

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE  
CARMEL MOUNTAIN RANCH RESIDENTIAL COMMUNITY ASSOCIATION**

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**Known Omissions/Alterations:**

- Table of Contents - Now generated and are slightly different in format**
- Exhibit "A" - The First Subdivision**
- Exhibit "B" - Annexable Area**
- Exhibit "C" - The Association Properties within the First Subdivision**
- Exhibit "D" - Golf Course Property**

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#### EXHIBITS

<u>Description</u>	<u>Designation</u>
The First Subdivision	Exhibit "A"
Annexable Area	Exhibit "B"
The Association Properties Within the First Subdivision	Exhibit "C"
Golf Course Property	Exhibit "D"

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE  
CARMEL MOUNTAIN RANCH RESIDENTIAL COMMUNITY ASSOCIATION

THIS DECLARATION ("Declaration") is made this 22 day of May, 1985, by CARMEL MOUNTAIN RANCH, a California general partnership ("Declarant").

RECITALS:

A. Declarant is the owner of certain real property in the County of San Diego, State of California described in Article I below as the First Subdivision and the Annexable Area.

B. Declarant proposes to develop the First Subdivision and the Annexable Area for residential and other related uses, in substantial compliance with an overall Development Plan, as hereinafter defined, which will incorporate certain portions of the Rancho Carmel Community Plan relating to residential and other related uses, as adopted by the City Council of the City of San Diego on August 14, 1984, by Resolution Nos. R-261374 and R-1375 (the "Original Community Plan"); as well as amendments to the Original Community Plan as are now proposed and at may from time to time be proposed and adopted by the City Council or other governmental entity (the "Amended Community Plan"); and other permits, plans and approvals as may be obtained from time to time. The Development Plan will provide for the development and use of the First Subdivision and the Annexable Area for residential and other related uses. Although the Original Community Plan and Amended Community Plan provide for portions of the Annexable Area to be used for industrial, research and development, commercial, retail, office, and financial uses, and such uses are an integral part of the Original and Amended Community Plans, the portions of the Annexable Area used or to be used for such purposes will be governed by a separate declaration of covenants, conditions, restrictions and reservations of easement; and no portion of the Annexable Area used or to be used for industrial, research and development, commercial, retail, office and financial purposes shall be annexed pursuant to this Declaration.

C. This Declaration is designed to create equitable servitudes and covenants running with the Subject Property to assist in the coordination and protection of a master plan for an entire planned community to be known as Carmel Mountain Ranch.

D. Declarant desires to establish a general plan for the maintenance, care, use and management of the Association Properties hereinafter described.

DECLARATIONS

Declarant hereby declares that the first. Subdivision and those portions of the Annexable Area hereafter declared to be subject to this Declaration in accordance with the provisions hereof, and each and every Lot part or parcel thereof and Condominium therein shall, from the date declared to be subject

to this Declaration in accordance with the provisions hereof, be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, maintained, altered and improved subject to the covenants, conditions, restrictions, limitations, reservations, exceptions, easements and terms hereinafter set forth, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement and protection of the Subject Property. The covenants contained in this Declaration are expressly intended to and shall run with the land, and shall until their expiration in accordance with Section 12.01 hereof, bind, be a charge upon and inure to the benefit of: (i) all of the Subject Property and each Lot, parcel, part or Condominium thereof or therein, (ii) Declarant and its successors or assigns, (iii) all persons having or acquiring any right, title or interest in the Subject Property or any Lot, part, parcel or Condominium thereof or therein or any improvement thereon, and their heirs, successors, executors, administrators and assigns. The covenants contained in this Declaration shall be for the mutual benefit of all such Lots, parts, parcels and Condominiums and the respective Owners thereof, and the Carmel Mountain Ranch Residential Community Association hereinafter described. It is the intent of Declarant that these covenants shall be covenants running with the Subject Property, and shall be mutual and equitable servitudes upon and in favor of each Lot, part, parcel or Condominium of or in the Subject Property, and the present and future Owners thereof, and their heirs, successors, administrators or assigns, all as part of a common and general plan and scheme for the purpose of developing, improving, enhancing and protecting the value, desirability and attractiveness of the Subject Property.

#### ARTICLE I

##### PROPERTY WHICH IS AND WHICH MAY BECOME SUBJECT TO THIS DECLARATION

###### Section 1.01. Property Now Subject.

The real property which Declarant hereby declares to be now subject to this Declaration consists of a Subdivision, as hereinafter defined, which real property is situated in the County of San Diego, State of California, and is more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein, and hereinafter is referred to as the "First Subdivision".

###### Section 1.02. Property Which May Become Subject.

The real property or portions thereof which may become subject to this Declaration in accordance with the provisions hereof is located in the County of San Diego, State of California, and is more particularly described in Exhibit "B" attached hereto and by this reference incorporated herein, and hereinafter is referred to as the "Annexable Area".



ARTICLE II  
DEFINITIONS

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

Section 2.01. Annexable Area.

The real property described in Exhibit "B" attached hereto and incorporated herein by this reference, any portion of which from time to time may be made subject to this Declaration by Declarant pursuant to the provisions of Section 3.01 hereof.

Section 2.02. Apartment Building.

Any building on a Lot containing two or more individual residential dwelling units designed for rental to Persons for any term of tenancy, but excluding any building included within the definition of a Condominium Project as set forth in Section 2.17 of this Declaration.

Section 2.03. Articles.

The Articles of Incorporation of the Association which have been or will be filed in the Office of the Secretary of State of the State of California, as the same may be amended from time to time.

Section 2.04. Assessment.

Any Common, Special or Reimbursement Assessment, as hereinafter defined.

Section 2.05. Common Assessment.

The annual charge against each Owner, and his Lot or Condominium, representing a portion of the total, ordinary costs of maintaining, improving, repairing, replacing, managing and operating the Association Properties, as hereinafter defined, which are to be paid by each Owner to the Association, as provided herein.

Section 2.06. Reimbursement Assessment.

A charge against a particular Owner, and his Lot or Condominium, directly attributable to or reimbursable by the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, together with late charges and interest, as provided herein.

Section 2.07. Special Assessment.

A charge against each Owner, and his Lot or Condominium, representing a portion of the costs to the Association for the purposes and as described in Section 9.12 hereof.

Section 2.08. Association.

The Carmel Mountain Ranch Residential Community Association, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 2.09. Association Properties.

All interests in real and personal property and Improvements now or hereafter owned by the Association, or over which the Association holds an easement for the use, care or maintenance thereof, held for the common use and enjoyment of the Members as provided herein, or for such other purposes as may be permitted by this Declaration. The Association Properties included within the First Subdivision, if any, are described in Exhibit "C" attached hereto. The Association Properties included within any Annexed Land shall be described in the Notice of Annexation and/or Supplemental Declaration covering such property.

Section 2.10. Board or Board of Directors.

The Board of Directors of the Association, elected in accordance with the Bylaws and this Declaration.

Section 2.11. Board Rules and Regulations.

The rules adopted by the Board pursuant to the Bylaws and Subsection 6.02 (g) hereof.

Section 2.12. Budget.

A written itemized estimate of the expenses to be incurred by the Association in performing its functions under this Declaration and prepared pursuant to Section 9.10 of this Declaration.

Section 2.13. Bylaws.

The Bylaws of the Association which have been or will be adopted by the Board, as the same may be amended from time to time.

Section 2.14. Close of Escrow.

The date on which a deed or other instrument conveying a Lot or Condominium is Recorded.

Section 2.15. Common Area.

Any portion of the Subject Property designated in a Supplemental Declaration as a "Common Area", which is for the primary common use and benefit of (a) the Owners of Lots within a portion of the Subject Property covered by any Supplemental Declaration governing, among other things, the use and ownership of such Common Area; or (b) the Owners of Condominiums within a Condominium Project. The Common Area may be owned (i) in undivided interests by the Owners, (ii) by the Sub-Association in which all the Owners shall be entitled to membership, or (iii) separately by individual Owners (within a Subdivision) over which a Sub-Association may have an easement for maintenance purposes, or (iv) by a "stock cooperative" as defined in Section 11003.2 of the California Business and Professions Code.

Section 2.16. Condominium.

A "condominium" as defined in Section 783 of the California Civil Code; or that portion of real property owned by a "stock cooperative" as defined in Section 11003.2 of the California Business and Professions Code to which a shareholder is entitled to exclusive occupancy; or an apartment in a "community apartment project" as defined in Section 11004 of the California Business and Professions Code; or as defined in any California statute or statutes in lieu of any of the foregoing statutes which may hereafter be enacted.

Section 2.17. Condominium Project.

A "project" as defined in Section 1350 of the California Civil Code, or the real property owned by a "stock cooperative" defined in Section 11003.2 of the California Business and Professions Code or a "community apartment project" as defined in Section 11004 of the California Business and Professions Code; or as defined in any California statute or statutes in lieu of any of the foregoing statutes which may hereafter be enacted, including all real property covered by any Supplemental Declaration in the event a Condominium Project is developed in phased increments. A Condominium Project owned by a single Owner in which all the Condominium units are rented or offered for rent to third parties shall be treated for purposes of this Declaration as a Lot improved with an Apartment Building.

Section 2.18. Declarant.

Carmel Mountain Ranch, a California general partnership, its successors, and any Person to which it shall have assigned any rights in whole or in part hereunder as hereinafter provided.

Section 2.19. Declaration.

This instrument as it may be amended from time to time.

Section 2.20. Delegate.

A natural Person selected by the Members owning the Lots or Condominiums in a Delegate District, pursuant to Section 4.04 hereof, to represent all of the Members within the Delegate District to vote on their behalf, as further provided in this Declaration and in the Bylaws.

Section 2.21. Delegate District.

A geographical are in the Subject Property in which all of the Members owning Lots or Condominiums therein shall elect a single Delegate to represent the collective voting power of the Members of such are Delegate Districts may be established in one of two ways, as follows:

(a) Where a Sub-Association is created in the Subject Property, the portion of the Subject Property covered by the Supplemental Declaration providing for the creation of the Sub-Association shall be a Delegate District; and,

(b) Delegate Districts for portions of the Subject Property not covered by any Supplemental Declaration providing for a Sub-Association shall be established from time to time by

Declarant upon Recordation of an instrument creating such Delegate District; all as further provided herein.

Section 2.22. Development Plan.

The general plan of Declarant for the development of the Subject Property, as set forth in the Recitals hereof, as the same may be amended by Declarant from time to time consistent with the requirements of the City of San Diego.

Section 2.23. DRE.

The California Department of Real Estate, and any successors thereto.

Section 2.24. Family.

One or more natural Persons each related to the other by blood, marriage or legal adoption, or a group of not more than six (6) Persons, not all so related, including his or their domestic servants who maintain a common household in a Residence.

Section 2.25. FHA.

The Federal Housing Administration of the United States Department of Housing and Urban Development, including the department or agency of the United States government as shall succeed to the FHA in insuring notes secured by mortgages and deeds of trust on residential real estate.

Section 2.26. FHLMC.

The Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, including any successors thereto.

Section 2.27. First Subdivision.

The real property described in Section 1.01 hereof, which Declarant intends to develop as a residential Subdivision.

Section 2.28. FNMA.

The Federal National Mortgage Association, a government sponsored private corporation established as such pursuant to Title VIII of the Housing and Urban Development Act of 1968, including any successors thereto.

Section 2.29. GNMA.

The Government National Mortgage Association administered by the United States Department of Housing and Urban Development, including any successors thereto.

Section 2.30. Improvements.

All structures and appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, additions, swimming pools, patio covers, awnings, painting of any exterior surfaces of any structure, walkways, bicycle trails, sprinkler pipes, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings,

planted trees and shrubs, poles, signs, exterior tanks, solar heating equipment and exterior air conditioning and water softener fixtures or equipment.

Section 2.31. Lot.

Any lot or parcel of land shown upon any Recorded subdivision tract map or Recorded parcel map of the Subject Property, including, without limitation, any Lot or parcel developed as rental apartments containing one or more Apartment Buildings. The term "Lot" shall not include any Association Properties and Common Areas as defined herein, nor shall it include any Condominium.

Section 2.32. Maintenance Funds.

The accounts into which the Board shall deposit all monies paid to the Association and from which disbursements shall be made in the performance of the functions of the Association as provided in Article IX hereof.

Section 2.33. Manager.

Anyone or more Persons employed by the Association, pursuant to and limited by Subsection 6.02{d), who is engaged to perform any of the duties, powers or functions of the Association.

Section 2.34. Master Architectural Committee.

The committee created pursuant to Article VII hereof.

Section 2.35. Member.

Every person holding a membership in the Association, pursuant to Section 4.02 hereof.

Section 2.36. Mortgage.

Any mortgage or deed of trust or other conveyance of a Lot, Condominium or other portion of the Subject Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance, including an installment land sales contract (as described in Sections 2985 through 2985.6 of the California Civil Code). The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

Section 2.37. Mortgagee.

A mortgagee under a Mortgage or a beneficiary under a Deed of Trust, or the vendor under an installment land sales contract, as the case may be, and the assignees of any Mortgage, beneficiary, or vendor.

Section 2.38. Mortgagor.

A Person who mortgages his or its property to another. The term "Mortgagor" shall include a trustor under a Deed of Trust, and the vendee under an installments land sales contract.

Section 2.39. Notice and Hearing.

Written notice and the opportunity for a public hearing before the tribunal appointed by the Board in the manner provided in the Bylaws.

Section 2.40. Notice of Annexation.

The written instrument by the Recordation of which Declarant may make portions of the Annexable Area part of the Subject Property, as set forth in Sections 3.01 and 3.02.

Section 2.41. Owner.

The Person or Persons who are alone or collectively the record owner of a fee simple title to a Lot or Condominium, including Declarant and Participating Builders, but excluding those having any such interest merely as security for the performance of an obligation. The term "Owner" shall include both the vendor and the vendee under an installment land sales contract (as described in Sections 2985 through 2985.6 of the California Civil Code) as well as the holder of a leasehold estate having a term of ten (10) or more years, including renewal periods. The fee Owner of a Lot developed as rental apartments shall be an Owner for purposes of this Declaration.

Section 2.42. Participating Built.

A Person who acquires a portion of the Subject Property for the purpose of improving such portion for resale to the general public; provided, however, that the term "Participating Builder" shall not mean or refer to Declarant or its successors.

Section 2.43. Person.

A natural individual, a corporation, or any other entity with the legal right to hold title to real property.

Section 2.44. Phase of Development.

