assessed by the Board after Notice and Hearing.

15.1.7 No Waiver. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof.

15.1.8 Right to Enforce. The Board, any Owner (not at the time in default hereunder), or Declarant (so long as Declarant is an owner) shall be entitled to enforce the Restrictions as described in this Article. Each Owner shall have a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

15.1.9 Attorneys Fees. Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the court or referee, as applicable, may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and costs of court or reference, as applicable.

15.2 Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

15.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a residential condominium development and for the maintenance of Common Property, and any violation of this Declaration shall be deemed to be a nuisance. 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. As used herein, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise.

15.4 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its 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 covenants, conditions and restrictions established by this Declaration governing the~~

Property, together with the covenants and restrictions established upon any other property, as one (1) plan.

15.5 Use of Recreational Facilities. The Board of Directors shall have the right to limit the number of guests that an owner or such Owner's tenant may permit to use the open parking and recreational facilities on the Common Property, and the Board shall have the right to set further reasonable restrictions on the time and manner of use of said parking areas and recreational facilities, in accordance with the Rules and Regulations, including, without limitation, Rules and Regulations restricting or prohibiting the use of all or designated portions of the Property recreational facilities by minors, guests of an Owner or his tenants.

15.6 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

15.7 Nonliability and Indemnification.

(a) General Limitation. Except as specifically provided in the Restrictions or as required by law, no right, power, or responsibility conferred on the Board or the Architectural Committee by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Architectural Committee, any member of the Board or of the Architectural 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 what 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 misconduct. 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 misconduct.

(b) Damages Limitation. A volunteer Board member or volunteer Association officer shall not be personally liable in excess of the coverage of insurance specified below to any person who suffers injury, including without limitation bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all of the following conditions are satisfied:

(1) ~~The Board member or officer is a tenant of a Unit or an Owner of no more than two (2) Units;~~

(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 shall include coverage for (A) general liability of the Association and (B) individual liability of officers and Board members for negligent acts or omissions in that capacity; provided that both types of coverage are in the amount of at least five hundred thousand dollars (\$500,000.00) if the Project then consisted of one hundred (100) or fewer Condominiums, and at least one million dollars (\$1,000,000.00) if the Project then consisted of more than one hundred (100) Condominiums.

A Board member or Association officer who at the time of the act or omission was the Declarant or received direct or indirect compensation as an employee from Declarant or from a financial institution that purchased a Condominium at a judicial or nonjudicial foreclosure of a Mortgage is not a volunteer for purposes of this Section 15.7(b). The payment of actual expenses incurred by a Board member or Association officer does not affect the member's or officer's status as a volunteer for purposes of this Section 15.7(b).

(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 a 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 had no reasonable cause to believe his conduct was unlawful; and

(3) In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section 15.7(c) 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 determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the person to be indemnified shall not be entitled to vote. Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 15.7(c) shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

**15.8 Notices.** Except as otherwise provided in this Declaration, notice to be given to an Owner shall be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more co-owners of a Condominium or to any general partner of a partnership owning a Condominium shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Unit. Such notice shall be deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors in which case the notice provisions of the Bylaws shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all owners.

**15.9 Priorities and Inconsistencies.** If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

**15.10 Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property, or any portion thereof.

**15.11 Declarant's Right to Cure Alleged Defects.** It is Declarant's intent that the Common Property, the Units, and the Improvements be built in compliance with all applicable building

codes and ordinances and that they be of a quality that is consistent with good construction practices for production housing of this type. Nevertheless, due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect in construction exists and Declarant's responsibility therefor. It is Declarant's intent to resolve all disputes and claims regarding "Alleged Defects" (as defined below) in any portion of the Common Property, any Unit, and any Improvements, amicably, and without the necessity of time consuming and costly litigation. Accordingly, the Association, and all Owners shall be bound by the following claim resolution procedure:

(a) Declarant's Right to Cure. If the Association or any Owner or Owners (collectively "Claimant") claim, contend or allege that any portion of the Common Property, any Unit, and/or any Improvements are defective or that Declarant or its agents, consultants, contractors or subcontractors were negligent in the planning, design, engineering, grading or construction thereof (collectively, an "Alleged Defect"), Declarant is hereby granted the irrevocable right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(b) Notice to Declarant. In the event that a Claimant discovers any Alleged Defect, Claimant shall, within a reasonable time after discovery, notify Declarant, in writing, at such address at which Declarant maintains its principal place of business, of the specific nature of such Alleged Defects ("Notice of Alleged Defect").

