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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

CALIFORNIA AUTUMNWOOD
(Condominium Development)**

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SUBORDINATION AGREEMENT

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made as of February 21, 1996, by KAUFMAN AND BROAD OF SAN DIEGO, INC., a California corporation (hereinafter referred to as "Declarant"), with reference to the following

RECITALS:

A. Declarant is the owner of the real property located in the City of Santee, County of San Diego, California, as described on Exhibit "A" to this Declaration ("Real Property").

B. The Real Property is planned to be developed as a Common Interest Development which is a condominium project as defined in §1351(f) of the California CIVIL CODE and a planned development as defined in §1351(k) of the California CIVIL CODE.

C. Each condominium in the Real Property will consist of a separate interest in space described on the Condominium Plan as a Living Unit, an undivided fractional interest in the Common Area within the Increment (hereinafter defined), the exclusive right to use a portion of the Common Area within the Increment shown and described on the Condominium Plan (which covers that Increment) as an Exclusive Use Common Area, the right to use the Association Property (hereinafter defined) and an appurtenant membership in SANTEE AUTUMNWOOD HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Association") which will be the management body for the development.

D. The Living Unit portion of the development will consist of single family homes with four (4) floor plans (*e.g.*, Plan 1, Plan 2, Plan 3 and Plan 4) each of which also includes a garage. The Common Area will be improved with private drives, street lights, walkways, landscaping, tot lots, fencing, walls, drainage systems and public access easement which will be improved with a pedestrian and bike path.

E. The development includes the Association Property which will be owned and maintained by the Association for the use and enjoyment of the Owners of Condominiums within the development. The Association Property will be improved with private drainage systems, fencing, lighting, half court basketball court, swimming pool, spa, pool equipment building, restrooms, walkways and landscaping. The Association Property also includes a public access easement which will be improved with a pedestrian and bike path.

F. It is intended to develop the Real Property in two (2) increments ("Increment(s)") containing a total of one hundred and eight (108) Condominiums. "Increment 1" is intended to consist of fifty-five (55) Condominiums. "Increment 2" is intended to consist of fifty-three (53) Condominiums. It is intended to develop the Increments in seven (7) phases ("Phases") initially proposed to be as follows:

Increment No.	Phase No.	Number of Condominiums
1	1	19
1	2	12
1	3	17
2	4	20
2	5	15
2	6	18
1	7	7

There is no guarantee that both Increments or all Phases will be constructed or completed or that each Increment or Phase will be constructed in the sequential order set forth above. Declarant reserves the right to vary the phasing and the actual Phase shall be determined as defined in Section 1.26 of the this Declaration.

G. The development will be consistent with the overall development plan submitted to the United States Department of Veterans Affairs or Federal Housing Administration or the City of Santee, California.

Before selling or conveying any interests in the Real Property, Declarant wishes to subject the Real Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future owners of the Real Property.

NOW, THEREFORE, Declarant hereby declares that all of Increment 1 and Association Property and, upon annexation, Increment 2 shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are enforceable equitable servitudes as described in the California CIVIL CODE and which are for the purpose of protecting the value and desirability of, and which shall run with the Real Property and be binding on all parties having any right, title or interest therein, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

1.1 "Articles" — The Articles of Incorporation of the Association.

1.2 "Association" — SANTEE AUTUMNWOOD HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation.

1.3 "Association Property" — All real property and improvements to the real property owned by the Association for the common use and enjoyment of the Owners and includes:

Parcel "B" of that certain Certificate of Compliance recorded on October 11, 1995 as File No. 1995-0459684 filed in the Office of the County Recorder of San Diego County, California and described as "Parcel B" on Exhibit "A" to this Declaration.

- 1.4 **"Board"** — The Board of Directors of the Association.
- 1.5 **"Bylaws"** — The Bylaws of the Association.
- 1.6 **"City"** — The City of Santee, a municipal corporation.
- 1.7 **"Common Area"** — All portions of the Condominium Property not located within a Living Unit.
- 1.8 **"Common Expenses"** — The expenses of operating the Condominium Property and Association Property and reasonable reserves for such purposes.
- 1.9 **"Condominium"** — A fee simple estate in the Condominium Property as defined in the California CIVIL CODE consisting of a separate interest in space shown and described on the Condominium Plan as a Living Unit, the exclusive right to use any appurtenant Exclusive Use Common Area shown and described on the Condominium Plan, and an undivided fractional interest as tenant in common in the Common Area equal to the reciprocal of the number of Condominiums shown on a Condominium Plan for the applicable Increment in which the Condominium is located, and a non-exclusive easement to use the Association Property as set forth in the Declaration.
- 1.10 **"Condominium Plan"** — The Condominium Plan(s) recorded pursuant to the California CIVIL CODE covering the Condominium Property.
- 1.11 **"Condominium Property"** — Increment 1 and such additions as may be annexed thereto as provided in the Declaration.
- 1.12 **"Declarant"** — KAUFMAN AND BROAD OF SAN DIEGO, INC., a California corporation, its successors and assigns, if the rights of "Declarant" are assigned to them.
- 1.13 **"Declaration"** — This Declaration of Covenants, Conditions and Restrictions For California Autumnwood.
- 1.14 **"Eligible Insurer or Guarantor"** — An insurer or governmental guarantor of a first Mortgage who has requested notice from the Association regarding matters about which an insurer or guarantor is entitled to notice by reason of the Declaration or the Bylaws.
- 1.15 **"Eligible Mortgage Holder"** — A holder of a first Mortgage who has requested notice from the Association regarding matters about which a holder is entitled to notice by reason of the Declaration or the Bylaws.
- 1.16 **"Exclusive Use Common Area"** — Those portions of the Common Area to which an exclusive right to use is granted to an Owner, as shown and described on the Condominium Plan, and shall consist of Yards ("Yards") and Private Driveways ("Private Driveways") for selected Plan 1 Living Units.

1.17 "FHA" — The Federal Housing Administration.

1.18 "FNMA" — The Federal National Mortgage Association.