Any portion of the First Subdivision or the Annexable Area for which a Final Subdivision Public Report has been issued by the DRE or, if no Final Subdivision Public Report is required by the DRE, then the term "Phase of Development" shall mean that portion or portions of the Subject Property designated as a Phase of Development in the Notice of Annexation or the Supplemental Declaration covering such property.

Section 2.45. Planned Development.

An area of the Subject Property, other than a Condominium Project, developed as an increment of this overall planned community, including all property covered by any Supplemental Declaration, whether or not the increment is developed in stages, which increment may or may not be defined as a planned development in Section 11003 of the California Business and Professions Code, or any similar California statute hereinafter enacted.

Section 2.46. Record, Recorded, and Recordation.

With respect to any document, the proper recordation of the document in the Official Records of the County Recorder of the County of San Diego, State of California.

Section 2.47. Residence.

A dwelling unit on a Lot, or a Condominium, intended for use and occupancy by a single Family.

Section 2.48. Sub-Association.

Any California corporation, or unincorporated association, or its successor in interest, organized and established or authorized pursuant to or in connection with a Supplemental Declaration, and whose membership is composed of Owners of Lots or Condominiums within the portion of the Subject Property covered by the Supplemental Declaration.

Section 2.49. Subdivision.

A parcel of real property which has been divided or separated into Lots, or a single Lot, as shown on a Recorded subdivision tract map or Recorded parcel map.

Section 2.50. Subject Property.

The First Subdivision, together with any real property with respect to which a Notice of Annexation as described in Section 3.02 shall have been Recorded, from and after the date of Recordation thereof.

Section 2.51. Supplemental Declaration.

Any declaration of covenants, conditions and restrictions, and reservation of easements, or any similar document which may be Recorded on any portion of the Subject Property in accordance with Article III of this Declaration. A Supplemental Declaration may provide that the real property subject to the Supplemental Declaration shall be made subject to the Supplemental Declaration at different times.

Section 2.52. VA.

The Veterans Administration of the United States of America, including the department or agency of the United States government as shall succeed to the VA in its present function of issuing guarantees with respect to notes secured by mortgages and deeds of trust on residential real estate.

ARTICLE III

ANNEXATION, SUPPLEMENTAL DECLARATIONS

Section 3.01. Annexation.

(a) Declarant and Participating Builders may, subject to the provisions of Section 3.02 of this Declaration, from time to time, but without any obligation to do so, add to the First Subdivision which is covered by this Declaration any portion of the Annexable Area then owned by Declarant or such Participating

Builders by Recording a Notice of Annexation with respect to the real property to be annexed (the "Annexed Land"). Any such annexation made by Declarant or Participating Builders prior to the issuance of a Final Subdivision Public Report from the DRE shall not require the approval of the Association. If any proposed annexation under this Article III shall not be effected prior to the third anniversary of the immediately preceding Final Subdivision Public Report from the DRE for a Phase of Development, then the annexation shall further require the vote of Delegates representing at least two-thirds (2/3 rds) of the voting power of the Association; provided, however, that if a delay beyond the third anniversary is the result of causes beyond the reasonable control of Declarant, then a proposed annexation may be made by Declarant without the vote of Delegates as long as the DRE approves of the annexation. Upon the Recordation of a Notice of Annexation in the form prescribed below, the Annexed Land shall become part of the Subject Property and thereafter the rights, obligations, privileges, duties and liabilities of the Owners, lessees and occupants of Lots or Condominiums on or in the Annexed Land shall be governed by this Declaration. The Notice of Annexation may be contained in the Supplemental Declaration affecting the Annexed Land.

(b) So long as the FHA or the VA is insuring or guaranteeing loans, or has agreed to insure or guarantee loans on any portion of the Subject Property with respect to the initial sale by Declarant of Lots or Condominiums, then the annexation shall be in accordance with the development plan submitted to and approved by the FHA or VA, as applicable, and shall require the approval of the FHA or VA as set forth in Section 12.09.

(c) Voting rights attributable to Lots and Condominiums within any Annexed Land shall not vest until Common Assessments have commenced as to the Lots and Condominiums, as provided in Section 9.05.

Section 3.02. Notice of Annexation.

The Notice of Annexation shall contain at least the following provisions:

(a) A reference to this Declaration, which shall include the date of Recordation hereof and the instrument number or other relevant Recording data of the records of the County Recorder of the County of San Diego where this Declaration is Recorded.

(b) A statement that this Declaration shall apply to the Annexed Land as set forth herein.

(c) An exact description of the Annexed Land.

(d) A description of the Association Properties, if any, located in the Annexed Land.

For so long as Declarant and Participating Builders have the right to add the Annexable Area to the Subject Property without the approval of Delegates representing at least two-thirds (2/3 rds) of the voting power of the Association, each Notice of Annexation covering property owned by Declarant shall be signed only by Declarant, and each Notice of Annexation covering property owned by a Participating Builder must be consented to by Declarant and executed by both Declarant and such Participating Builder. Declarant's execution of any Notice of



Annexation shall be conclusive evidence of Declarant's consent thereof. From and after the date on which any annexation requires the approval of the Delegates as provided herein, each Notice of Annexation must also be signed by at least two (2) officers of the Association, certifying that the vote of the requisite percentage of Delegates has been obtained.

Section 3.03. Deletion.

Declarant may delete all or any portion of the Annexed Land from the coverage of this Declaration and rescind any Notice of Annexation, provided (a) Declarant is the sole Owner of all of the real property described in the Notice of Annexation to be rescinded; (b) no vote has been exercised with respect to the Annexed Land; (c) Assessments have not commenced with respect to the Annexed Land; and, (d) no Association expenditures have accrued with respect to the Annexed Land unless reimbursed. The deletion shall be effected by Declarant's Recording a "Notice of Deletion" in the same manner as the Notice of Annexation to be rescinded was Recorded.

A Participating Builder may delete all or any portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Association, so long as such Participating Builder is the Owner of all of such Phase of Development and; provided further, that (i) all requirements of items (b) through (d) above have been satisfied, and (ii) Declarant has consented in writing to such deletion by executing the Notice of Deletion for such Phase of Development.

So long as the FHA or VA is insuring or guarantying loans, or has agreed to insure or guaranty loans on any portion of the Subject Property with respect to the initial sale by Declarant of Lots or Condominiums, then the Declarant shall forward a copy of a Recorded Notice of Deletion to the FHA and VA.

Section 3.04. Supplemental Declarations, Sub-Associations.

Declarant intends to develop the Annexable Area in stages. Development may include Apartment Buildings, Condominium Projects, and Residences which may or may not be organized as Planned Developments. As each portion of the Annexable Area is developed, Declarant and Participating Builders may file a Notice of Annexation and may also impose one or more Supplemental Declarations upon such portion of the Annexable Area. Any Supplemental Declaration imposed by a Participating Builder must be consented to by Declarant prior to Recordation. Declarant's consent shall be evidenced by a certificate of consent that shall be attached to or incorporated within any such Supplemental Declaration. If Declarant and/or Participating Builders elect to subject any portion of the Annexable Area to this Declaration, the provisions of any Supplemental Declaration shall not conflict with the provisions hereof, but may impose further conditions, covenants, restrictions, land uses and limitations as Declarant and/or Participating Builders may deem advisable, taking into account the particular requirements of each portion of the Annexable Area. In the event of any direct conflict between any Supplemental Declaration and this Declaration, this Declaration shall control. The inclusion in any Supplemental Declaration of conditions, covenants, land uses, and limitations which are more restrictive or more inclusive than the restrictions contained in this Declaration shall not be deemed to constitute a conflict with this Declaration. In the event, however, that the land subject to any

Supplemental Declaration is developed pursuant to a legal structure of ownership not presently contemplated by this Declaration, then the Supplemental Declaration may specify the manner in which the provisions of this Declaration shall be interpreted to apply to such land and the Owners thereof; provided, however, that no Supplemental Declaration shall negate any provision of this Declaration, and this Declaration shall govern all Supplemental Declarations. As each portion of the Annexable Area is annexed to the Subject Property, control over the completed Association Properties contained therein, if any, shall be transferred to the Association in accordance with the provisions of this Declaration.

ARTICLE IV  
THE ASSOCIATION

Section 4.01. Organization of the Association.

The Association is organized as a California corporation under the California Nonprofit Mutual Benefit Corporation Law and is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or Bylaws, then the provision shall be construed, to the extent possible, so that the provision shall be consistent with this Declaration.

Section 4.02. Membership.

Each owner (including Declarant and Participating Builders) of one or more Lots or Condominiums in the Subject Property shall be a Member of the Association. Membership in the Association shall be subject to the terms and provisions of the Articles, Bylaws and the Board Rules and Regulations to the extent the provisions thereof are not in conflict with the provisions of this Declaration. Membership in the Association shall be appurtenant to the Lot or Condominium owned by each owner, and membership in the Association shall not be assignable, except to the Person to whom title to the Lot or Condominium is transferred; provided, however, that a participating Builder's voting rights may be assigned to Declarant. Membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to the Lot or Condominium, and then only to the transferee of title to the Lot or Condominium. Ownership of a Lot or Condominium shall be the sole qualification for Membership in the Association. Membership in the Association shall be in addition to membership in any Sub-Association responsible for operating the Planned Development or Condominium Project in which the Member's Lot or Condominium is located. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association. A Member shall have the right to assign his rights of use and enjoyment of the Association Properties to a lessee or tenant of his Lot or Condominium in accordance with Section 5.05.

In the event the Owner of any Lot or Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of the Lot or Condominium upon transfer

of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association. The Association may levy a reasonable transfer fee against each new Owner and his Lot or Condominium (which fee shall be added to the Common Assessment chargeable to the new Owner) to reimburse the Association for the administrative cost of transferring the membership to the new Owner on the records of the Association.

When more than one Person owns a portion of the interest in a Lot or Condominium required for membership, or when there are more than one Owners of a Lot or Condominium (as in the case of the vendor and the vendee under an installment land sales contract, or as in the case of a leasehold estate exceeding ten years) each such Person shall be a Member and, at any duly constituted meeting of the Members in a Delegate District, the vote for the Lot or Condominium shall be exercised as they among themselves determine, but in no event shall more votes be cast with respect to any Lot or Condominium than could be cast if there were only one Owner. Unless the Board (or the board of directors of any Sub-Association, if applicable) receives written objection in advance, if any Owner casts a vote representing his Lot or Condominium, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot or Condominium.

Section 4.03. Voting by Delegates.

(a) Qualification of Delegates and Alternate Delegates. The Subject Property shall be divided into Delegate Districts, as described in Section 4.04. At the first meeting of Members in a Delegate District, and at each subsequent annual meeting for each Delegate District, the Members of the Delegate District shall elect (i) one (1) Delegate to the Association to exercise the voting power of all of the Members in the Delegate District; and, (ii) one (1) Alternate Delegate, who shall have and shall exercise the powers and duties of the Delegate for that Delegate District whenever the Delegate is absent, disabled or unable to act, as more fully described in the Bylaws. The chairman of any meeting at which the Delegate and the Alternate Delegate are elected shall certify in writing to the Board the name and address of the Delegate and the Alternate Delegate elected, the time and place of the meeting at which the election occurred, and the Delegate District which the Delegate and the Alternate Delegate represent. The Delegate and the Alternate Delegate shall continue in office for one (1) year or until their successor is elected, whichever is later, except that a Delegate or an Alternate Delegate may be removed without cause by the vote in person or by proxy at any duly constituted meeting of at least a majority of the voting power of the Members in the Delegate District. Only Members of the Association or, if a Member is a corporation or partnership or similar entity, the authorized agent of such entity, shall be eligible for election as a Delegate or an Alternate Delegate. Upon termination of any Delegate's or Alternate Delegate's membership in the Association, the Delegate's or Alternate Delegate's term of office shall immediately terminate and a new Delegate or Alternate Delegate shall be elected in his place.

(b) Number of Delegate Votes. At a meeting of Delegates, each Delegate shall be entitled to cast the voting power for all of the Lots and Condominiums subject to this Declaration

and located in the Delegate District represented by the Delegate. The Delegate shall be entitled to cast the votes representing Lots or Condominiums in his Delegate District with respect to each Lot or Condominium only during such periods as the Owner of the Lot or Condominium may be entitled to cast votes for the election of a Delegate as provided herein, or in any Supplemental Declaration.

(c) Allocation of Delegate Votes. At a meeting of Delegates, each Delegate personally, and not by proxy, shall cast the votes which he represents in the manner as he may, in his sole discretion, deem appropriate, acting on behalf of all the Members owning Lots or Condominiums in his Delegate District; provided, however, that in the event that at least a majority of the voting power of the Members in any Delegate District shall determine at any duly constituted meeting of the Members in the Delegate District to instruct their Delegate as to the manner in which he is to vote on any issue to be voted on by the Delegates, then the Delegate representing the Delegate District shall cast all of the voting power in the Delegate District in the same proportion, as nearly as possible without counting fractional votes, as the Members in the Delegate District shall have cast their voting power "for" and "against" such issue in person or by proxy. A Delegate shall have the authority, in his sole discretion, to call a special meeting of the Members owning Lots or Condominiums in his Delegate District, pursuant to the procedures adopted by the Board of Directors for the purpose of obtaining instructions as to the manner in which he is to vote on any issue to be voted on by the Delegates. When a Delegate is voting in his own discretion, without instruction from the Members whom he represents, the Delegate may cast all of the votes which he represents as a unit, or the Delegate may apportion the votes and cast some votes in favor of a given proposition and some votes in opposition to the proposition. It will be conclusively presumed for all purposes of Association business that any Delegate, casting votes on behalf of the Members owning Lots or Condominiums in his Delegate District, has acted with the authority and consent of all the Members. All agreements and determinations lawfully made by the Association in accordance with the voting procedures established herein, and in the Bylaws, shall be deemed to be binding on all Members, and their successors and assigns.

(d) Voting Reports. Except as provided in Section 12.12 of this Declaration, and unless otherwise expressly provided, any provision in this Declaration, the Articles or Bylaws which expressly requires the vote or written consent of a majority or other specified percentage of the voting power of the Association before being undertaken shall require the approval of (1) the specified percentage of the voting power of the Delegate attributable to Lots or Condominiums owned by Members other than Declarant, and (2) a bare majority of the total voting power of the Delegates. In order to determine whether these requirements have been satisfied, each Delegate shall deliver to the chairman of the meeting of the Delegates a written notice listing: (i) the number of votes cast by the Delegate in favor of the matter being voted upon, (ii) the number of votes cast by the Delegate against the matter being voted upon, (iii) the number of votes cast by the Delegate in favor of the matter being voted upon, which votes are attributable to Lots or Condominiums owned by Members other than Declarant, and (iv) the number of votes cast by the Delegate

against the matter being voted upon, which votes are attributable to Lots or Condominiums owned by Members other than Declarant. The chairman of the meeting shall then tabulate the total number of votes cast by all Delegates in each of the categories to determine whether the necessary approvals have been obtained.