(c) Right to Enter, Inspect, Repair, and/or Replace. Within a reasonable time after the receipt by Declarant of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by Declarant, Declarant shall have the irrevocable right, upon reasonable notice to Claimant and during normal business hours, to enter onto or into, as applicable, the Common Property, any Unit, and/or any Improvements for the purposes of inspecting and, if deemed necessary by Declarant, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement Declarant shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(d) Legal Actions. In the event a Claimant initiates any legal action, cause of action, proceeding, reference or arbitration against Declarant alleging damages (i) for the costs of repairing or the replacement of any Alleged Defect, (ii) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (iii) for any consequential damages resulting from such Alleged Defect, any judgment or award in connection therewith shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. In the event the Claimant is the Association,



any excess funds remaining after repair of the Alleged Defect shall be paid into the Association's reserve fund.

(e) No Additional Obligations. Nothing set forth in this Section 15.11 shall be construed to impose any obligation on Declarant to inspect, repair or replace any items or Alleged Defect for which Declarant is not otherwise obligated under applicable state and federal law or any limited warranty provided by Declarant in connection with the sale of the Units constructed thereon. Notwithstanding any other provision of this Declaration, this Section 15.11 shall not be amended without the prior written approval of Declarant.

15.12 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents, consultants, or employees in connection with the Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for 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.

15.13 Alternative Dispute Resolution. Notwithstanding any other provision of this Declaration, in the event of any dispute between or among (a) Declarant or its agents, consultants, or employees, and any Owner(s) or the Association, or (b) any Owner, and another Owner, or (c) the Association, and any Owner (exclusive of disputes relating to the payment of Annual Assessments, Capital Improvement Assessments, Reconstruction Assessments, Special Assessments or any other assessments imposed by this Declaration), the matter will be heard by a reference pursuant to the provisions of the California Code of Civil Procedure, Sections 638-645, inclusive.

#### ARTICLE XVI ANNEXATION OF ADDITIONAL PROPERTY

Additional real property may be annexed to the Property and such additional real property may become subject to this Declaration by any of the methods set forth hereinafter:

16.1 Additions by Declarant. Declarant or its successors or assigns shall have the right from time to time to add the Annexable Territory, or any portion or portions thereof (including any recreation facilities located thereon), to the Property and to bring such added territory within the general plan and scheme of this Declaration without the approval of the Association, its Board of Directors, or Members; provided that such a right of Declarant and its successors and assigns shall terminate on the earlier to occur of the third (3rd) anniversary of the original issuance of the most recently issued Final Subdivision Public Report for the Property, or the seventh (7th) anniversary of

the date of Recordation of this Declaration. As each portion of the Annexable Territory is developed, Declarant may, with respect thereto, record a supplemental declaration ("Supplemental Declaration") which may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as Declarant may deem appropriate for that phase of development.

16.2 Other Additions. In addition to the provision for annexation specified in Section (a) above, additional real property may be annexed to the Property and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3rds) of the voting power of the Association. Notwithstanding the foregoing, any additional real property annexed to the Property after the seventh (7th) anniversary of the Recordation of this Declaration shall not effect a change in the percentage interests of Owners in the Common Area which existed prior to the date of annexation.