1.19 "Increment 1" — The real property located in the City of Santee, County of San Diego, California, described as:

Parcel "A" of that certain Certificate of Compliance recorded on October 11, 1995 as File No. 1995-0459684 filed in the Office of the County Recorder of San Diego County, California and described as "Parcel A" on Exhibit "A" to this Declaration.

1.20 "Increment 2" — The real property located in the City of Santee, County of San Diego, California, described as:

Parcel "C" of that certain Certificate of Compliance recorded on October 11, 1995 as File No. 1995-0459684 filed in the Office of the County Recorder of San Diego County, California and described as "Parcel C" on Exhibit "A" to this Declaration.

1.21 "Living Unit" or "Separate Interest" — A separate interest in space as defined in California CIVIL CODE §1351(f) and as shown and described as such on the Condominium Plan. Included within the boundaries of each Living Unit are the exterior surfaces of the perimeter walls, the exterior surfaces of the foundations and of the roof, windows and doors, and other portions of each building described as being within a Living Unit, together with any real property shown on the Condominium Plan as being outside the building but located within a Living Unit. Each Living Unit includes all the airspace so encompassed. The following are also a part of each Living Unit: bearing walls, columns, floors, roofs, foundations, overhanging protrusions, central heating and other services, pipes, including water and sewer pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located upon or within a Living Unit, except any pipes, wires and other utility installations which serve another Living Unit. In interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans therefor, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

1.22 "Member" — An Owner as defined in Section 1.25 of the Declaration.

1.23 "Mortgage" — A deed of trust as well as a mortgage encumbering a Condominium.

1.24 "Mortgagee" — A beneficiary under or holder of a deed of trust as well as a mortgagee.

1.25 "Owner" — The record owner, whether one (1) or more persons or entities, of fee simple title to a Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.26 "Phase" — That portion of the Project which is described as a separate phase of a Final Subdivision Public Report issued by the California Department of Real Estate.

1.27 "Project" — Increment 1 and Association Property, including all structures and improvements erected or to be erected as shown on the approved plans for the Development Review Permit DR 95-03 on file with the City Department of Development Services, and any such additional property annexed to the Declaration.

1.28 "VA" — The United States Department of Veterans Affairs.

ARTICLE II

PROPERTY RIGHTS IN ASSOCIATION PROPERTY

2.1 **Title to the Association Property.** Declarant will convey fee simple title to the Association Property, if any, in each Phase of the Project to the Association prior to the first close of escrow for the retail sale of a Condominium in that Phase to an Owner, other than to a Declarant, free and clear of all encumbrances and liens, except real property taxes which may be due but are not delinquent, and easements, covenants, conditions and reservations then of record, including those set forth on the Final Subdivision Map within which the Association Property is located and in the Declaration.

2.2 **Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of ingress, egress and of enjoyment in and to the Association Property which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the recreational facilities on the Association Property by an Owner for any period during which any assessment against his Condominium remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board which satisfies the minimum requirements of §7341 of the California CORPORATIONS CODE as set forth in the Bylaws.

(b) The right of the Association to dedicate or transfer its assets, including all or any part of the Association Property, to any public agency, authority or utility for such purposes and subject to such conditions as may be determined by the Board and with the consent of the City. Notwithstanding any contrary provisions in the Articles or Bylaws, so long as there is any Association Property for which the Association is obligated to provide management, maintenance, preservation or control, no dedication or transfer of all or substantially all of the assets of the Association shall be effective unless approved in accordance with the California CORPORATIONS CODE.

(c) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Association Property and to hypothecate any or all real or personal property owned by the Association.

(d) The right of access, ingress and egress over the Association Property and the right of installation and use of utilities on the Association Property for the benefit of the Condominiums.

(e) The right of the Board to grant maintenance, utility and access easements to others over the Association Property and to convey portions of the Association Property to

others in connection with a boundary adjustment requested by an adjacent property owner or public entity.

(f) The right of the Board to adopt rules and regulations relating to the use of the Association Property and the governance of the Project.

(g) Subject to the obligation to restore and repair any damage, Declarant and its sales agents, employees and independent contractors shall have:

(i) a non-exclusive easement over the Association Property for the purposes of access and making improvements and repairs to the Association Property or to the Common Area and Living Units, provided access is otherwise not reasonably available, constructing, marketing and maintaining all Phases of the Project, and inspecting and documenting the level of maintenance and the condition of the Association Property and improvements to the Association Property;

(ii) the right to the non-exclusive use of the Association Property for the purpose of maintaining signs, poles and flags reasonably necessary to market the Condominiums, for a period of not more than five (5) years after conveyance of the Association Property to the Association, or the retail sale of all Condominiums within the Project, whichever is first to occur. (The sale to a successive Declarant shall not be deemed a "retail" sale as such term is used in this Declaration.) The use of the Association Property by Declarant and its agents shall not unreasonably interfere with the use of the Association Property by the Class A Members of the Association.

(h) The right of the Board to grant access and use easements to owners of property adjacent to the Project over the basketball court which is planned to be a part of the Association Property subject to the Use Agreement referred to in Section 12.18 of this Declaration.

2.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment to the Association Property and facilities to the members of his family, his tenants or contract purchasers who reside in his Living Unit.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

3.1 Membership. Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Condominium. Each Owner is obligated to comply with the Declaration, Articles, Bylaws and rules and regulations adopted by the Board. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser of the Condominium.

3.2 Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Initially, Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for a

Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

Class B. Class B Member(s) shall be Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earliest of the following to occur:

(i) Two (2) years following the date of the first close of escrow for the retail sale of a Condominium by Declarant pursuant to the most recently issued original Final Subdivision Public Report issued by the California Department of Real Estate for a Phase of development of the Project; or

(ii) Four (4) years following the date of the first close of escrow for the retail sale of a Condominium by Declarant pursuant to the original Final Subdivision Public Report for Phase 1 of the development of the Project.