Section 4.04. Delegate Districts and Selection of Delegate.

(a) Delegate Districts Created by Supplemental Declarations.

In the event that a Sub-Association is created by a Supplemental Declaration covering all or any portion of the First Subdivision or the Annexable Area, then the real property within the jurisdiction of the Sub-Association shall constitute a Delegate District. The election of a Delegate and an Alternate Delegate to the Association for the Delegate District shall be accomplished in the manner specified in the Supplemental Declaration; or if no manner is specified, then the Delegate and the Alternate Delegate shall be elected in the manner provided in the Bylaws.

(b) Delegate Districts Created by Declarant. In the event that a Sub-Association is not created for any of the First Subdivision or the Annexable Area, then the various Delegate Districts for those portions of the Subject Property may be established by Declarant from time to time by the Recordation of a written instrument signed by Declarant containing a legal description of the portion of the Subject Property which shall constitute the Delegate District, and a statement that the real property described therein shall be a Delegate District for purposes of this Declaration. The written instrument creating a Delegate District may be included in a Notice of Annexation. The Delegate and the Alternate Delegate to represent any Delegate District established as set forth in this Subsection 4.04(b) shall be elected by Members holding a majority of the voting power in the Delegate District in accordance with the voting procedures set forth in the Bylaws.

(c) Classes of Voting Membership. The Association shall have two (2) classes of voting membership, as follows:

Class A. Initially, Class A members shall be all Members, with the exception of Declarant and Participating Builders, and each Class A Member shall be entitled to one (1) vote for each Lot or Condominium which he owns, except that in the case of a Lot developed as an Apartment Building, the Class A Member owning the Lot shall be entitled to one (1) vote for each three (3) apartment units located on the Lot. In the event the number of apartment units in any Lot is not exactly divisible by three (3), no fractional vote shall be counted for the remaining units. Declarant and Participating Builders shall become Class A Members with regard to Lots or Condominiums owned by Declarant or the Participating Builders in any particular Delegate District upon the conversion of Declarant's or the Participating Builder's Class B Membership to Class A Membership with respect to that Delegate District as provided below.

Class B. The Class B Members shall be Declarant and Participating Builders. The Class B Members shall be entitled to three (3) times the number of votes to which the Class B Members would have been entitled as Class A Members.

As to each Delegate District, the Class B Membership shall forever cease as to any particular Delegate District, and be converted to Class A Membership, on the happening of either of the following events, whichever occurs earlier:

A. When the total votes outstanding in the Class A Membership for the Delegate District equals the total votes outstanding in the Class B Membership for that Delegate District; or,

B. Two (2) years from the date of the original issuance by the DRE of the most recent Final Subdivision Public Report for any portion of that Delegate District; or,

C. Four (4) years from the date of the original issuance by the DRE of the earliest Final Subdivision Public Report issued for any portion of that Delegate District.

Section 4.05. Election of Delegates if No Sub-Association.

The Bylaws of the Association shall provide for the manner, time, place, conduct and voting procedures for meetings of Members for the purpose of electing a Delegate and an Alternate Delegate in any Delegate District without a Sub-Association, subject to the provisions of Subsection 4.04(b) of this Declaration.

Section 4.06. Suspension of Voting Rights.

The Board shall have the authority, after Notice and Hearing, to suspend the voting rights of any Member for any period during which the payment of any Assessment against the Member and his Lot or Condominium remains delinquent. Any suspension of the voting rights of any Member for nonpayment of any Assessment shall not constitute a waiver or discharge of the Member's obligation to pay the Assessments provided for herein.

ARTICLE V

PROPERTY RIGHTS IN ASSOCIATION PROPERTIES

Section 5.01. Title to Association Properties.

All interests in real and personal property and Improvements owned by the Association or property over which the Association has an easement for the use, care or maintenance thereof shall be held for the common benefit of Members, and for such other purposes as may be permitted in this Declaration. The Association Properties within the First Subdivision, if any, are described in Exhibit "C" attached hereto and by this reference incorporated herein, and shall be conveyed to the Association by Declarant prior to the first Close of Escrow for the sale to the public of a Lot or Condominium in the First Subdivision. As each Phase of Development is developed by Declarant or participating Builders, Declarant or Participating Builders, as the case may be, shall convey any Association properties designated as such in any Notice of Annexation or Supplemental Declaration for that Phase of Development. Notwithstanding any such conveyance, the Association's responsibility to maintain the Association Properties located in any Phase of Development shall not begin until the commencement of

Common Assessments to the Association in that Phase of Development. If any Improvements are not completed at the time of the conveyance, Declarant or Participating Builders shall provide a bond, letter of credit or other assurance as the Association and the DRE may reasonably require to assure that the cost of completion thereof will be paid by Declarant or the Participating Builder and that the Improvements will be completed free of liens and encumbrances relating to the construction thereof. Any interests in real or personal property which may be conveyed to the Association by Declarant or Participating Builders in accordance with the terms hereof shall be conveyed subject to (i) the lien of property taxes and assessments not delinquent, (ii) all restrictive covenants of record at the time of the conveyance, including this Declaration, and (iii) all other matters of record at the time of the conveyance, except encumbrances securing loans made to Declarant or Participating Builders.

Section 5.02. Partition.

There shall be no judicial partition of the Association Properties or any part thereof, nor shall Declarant, any Owner, or any Person acquiring any interest in any Lot, Condominium or parcel included in the Subject Property seek any such judicial partition. No Owner shall sever his ownership interest in a Lot or Condominium from his membership in the Association, or his beneficial interest in the Association properties.

Section 5.03. Members' Easements of Use and Enjoyment of Association Properties.

(a) Subject to the provisions set forth herein, every Member of the Association who owns a Lot or Condominium and resides therein shall have, for himself and his Family, a beneficial interest in and to the Association Properties, which beneficial interest shall be appurtenant to and shall pass with the title to the Lot or Condominium. Any Member who does not reside in his Lot or Condominium, or any Member who is not a natural Person, may delegate his or its beneficial interest in the Association Properties, in accordance with the provisions of Section 5.05 of this Declaration.

(b) In instances where a Member owns a Lot developed as an Apartment Building, the lessees or tenants occupying apartment units on the Lot shall derive from the Member the right to use the Association Properties as described in Subsection 5.03 (a) above, subject to reasonable regulation by the Board. Any Member owning a Lot developed as an Apartment Building shall not, by virtue of such ownership, have the right to use the Association Properties as described in Subsection 5.03(a) above unless the Member actually occupies an apartment unit on the Lot.

Section 5.04. Extent of Members' Easements.

The rights of use and enjoyment of the Association Properties created by this Declaration shall be subject to the rights and powers of Declarant, Participating Builders, and the Association as set forth in this Declaration, the Bylaws, and the Board Rules and Regulations.

Section 5.05. Delegation of Use.

Any Member may delegate, in accordance with this Declaration and the Bylaws, his right of use and enjoyment of the Association Properties to the members of his Family, his tenants or other Persons who reside in his Lot or Condominium, subject to reasonable regulation by the Board, which may include the imposition of additional fees payable to the Association for any delegation that results in a more intensive use of the Association properties.

Section 5.06. Waiver of Use of Association Properties.

No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor effect the release of his Lot or Condominium from the liens and charges thereof, by waiver of his beneficial interest in the Association Properties, or by abandonment of his Lot or Condominium.

Section 5.07. Damage to Association Properties by Members.

Except to the extent prohibited by California law, each Member shall be liable to the Association for any damage to Association Properties not fully covered by insurance that may be sustained by reason of the negligence or willful misconduct of the Member, or the Persons deriving their right of use and enjoyment of the Association Properties from the Member, including employees of the Member, and including the Family and guests of any such Persons. Notwithstanding the foregoing, the Association shall have the right, after Notice and Hearing, to levy a Reimbursement Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the Persons for whom the Member may be liable as described above. In the case of joint ownership of a Lot or 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, the Association may levy a Reimbursement Assessment against the Member and his Lot or Condominium to recover the cost of correcting any such damage not covered by insurance, pursuant to Section 9.13 hereof.

Section 5.08. Damage, Destruction and Required Improvements.

If the Association Properties are damaged by fire or other casualty, the insurance proceeds payable by reason thereof shall be paid to the Association. In the event of any such damage, or if any governmental authority requires that any repair, replacement or Improvement be made to the Association Properties by virtue of any law or regulation not in existence as of the date of Recordation of this Declaration, the Association shall, as soon as practicable and subject to the provisions set forth in this Section 5.08, contract to repair, replace or improve the Association Properties so damaged or so required to be repaired, replaced or improved. If the insurance proceeds are insufficient to pay all the costs of repairing or rebuilding the damage, or if the Association is required to make repairs, replacements or improvements by a governmental authority as described herein, the Association may, in order to make up any deficiency in the insurance proceeds or to pay for the required repair, replacement or improvement and notwithstanding any other provision of this Declaration, levy a



Special Assessment on all Owners in accordance with the provisions of Section 9.12 hereof, or if any Owner is liable for any damage, the Association may levy a Reimbursement Assessment against the Owner responsible therefor in accordance with Section 5.07 hereof. In the event the Association is obligated to provide for the repair, replacement or improvement of any portion of the Association Properties pursuant to this Section 5.08, the Board shall obtain firm bids (including an obligation to obtain a performance bond) from at least two (2) responsible contractors to repair or rebuild the damaged portion(s) substantially in accordance with the original plans and specifications therefor, or in accordance with the applicable requirements of the governmental agency. In the event that the insurance proceeds available for the repair of the Association Properties, or any portion thereof, are in excess of the amount required to perform the repair and reconstruction contemplated by this Section 5.08, the excess shall be held by the Board and deposited in the appropriate Maintenance Fund for the future maintenance, repair and operation of the Association Properties.

Section 5.09. Condemnation.

If at any time all or any portion of the Association Properties or any interest therein shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the award in condemnation allocable to the Association Properties shall be paid to the Association. The award shall be deposited in whichever of the Maintenance Funds that the Board may, in its sole discretion, determine. No Member shall be entitled to participate as a party, or otherwise, in any proceedings relating to such condemnation, other than the Member or Members on whose Lots or Condominiums the Association Properties may be located if the proceedings involve a taking of any interest owned by the Member or Members individually. The Association shall have the exclusive right to participate in and represent the interests of all Members in condemnation proceedings affecting the Association Properties. The Board shall promptly notify all Owners (and all insurers, guarantors and holders of first Mortgages on Lots or Condominiums who have requested written notice in accordance with Section 12.04(f) hereof), as soon as the Board becomes aware of any taking or threatened taking of any Association properties.

Section 5.10. Reservation of Easements.

(a) Association's Easements. There is hereby reserved to Declarant, Participating Builders, and the Association, their successors and assigns, an easement in gross, over all portions of the Subject Project as the servient tenement, including the right of entry and access, for (i) the installation and maintenance of sewers, storm drains, drainage facilities and utility lines and facilities; and, (ii) for the performance generally of their rights and duties under this Declaration, including landscaping and maintenance.

(b) Recreational Easement. There is hereby reserved to the owner of record of that certain real property more particularly described in Exhibit "D" attached hereto, its successors and assigns, as dominant tenement, a nonexclusive easement for the flight and retrieval of golf balls, including the right to enter any Lot or other portion of the Subject Property for such purpose. Such right may be exercised by any authorized guest of such owner, provided that the entry does not unreasonably

interfere with the use and enjoyment by any Owner of his Lot or Condominium and any damage caused thereby shall be repaired by the entering party.

ARTICLE VI

POWERS AND DUTIES OF THE ASSOCIATION

Section 6.01. Duties of The Association.

The Association shall have the obligation, subject to and in accordance with this Declaration, to perform, by action of the Board, each of the following duties:

(a) Association Properties. The duty to accept and exercise jurisdiction over all interests in real and personal property and Improvements conveyed to the Association by Declarant or Participating Builders in accordance with this Declaration.

(b) Title to Property Upon Dissolution. The duty to convey, upon dissolution of the Association, the assets of the Association to an appropriate public agency or agencies to be used for purposes similar to those for which the Association was created, or to a nonprofit corporation, association, trust or other organization organized and operated for similar purposes.

(c) Maintain Association Properties. The duty to maintain or provide for the maintenance of all Association Properties in a safe and attractive condition, suitable for the uses and purposes for which the Declarant or Participating Builders conveyed them to the Association, including the power and duty to contract for such goods and services as may be necessary or convenient for such maintenance, subject to the limitations set forth in Section 6.02(n) hereof. Notwithstanding the foregoing, the Association shall have no responsibility to maintain any Association Properties that are accepted for maintenance by any state, local or municipal governmental agency or entity, or which is the maintenance responsibility of any Sub-Association pursuant to a Supplemental Declaration.

(d) Assessments. The duty to levy Assessments on the Owners of Lots and Condominiums within the Subject Property, and enforce payment of the Assessments in accordance with the provisions of Article IX hereof.

(e) Payment of Taxes. The duty to pay all taxes and assessments levied upon the Association or any of the Association Properties, to the extent not assessed to or paid by the Owners. The Association may contest or compromise any taxes or assessments, provided that if the Association contests any taxes or assessments, a bond insuring the payment thereof is posted prior to the delinquency date thereof.

(f) Insurance. The duty to obtain and maintain in force, to the extent reasonably obtainable, policies of insurance as described in Article VIII.

(g) Enforcement of Declaration and Board Rules and Regulations. The duty to perform such other acts, whether or

not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration, the Bylaws, and the Board Rules and Regulations.

(h) Audit. The duty to provide for annual budgets and financial statements pursuant to Section 9.10 of this Declaration. Any Owner (or his duly appointed representative) may at any time, at the Owner's expense, cause an audit or inspection to be made of the books and records of the Association, as well as minutes of meetings of the Board, the Delegates, and any committees of the Association; provided that the audit or inspection by the Owner is reasonably related to his interest as a Member, and the audit or inspection is conducted at the office of the Association or such other place as the Board may determine, and further provided that the audit or inspection is made during normal working hours and without unnecessary interference with the operations of the Manager or the Association, as further provided in the Bylaws.

(i) Other. The power and duty to carry out the obligations of the Association as set forth in this Declaration, the Articles, the Bylaws, and any other instruments pertaining to the ownership, management and control of the Subject Property.