16.3 Rights and Obligations-Added Territory. Subject to the provisions of Section (d), upon the Recording of a Declaration of Annexation of Territory containing the provisions as set forth in this Section, all provisions contained in this Declaration shall apply to the real property described in such Declaration of Annexation of Territory (the "added territory") in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the added territory shall be the same as with respect to the property originally covered hereby, and the rights, powers and responsibilities of the Owners, lessees and occupants of Units within the added territory, as well as within the property originally subject to this Declaration, shall be the same as if the added territory were originally covered by this Declaration. From and after the first day of the month following the first Close of Escrow for the sale of a Condominium in the added territory, the Owner of Condominiums located in the added territory shall share in the payment of assessments to the Association to meet Common Expenses of the entire Property as provided in Section 5.5 hereof. Voting rights attributable to the Condominiums in the added territory shall not vest until Annual Assessments have commenced as to such Condominiums.

16.4 Declaration of Annexation of Territory. The additions authorized under Sections (a) and (b) shall be made by Recording a Declaration of Annexation, or other similar instrument (which notice or instrument may contain the Supplemental Declaration, if any, affecting each such phase of development), with respect to the added territory which shall extend the general plan and scheme of this Declaration to such added territory. The Declaration of Annexation for any addition under Section (a) shall be signed by Declarant. The Declaration of Annexation for any addition under Section (b) shall be signed by at least two (2)

officers of the Association to certify that the requisite approval of the Members under Section (b) was obtained. The Recordation of said Declaration of Annexation shall constitute and effectuate the annexation of the added territory described therein, and thereupon said added territory shall become and constitute a part of the Property, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the owners of Condominiums in said added territory shall automatically become Members of the Association. Such Declaration of Annexation may contain a Supplemental Declaration with such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the added territory, or as Declarant may deem appropriate in the development of the added territory, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such Declaration of Annexation or Supplemental Declaration revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Declaration as the same shall pertain to the real property originally covered by this Declaration.

16.5 Deannexation and Amendment. Declarant may amend a Declaration of Annexation or delete all or a portion of the Property or a phase of development from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the owner of all of the Property or such phase of development, and provided that (1) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Declaration of Annexation was Recorded, (2) Declarant has not exercised any Association vote with respect to any portion of such phase of development, (3) assessments have not yet commenced with respect to any portion of such phase of development, (4) Close of Escrow has not occurred for the sale of any Condominium in such phase of development, and (5) the Association has not made any expenditures or incurred any obligations with respect to any portion of such phase of development.

16.6 Power of Attorney. Each Owner of a Condominium in the Project, by accepting a deed to a Condominium, shall be deemed to have (a) agreed and acknowledged that the Owners own no interest in the Annexable Territory which may be developed, if at all, by Declarant in its sole and absolute discretion and (b) constituted and irrevocably appointed Declarant, for so long as Declarant owns all or any portion of the Annexable Territory, 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 thereby to have conveyed a Power of Attorney

coupled with an interest to Declarant as his Attorney in Fact to prepare, execute, acknowledge and Record any Condominium Plan or amendment to the Condominium Plans for all or any portion of the Annexable Territory. However, nothing set forth herein shall be deemed for or construed as an agreement by Declarant that any Owner shall be entitled to any participation in or discretion over the preparation and Recordation of a Condominium Plan or Plans for all or any portion of the Annexable Territory. 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 in this Section.

## ARTICLE XVII ANNUAL INSPECTION

17.1 Duty to Inspect. It shall be the duty of the Board to have the Common Property inspected at least once every three (3) years.

17.2 Purpose of Inspection. The purpose of the inspection shall be to (i) determine whether the Common Property is being maintained adequately in accordance with the standards of maintenance established in Section 2.6 hereof, (ii) identify the condition of the Common Property and any Improvements thereon including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future.

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

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

17.5 Report to Owners. The Board shall have a report of the results of the inspection of the Common Property required by this Article prepared. The report shall be furnished to Owners within the time set forth for furnishing Owners with the Budget. The report shall include at least the following:

(a) a description of the condition of the Common Property, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(b) a description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the Budget;

(c) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(d) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

(e) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

(f) such other matters as the Board deems appropriate.