Anything contained herein to the contrary notwithstanding, no voting rights shall be attributable to a Condominium until that Condominium is subject to regular assessments by the Association.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

4.1 Creation of Lien and Personal Obligation for Assessments. Declarant, for each Condominium owned, covenants, and each Owner of a Condominium by acceptance of a deed for the Condominium, whether or not expressed in the deed, is deemed to covenant and agree to pay to the Association: (i) regular assessments, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Association Property and Common Area; and (ii) special assessments. Assessments shall be established and collected as provided in the Declaration. The regular and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall (except as otherwise provided in Section 4.4 below) be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each assessment is made. The lien shall become effective upon recordation of a notice of delinquency. Each assessment, together with interest, costs, late charges and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Condominium at the time the assessment is due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Project, for the improvement, maintenance and operation of the Association Property and Common Area for the common good of the Project, and to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Articles, Bylaws, Declaration and rules and regulations adopted by the Board. The regular assessment is the assessment determined annually by the Board for the next fiscal year to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The

Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in Section 4.4 of the Declaration. The Board shall provide notice by first-class mail to each Owner of any increase in the regular assessment or of any special assessment not fewer than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

4.3 Limitation on Regular and Special Assessments. The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in the Declaration and Bylaws; provided, however, except for assessment increases necessary for emergency situations:

- (a) The Board may not increase the regular assessments for any fiscal year unless the Board has complied with the provisions of California CIVIL CODE §1365.5 (preparation and distribution of the budget), and
- (b) The Board may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year,

without the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and §7613 of the California CORPORATIONS CODE at which a quorum was present or participated. For purposes of this Section 4.3, "quorum" means more than fifty percent (50%) of the Owners. An emergency situation is any one of the following:

- (1) An extraordinary expense required by an order of a court;
- (2) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety in the Project is discovered; or
- (3) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under CIVIL CODE §1365. However, prior to the imposition or collection of an assessment under this Subsection, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Members with the notice of assessment.

The term "regular assessment for the Association's preceding fiscal year" as used in this Section 4.3 is deemed to be the regular assessment which would have existed in the absence of any subsidy of assessments agreed to be paid by Declarant. Anything in this Section 4.3 to the contrary notwithstanding, the limitation on regular and special assessments shall comply with the laws of the State of California at the time the regular or special assessment is levied by the Association.

4.4 Individual Special Assessments. The Association may also impose a special assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his

Condominium into compliance with the provisions of the Declaration, the Articles, the Bylaws and the Association rules and regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of §7341 of the California CORPORATIONS CODE, as set forth in the Bylaws; provided, however, that except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the individual special assessment shall not constitute a lien on the Owner's Condominium.

4.5 Rate of Assessments. Both regular and special assessments (other than (i) special assessments imposed by reason of non-compliance with the Condominium documents; or (ii) special assessments to raise funds for the rebuilding or major repair of a portion of the structural Common Area) shall be levied upon each Condominium at a uniform rate, and may be collected on a monthly basis or otherwise as determined by the Board. A special assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his Condominium into compliance with the provisions of the Condominium documents shall be assessed only against that Member and his Condominium. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid in full. A late charge may be imposed by the Board subject to the limitations imposed by the California CIVIL CODE.

4.6 Date of Commencement of Regular Assessments; Due Dates. The regular assessments shall commence as to all Condominiums in a Phase of the Project on the first day of the month following the first close of escrow for the retail sale of a Condominium in that Phase to an Owner other than Declarant. The first regular assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the regular assessment against each Condominium at least thirty (30) days in advance of each regular assessment period. Written notice of the regular assessment shall be sent to every Owner subject to the assessment. The due dates for payment of assessments shall be established by the Board and may be billed monthly or on such other periodic basis as the Board may determine.

4.7 Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a notice of delinquency as to the Condominium, which notice shall state all amounts which have become delinquent with respect to the Condominium and the costs, including attorney's fees, late charges, penalties and interest which have accrued, the amount of any assessments relating to the Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, and the name of the record or reputed record Owner of the Condominium. The notice shall be signed by an officer of the Association.

Immediately upon recording of any notice of delinquency pursuant to this Section, the amounts delinquent, as set forth in the notice, together with the costs, attorney's fees, late charges, penalties and interest, shall (except as otherwise provided in Section 4.4 above) be a lien upon the Condominium described in the notice. The lien shall also secure all other payments and assessments, costs, attorney's fees, late charges, penalties and interest which shall become due and payable with respect to the Condominium following the recording of the notice of delinquency. When a notice of delinquency has been recorded, the assessment shall be a lien on the Condominium prior and superior to all other liens, except (i) taxes, bonds, assessments and other levies which, by law, are superior; and (ii) the lien or charge of any first Mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs, attorney's fees, late charges, penalties and interest, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of the lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to the California CIVIL CODE, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the Condominium. Suit to recover a money judgment for unpaid assessments, costs, interest, penalties, attorney's fees and late charges shall be maintainable without foreclosing or waiving the lien.

4.8 Subordination of the Lien to First Deeds of Trust and First Mortgages. The lien of the assessments, interest, costs, attorney's fees and late charges shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien as to payments which became due prior to the foreclosure. No foreclosure shall relieve the Condominium from lien rights for any assessments thereafter becoming due. When the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title as a result of foreclosure, the acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to the Condominium which became due prior to the acquisition of title to the Condominium by the acquirer. The unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Condominiums, including the acquirer, his successors and assigns.

4.9 Treatment of Monetary Penalty. A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Declaration, Bylaws or rules of the Association or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Association Property or Common Area for which the Member was allegedly responsible or in bringing the Member and his Condominium into compliance with the Declaration, Bylaws or rules of the Association, shall not be treated as an assessment which may become a lien against the Member's Condominium enforceable as provided in the California CIVIL CODE. This Section shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

4.10 Estoppel Certificate. The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

4.11 Personal Liability of Owner. No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Condominium owned by him from liens and charges by waiver of the use or enjoyment of any of the Association Property or the Common Area or by abandonment of his Condominium.