(j) Annual Meetings. The duty to hold general membership meetings of the Association not less frequently than once each calendar year at a time and place prescribed by the Bylaws. The first general membership meeting of the Association shall be held within forty-five (45) days after the Close of Escrow of the Lot or Condominium which represents the fifty-first (51st) percentile interest offered for sale in the First Subdivision, but in no event later than six (6) months after the Close of Escrow of the first such Lot or Condominium.

Section 6.02. Power and Authority of the Association.

The Association shall have all of the powers of a California corporation organized under the California Nonprofit Mutual Benefit Corporation Law, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws or this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, the Articles, and the Bylaws, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of any of the foregoing provisions, the Association shall have the power and authority, which may be exercised by the Board at any time, as follows:

(a) Right of Entry and Enforcement. The power to enter upon any real property included in the Subject Property, without liability to any Owner, for the purpose of enforcing any of the provisions of this Declaration or the Board Rules and Regulations, or for the purpose of constructing, maintaining and repairing any real property in the Subject Property, and to commence and maintain actions and suits to restrain and enjoin any breach of threatened breach of this Declaration or the Board Rules and Regulations and to enforce, by mandatory

injunctions or otherwise, all of the provisions of this Declaration; provided, however, that unless there exists an emergency, there shall be no entry into the interior of a Residence without the prior consent of the Owner thereof; and further provided that any damage caused by an entry upon said real property shall be repaired by the entering party.

(b) Conveyance of Certain Easements. Subject to the provisions of Section 11.01(c) hereof, the power to grant, dedicate or convey easements, licenses, rights-of-way, in, on, over or under any Association Properties to any public agency, governmental entity, public utility, or other Person for purposes not inconsistent with the use of such property for residential purposes.

(c) Conveyance of Interests in Real Property. Subject to the provisions of Section 11.01(c) hereof, the power to grant, dedicate or convey all or any part of the Association Properties to any public agency, authority, public service district, governmental entity or other Person for any purposes, subject to such conditions as may be determined by the Board; including the power to grant easements to or otherwise participate in any assessment district established by, through or under the City of San Diego or other governmental entity for the maintenance of any open space areas, slope easements, or other portion of or interest in the Subject Property; provided further that any grant, dedication or other conveyance of any Association Properties (other than grants of easements, licenses and rights of way as described in Section 6.02(b) above) shall not be effective unless there shall have been Recorded an instrument signed by at least two (2) members of the Board certifying that Delegates entitled to cast at least two-thirds (2/3) of the voting power of the Association have voted to approve the grant, sale or other conveyance.

(d) Manager. Except to the extent prohibited by California law, the power to retain and pay for the services of a Person or firm as Manager to undertake any of the management or administrative functions for which the Board has responsibility hereunder to the extent deemed advisable by the Board, and to engage such other personnel as the Board shall determine may be necessary or proper for the performance of such management or administrative functions; and to delegate any of its duties, : powers, or functions to any Manager. Any contract with any Manager or other personnel as described above shall not have a renewable term of more than one (1) year, except by mutual agreement of the parties, and shall be terminable (i) for cause, upon not more than thirty (30) days' written notice by the Board, and, (ii) without cause, on ninety (90) day.' written notice by the Board. Notwithstanding any such delegation, the activities and affairs of the Association shall be managed and all powers of the Association shall be exercised under the ultimate direction of the Board pursuant to the Bylaws. The Members hereby release the members of the Board and the Delegates from any liability for any omission or the improper exercise by any Manager of any such duty, power or function as delegated.

(e) Public Functions. The power to perform, provide, maintain and pay for any of the public services for the Association that are commonly associated with municipal or other local governments, to the extent, if any, deemed desirable or appropriate by the Board. Such services may include, but shall not be limited to, the following:

(i) Maintenance and repair of streets, roadways, rights-of-way, slopes, medians, roadsides, parking areas, sidewalks and decorative or informative signs, street sweeping and lighting:

(ii) Maintenance of hiking, riding, jogging or bicycle trails;

(iii) Provision for public health services such as mosquito abatement and pest eradication;

(iv) Disposal of solid wastes, including garbage collection services;

(v) Maintenance and operation of public parks and other recreational facilities;

(vi) Maintenance of paid patrols to control crime and disorder and to protect the Association Properties from vandalism and trespass through guards, gates and fences, and other security measures.

(f) Legal and Accounting Services. The power to retain and pay for legal aid accounting services necessary or proper for the operation of the Association Properties, the enforcement of this Declaration, or the performance of any of the other duties or rights of the Association.

(g) Board Rules and Regulations. The power to adopt any Board Rules and Regulations as the Board deems proper concerning all aspects of the Association, including, but not limited to, the right to take and enforce parking restrictions within the Association Properties, and the power to amend or repeal any of the Board Rules and Regulations. Notice of adoption of any Board Rules and Regulations, and of any change, amendment or repeal thereof, shall be given in writing to each Delegate and copies of each notice shall be kept at the principal office of the Association. The Board Rules and Regulations, as they may be amended from time to time, shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between the Board Rules and Regulations and this Declaration, this Declaration shall prevail.

(h) Other Services and Fees. The power to provide any other services, do any acts and charge any fees as may be necessary or proper to carry out the Association's obligations, rights and business under the terms of this Declaration so as to enhance the enjoyment by the Members of the Association Properties. The Association may charge reasonable admission or other fees for any special or extraordinary uses of the Association Properties or services provided by the Association, such as special parking privileges, instruction, special recreation facilities, day-care or child-care services or similar uses beyond the ordinary use of the Association Properties.

(i) Construction on Association Properties. The power to acquire interests in real or personal property, and construct and operate Improvements on or additions to the Association Properties, or demolish existing Improvements, provided that any Special Assessment required in connection with any such construction shall be in accordance with the provisions of Section 9.12 hereof.

(j) Power to Borrow Money. The right, in accordance with the Articles and Bylaws, and subject to the vote of Delegates representing at least two-thirds (2/3) of the voting power of the Association, to borrow money from any lender for the purpose of improving or maintaining the Association Properties, and providing services authorized herein, and to mortgage, pledge, deed in trust or hypothecate any or all of the Association Properties as security for any such money borrowed or debts incurred, provided that the rights of the lender shall be subordinated to the use rights of the Members.

(k) Power to Provide Services to Sub-Associations. The Association shall have the power to provide services to Sub-Associations, provided there is a written agreement between the Association and the Sub-Association that requires the Sub-Association to pay to the Association the expenses of providing the services to the Sub-Association, including a fair share of the overhead expenses of the Association. Services which may be provided to a Sub-Association include, without limitation, (a) construction, care, operation, management, maintenance, repair and replacement of Improvements owned by the Sub-Association; (b) enforcement of the provisions of any Supplemental Declaration for, on behalf of, and in the name of the Sub-Association; (c) collection of Assessments for, in the name of, and on behalf of a Sub-Association; (d) payment of taxes for a Sub-Association with funds of the Sub-Association; (e) obtaining insurance for a Sub-Association; (f) collection of charges for use of facilities of a Sub-Association; and, (g) appointment and supervision of a Manager of Managers for a Sub-Association.

(l) Power to Provide Special Services for Members. The Association shall have the power to provide special services to an Owner, provided there is a written agreement between the Association and the Owner, or there exists a Supplemental Declaration providing for payment to the Association by the Owner of the reasonably estimated costs and expenses of the Association of providing the services, including a fair share of the overhead expenses of the Association. The agreement or Supplemental Declaration shall also contain reasonable provisions assuring that the obligation to pay for the services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner, and that the payment for the services may be collected by a Reimbursement Assessment.

(m) Other. The right to allow members of the general public, subject to reasonable limitations, to use the Association Properties.

(n) Contracts. The Association shall have the power to enter into any contracts or agreements necessary or convenient for the performance of the Association's obligations, rights and business. The power of the Association to enter into such contract shall include, but not be limited to, the power to enter into contracts with any other homeowner associations or similar entities (regardless of whether or not the real property governed by the homeowner association or similar entity is included within the boundaries of the Subject Property or the Annexable Area) for the purpose of providing, on a shared-cost basis, any of the good or services required or permitted under this Declaration, the Board Rules and Regulations, or the Bylaws, provided that the Association shall be obligated to pay only those costs attributable to goods or services provided to or for the benefit of the Association or the Association Properties. The Association shall not enter into any contract with a third person wherein the third person will furnish goods or service for the Association Properties

or the Association which would bind the Association or the Board for a period in excess of one (1) year (except as may be provided in the Bylaws), without the vote of Delegates representing at least a majority of the voting power of the Association.

Section 6.03. Agents.

Any power or authority vested in the Board pursuant to this Declaration shall be exercisable by the Board directly or through its authorized agents, including any committees, officers or employees of the Association.

Section 6.04. Liability.

No member of the Board, nor any Delegate, nor the Declarant, shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, any Delegate, Declarant, or any other representative or employee of the Association, provided that the Board member, Delegate, or the Declarant has, upon the basis of such information as may be possessed by him, acted in good faith. The Association shall and hereby agrees to indemnify the Board (and each member thereof), and the officers of the Association (and each of them) and any members of a committee created by the Board pursuant to this Declaration, and any Delegate, from all expenses and liabilities, including attorney's fees, incurred in connection with any proceeding to which he is a party by reason of his being a member of the board or of a committee, or an officer of the Association, or a Delegate, except in such cases where he has committed a willful misfeasance or malfeasance in the performance of his duties.

Section 6.05. Requirement for Approval by Members

Notwithstanding any other provision of this Declaration, the Board shall not, without the approval of Delegates representing at least a majority of the voting power of the Association (a) incur aggregate expenditures for capital improvements to the Association Properties in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or, (b) sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

ARTICLE VII

MASTER ARCHITECTURAL COMMITTEE

Section 7.01. Members of the Master Architectural Committee.

The Master Architectural Committee shall consist of three (3) members; provided, however, that the number of members may be increased or decreased by resolution of the Board of Directors, provided that the number of members shall never be less than three (3) nor more than five (5). The members of the Master Architectural Committee may be removed at any time without cause by the person appointing the member under the authority granted by Section 7.02 hereof. Unless changed by resolution of the Board, the address of the Master Architectural Committee for all purposes, including submission of plans for approval, shall be at the principal office of the Association as designated by the Board pursuant to the Bylaws.

Members of the Master Architectural Committee shall serve for a term of one (1) year, or until such time as the member has resigned or been removed. Members of the Master Architectural Committee may serve one or more terms.

Section 7.02. Rights of Appointment.

Declarant may, at its sole option, appoint all three of the original members of the Master Architectural Committee, and all replacements, until the first anniversary of the original issuance of the Final Subdivision Public Report for the first Phase of Development Requiring a Final Subdivision Public Report. Thereafter, the Board shall have the right to appoint at least one member of the Master Architectural Committee, but Declarant may, at its sole option, appoint a majority of the members until (i) Five Thousand Forty (5,040) of the Lots or Condominiums within the Subject Property (including any Lots or Condominiums within any real property annexed pursuant to Article III hereof) have been sold, or (ii) until the fifth anniversary of the original issuance of the Final Subdivision Public Report for the most recent Phase of Development of the Subject Property, or (iii) thirty (30) years from the date of the Recordation of this Declaration, whichever occurs first. Thereafter, the Board shall have the right to appoint the remaining members of the Master Architectural Committee. Members of the Master Architectural Committee appointed by the Board shall be members of the Association, but those appointed by Declarant need not be members of the Association.

Section 7.03. Architectural Review Procedures.

(a) Review of Plans and Specifications. Subject to Subsection 7.03(b) and to Article XI hereof, no Improvements, including any exterior changes or alterations in any existing Improvement, shall be commenced, erected or maintained upon the Association Properties or upon any real property lying within the Subject Property 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 and approved in writing by the Master Architectural Committee. The Board of Directors from time to time shall adopt and promulgate architectural standards ("Architectural Standards") which may include, among other things, the following restrictions and limitations:

(i) Reasonable time limitations for the completion of the Improvements.

(ii) Such other limitations and restrictions as the Board, in its reasonable discretion, may adopt including, without limitation, the nature, kind, shape, height, materials, exterior color and location of any building, wall, structure, fence or other Improvement; the type, location and height of trees, bushes, shrubs, plants and other landscaping, preservation of views and aesthetic beauty; the harmony of exterior design and color to other Improvements in the Subject Property; grading and ground elevations; with respect to fences, walls, and landscaping, assurance of adequate access by the Association in connection with the performance of its duties and the exercise of its powers hereunder; conformity of the plans and specifications to the purpose and general plan and intent of this Declaration, including the provision for adequate parking, driveways, walkways and parkways.



The Owner shall obtain a receipt for the plans and specifications from an authorized agent of the Master Architectural Committee. The jurisdiction of the Master Architectural Committee over construction in the Subject Property shall be in addition to that of any architectural committee established under any Supplemental Declaration, and any work or Improvement in the Subject Property may require the approval of both any such architectural committee and the Master Architectural Committee. The Master Architectural Committee shall approve plans and specifications submitted for its approval only if it deems in its reasonable discretion that the construction, alterations or additions contemplated thereby in the location indicated will not be detrimental to the appearance of the Subject 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 Subject Property as a whole, and that the upkeep and maintenance thereof will not become a burden on the Association.

The Committee may condition its approval of proposals or plans and specifications upon such changes therein as it deems appropriate, or upon the agreement by the Person (referred to in this Section 7.03 as "Applicant") submitting the same to grant appropriate easements to the Association for the maintenance thereof, or to reimburse the Association for the cost of maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving any material submitted. The Master Architectural Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, and may require a fee to accompany each application for approval, and unless such rules are complied with, the plans and specifications shall not be deemed received. The Master Architectural Committee may provide that the amount of any fee shall be uniform, or that it shall be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The Master Architectural 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. The Master Architectural Committee may postpone review of any plan submitted for approval until it shall have received a complete set of the plans and specifications.

Decisions of the Master Architectural Committee and the reasons therefor shall be transmitted by the Master Architectural Committee to the Applicant at the address set forth in the application for approval within sixty (60) days after receipt by the Master Architectural Committee of all materials required by the Master Architectural Committee. Any application submitted pursuant to this Section 7.03 shall be deemed approved, unless written disapproval or a request for additional information or materials by the Master Architectural Committee shall have been transmitted to the Applicant within sixty (60) days after the date of receipt by the Master Architectural Committee of all required materials. Upon completion of the contemplated Improvement, the Applicant shall give written notice to the Master Architectural Committee of such completion and, for purposes hereof, the date of receipt of the written notification by the Master Architectural Committee shall be deemed to be the date of completion of the Improvement.