#### ARTICLE XVIII BOAT DOCKS

Declarant has constructed certain boat slips and boat docks (the "Boat Docks") on Lake Arrowhead pursuant to an agreement between Declarant and the Arrowhead Lake Association. The Boat Docks contain a total of 34 separate boat slips (collectively, the "Boat Slips" and each a "Boat Slip" as each is more particularly described in the applicable "Conveyance of Easement Determinable" defined below). Declarant has also made arrangements to cause the Arrowhead Lake Association to convey an easement to use and maintain a specific Boat Slip to each Owner pursuant to a "Conveyance of Easement Determinable" and such other agreements and documents which Arrowhead Lake Association may require (collectively, the "ALA Documents"). Each Owner's easement to use his Boat Slip ("Slip Easement") will be subject to the terms and conditions of the ALA Documents (which include, without limitation, requirements for the payment of fees) and the rules and regulations of the Arrowhead Lake Association and all matters of record which encumber Lake Arrowhead. Copies of the ALA Documents can be obtained directly from the Arrowhead Lake Association by each Owner. The ALA Documents can also be obtained on behalf of each Owner by the Association. Each Owner acknowledges and agrees that Declarant makes no representation or warranty regarding: (i) the enforceability of the Slip Easement, (ii) each Owner's ownership interest in his Boat Slip and/or the Boat Docks, (iii) the rights and authority of the Arrowhead Lake Association to convey the Slip Easements and (iv) the Arrowhead Lake Association's ability to regulate, control and maintain Lake Arrowhead. Each Owner further acknowledges and agrees that he has been directed to contact the Arrowhead Lake Association for more information regarding its procedures, policies and enforcement of the ALA Documents. Further, each Owner acknowledges and agrees that any breach of the ALA Documents or violation of the Arrowhead Lake Association's rules and regulations may subject the Owner to discipline under this Declaration by the Association.

Each Owner acknowledges and agrees that his access to the Boat Slips and Boat Docks is pursuant to the Off-Site Easements. Each Owner further acknowledges and agrees that his use of the Off-

Site Easements is hereby made subject to compliance with the provisions of this Declaration and the rules and regulations promulgated by the Association from time to time. Each Owner hereby grants to the Association an easement to maintain the Boat Docks and Boat Slips as Common Property and hereby consents to the assumption of such maintenance responsibility by the Association as provided in this Declaration. Each Owner also irrevocably appoints the Association as the sole arbiter of disputes between and among Owners with respect to the Boat Slips and Boat Docks, except to the extent such dispute is within the jurisdiction of the Arrowhead Lake Association, and consents to the Association's regulation and control of the Boat Slips and Boat Docks as Common Property. Any attempt by an Owner to interfere with the authority, control or rights granted to the Association in this Declaration shall, without limiting any other right or remedy of the Association, authorize the Association to suspend such Owner's ability to access the Boat Slips and Boat Docks pursuant to the Off-Site Easements.

#### ARTICLE XIX COUNTY REQUIREMENTS

19.1 Approval. The obligations imposed upon the Association and the Members and the rights of the County contained in this Article are conditions of approval of this Project by the County. In the event any of the provisions of this Article conflict with any other provisions of this Declaration, the provisions of this Article shall control.

19.2 Special Maintenance Requirements. Without limiting the generality of the Association's maintenance duties contained elsewhere in this Declaration, the Association shall maintain all Common Property including landscaped slopes, interior streets, and sidewalks; as well as improvements, including, but not limited to, irrigation systems, landscaped areas, walls, streets, street lights, drainage and storm drain systems. The Association shall irrigate all landscaped areas in a manner designed to conserve water. The Association and each Owner hereby acknowledge and agree that the County shall have the right to inspect the Property on an annual basis in accordance with applicable County ordinances and law, to insure compliance with County requirements regarding hazard abatement.

19.3 Amendment; Approval by County. No amendment to this Declaration which impacts the County's conditions of approval relating to the Property shall be valid unless it has been approved by the County Planning Department. An amendment to this Declaration shall be deemed approved if the County does not object to such amendment within 30 days of the date upon which a request for approval of such an amendment is delivered to the County Planning Department.