4.12 Taxation of Association. In the event that any taxes are assessed against the Association Property or the Common Area or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominium in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

4.13 Capitalization of Association. Upon acquisition of record title to a Condominium from Declarant, each Owner who acquires a Condominium from Declarant shall contribute to the capital of the Association an amount equal to two (2) months of the then regular assessment of the Association. The capital contribution shall be deposited by the buyer into the purchase and sale escrow and disbursed from the escrow to the Association. Amounts paid pursuant to this Section 4.13 shall not be considered as advance payments of assessments and are in addition to and not in lieu of regular and special assessments of the Association. No capital contributions made pursuant to this Section shall be used by Declarant to offset its obligations to the Association.

4.14 Schedule of Monetary Penalties. If the Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that were adopted and distributed to the Owners pursuant to this Section.

ARTICLE V

RESPONSIBILITIES OF MAINTENANCE

5.1 Owner Maintenance of Living Unit And Exclusive Use Common Area. Except as otherwise provided in Sections 5.3 and 5.6 below, each Owner of a Condominium shall be responsible for the maintenance and repair of:

(a) All portion of his Living Unit, including, but not limited to, the foundations, walls, doors, surfaces and structures thereof.

(b) All plumbing, electrical, heating, air conditioning and other utility systems serving his Living Unit and located anywhere on or in his Living Unit, Exclusive Use Common Area or Common Area, including, but not limited to: (i) rain gutters and downspouts and any part of the downspouts that are connected to the Living Unit and are located above ground level; and (ii) the light fixture located on the exterior of the garage portion of the Living Unit originally installed by Declarant for purposes of lighting the courtyards; provided, however, (A) utility installations which serve more than one Living Unit, including drainage systems; (B) water supply pipe(s) from the cut off valve in the Living Unit to the water meter located in the Common Area; and (C) sewer pipe(s) from the boundary of the Living Unit to the public sewer located in the Common Area, shall be maintained by the Association.

(c) The Yard which he has the exclusive right to use, and all improvements thereto, except portions maintained by the Association, including any perimeter fences or walls located

thereon or separating such areas from other portions of the Common Area or Association Property; provided, however, the cost of maintenance and repair of any fence or wall which separates Yards between Owners and adjacent real property owners shall be shared equally by the respective owners.

The Owners shall make such repairs and perform such maintenance as the Board deems necessary to preserve the attractive appearance and protect the value of the Condominium.

5.2 Owner's Grant of Easements. Each Owner grants easements to the Association and other Owners to enter into each Yard and to have utility companies enter into a Yard to repair the plumbing, storm drain system, heating and electrical systems located thereon, subject to the following limitations. Entry for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry for other than emergency repairs shall be made only after a three (3) day notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Subject to the limitations set forth in this Section 5.2, there is hereby granted a non-exclusive easement in favor of: (a) the Association, its officers, agents, employees and independent contractors, over the Yards to provide maintenance, repair and replacement of the perimeter fences on the Yards the maintenance of which is the responsibility of the Association; and (b) the Owners of Plan 1 Condominiums and their agents, employees and independent contractors, to provide access to maintain, repair and rebuild the exterior of the Plan 1 Living Units over a portion of the Yards (the boundaries of which are more specifically identified on the Condominium Plan as "Side Yard Maintenance Easements") which adjoin the Plan 1 Living Units.

5.3 Association Maintenance of Common Area. Except as otherwise provided in the Declaration, the Association acting through the Board and its officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area, including the improvements, front yards, street lights, tot lots, trees, shrubbery, private drives (including Private Driveways), landscaping, irrigation systems, vehicular parking spaces, perimeter fencing and walls (except as specified in Section 5.1(c)), drainage systems (including those within the Exclusive Use Common Areas), sewer pipes (from the boundaries of the Living Units to the public sewer), and water supply pipe(s) (from the cut-off valve within the Living Units to the water meters) all as more fully set forth in the Declaration, the Articles and Bylaws. The Association shall have the obligation to repaint fire hydrants located within the Common Area and shall also repair, replace and maintain the "reduced pressure backflow assemblies" located in the Common Areas and servicing water supply pipes and water meters for Living Units, including any inspections required by the Padre Dam Municipal Water District, if any. In the event any maintenance or repair results from the act or neglect of an Owner or his guests or licensees, the Owner shall reimburse the Association for such maintenance or repair.

The obligation of the Association to maintain the Common Area shall commence with respect to each Phase of the Project on the date of the first close of escrow for the retail sale of a Condominium by Declarant in that Phase. (The sale to a successive Declarant shall not be deemed a "retail" sale as such term is used in this Declaration.) Declarant shall, at Declarant's expense, maintain the Common Area in each Phase until the obligation of the Association to maintain the Common Area in that Phase commences. The Association shall be responsible for maintaining the public access easement located on the Common Area until the responsibility for maintenance of the easement has been accepted by the Town Center Landscape Maintenance District, a public assessment district ("District"). In the

event the District abandons its maintenance obligation of the public access easement, the Association shall be obligated to maintain such area.

5.4 Association Maintenance of Association Property. The Association shall maintain and provide for the maintenance of all the Association Property and all improvements, including pool, spa, restrooms, pool equipment building, basketball court, lights, perimeter fencing and walls, landscaping, irrigation systems, drainage systems, sewer pipes and water pipes, in good repair and appearance and in accordance with the approved plans on file with the City. The Association shall be responsible for maintaining the public access easement located on the Association Property until the responsibility for maintenance of the easement has been accepted by the District. In the event the District abandons its maintenance obligation of the public access easement, the Association shall be obligated to maintain such area. The Association shall also have the obligation to repaint fire hydrants located within the Association Property. The obligation of the Association to maintain the Association Property shall commence on the date the Association Property is conveyed of record to the Association.