(b) Variances. The Master Architectural 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 considerations may require. All variances must be evidenced in writing, must be signed by at least a majority of the members of the Master Architectural Committee, and shall become effective upon Recordation. If a variance is 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 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 his use of the property, including but not limited to zoning ordinances and Lot set-back lines or any other requirements imposed by any governmental authority.

(c) No Waiver of Future Approvals. The approval by the Master Architectural 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 Master Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval of or to consent to any similar proposals, plans and specifications, drawings or any matter whatsoever that is subsequently or additionally submitted for approval.

(d) Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

(i) The Master Architectural Committee or its duly authorized representative may at any time inspect any Improvement, or change or alteration thereof, for which approval of plans are required under this Article VII: provided, however, that the Master Architectural Committee's right of inspection shall terminate sixty (60) days after the Owner shall have given written notice of the completion of the work to the Master Architectural Committee, provided that such Improvement was actually completed as of the date of such notification. If, as a result of its inspection, the Master Architectural Committee finds that the Improvement, or change or alteration thereof, was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Master Architectural Committee, it shall notify the Owner in writing of the failure to comply with this Article VII within thirty (30) days after the inspection, specifying the particulars of noncompliance (the "Notice of Noncompliance"). The Master Architectural Committee shall have the authority to require the Owner to take such action as may be necessary to remedy the noncompliance.

(ii) If upon the expiration of thirty (30) days from the date of the Notice of Noncompliance, the Owner shall have failed to remedy the noncompliance, then the Master Architectural Committee shall notify the Board in writing of such failure and the nature thereof, and the estimated cost of correcting or removing the same. The Board shall then have the right at its option either to pursue such remedies against the

Owner as it may have in any court of competent jurisdiction or to determine whether there is a noncompliance after Notice and Hearing, in the manner set forth in the Bylaws. If a noncompliance is determined to exist at the Notice and Hearing, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Board ruling is delivered to the Owner. If the Owner does not comply with the Board ruling within such period, the Board, at its option, may Record a Notice of Noncompliance against the real property in which the noncompliance exists, remove the non-complying Improvement, or remedy the noncompliance; and the Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Reimbursement Assessment against the Owner for reimbursement pursuant to Section 9.13 hereof. The right of the Association set forth in this Subsection 7.03(d) to remove any Improvement or remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or under this Declaration.

(iii) As to any Improvements constructed in compliance with this Article VII, the Association shall, upon written request, provide to the Owner thereof a notice (the "Notice of Compliance") in recordable form, aligned by the President and the Secretary of the Association, evidencing such compliance. The Notice of Compliance, when Recorded, shall be conclusive evidence of compliance with the provisions of this Article VII as to the Improvements described in the Recorded Notice of Compliance.

(iv) The Board shall adopt a procedure by which a prospective Owner intending to erect Improvements on any portion of the Subject Property may submit and obtain the advance approval of the Master Architectural Committee for the prospective Owner's plans therefor prior to the purchase of the property.

Section 7.04. Meetings of the Master Architectural Committee.

The Master Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The Master Architectural 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 the behalf of the Master Architectural Committee, except the granting of variance pursuant to Subsection 7.03(b) above. In the absence of such designation, the vote of a majority of the members of the Master Architectural Committee, or the written consent of a majority of the members of the Master Architectural Committee, shall constitute an act of the Master Architectural Committee.

Section 7.05. Notice of Appointment.

Whenever a member of the Master Architectural Committee is appointed or removed while both Declarant and the Board have rights of appointment, written notice to the other party of such appointment or removal shall be given by the party appointing or removing the member.

Section 7.06. Scope of Review.

The Master Architectural Committee shall not be responsible for reviewing, nor shall its approval be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

Notwithstanding any other provision of this Declaration to the contrary, Declarant need not seek or obtain Master Architectural Committee approval for any Improvement constructed or placed by Declarant on any portion of the Subject Property owned or leased by Declarant, but Participating Builders shall be required to obtain such approval.

ARTICLE VIII

INSURANCE

Section 8.01. Obligation to Obtain Insurance.

The Board shall cause to be obtained and maintained the following insurance:

(a) Fire and extended coverage insurance, to the extent reasonably obtainable, on all Improvements, if any, under the control or ownership of the Association, in an amount of not less than one hundred percent (100%) of the actual current replacement cost. The insurance shall insure the Association and its Mortgagees, as their interests may appear. As to each such policy which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Delegates, Declarant, Participating Builders, and the agents and employees of each of the foregoing, with respect to any loss covered by the insurance, whether or not caused by negligence or breach of any agreement by such Persons, but only to the extent that insurance proceeds are received in compensation for the loss.

(b) Bodily injury liability insurance with limits of not less than \$500,000 per person and \$5,000,000 per occurrence, and property damage liability with a deductible of not more than \$5,000 and a limit of not less than \$5,000,000 per occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured.

(c) Workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) Such other insurance, including indemnity and other bonds as the Board shall deem necessary or expedient to carry out the Association functions as set forth in this Declaration, the Articles and the Bylaws.

The liability insurance referred to above shall name, as separately protected insured, Declarant, the Association, the Board, and their representatives, members and employees, with respect to any liability arising out of the management, maintenance or use of any of the Association properties. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of

subrogation against Declarant, the Board, and their representatives, members and employees.

The fire and liability insurance policies may be blanket policies covering the Association properties and any property of Declarant, in which case the Association and Declarant shall each pay their proportionate shares of the premium.

Section 8.02. Association as Trustee.

The Association, acting through the Board, is hereby appointed and shall be deemed trustee of the interests of all named insured under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 8.01 shall be paid to the Board as trustee. 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 Improvements for which the insurance was carried, which repairs or replacements shall be made in accordance with the provisions of Section 5.08 hereof. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two directors of the Board may sign a loss claim form and release form in connection with the settlement of a loss claim, and any such claim, release or settlement shall be binding on all the named insured.

Section 8.03. Annual Insurance Review.

The Board shall review the insurance carried by the Association at least annually, for the purpose of determining the amount of the insurance referred to in this Article VIII. The Board may obtain a current appraisal of the full replacement value of any Improvements owned by the Association, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each annual review. Notwithstanding the requirement for annual review, the insurance policies carried by the Association shall, to the extent possible, provide for automatic adjustments of coverage levels to reflect the changes in costs resulting from inflation.

Section 8.04. Mortgagee Requirements.

Notwithstanding any other provision herein, the Association shall continuously maintain in effect casualty and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for planned unit developments established by FNMA, GNMA and FHLMC so long as any of the foregoing agencies is a Mortgagee or Owner of a Lot or Condominium within the Subject Property, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA and FHLMC, as applicable.

ARTICLE IX

ASSESSMENTS, BUDGETS AND FUNDS

Section 9.01. Personal Obligation of Assessments.

Declarant hereby covenants, and each Owner of any Lot or Condominium, including Participating Builders, by acceptance of a deed or other conveyance therefor, whether or not it shall be

so expressed in the deed or other instrument, is deemed to covenant and agree to pay to the Association (1) annual Common Assessments, (2) Special Assessments, and (3) Reimbursement Assessments; all as hereinafter provided. All Assessments (other than Reimbursement Assessments) together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot or Condominium against which the Assessment is made, which lien may be foreclosed in the manner described in Section 9.21 hereof. All Assessments shall also be a personal obligation of the Owner to pay the Assessment. The personal obligation of the Owner to pay an Assessment shall not be terminated by a conveyance or any transfer (whether by foreclosure or otherwise) of the Owner's interest in the Lot or Condominium. The personal obligation for any Assessment shall not pass to the successors-in-title to any Owner unless expressly assumed by them.

Section 9.02. Maintenance Funds.

The Board shall establish no fewer than two (2) separate accounts (the "Maintenance Funds") into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance by the Association of its functions under this Declaration. Each of the Maintenance Funds shall be established as separate trust savings or trust checking accounts. The Maintenance Funds may be established as trust accounts at a bank or savings institution and shall include: (1) an Operating Fund for current expenses of the Association, and, (2) a Reserve Fund for replacements, painting, and repairs of the landscaping and other Improvements within the Association Properties; and, (3) any other funds which the Board of Directors may establish to the extent it deems necessary or convenient under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Maintenance Funds with amounts deposited into any other Maintenance Fund, provided that the integrity of each individual Maintenance Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Maintenance Fund separately.

Section 9.03. Purpose of Assessments.

All amounts deposited into the Operating Fund and the Reserve Fund must be used solely for the Common benefit of all of the Owners for the purposes authorized by this Declaration. Disbursements from the Reserve Fund shall be made by the Board only for the respective purposes specified in this Article IX. Disbursements from the Operating Fund shall be made by the Board 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. Nothing in this Declaration shall be construed so as to permit the Association to use any Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Subject Property. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association earmarked for specified purposes authorized by this Declaration.

Section 9.04. Common Assessments.

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund, the Operating Fund and any other Maintenance Fund established by the Board. Common Assessments shall be assessed against the Owners of Lots and Condominiums in any Phase of Development requiring a Final Subdivision Public Report in the amounts as set forth in the Association budget on file with the ORE. As Common Assessments commence with respect to additional Phases of Development requiring a Final Subdivision Public Report annexed to the Subject Property pursuant to Article III hereof, the Common Assessments shall be revised in accordance with the combined budget of the Association filed with the DRE for the additional Phase of Development. Any revision of Common Assessments shall be subject to the limitations set forth in Section 9.06 below. Common Assessments payable to the Association shall be assessed equally against all Owners, based upon the number of Lots or Condominiums, except that in the case of a Lot developed as an Apartment Building, Common Assessment shall be assessed for each three (3) apartment units located on the Lot. In the event the number of apartment units located on any Lot is not exactly divisible by three, no fractional Common Assessment shall be assessed for the remaining units.

Common Assessment charges shall include, but not by way of limitation, all costs of management and administration of the Association, including compensation paid to Managers, accountants, attorneys and employees; all costs related to the maintenance of the Association Properties, including utilities, irrigation and gardening services; all costs of insurance; reasonable reserves as deemed appropriate by the Board; all costs of bonding members of the Board, the Manager or any other person handling the funds of the Association; all taxes and assessments; all costs incurred by any committee established by the Board pursuant to this Declaration or the Bylaws; and all other costs incurred by the Association in the discharge of its powers and duties under this Declaration, except those costs which are collectible as a Special Assessment or a Reimbursement Assessment.

Section 9.05. Date of Commencement of Common Assessments.

As to each Lot or Condominium in any Phase of Development, other than a Lot developed as an Apartment Building, Common Assessments shall commence on the first day of the first month following the month in which the first Close of Escrow occurs for the sale of a Lot or Condominium in that Phase of Development. As to any Lot developed as an Apartment Building, Common Assessments shall commence on the earlier to occur of (1) the first day of the month following the month in which a Certificate of Occupancy is issued for any Improvement in such Phase of Development, of (2) to date on which the Association becomes responsible for maintaining the Association Properties in such Phase of Development. Each Lot or Condominium shall thenceforth be subject to its share of the then established annual Common Assessment as set forth herein, provided that the first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the Bylaws. The Board shall fix the amount of the annual Common Assessment to be levied against each Lot or Condominium at least thirty (30) days in advance of each Common Assessment

period. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, at least thirty (30) days prior to the effective date of the change. If any payment of a Common Assessment is less than the amount assessed, and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Common Assessment has been satisfied, and second to the Reserve Fund.

At the end of any fiscal year of the Association, the Board may determine that all excess funds remaining in the Operating Fund, over and above the amounts used for the operation of the Association Properties, may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessment. Upon dissolution of the Association incident to the abandonment or termination of the maintenance of the Association Properties, any amounts remaining in any of the Maintenance Funds shall be distributed proportionately to or for the benefit of the Members.

Section 9.06. Maximum Common Assessment.

Until the first day of the fiscal year next following the commencement of Common Assessments for any Phase of Development requiring a Final Subdivision Public Report, the Common Assessment per Lot or Condominium under this Article IX shall be the amount set forth in the Final Subdivision public Report issued by the DRE for the Phase of Development in which the Lot or Condominium is located.

If the Board determines that the Common Assessment is insufficient to meet the expenses of the Association during the remainder of the Association's initial fiscal year, the Board may, by majority vote, increase the Common Assessment by not more than ten percent (10%) above the Common Assessment for the year as set forth in the approved budget of the Association on file with the DRE. Prior to the end of the Master Association's initial fiscal year, any proposed Common Assessment in excess of ten percent (10%) above the Common Assessment set forth in the approved budget of the Association on file with the DRE shall be subject to approval by a vote of Delegates representing a majority of the voting power of the Association.

From and after the first day of the fiscal year immediately following the commencement of Assessments, pursuant to Section 9.05 hereof, the annual Common Assessment per Lot or Condominium may be increased by the Board, above the annual Common Assessment for the previous year, without a vote of the Delegates; provided, however, the Board shall not levy a Common Assessment per Lot or Condominium in any single fiscal year (including all supplemental Common Assessments authorized pursuant to Section 9.09 below) which would result in an increase of more than ten percent (10%) above the Common Assessment per Lot or Condominium actually levied in the immediately preceding fiscal year, except with the vote of Delegates representing at least a majority of the voting power of the Association.

Nothing in this Section 9.06 shall be deemed to limit any increase in Common Assessments that are approved by the DRE



and are necessary to obtain a public report for any Phase of Development.

Section 9.07. Payment of Common Assessments.

All Common Assessments shall be due and payable to the Association by the assessed Owners (including Declarant), during the fiscal year, in advance, in monthly, quarterly, or semi-annual installments, on or before the first day of each month, or in such other manner or frequency as the Board may designate in its sole and absolute discretion.

Section 9.08. Exempt Property.

The following property subject to this Declaration shall be exempt from Assessments:

- (a) All properties dedicated to and accepted by a local authority; and,
- (b) Any Association Properties owned in fee by the Association; and,
- (c) Any Common Areas owned in fee by any Sub-Association.

Section 9.09. Supplemental Common Assessments.

Subject to the provisions of Section 9.06 hereof, if the estimated sums prove inadequate for any reason including nonpayment of any Owner's Common Assessment, the Board may, from time to time, levy a supplemental Common Assessment for any of the Maintenance Funds. The supplemental Common Assessment shall be assessed against each Owner, and his Lot or Condominium, in the same manner as Common Assessments are assessed. Written notice of any change in the amount of any annual Common Assessment shall be sent to every Owner subject thereto, not less than thirty (30) days prior to the effective date of the change.

Section 9.10. Annual Budgets and Financial Statements.