IN WITNESS WHEREOF, Declarant has executed this instrument the day and year first hereinabove written.

MAY 23<sup>rd</sup>, 1997. This Declaration is dated for identification purposes

ARROWHEAD VILLAS, LLC, a California limited liability company

By: HSMS ARROWHEAD CORPORATION, a California corporation, a member

By: [Signature]  
Name: William J. McNamee  
Title: G.P.

By: HSM ARROWHEAD LIMITED PARTNERSHIP, a California limited partnership, a member

By: HSMS Arrowhead Corporation, a California corporation, its general partner

By: [Signature]  
Name: William J. McNamee  
Title: G.P.

By: ARROWHEAD VENTURE LTD., a California limited partnership, a member

By: G.I.C. Enterprises, Inc., a California corporation, its general partner

By: [Signature]  
Name: GEORGE L. GRAZIANO, JR.  
Title: PRESIDENT

STATE OF CALIFORNIA

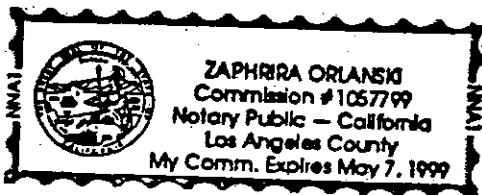
COUNTY OF

Los Angeles

)  
) ss.  
)

On May 22, 1997, 1997, before me, the undersigned, a Notary Public in and for said County and State, personally appeared William J. McMorrow personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.



Zaphira Orlanski  
Notary Public



STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

)  
) ss.  
)

On \_\_\_\_\_, 199\_\_, before me, the undersigned, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the within instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

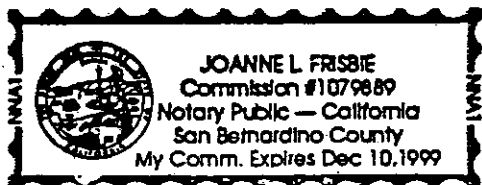
STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

)  
) ss.  
)

On MAY 23<sup>rd</sup>, 1997, before me, the undersigned,  
a Notary Public in and for said County and State, personally  
appeared GEORGE GRAZIADIO  
personally known to me (or proved to me on the basis of  
satisfactory evidence) to be the person ☒ whose name ☒ ~~is/are~~  
subscribed to the within instrument and acknowledged to me that  
~~he/she/they~~ executed the same in his ~~her/their~~ authorized  
capacity ~~(ies)~~, and that by his ~~her/their~~ signature ☒ on the  
instrument the person ☒, or the entity upon behalf of which the  
person ☒ acted, executed the within instrument.

WITNESS my hand and official seal.



Joanne L. Frissie  
Notary Public

EXHIBIT "B"

DESCRIPTION OF OFF-SITE EASEMENT AGREEMENTS  
WHICH BENEFIT THE PROPERTY

1. Those rights reserved by or granted to Central Capital Development Company in that certain parking lot, roadway and conservation easements (Burnt Mill Beach) recorded August 31, 1984 as Instrument No. 84-210595 and Instrument No. 84-210596 both of Official Records of San Bernardino County, over the property therein described as Parcels A, B-1, B-2, C and D.
2. A non-exclusive easement for pedestrian and vehicular ingress, egress and movement over that certain private roadway system located on Tract No. 10908, in the County of San Bernardino, State of California, as per map recorded in Book 151, pages 95 to 97 inclusive of Maps, in the Office of the County Recorder of said County, as established, described and depicted by the Declaration of Protective Covenants, Conditions and Restrictions and Easements executed on December 19, 1980, and recorded in the Office of the County Recorder of said San Bernardino County, State of California, on December 29, 1980 as Instrument No. 80-295716 of Official Records.
3. Easements as provided in that certain document entitled "Declaration of Reciprocal Easements", recorded December 12, 1996 as Document No. 19960456040 of Official Records of San Bernardino County.

"If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code."