5.5 Association Maintenance of Landscaping. Except as otherwise provided in the Declaration, landscaping and irrigation systems within the Association Property and Common Area the maintenance of which is the responsibility of the Association, shall be maintained by the Association in a good, neat and attractive appearance and in good working order and in accordance with the approved plans on file with the City; the trees, plants, grass and other vegetation originally placed in the Association Property and Common Area by Declarant shall be periodically replaced when necessary. There is hereby granted a non-exclusive easement in favor of the Association, its officers, agents, employees and independent contractors, to conduct inspections and to provide maintenance, repair and replacement of the landscaping and irrigation systems on the Common Area the maintenance of which is the responsibility of the Association. An easement or right over an area which otherwise would be Common Area or Association Property (landscaping along the center of the Real Property to be shown on the Landscape Maintenance Easement) may be conveyed to the District, in which event the area conveyed shall be maintained by the District. In the event the District abandons its maintenance obligation of the conveyed area, the Association shall be obligated to maintain such area. Under no circumstances shall any landscaping with related improvements maintained by the District be altered or removed without the prior consent of the City. Landscaping of Common Areas and Association Property shall be irrigated with only reclaimed water when available and as required by the City or Padre Dam Municipal Water District.

5.6 Association Maintenance of Drainage Systems. Except as otherwise provided in the Declaration, all drainage systems for the Project, including drains and piping within any Yard or Private Driveway shall be maintained by the Association in good working order; provided however, each Owner shall maintain the inlets to the drainage system free of debris. No Owner shall interfere with or modify any drainage systems except with the approval of the ARC pursuant to Article VI. There is hereby granted a non-exclusive easement in favor of the Association, its officers, agents, employees and independent contractors, to conduct inspections and to provide maintenance, repair and replacement of the drainage systems on the Common Area and Exclusive Use Common Area the maintenance of which is the responsibility of the Association.

5.7 Association Right of Entry. For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under the Declaration, the Association, its agents and employees shall have the right to enter any Yard or upon any portion of the Common Area the maintenance of which is the responsibility of the Association. Entry shall be made with as little inconvenience to the Owner as possible and any

damage caused by the Association shall be repaired by the Association. Entry into a Yard for other than emergency repairs shall be made only after not less than three (3) days' notice has been given to the Owner.

5.8 Association Right to Adopt Rules. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the rules from time to time relating to the use of the Association Property and Common Area the maintenance of which is the responsibility of the Association and the recreational and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to vehicle parking, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. The rules may provide that the Owner of a Condominium whose occupant leaves property on the Association Property or Common Area in violation of the rules may be assessed (on a non-lien basis) to cover the expense incurred by the Association in removing the property and storing or disposing of it, after appropriate notice and an opportunity for a hearing before the Board. The Board may suspend the voting rights and right to use the recreational facilities located on the Association Property and Common Area of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws and which satisfies the minimum requirements of §7341 of the California CORPORATIONS CODE.

5.9 Association Right to Grant Permits. The Board shall have the right to grant permits, licenses and easements over, under, upon and across the Association Property and Common Area the maintenance of which is the responsibility of the Association, for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project and Declarant and each other Owner hereby grants easements to the Association for such purposes.

ARTICLE VI

ARCHITECTURAL CONTROL

6.1 Architectural Control. No construction, development, alteration, grading, landscaping, excavation, modification, decoration, painting or reconstruction of the visible exterior of the Living Unit or Yard shall be commenced or maintained until the plans and specifications therefor showing the nature, design, kind, shape, height, width, color, materials and location have been submitted to and approved in writing by the Architectural Review Committee ("ARC"); provided, however, that construction of any auxiliary structures or additions which require a building permit, with the exception of spas, hot tubs and pools located in the Yards, is prohibited. No auxiliary structures or additions, including patio covers which require building permits, shall be permitted; if a building permit is not required, it may be constructed with the prior approval of the ARC provided they are consistent with the architecture of the Living Units. The Private Driveways shall not be modified or altered in any manner. In addition to ARC approval, any structural or other improvement to a Living Unit or Yard may require a building permit or other approval from the City. All construction shall be subject to the development standards of R-14 (Medium-High Density Residential Zone).

6.2 Architectural Review Committee. The ARC shall be comprised of not less than three (3) nor more than five (5) persons. All members of the ARC may be appointed and replaced by Declarant until one (1) year following issuance by the California Department of Real Estate of the original Final

Subdivision Public Report for Phase 1 of Increment 1. Thereafter, a majority of the members of the ARC may be appointed and replaced by Declarant and a minority of the members of the ARC may be appointed or replaced by the Board until ninety percent (90%) of the Condominiums in Increments 1 and 2 have been conveyed of record to retail purchasers or until five (5) years following issuance by the California Department of Real Estate of the original Final Subdivision Public Report for Phase 1 of Increment 1, whichever shall first occur. Thereafter, all members of the ARC may be appointed or replaced by the Board. ARC members appointed by Declarant need not be Members of the Association. ARC members appointed by the Board shall be Members of the Association. Persons submitting proposals or plans and specifications to the ARC (each person is referred to as the "Applicant") must furnish the ARC with the address to which communications from the ARC to the Applicant are to be directed.

6.3 ARC Approval. The ARC shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alteration, addition or other construction activity contemplated thereby in the locations indicated will not be detrimental to the appearance of the Project and surrounding real property as a whole, and that the appearance of any structure or other improvement will be in harmony with the surrounding structures and improvements.

6.4 Approved Conditions. The ARC may condition its approval of proposals or plans and specifications on such changes thereto as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ARC may adopt, amend or supplement the architectural rules (i) concerning design and materials standards, rules and guidelines for construction activities, (ii) setting forth procedures for the submission of plans for approval, (iii) requiring a reasonable fee ("Review Fee") payable to the ARC for any costs involved to accompany each application for approval, and (iv) specifying additional factors which it will take into consideration in reviewing submissions. The ARC 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 plantings, exterior materials and colors. Until receipt by the ARC of all plans, specifications or other materials deemed necessary by the ARC, the ARC may postpone review of any plans submitted for approval.

6.5 Notification. Decisions of the ARC and the reasons for decisions shall be transmitted by the ARC to the Applicant at the address set forth in the application for approval within thirty (30) days after receipt by the ARC of all materials required by the ARC. If the ARC fails to approve the application within thirty (30) days, the Applicant may submit another request by certified mail, which states that if the ARC fails to approve or request additional information within fifteen (15) days after receipt by ARC of all materials, the resubmitted application pursuant to this Article VI shall be deemed approved.