The Board of Directors shall cause to be prepared and distributed to all Members, at least sixty (60) calendar days prior to the commencement of each fiscal year, the following:

1. A Budget, consisting of at least the following information:
  - (a) estimated revenue and expenses on an accrual basis, (b) the amount of the total cash reserves of the Association currently available for replacement or major repair of Association properties and for contingencies; (c) an itemized estimate of the remaining life of, and the methods of funding to defray the costs of repairs, replacement or additions to major components of the Association Properties; and, (d) a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Association Properties.
2. A statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Common Assessments and Special Assessments,

including the Recording and foreclosing of liens against Member's Lots and Condominiums.

The Board of Directors shall cause to be prepared and distributed to all Members, at least one hundred twenty (120) calendar days after the close of the fiscal year, a report consisting of at least the following information: (a) a balance sheet as of the end of the fiscal year; (b) an operating (income) statement for the fiscal year; (c) a statement of changes in financial position for the fiscal year prepared by an independent accountant or, alternatively, accompanied by a certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review; and, (d) a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the Association exceeds \$75,000.

The Board of Directors shall cause to be prepared a balance sheet as of an accounting date which is the last day of the month closest in time to six months from the date of the Close of Escrow of the first sale (If a Lot or Condominium in the First Subdivision, and an operating statement for the period from such first Close of Escrow to the accounting date, which operating statement shall include a schedule of Assessments received and receivable by the number of the Lot or Condominium and the name of the Owner assessed.

Section 9.11. Failure to Fix Common Assessment.

The omission by the Board, prior to the expiration of any year, to fix the Common Assessment provided for herein for the ensuing year, shall not be deemed a waiver or modification with respect to any of the provisions of this Declaration, or a release of the liability of any Owner to pay the Common Assessment, or any installment thereof, for that or any subsequent year, and in such event the Common Assessment for the preceding fiscal year shall be deemed to be the Common Assessment for any year in which the Board fails to fix the Common Assessment. No diminution or abatement of the Common Assessment shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to Association Properties or from any action taken to comply with any law or any determination of the Board.

Section 9.12. Special Assessments.

(a) Purposes. In addition to the Common Assessments authorized by this Declaration, the Board may levy Special Assessments against Owners (including Declarant) in the Subject Property for the following purpose.:

(i) To construct or reconstruct, repair or replace capital Improvements upon the Association properties, including any necessary fixtures and personal property related thereto;

(ii) To add to the Association Properties;

(iii) To provide for the necessary facilities and equipment to offer the services authorized herein;

(iv) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

(b) Vote. The Board shall not, in anyone fiscal year, levy Special Assessments which in the aggregate exceed five percent (5%) of the estimated gross expenses of the Association as set forth in the Budget for that fiscal year without the vote of Delegates representing at least a majority of the voting power of the Association.

(c) Proportion. Special Assessments shall be levied upon Members on the same basis as Common Assessments. In the event the Board levies a Special Assessment, the Board shall specify the manner in which the Special Assessment is to be apportioned among the Maintenance Funds.

(d) Payment. The Board shall notify the Members in writing at the time a Special Assessment is levied of the manner in which and the dates on which the Special Assessment is payable, and the Members shall pay the Special Assessment in the manner so specified by the Board.

Section 9.13. Reimbursement Assessments.

In addition to any provisions of this Declaration specifically providing for the imposition of a Reimbursement Assessment, the Board may, subject to Notice and Hearing, levy a Reimbursement Assessment against any Member if the willful or negligent failure of the Member or the Person deriving rights of use from the Member to comply with these covenants, the Bylaws or the Board Rules and Regulations shall have resulted in the expenditure of funds by the Association in performing its functions hereunder, or in the event the Board determines pursuant to Subsection 12.08(c) that an Owner is liable for a violation of this Declaration. The amount of any Reimbursement Assessment shall be due and payable to the Association thirty (30) days after notice to the Member of the decision of the Board that a Reimbursement Assessment is owing. A Reimbursement Assessment shall include interest, costs, and reasonable attorney's fees incurred for the collection thereof.

Section 9.14. Late Charges and Interest.

If any installment of any Assessment assessed to any Owner is not paid within thirty (30) days after it is due, the Owner shall be required to pay a late charge in an amount as the Board may determine in the exercise of its good faith judgment to reimburse the Association for the additional costs and expenses occasioned by the late payment, as well as reasonable attorney's fees incurred by the Association in the collection of any delinquent Assessment. Any installment of an Assessment which is not paid within thirty (30) days after it is due shall bear interest from the due date of the installment at an interest rate to be determined from time to time by the Board, but which shall in no event exceed the maximum rate permitted by law.

Section 9.15. Notice of Default and Acceleration of Assessments.

If any Common Assessment or Special Assessment or any installment thereof is not paid within thirty (30) days after its due date, the Board of Directors may mail a notice of

default to the Owner and to each first Mortgagee of any Lot or Condominium who has requested a copy of the notice. The notice shall specify (a) the fact that the installment is delinquent; (b) the action required to cure the default; (c) a date, not less than thirty (30) days from the date the notice is mailed to the Member, by which the default must be cured; and, (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current fiscal year and the filing and foreclosure of the lien for the Assessment against the Lot or Condominium of the Member. The notice shall further inform the Member of his right to cure the default after acceleration. If the delinquent Assessment or installment and any late charges or interest thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Declaration, subject to the protection afforded to Mortgagees under this Declaration.

Section 9.16. Remedies to Enforce Assessments.

Each Assessment levied hereunder shall be a separate, distinct and personal debt and obligation of the Owner against whom the same is assessed. In the event of a default in payment of any Assessment or installment thereof, whether Common, Special or Reimbursement, the Board may, in addition to any other remedies provided under this Declaration or by law, enforce the obligation on behalf of the Association by suit or, in the case of Common Assessments or Special Assessments, by filing and foreclosure of a lien as provided herein.

Section 9.17. Lawsuit to Enforce Assessments.

The Board may bring a suit at law to enforce any Assessment obligation, and any judgment rendered in any such action shall include any late charges, interest, and other costs of enforcement including reasonable Attorneys' fees in an amount as the court may determine.

Section 9.18. No Offsets.

All Assessments shall be payable in the amount specified in the levy thereof and no offsets or reductions thereof shall be permitted for any reason, including without limitation, any claim that the Association or the Board is not properly exercising its duties and powers as provided in this Declaration.

Section 9.19. Mortgage Protection.

The lien created by any Assessment provided for herein shall be subordinate to the lien of any first Mortgage (as defined in Section 12.04(a) herein) or first Deed of Trust upon any Lot or Condominium. Notwithstanding any other provision hereof, no lien created by any Assessment, nor any breach of this Declaration, nor the enforcement of any provision hereof, or of any Supplemental Declaration, shall defeat or render invalid the rights of any Mortgagee under any Recorded first Mortgage (as defined in Section 12.04(a) herein) upon a Lot or Condominium made in good faith and for value, provided that after the Mortgagee or other Person obtain title to the Lot or

Condominium by judicial foreclosure or other remedies provided in the Mortgage, the Lot or Condominium shall remain subject to this Declaration, and the payment of all installments of Assessments accruing subsequent to the date the Mortgagee or other Person obtains title.

Section 9.20. Estoppel Certificates.

Upon the payment of a reasonable fee as may be determined from time to time by the Board of Directors, and upon the written request of any Member and any Person owning, or intending to acquire, any right, title or interest in the Lot or Condominium of the Member, the Association shall furnish a written statement setting forth the amount of the Assessments or other amounts, if any, due and accrued and then unpaid with respect to the Lot or Condominium and the Owner thereof, and setting forth the amount of any Assessment levied against the Lot or Condominium which is not yet due and payable. The statement shall, with respect to the Person to whom it is issued, be conclusive against that Association that no greater or other amounts were then due or accrued and unpaid, and that no other Assessments have been levied.

Section 9.21. Lien to Enforce Assessments.

For delinquent Common or Special Assessments (but not for delinquent Reimbursement Assessments), the Board may elect to file a claim of lien against the Lot or Condominium of the delinquent Owner by recording a Notice of Claim of Lien (for purposes of this Section 9.21 only, the "Notice") stating the amount of the claim of delinquency, the interest and costs which have accrued thereon, the legal description and street address of the Lot or Condominium against which it has been assessed, and the name of the record Owner thereof. The Notice shall be signed and acknowledged by an officer of the Association or other duly authorized agent of the Board. The assessment lien shall be prior to any declaration of homestead Recorded after the time that the Lot or Condominium shall have been made subject to this Declaration. The lien shall continue until fully paid or otherwise satisfied. When all amounts claimed under the lien and all other costs and Assessments which may have accrued as to the Lot or Condominium have been fully paid or satisfied, a further notice releasing the lien shall be recorded upon payment by the Owner of the Lot or Condominium of a reasonable fee as may be fixed by the Board to cover the cost of preparing and Recording the notice of release of lien. The lien may be foreclosed in the same manner as is provided in the laws of the State of California for the foreclosure of liens on real property, including without limitation, the provisions of Sections 2924, 2424a, 2924b, 2924c, 2924f, 2924g, and 2924h of the California Civil Code, as they may be amended from time to time. No action shall be brought by the Board or by its agents to foreclose the assessment lien or to proceed under the power of sale thereunder, until thirty (30) days have elapsed after the date that the Notice is deposited in the United States postal service, certified or registered, postage prepaid, to the Owner of the Lot or Condominium.

ARTICLE X

GENERAL RESTRICTIONS

All real property within the Subject Property shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant set forth herein. The application of the following limitations and restrictions shall be interpreted by the Master Architectural Committee. The Master Architectural Committee may waive in whole or in part any of the following limitations and restrictions in accordance with Section 7.03(b) if the strict application thereof could be unreasonably or unduly harsh under the circumstances. Any such interpretation or waiver of the following provisions shall be in writing or shall be contained in the written Architectural Standards promulgated from time to time by the Master Architectural Committee.

All real property within the Subject Property shall be improved and used only for residential uses, and except for the operation of Apartment Buildings, no portion of the Subject Property shall be improved or used for any business or commercial purpose.

Section 10.01. Antennae.

No exterior radio antenna, television antenna, or other antenna of any type, including satellite television dishes or similar devices, shall be erected or maintained in the Subject Property. A master antenna or cable television antenna or antennae may, but need not, be provided for use of all Owners or a group of Owners, and Declarant may grant easements for such purposes, subject to the provisions of Section 12.09 of this Declaration.

Section 10.02. Insurance Rates.

Nothing shall be done or kept in the Subject Property which will increase the rate of insurance on any Association Properties without the approval of the Board, nor shall anything be done or kept in the Subject Property which would result in the cancellation of insurance on any Association Properties or which would be in violation of any law. The Board may condition any approval given pursuant to this Section 10.02 upon the Owner's agreement to pay the increase in insurance premiums caused by such Owner's activity.

Section 10.03. No Further Subdivision.

No Lot, Condominium or Common Area may be further subdivided, nor may any easement or other interest therein less than fee title (including a time-share estate or time-share use as defined in California Business and Professions Code Section 11003.5) be conveyed by the Owner thereof (including Participating Builders, the Association and any Sub-Association) without the prior written approval of the Master Architectural Committee, but excepting any subdivision or conveyance made by Declarant. Nothing in this Section shall be deemed to prevent an Owner from, or require the approval of the Master Architectural Committee for: (1) selling or leasing of entire Lots or selling or leasing of Condominiums to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety or as community property.

Section 10.04. Signs.

To the extent not prohibited by law, no sign, poster, billboard, advertising device or other display of any kind shall be displayed to the public view without the approval of the Master Architectural Committee, except such signs as may be used by Declarant and Participating Builders, and their successors, in connection with the development of the Subject Property and sale of Condominiums and Lots, and except such signs of customary and reasonable dimensions as may be prescribed by the Master Architectural Committee that are displayed on or from a Lot or Condominium advertising the Lot or Condominium for sale or lease. The right of any Participating Builder to display any signs under this Section 10.04 shall be subject to the obligations of the Participating Builder to obtain the prior written consent of Declarant.

Section 10.05. Animals.

No animals of any kind shall be raised, bred or kept on the Subject Property, except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Declaration, and such limitations as may be set forth in the Board Rules and Regulations. A "reasonable number" as used in this Section 10.05 shall ordinarily mean no more than two (2) pets per household; provided, however, that the Association (or the Master Architectural Committee or such other Person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be more or less. The Association, acting through the Board, shall have the right to 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 Subject Property must be either kept within an enclosure, an enclosed yard or on a leash being held by an individual capable of controlling the animal. Each Owner shall be liable to each and all remaining Owners, their Families, guests, tenants and invitee., for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Subject Property by the Owner or by members of his Family, his tenants or his guests; and it shall be the absolute duty and responsibility of each Owner to clean up after his animals which have used any portion of the Subject Property.

Section 10.06. Nuisances.

No rubbish or debris of any kind shall be placed or permitted to accumulate anywhere upon the Subject Property, and no odor shall be permitted to arise therefrom so as to render the Subject Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Subject Property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

Section 10.07. View Restriction.

No vegetation or other Improvement shall be planted constructed or maintained upon any Lot or Condominium in such

location or of such height as to unreasonably obstruct the view from any other Lot or Condominium in the vicinity thereof. In the event of a dispute between Owners as to the obstruction of a view from a Lot or Condominium, such dispute shall be submitted to the Master Architectural Committee, whose decision in such matters shall be final and binding and not subject to appeal of any kind. Any such obstruction shall, upon request of the Master Architectural Committee, be removed or otherwise altered to the satisfaction of the Master Architectural Committee, by the Owner of the Lot or Condominium upon which the obstruction is located. Each Owner of a Lot or Condominium shall be responsible for periodic trimming and pruning of all hedges, shrubs and trees located on his Lot or on that portion of his Condominium subject to his control, so as to not unreasonably obstruct the view of adjacent Owners.

Section 10.08. Exterior Maintenance and Repair; Owners' Obligations.

No Improvement anywhere within the Subject Property shall be permitted to fall into disrepair, and each Owner shall keep all Improvements located on his Lot in good condition and repair, and each Sub-Association shall maintain in good condition and repair all Improvements and property owned or required to be maintained by such Sub-Association. In the event that any Owner or Sub-Association shall permit any Improvement, which is the responsibility of such Owner or Sub-Association to maintain, to fall into disrepair such as to create a dangerous, unsafe, unsightly or unattractive condition as determined by the Master Architectural Committee, the Board, after consulting with the Master Architectural Committee, and, after Notice and Hearing, followed by not less than fifteen (15) days' prior written notice to the Owner of such property, shall have the right to correct the condition, and to enter upon the owner's Lot or any Common Area for the purpose of doing so, and the Owner or Sub-Association, as the case may be, shall promptly reimburse the Association for the cost thereof. The Owner of the offending property shall be personally liable, and his property may be subject to a mechanic's lien in favor of the Association or its contractors or subcontractors in accordance with Chapter 2 of Title 15 of Part 4 of Division Third of the Civil Code of the State of California, as the same may be revised from time to time, or any statute or governmental Regulation which may be enacted in lieu thereof or in further instance thereof, for all costs and expenses incurred by the Association in taking such corrective acts, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may at the option of the Board be made payable by the Owner, after Notice and Hearing, as a Reimbursement Assessment.