6.6 Waiver. The approval of the ARC to 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 ARC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.7 No Liability. Neither the ARC, nor any members of the ARC, nor their duly authorized representatives, shall be liable to any Applicant or Owner for any loss, damage or injury arising out of or in any way connected with the performance of the ARC's duties, unless due to the willful misconduct of the ARC.

6.8 Design Criteria. The ARC shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration, addition or other construction activity on the basis of satisfaction of the ARC with the grading plan, location of the improvements on the Living Unit or Yard, the finished ground elevation, the color scheme, finish, design, proportions, architecture, shape, height, style, appropriateness of proposed improvements, affect on adjoining Living Units or Yards, the materials to be used, the kinds, pitch or type of roof proposed, the planting, landscaping, size, height or location of vegetation on a Yard and on the basis of aesthetic considerations and the overall benefit or detriment to the Project and surrounding real property generally which would result from such improvement, alteration, addition or other construction activity. Although the ARC shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color, schemes, exterior finishes and materials, and similar features, it shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of any plan or design from the standpoint of adequacy of drainage, structural safety or conformance with building or other codes. The ARC approval of any particular construction activity shall expire and the plans and specifications therefor shall be resubmitted for ARC approval if substantial work pursuant to the approved plans and specifications is not commenced within six (6) months after the ARC's approval of such construction activity. All construction activities shall be performed as promptly and as diligently as possible and shall be completed within such reasonable period of time specified by the ARC.

6.9 Variances. The ARC may authorize variances from compliance with any of the architectural provisions of this Article VI, including, without limitation, restrictions on 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. Such variances must be in writing, and must be signed and acknowledged by at least a majority of the members of the ARC. The granting of a variance shall not operate to waive any of the terms and provisions of this Article VI for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all laws and regulations of any governmental authority affecting the use of his Condominium including, but not limited to, zoning and building requirements of the City or any other governmental agency or entity having jurisdiction over the Condominium.

6.10 Rules. The architectural rules of the ARC may provide for the pre-approval of certain specified types or categories of construction activities, provided that such pre-approved construction activities are implemented by the affected Owner in conformance with the standards for design, materials and other criteria established in the architectural rules for such pre-approved construction activities and are in compliance with all applicable zoning laws of the City. The ARC may from time to time adopt, supplement or amend architectural rules to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved construction activities. Owners shall be obligated to obtain all necessary permits required by the City.

6.11 Enforcement. Any construction, development, alteration, grading, landscaping, addition, excavation, modification, decoration, painting, or reconstruction of the visible exterior of the Living Unit or Yard made in violation of this Declaration or the Rules shall be deemed to be non-conforming. Upon written request from the Board or the Declarant, Owners shall, at their own cost and expense, remove such non-conforming improvement and restore the property to substantially the same condition as existed prior to the non-conforming work. Should an Owner fail to remove and restore as required, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially comply with approved plans or the same condition as previously existed.

All costs, together with the interest at the maximum rate then allowed by law, may be assessed against such Owner's Condominium and collected as an Individual Special Assessment.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration and the Rules may be excluded by the Board from the Project, subject to the notice and hearing procedures contained in the Bylaws. In such event, neither the Association, its officers, or directors shall be held liable to any person for exercising the rights granted by this Section 6.11, and the Owner shall hold them harmless from any such liability.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration and the Rules and the decisions of the ARC.

6.12 Declarant Exemption. The ARC shall have no authority, power or jurisdiction over Condominiums owned by Declarant, and the provisions of this Article shall not apply to Condominiums owned by Declarant until such time as Declarant conveys title to the Condominium to a purchaser. Any improvements made by Declarant shall be exempt from this Article VI.

ARTICLE VII

SEPARATION OF INTEREST AND PROHIBITION OF PARTITION

7.1 Separation of Interest. No Owner may sell, assign, lease or convey (i) his interest in the Common Area separate and apart from his Living Unit; nor (ii) his interest in any Exclusive Use Common Area separate and apart from his interest in the Common Area and Living Unit.

7.2 Prohibition of Partition. Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant in common, is hereby prohibited from partitioning or in any way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that: (i) more than three (3) years before the filing of the action, the Project was damaged or destroyed so that a material part thereof was unfit for its use and the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or (ii) that three-fourths (3/4) or more of the Project has been destroyed or substantially damaged, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project; or (iii) that the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project; provided, however, that if any Condominium shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition as between such co-tenants and no Condominium may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first Mortgage on that Condominium.

7.3 Power of Attorney. The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners when the partition of the Owners' interests in the Condominium Property may be had pursuant to Section 7.2 above. The power of attorney may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any two (2) Members of the Board who are authorized to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence in favor of any person relying thereon in good faith; provided,

however, that the power of attorney shall not apply to the Secretary of the VA, an officer of the United States of America.

ARTICLE VIII

RIGHT OF MORTGAGEES

8.1 Actions Requiring Mortgagee Approval. Except as provided by statute in case of condemnation or substantial loss to the Living Unit or Common Area, unless the Mortgagees of first Mortgages encumbering at least sixty-seven percent (67%) of the Condominiums which are encumbered by a Mortgage or Owners representing sixty-seven percent (67%) of the voting power of Members of the Association (excluding the vote of Declarant) have given their prior written approval, the Association may not:

- (a) Seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plan(s) or the Declaration, or change, waive or abandon any scheme of regulation or enforcement thereof pertaining to the architectural design or the exterior appearance or maintenance of Living Units, Association Property or the Common Area;
- (b) Change the *pro rata* interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the *pro rata* share of the Common Area appurtenant to each Living Unit;
- (c) Partition or subdivide any Condominium;
- (d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Association Property or Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Association Property or Common Area shall not be deemed a transfer within the meaning of this provision;
- (e) Use hazard insurance proceeds for losses to any portion of the Condominium Property or Association Property for other than the repair, replacement or reconstruction of the Condominium Property or Association Property;
- (f) Fail to maintain fire and extended coverage insurance on the Common Area and improvements thereto and the Association Property and improvements thereto on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.