Section 10.09. Drainage.

There shall be no interference with the established drainage pattern over any part of the Subject Property, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Master Architectural Committee. The term "established drainage pattern" shall mean the drainage pattern that exists at the time the overall grading is completed by Declarant or a Participating Builder, or that which is shown on any plans approved by the Master Architectural Committee, which may include drainage from the



Association Properties over any other portion of the Subject Property.

Section 10.10. No Hazardous Activities.

No activities shall be conducted on any portion of the Subject Property, and no Improvements shall be constructed on any Lot which are or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, no firearms shall be discharged on the Subject Property and no open fires shall be lighted or permitted on the Subject Property except in a contained barbecue unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent the dispersal of burning embers.

Section 10.11. Unsightly Articles.

No unsightly articles shall be permitted to remain on any Lot or Condominium so as to be visible from any other portion of the Subject Property. Without limiting the generality of the foregoing, refuse, garbage and trash shall be kept at all times in covered, sanitary containers or other areas as may be provided by either the Association or by any Sub-Association. No clotheslines shall be installed on any Lot or Condominium. No clothing or household fabrics shall be hung, dried or aired on any Lot or on the exterior of any Condominium, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except within an enclosed structure or otherwise appropriately screened from view.

Section 10.12. No Temporary Structures.

No tent, shack or other temporary building, Improvement or structure shall be placed upon any portion of the Subject Property, except that the Master Architectural Committee may permit temporary structures to be used in connection with construction on parts of the Subject Property.

Section 10.13. No Mining or Drilling.

No portion of the Subject Property shall be used without the express prior written consent of the Master Architectural Committee. for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbon., minerals, rocks, stones, gravel or earth.

Section 10.14. Improvements ant Alterations.

There shall be no excavation or construction or alteration which in any way alters the exterior appearance of any Improvement without the prior approval of the Master Architectural Committee pursuant to Article VII hereof.

Section 10.15. Parking and Vehicular Restrictions.

No Owner shall park, store or keep on any street (public or private) within the Subject Property for over twenty-four (24) hours any large commercial type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck, or delivery truck); recreational vehicle (including, but not limited to, any camper unit, house, car or motor home); or any bus, trailer, trailer coach, camp trailer, boat, aircraft or mobile home; or any inoperable vehicle of any other similar

vehicle. In addition, no Owner shall park, store, or keep anywhere within the Subject Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board, upon any unenclosed parking space, so as to be visible from anywhere in the Subject Property. All trailers, campers, motor homes and similar recreational vehicles shall be parked in enclosed garages or otherwise adequately screened from view by way of a structure approved by the Master Architectural Committee. The above excludes camper trucks and similar vehicles up to and including three-quarter (3/4) ton when used for everyday-type transportation and subject to approval by the Board. No Owner of a Lot or Condominium shall conduct major repairs or major restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or Condominium or elsewhere within the Subject Property, except wholly within the Owner's garage; provided, however, that such activity shall at no time be permitted if it is determined by the Board or its agent to be a nuisance. Notwithstanding the foregoing, these restrictions shall not be interpreted in such a manner so as to permit any activity which would be contrary to any ordinance of the City of San Diego.

Section 10.16. Landscaping.

Within one hundred and twenty (120) days of the conveyance. of a Lot improved with a Residence other than an Apartment Building to any Owner other than a Participating Builder, such Owner shall install and shall thereafter maintain (except for that landscaping to be maintained by the Association or a Sub-Association pursuant to a Supplemental Declaration) the landscaping of his Lot in a neat and attractive condition, including all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation originally placed on such Lot by Declarant or any Participating Builder, if any. As to any Lot in a Phase of Development that is not improved with a Residence when title thereto is conveyed, the Owner (other than a Participating Builder) shall install such landscaping within ninety (90) days after issuance of a Certificate of Occupancy for the Residence that is constructed on such Lot. No plants or seeds, infected with insect or plant diseases, shall be brought upon, grown or maintained upon any part of the Subject Property. The Board may adopt Rules and Regulations proposed by the Master Architectural Committee to regulate landscaping permitted and required within the Subject Property. In the event that any Owner shall fail to install and maintain landscaping in conformance with any such Rules and Regulations, or shall allow his landscaping to deteriorate to a dangerous, unsafe, unsightly or unattractive condition, the Board, upon thirty (30) days' prior written notice to such Owner, shall have the right either to seek any remedies at law or in equity which it may have or to correct such condition and, after Notice and Hearing, to enter upon such Owner's property for the purpose of doing so, and such Owner shall promptly reimburse the Association for the cost thereof. The Board may impose a Reimbursement Assessment to recover any such costs.

ARTICLE XI

DECLARANT'S RIGHTS AND RESERVATIONS

From the date of the Recordation of this Declaration by Declarant until such time as Declarant no longer owns any Lots

or Condominiums in the Subject Property, Declarant and its successors or assigns, retains and reserves the following rights in and to and with respect to the Subject Property, the Association, and the Association Properties, which rights, reservations and easements shall also be deemed reserved by Declarant upon the conveyance of any real property to the Association or any other Person, including but not limited to any Participating Builder, whether or not specifically stated to be so reserved in any grant deed or other instrument of conveyance. The rights, reservations and easements contained in this Article XI shall be prior and superior to any of the other provisions of this Declaration and may not, without Declarant's prior written consent, be affected by any amendment of this Declaration. Declarant's consent to anyone such amendment shall not be construed as consent to any other or subsequent amendment.

With respect to this Article XI, the rights and easements reserved to Participating Builders may be exercised by such Participating Builders only within that portion of the Subject Property covered by a Notice of Annexation or Supplemental Declaration Recorded by such Participating Builders, unless Declarant gives written authorization to such Participating Builders to exercise such rights and easements in other portions of the Subject Property.

Section 11.01. Rights to Association Properties.

(a) Construction of Additional Improvements. Declarant reserves for itself and Participating Builders the right at any time and from time to time to construct at its expense additional Improvements on the Association Properties at any time and from time to time in accordance with the Development Plan and this Declaration for the enhancement thereof. The Association shall upon completion of any such Improvements undertake the care and maintenance thereof, subject to the provisions of Section 5.01 hereof; provided, however, that Declarant and participating Builders shall not construct any Improvement which would directly result in an increase in the Common Assessments per Lot or Condominium above the amount of the maximum Common Assessment as described in Section 9.06 hereof, unless approved by the Members as described therein. Prior to the commencement of construction of any such Improvements, Declarant and/or Participating Builders shall obtain a bond or make other arrangements approved by the DRE, under which the Association is obliged to secure the performance of the commitment of Declarant and/or Participating Builders to complete the Improvements.

(b) Promotional Functions. Declarant reserves for itself and Participating Builders the right to refer to the Association Properties and the services offered by the Association in connection with the promotion and marketing of residential developments within the Subject Property. Declarant and participating Builders may also permit prospective purchasers of Lots or Condominiums who are not Members to use the Association Properties at reasonable times and in reasonable numbers. Declarant and its duly authorized agents may (i) erect and maintain on any part of the Association properties such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper to the development and marketing of real property in the Subject Property; and, (ii) use vehicle and equipment on Association Properties for promotional purposes.

(c) Approval of Conveyances. The Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, grant, dedicate or convey any interest in real property included in the Association Properties.

(d) Approval of Changes in Use or Function. Except as otherwise set forth in this Declaration as of the date of Recordation of this Declaration, the Association Properties shall be used solely for the benefit of Members, and the Association shall not change or alter the use of the Association Properties without the prior written consent of Declarant. In addition, the Association shall not take any action that would require the approval of first Mortgagees pursuant to Section 12.04(d) hereof, without first obtaining the prior written consent of Declarant.

(e) Drainage Easement. Declarant hereby reserves for itself and Participating Builders, easements for and the right to use and maintain drainage courses of all kinds in all areas of the Association Properties and within the Subject Property. Within the areas subject to these easements, no structure, planting or other material shall be placed which may damage or interfere with drainage courses, create erosion or sliding problems or obstruct, retard or change the direction of the flow of water through such drainage courses.

(f) Utility Easements. Declarant hereby reserves for itself and Participating Builders easements for and the right to install and maintain utilities over and under any areas of the Association Properties designated as streets, roads, roadways and drainage courses. For the purposes of this Subsection 11.01(f), the term "utilities" shall include all of the purposes for which the Association may grant easements as set forth in Subsection 6.02(b) hereof, and any other public or quasi-public facility or Improvement deemed by Declarant or participating Builders to be necessary or desirable for the comfort, safety and convenience of residents of the Subject Property.

(g) Other Easements. Declarant hereby reserves for itself and Participating Builders a nonexclusive easement for ingress and egress over the Subject Property for the purpose or performing any of Declarants' or Participating Builders' rights or obligations under this Declaration.

Section 11.02. Other Rights.

(a) Completion of Development. No provision of this Declaration shall be construed to prevent or limit the right of Declarant. to complete development of the Subject Property, or the construction or alteration of Improvements thereon owned by Declarant, nor the right of Declarant and Participating Builders to maintain model homes or construction, sales or leasing offices or similar facilities on any portion of the Subject Property owned by Declarant or Participating Builders, the Association, nor the right of Declarant to post signs incidental to construction, sales or leasing. In exercising its rights under this paragraph, Declarant and Participating Builders shall not unreasonably interfere with any Member's use of either the Association Properties or any Member's wholly owned property.

(b) Additional Conveyances of Interests in Real Property.

Declarant hereby reserves for itself and Participating Builders the right to convey at any time and from time to time to the Association, at no cost thereto, interests in real property in the Subject Property in accordance with the Development Plan and subject to Section 12.09 of this Declaration. The right of Declarant and Participating Builders to convey interests in real property to the Association shall be subject to the condition that the conveyance of any interests in real property shall not directly result in an increase in the Common Assessments per Lot or Condominium above the amount of the maximum Common Assessment as described in Section 9.06 hereof, unless approved by the Members as described therein. Upon any conveyance, the interests in real property conveyed shall become part of the Association Properties, and the Association shall be responsible for the maintenance thereof, subject to the provisions of Section 5.01 hereof. In connection with any such conveyance, Declarant or Participating Builders may reserve rights to any minerals, hydrocarbons, water, steam or other substances below a depth of five hundred (500) feet from the surface, without the right of surface entry.

(c) Exemption of Declarant.

Nothing in this Declaration shall limit, and neither an Owner, nor any Sub-Association, nor the Association, shall do anything to interfere with the right of Declarant to subdivide or resubdivide any portion of the Subject Property, or to complete excavation and grading and construction of Improvements to and on any portion of the Subject Property owned by Declarant, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Subject Property. Such rights shall include, but shall not be limited to, erecting, constructing and maintaining on the Subject Property any structures and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant or participating Builders at any time prior to acquisition of title to a Lot or Condominium in a Planned Development or Condominium Project by a purchaser from Declarant or Participating Builders to establish on that Lot or Condominium Project, as the case may be, 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 for the proper development and disposal of the Subject Property, subject to the rights of the VA and the t FHA to approve such grants as provided herein. Prospective purchasers, Participating Builders and Declarant shall have the right to use any portion of the Association Properties for access to the sales facilities of Declarant and Participating Builders. Declarant and Participating Builders may use any structure owned by Declarant or Participating Builders, as the case may be, in the Subject Property a. model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain Master Architectural Committee approval for any Improvement constructed or placed by Declarant on any portion of the Subject Property owned or leased by Declarant but Participating Builders shall be required to obtain such consent.

(d) Consent of Declarant.

Notwithstanding any other provision of this Declaration, no amendment of this Declaration that requires the approval of first Mortgagees pursuant to

Section 12.04(d) (vi) shall be effective unless approved in writing by Declarant.

(e) Assignment of Declarant's Rights. Declarant reserves the right to assign, by an express written instrument, all of any portion of its rights contained in this Article XI or elsewhere in this Declaration to any person who may acquire more than one (1) Lot or Condominium in the Subject Property or the Annexable Area from Declarant for the purpose of development and resale, provided, however, that in no event shall more than one Person at any given time possess the right to withhold approval or consent to any action under this Declaration that requires Declarant's consent or approval. In the event of any such assignment, the assignee shall be considered Declarant for purposes of this Declaration with respect to the rights of Declarant so assigned.

Section 11.03. FHA/VA Veto.

In the event the FHA or VA is insuring or guaranteeing or has agreed to insure or guarantee loans on any portion of the Subject Property with respect to the initial sale by Declarant or Participating Builders of Lots or Condominiums, the FHA or VA, as applicable, shall have the power to veto the exercise by Declarant and Participating Builders of those rights set forth in Section 12.09 hereof, as provided therein.

ARTICLE XII

MISCELLANEOUS

Section 12.01. Term.

This Declaration shall remain in full force and effect for a term of fifty (50) years from the date this Declaration is Recorded, after which time the covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, unless extinguished by the vote by written ballot of Members holding at least three-fourths (3/4) of the voting power of the Association. The extinguishment shall be effective upon the Recordation of a written instrument executed by a majority of the Board certifying that this Declaration has been extinguished by the vote of the Members as provided herein.

Section 12.02. Amendment.

(a) By Declarant. Until the Close of Escrow for the first sale of a Lot or Condominium in the Subject Property, the provisions of this Declaration may be amended or terminated by Declarant, in accordance with Section 11018.7 of the California Business and Professions Code, by Recordation of a written instrument setting forth the amendment or termination.

Notwithstanding any other provision of this Declaration to the contrary, Declarant may amend this Declaration at any time after the Close of Escrow for the first sale of a Lot or Condominium in the Subject Property by Recording a written instrument setting forth the amendment, provided that the amendment is necessary to cause this Declaration to comply with any existing or future requirements of the DRE, VA, FHA, FHLMC, FNMA or GNMA; provided, however, that any such amendment shall be effective only if Declarant mails a copy of the amendment to

all of the foregoing entities, and does not within sixty (60) days thereafter receive a notice of disapproval from any such entity. Said amendments shall not be Recorded by Declarant until after the expiration of such sixty (60) day period.

(b) By Members. Except as otherwise provided herein, this Declaration may be amended or repealed, subject to the provisions of Section 11018.7 of the California Business and Professions Code, at any time upon the satisfaction of the conditions set forth below:

(i) Members in each Delegate District shall have held duly constituted meetings and the Delegates shall have certified to the Board the results thereof. An amendment, to be effective, must receive the affirmative vote at such meetings in person or by proxy of at least three-fourths (3/4) of the voting power of the Association as a whole, and also three-fourths (3/4) of the voting power of Members other than Declarant; and,

(ii) A certificate, executed by the President or Vice President, and the Secretary or Assistant Secretary, setting forth in full the amendment or repeal and certifying that the amendment or repeal has been approved by the Members and certified by the Delegates as set forth above, shall have been Recorded; and,

(iii) If the amendment requires the consent of Declarant in accordance with Section 11.02(d), or if the amendment involves an amendment to Article XI, Declarant shall have given its written consent to the amendment or repeal, which consent may be evidenced by Declarant's executing the certificate described in Subsection (ii) above.

Section 12.03. Amendment of Articles and Bylaws.

The Articles and Bylaws may be amended in accordance with the provisions respecting amendment thereof as set forth in each of the instruments, or in the absence of such provisions, in accordance with the applicable provisions of the California Nonprofit Mutual Benefit Corporations Law.

Section 12.04. Mortgage Protection.

Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce FHLMC, FNMA and GNMA to participate in the financing of the sale of Lots or Condominiums within the Subject Property, the following provisions are added hereto (and to the extent these added provisions pertaining to the rights of Mortgagees conflict with any other provisions of this Declaration, these added provisions shall control):

(a) Each holder, insurer and guarantor of a first Mortgage encumbering any Lot or Condominium in the Subject Property, upon filing a written request for notification with the Board, shall be entitled to written notification from the Association of any default by the Mortgagor of the Lot or Condominium in the performance of the Mortgagor's obligations under this Declaration, the Articles or the Bylaws, which default is not cured within thirty (30) days after the Association learns of the default. The term "first Mortgage" shall mean a Mortgage with first priority over other Mortgages

encumbering the Lot or Condominium, and the term "first Mortgagee" shall mean the holder of a first Mortgage.

(b) Every Owner, including every first Mortgagee, which obtains title to a Lot or Condominium pursuant to the remedies provided in a first Mortgage, or pursuant to foreclosure of a first Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal", if any such "right of first refusal" is ever contained in this Declaration or in any Supplemental Declaration.

(c) Any first Mortgagee which obtains title to a Lot or Condominium pursuant to the remedies provided in a first Mortgage, or by judicial foreclosure, shall take title to the Lot or Condominium free and clear of any claims for unpaid Assessments or charges against the Lot or Condominium which accrued prior to the time such holder acquires title to the Lot or Condominium.

(d) Unless at least sixty-seven percent (67%) of the first Mortgagees (based upon one vote for each first Mortgage owned) of the Lots or Condominiums in the Subject Property have given their prior written approval, neither the Association nor the Members shall:

(i) Subject to the provisions of the California Nonprofit Mutual Benefit Corporation Law to the contrary, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Association Properties of the Improvements thereon which are owned, directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association as provided in Section 6.02(b) shall not be deemed a transfer within the meaning of this clause);

(ii) Change the method of determining the obligations, Assessments or other charges which may be levied against Members, or the method of allocating distributions of hazard insurance proceeds or condemnation awards,

(iii) By act or omission change, waive or abandon any scheme of Regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Residences, the exterior maintenance of Residences, the maintenance of any common property party walks or common fences and driveway., or the upkeep of lawns and plantings within the Subject Property;

(iv) Fail to maintain fire and extended coverage insurance on insurable Association Properties as provided in Article VIII hereof;

(v) Use hazard insurance proceeds for losses to any Association Properties for other than the repair, replacement or reconstruction of the Association Properties; or,

(vi) Materially amend, or add to, the provisions of this Declaration, the Articles or Bylaws which establish, provide for, govern or regulate any of the following: (An amendment or addition to such documents shall not be considered material if it is for the purpose of correcting technical, errors, or for clarification only.)



(1) Voting rights and procedures, for both Members and Delegates;

(2) The method of determining Assessments or other charges, the levying and enforcement of Assessment liens, and the subordination of any liens arising therefrom to the liens of first Mortgagees;

(3) The requirements for creating and maintaining reserve funds to be used for maintenance, repair and replacement of the Association Properties:

(4) The required types and coverages of insurance policies and fidelity bonds, and the entitlement to proceeds thereof;

(5) The rights of Members to use the Association Properties;

(6) Responsibility for maintenance and repair of the Association Properties;

(7) Expansion or contraction of the Annexable Area or the addition, annexation or withdrawal of property to or from the Subject Property;

(8) The formation and operation of the Master Architectural Committee;

(9) Prohibitions against further subdivision of, or the granting of easements on, any Lot, Condominium or Common Area;

(10) Establishment of self-management by the Association where professional management has been required by FHLMC, FNMA, GNMA, FHA, VA, or any similar agency or corporation;

(11) Any provisions for the express benefit of holders, insurers or guarantor of first Mortgages that encumber any Lot or Condominium in the Subject Property, including this Section 12.04;

(12) Imposition of any restrictions on the right of an Owner to sell, lease or transfer his Lot or Condominium; and,

(13) Provisions regarding the restoration and repair of Association properties (after a hazard damage or partial condemnation) in a manner other than as specified herein, or the initiation of any action to terminate the legal status of the project after substantial destruction or condemnation occurs.

(e) All holders, insurers and guarantors of first Mortgages, upon written request, shall have the right to (i) examine the books and records of the Association during normal business hours; (ii) require from the Association the submission of audited annual financial reports and other financial data; (iii) receive written notice of all meetings of the Members in the various Delegate Districts; and, (iv) designate in writing a representative to attend all such meetings.

(f) All holders, insurers and guarantors of first Mortgages who have made written request therefor shall be given (i) thirty (30) days' written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles or Bylaws, and prior to the effective date of any termination of an agreement for professional management of the Association Properties following a decision of the Association to assume self-management of the Association Properties; and (ii) immediate written notice, as soon as the Board receives notice or otherwise learns of any damage to the Association Properties, whenever the cost of reconstruction exceeds Ten Thousand Dollars (\$10,000); and immediate written notice as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition, with respect to any portion of the Association Properties.

(g) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Association Properties, and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance for such property, and first Mortgages making such payments shall be owed immediate reimbursement therefor from the Association.

(h) The Reserve Fund described in Article IX hereof must be funded by regularly scheduled payments rather than by large Special Assessments.

(i) The Board shall secure and cause to be maintained in force at all times a fidelity bond for any Person handling funds of the Association, including, but not limited to, employees of the professional Manager.

(j) In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Lots or Condominiums. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their Lots or Condominiums, if such agencies approve the Subject Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

(k) In the event that any Improvement constructed by Declarant, or by any Owner in compliance with Article VII hereof and pursuant to written permission of the Board, encroaches upon any of the Association Properties, then an easement for the encroachment over the portion of Association Properties so encroached shall continue in favor of the Owners over whose real property the encroachment extends, until the Improvement may be removed by the Owner.

(l) Each Owner hereby authorizes the first Mortgagee of a first Mortgage on his Lot or Condominium to furnish information to the Board concerning the status of the first Mortgage and the loan which it secures.

(m) No provision of this Declaration, the Bylaws, or the Board rules and Regulations shall be construed to grant priority

to any Owner or other Person over the rights of a first Mortgagee pursuant to its Mortgage in the event of a distribution to an Owner of insurance proceeds or condemnation awards for losses to or a taking of any of the Association Properties.

Section 12.05. Inspection Rights of Prospective Purchasers

Prospective purchasers from any Member (including Declarant and Participating Builders) shall have the right, upon written request, to examine the books and records of the Association during normal business hours, subject to reasonable regulation by the Board.

Section 12.06. Notices.

Any notice permitted or required to be given as provided herein shall be in writing and may be given either personally or by mail, telephone or telegraph. If served by mail, each notice shall be sent postage prepaid, addressed to any Person at the address given by the Person to the Association for the purpose of service of notices, or to the Residence of the Person if no address has been given to the Association. Any notice shall be deemed given, if not actually received earlier, at 5:00 p.m. on the second day after it is deposited in a regular depository of the United States Postal Service. Such address may be changed from time to time by notice in writing to the Association.

Section 12.07. Governing Law.

This Declaration shall be construed and governed under the laws of the State of California.

Section 12.08. Enforcement and Non-Waiver.

(a) Right of Enforcement. Except as otherwise provided herein, any Owner of any Lot or Condominium within the Subject Property shall have the right to enforce any or all of the provisions of this Declaration against any property within the Subject Property and the Owners thereof, except that no Owner shall have the right to enforce independently of the Association any Assessment or lien created hereby. Such right shall include an action for damages as well as an action to enjoin any violation of this Declaration.

(b) Violations and Nuisance. Every act or omission whereby any provision of this declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action by Declarant or the Board or any Owner or Owners of Lots or Condominiums within the Subject Property. However, any other provision hereof to the contrary notwithstanding, only Declarant, the Board, or a duly authorized agent of either of them, may enforce by self-help any of the provisions of this Declaration, and only if the self-help is preceded by Notice and Hearing.

(c) Fines and Suspension. If any Owner, his Family, guest, or any licensee, lessee or invitee violates this Declaration, or the Board Rules and Regulations, the Board may impose a Reimbursement Assessment upon the Owner in an amount as the Board determines in the exercise of its good faith judgment to be reasonable for each violation and may suspend or condition the Owner's right to use the Association Properties.

In the event of a continuing violation, each calendar day, or portion thereof if less than a whole day, that the violation continues shall be deemed a separate violation. Before invoking any such measure, the Member shall be entitled to Notice and Hearing. Any such suspension or conditional suspensions shall be for a period of not more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction, may be imposed for so long as the violation continues. The provisions of this Section 12.08(c) shall not apply to the failure to pay Assessments, and the enforcement of Assessments shall be governed by Article IX hereof. The Association shall not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his Lot or Condominium on account of the failure of the Owner to comply with the provisions of this Declaration, the Bylaws, or the Board Rules and Regulations, except by judgment of a court or a decision arising out of arbitration, or on account of a foreclosure as provided in Section 9.21 hereof.

(d) Violation of Law. Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Subject Property is hereby declared to be a violation of this Declaration, and shall be subject to any or all of the enforcement procedures set forth in this Declaration.

(e) Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

(f) Non-Waiver. The failure to enforce any of the provisions of this Declaration at any time shall not constitute a waiver of the right thereafter so enforce any such provision or any other provisions hereof.

(g) Attorneys' Fees. Any judgment rendered in any action or proceeding hereunder to enforce the terms of this Declaration or to collect Assessment shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of the delinquent payment (if applicable), interest thereon, late charge (if any) and court costs.

Section 12.09. FHA/VA Approval.

As long as Declarant has effective voting control of the Association, and provided further that the FHA or the VA is insuring or guaranteeing or has agreed to insure or guarantee the loans with respect to initial sale of Lots or Condominiums in any portion of the Subject Property by Declarant, the following action shall require the prior approval of the FHA or the VA, in accordance with the procedure set forth herein: (a) dedication of any of the Association Properties; (b) sales or transfers of additional property easements, rights of way or licenses by Declarant in the Association Properties; (c) granting of a Mortgage covering any portion of the Association Properties; (d) establishment of additional reservations by Declarant in the Association Properties; (e) amendment of this Declaration, the Articles or the Bylaws; (f) any merger or consolidation of the Association with any other entity; and (g) any exceptions to title to any Association Properties transferred to the Association by Declarant. Prior to any such proposed action, Declarant shall give written notice of the proposed action to the FHA and the VA, as applicable, and for sixty (60) days following the receipt of the notice, the FHA or the VA shall

have the power to prohibit the action by written notice to Declarant. If written notice of veto is not received by Declarant within the sixty (60) day period, then the approval shall be deemed given, and Declarant may proceed as if the approval was obtained with respect to the request contained in the notice. Any certificate of amendment or repeal shall state whether or not any such consent is required and, if required, state whether or not the consent has been obtained, and the statements in the certificate shall be binding and conclusive on all Persons.

Section 12.10. Interpretation.

(a) Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Subject Property. All provisions affecting any Condominium project in the Subject Property shall be controlled to the extent possible so as to be in conformance with the provisions of California law pertaining to Condominiums.

(b) Provisions Severable. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural, and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(d) Captions. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

Section 12.11. No Representations or Warranties.

No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Subject Property or any portion of the Subject Property, or any Improvement thereon, 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 Planned Development, 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, the City of San Diego, the VA, the FHA, FHLMC, FNMA, GNMA or any other government agency.

Section 12.12. Special Provision for Enforcement of Certain Bonded Obligations.

In the event that (1) the Improvements to be located on any Association Properties are not completed prior to the issuance of a Final Subdivision Public Report for the sale of Residences in the Subject Property, and (2) the Association is obligated under a bond or other arrangement ("Bond") required by the DRE to secure performance of the commitment of Declarant to complete the Improvements, the following provisions of this Section 12.12 shall apply with respect to the Association's

initiating action to enforce the obligations of Declarant and the surety under the Bond:

(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any 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 Improvement on the Association Properties, 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.

(b) A special meeting of the Association, 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 not less than five percent (5%) of the total voting power of the Association. The Bond shall be enforced against Declarant and/or the surety upon the affirmative vote of a majority of Members of the Association, excluding Declarant, at the special meeting called for the purpose set forth in this Subsection 12.12. A vote of Members representing 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 the decision by initiating and pursuing appropriate action in the name of the Association.

Section 12.13. Limitation of Liability.

Neither the Declarant, its agents or employees, nor Participating Builders, the Association, Delegates, the Board (and each member or officer thereof), nor any of them, shall be liable for any failure to provide any service or perform any

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duty, function or responsibility designated or provided in this Declaration or by the Bylaws, unless caused by his or its willful misconduct.

IN WITNESS WHEREOF, Declarant has executed this Declaration on the day and year first above written.

CARMEL MOUNTAIN RANCH,  
a California General Partnership

By: CARMEL MOUNTAIN PROPERTIES, a  
California corporation, partner

Michael D. Stewart, Vice President

Lee H. Koerner, Vice President

By: HOME CAPITAL CORPORATION, a  
California corporation, partner

Kent MacDiarmid, Project Manager

Michael B. McCook, Chief Executive Officer

By: HUMBOLT FINANCIAL SERVICE CORPORATION,  
A California corporation, partner

Kent MacDiarmid, Project Manager

Michael B. McCook, Chief Operating Officer