Anything contained herein to the contrary notwithstanding, no termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project shall be permitted without the approval of Eligible Mortgage Holders holding Mortgages encumbering sixty-seven percent (67%) of the Condominiums which are subject to Eligible Mortgage Holder's Mortgages.

8.2 Notification to Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in the Bylaws or in the Declaration.

8.3 Quality of Construction. Solely for the benefit of FNMA, Declarant covenants that future improvements constructed as part of the Project will be generally consistent with the initial improvements, as to both structure type and quality of construction.

ARTICLE IX

DESTRUCTION OF COMMON AREA, ASSOCIATION PROPERTY OR LIVING UNITS

9.1 Casualty Destruction of Common Area. If any portion of the Common Area or Association Property the maintenance of which is the responsibility of the Association is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of the available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall contract to repair or rebuild the damaged portions of the Common Area or Association Property substantially in accordance with the original plans and specifications as approved by the City.

(b) If the cost of repairing or rebuilding the Common Area exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area agree to the repair or restoration of the Common Area, then the Board shall contract as provided in Subsection (a) above.

(c) If the cost of repairing or rebuilding the Association Property exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners agree to the repair or restoration of the Association Property, then the Board shall contract as provided in Subsection (a) above.

(d) If the Owners do not agree to the repair or rebuilding of the Common Area as provided in Subsection (b) above, then each Owner (and his Mortgagee(s) as their respective interests then appear) shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his Condominium as compared to the aggregate decrease in the fair market values of all the Condominiums caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a member of the American Institute of Real Estate Appraisers selected by the Board and hired by and at the expense of the Association. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration. This Subsection (d) does not apply to the Association Property. Should the Owners not agree to the repair or rebuilding of the Association Property as provided in Subsection (c) above, then the Association shall use the insurance proceeds (or not use the insurance proceeds) as the Board deems appropriate.

(e) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium pursuant to Section 4.5 of this Declaration, for purposes of raising funds for the rebuilding or major repair of a portion of the structural Common Area, to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

9.2 Taking of Common Area. If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award is not apportioned among the Owners (and their Mortgagees as their respective interests then appear) by court judgment or by agreement between the condemning authority and each of the affecting Owners, then the Owners of the Common Area (and their Mortgagees as their respective interests then appear) shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds will be distributed pursuant to Subsection 9.1(d) above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in Section 9.1 for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in Section 9.1 for determining whether to rebuild or repair following damage or destruction.

9.3 Casualty Destruction of Living Unit. In the event of damage or destruction to any Living Unit, the Owner shall reconstruct the same as soon as reasonably practicable and substantially in accordance with the original plans and specifications approved by the City; provided, however, that the Owner may, with the written consent of the ARC, reconstruct or repair the Living Unit pursuant to new or changed plans and specifications approved by the City. In the event the ARC fails to approve or disapprove the changed plans and specifications within forty-five days of the receipt thereof, they shall be deemed to have been approved.

9.4 Taking of Living Unit. In the event of any taking of a Living Unit, the Owner (and his Mortgagees as their interests may then appear) of the Living Unit shall be entitled to receive the award for such taking and after acceptance thereof he (and his Mortgagee) shall be divested of any further interests in the Condominium Property if such Owner shall vacate his Living Unit as the result of such taking. In such event, the Owner shall grant his remaining interests in the Common Area appurtenant to the Living Unit so taken, to the other Owners owning a fractional interest in the same Common

Area, the grant to be in proportion to the fractional interest in the Common Area then owned by each other Owner.

9.5 Taking of Association Property. In the event the Association Property or any portion thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

9.6 Association's Insurance. The Association shall obtain and continue in effect the following insurance:

(a) A master policy of hazard insurance with extended coverage and special form endorsements covering all of the Association Property and Common Area the maintenance of which is the responsibility of the Association. The form and content of the policy must be satisfactory to all institutional first Mortgagees and shall meet the maximum standards of the various institutional first Mortgagees whose loan(s) encumber any of the Condominiums.

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, Declarant and the Owners against liability incident to ownership or use of the Association Property and Common Area. The limits of such insurance shall not be less than the amount specified in California CIVIL CODE §1365.9 covering all claims for death, personal injury and property damage arising out of a single occurrence.

(c) A public liability and property damage insurance policy with coverage for individual liability of officers and directors of the Association for negligent acts or omissions of those persons acting in their capacity as officers and directors.

(d) If requested by Members of the Association who have at least ten percent (10%) of the Association's voting power or any first Mortgagee or any insurer or governmental guarantor of any first Mortgage, a fidelity bond covering members of the Board, officers and employees of the Association, and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to the amount of funds held by the Association during the term of the bond but not less than one-fourth of the estimated annual operating expenses of the Association, including reserves. A fidelity bond shall be obtained if any first Mortgage is acquired by the FNMA or is guaranteed by the VA.

(e) Workers' compensation insurance covering the employees, if any, of the Association.

(f) A policy covering all loss to personalty owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for personalty owned by the Association shall be payable to the Association.

The Association may maintain such additional insurance or additional amount of insurance as it deems appropriate. Insurance premiums for the insurance policies set forth above shall be a Common

Expense to be included in the regular assessments levied by the Association. All insurance policies shall (i) provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association; and (ii) contain a waiver of subrogation by the insurer(s) against the Association, Board and Owners. Copies of all insurance policies (or certificates showing the premiums to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s).

Anything contained herein to the contrary notwithstanding:

(A) The Association shall maintain such insurance coverage as may be required by FNMA so long as FNMA holds a Mortgage on or owns any Condominium; and

(B) Section 1365.7 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Association who reside in a Living Unit, provided that certain requirements, as set forth in the CODE section, are satisfied. The requirements include that general liability insurance be carried by the Association in specified amounts. The Association shall maintain general liability insurance in amounts which satisfy the requirements of the CODE to limit the liability of volunteer officers and directors of the Association.

9.7 Owners' Insurance. Each Owner shall separately insure his Living Unit and Yard against loss by fire or other casualty. Each Owner shall be responsible to pay the premiums for insurance covering his Living Unit and Yard and any deductible amount for any loss to his Living Unit and Yard. No Owner shall insure his Living Unit and Yard in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision he shall be responsible to the Association for any such diminution.

ARTICLE X

USE OF LIVING UNITS AND COMMON AREA AS DESCRIBED IN CONDOMINIUM PLAN

10.1 Residential Purposes. Each Living Unit shall be improved in accordance with plans approved by the City and shall be used and occupied for private, single-family dwelling purposes only, and no portion of a Living Unit, Association Property nor the Common Area shall be used for any commercial purpose; provided, however, Declarant may, subject to the approval of the City, use any of the Living Units and Exclusive Use Common Areas owned or leased by Declarant as model homes, design centers, construction offices and sales offices during the period of time commencing when the Condominiums are first offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate owners or five (5) years after the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the first Phase of the Project, whichever first occurs. The provisions of this Section shall not preclude an Owner from maintaining a home-office and conducting business activities therefrom pursuant to the following conditions: (a) there is not external evidence of such activity; (b) such activities are conducted in conformance with the Home Occupation Standards of the City's MUNICIPAL CODE; (c) the Owner obtains a business license and operates in compliance with the license; (d) the patrons or clientele of such activities do not visit the Living Unit or park automobiles or other vehicles within the Project; (e) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from

outside of the boundaries of the Living Unit; and (f) such activities are consistent with the residential character of the Project and conform with the provisions of this Declaration.

10.2 Lease of Condominium. Each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and that the failure to comply with the provisions of these documents shall be a default under the lease. No lease shall relieve the Owner from the obligation to pay assessments in accordance with this Declaration.

10.3 No Use Causing Loss of Insurance. No Living Unit, Exclusive Use Common Area or improvements situated therein shall be occupied or used for any purpose or in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

10.4 Pets. Not exceeding two (2) usual and ordinary household pets (exclusive of caged birds or aquarium fish) may be kept in any Living Unit or Exclusive Use Common Area without the prior written consent of the Board and subject to the City Zoning Ordinance. Pets shall not be allowed on other portions of the Association Property or Common Area except as may be permitted by rules made by the Board. Except as provided hereinabove, no animals, livestock, birds or poultry shall be brought within the Condominium Property or kept in any Living Unit or on any portion of the Association Property or Common Area. No pet shall be permitted to be kept within any portion of the Condominium Property if it makes excessive noise or otherwise constitutes an unreasonable annoyance to other Owners.

10.5 Nuisance. No Living Unit or Exclusive Use Common Area shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Living Unit, Association Property nor on the Common Area.

10.6 Sign Control. No sign, poster, billboard, balloon or other display or advertising device of any kind shall be displayed on, over or from any portion of the Project, except (i) entry monuments and similar community identification signs, (ii) one sign which may be displayed for each Condominium advertising the Condominium for sale or lease; provided that such for sale or lease sign shall be freestanding and not more than three (3) feet from the exterior of the Living Unit and not be larger than 18" by 30" in size, (iii) one sign which may be displayed for each Condominium providing notification that the Living Unit is serviced by a security system; provided that the sign shall be freestanding not more than three (3) feet from the exterior of the Living Unit, the top of the sign shall not be higher than three (3) feet above the ground and shall not be larger than 12" by 12" in size. All signs shall conform to the City Sign Ordinances. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain during the sales period set forth in Section 10.1 above, such signs, poles, flags and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

10.7 Outside Antennae. There shall be no outside television or radio antennae, satellite dishes, masts, poles or flag poles constructed, installed or maintained on the Condominium Property for any purpose whatsoever; provided, however, a video or television antennae, including a satellite dish that has a diametric or diagonal measurement of thirty-six inches (36") or less, or the attachment of such device to a structure where it is not visible from any portion of the Common Area shall be permitted with the approval of the ARC whose approval shall be consistent with California CIVIL CODE §1376.

10.8 Owner Not to Alter Common Area. Except as otherwise specifically provided in this Declaration, no Owner shall paint, decorate, remodel, landscape or adorn any part or parcel of the Common Area without the written consent of the Board.

10.9 No Offensive Activity. No noxious or offensive activity shall be carried on in any Living Unit, on the Association Property or on the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements made at the Board's instruction or at Declarant's instruction. Nothing shall be done in any Living Unit or in, on or to the Common Area or Association Property which will impair the structural integrity of any building, or which would structurally change any building. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Association Property or Common Area the maintenance of which is the responsibility of the Association, except upon the written consent of the Board or an architectural committee appointed by the Board. No fences, hedges or walls shall be erected or maintained upon the Condominium Property except as are installed in accordance with the initial construction of the buildings located on the Condominium Property or as allowed by the Board. No exterior clotheslines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Association Property or Common Area, except in areas which may be approved by the Board.

10.10 Garbage and Refuse Disposal. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Living Units, streets and Common Area. All rubbish, trash and garbage shall be regularly removed from the Project and not allowed to accumulate therein. Trash, garbage and other waste shall be kept in sanitary containers, which shall be kept in garages or other portions of Living Units or Yards, concealed from view of those outside the Living Unit except when placed outside in designated areas on the designated garbage pick-up day; the containers shall be exposed to the view of neighboring Living Units only when set out for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Living Units, private drives, Association Property and Common Area.

10.11 Power Equipment. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted on the Condominium Property, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

10.12 Use of Common Area. Except as otherwise provided in the Declaration, the Common Area shall be improved and used only for the following purposes:

- (a) Affording vehicular passage and pedestrian movement, including access to the Living Units.
- (b) Recreational use by the Owners and occupants of Living Units and their guests, subject to rules established by the Board.
- (c) Beautification of the Common Area and providing privacy to the residents of the Condominium Property through landscaping and such other means as the Board shall deem appropriate.

(d) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board. No parking shall be permitted in any areas marked as fire lanes. Each parking space shall be permanently maintained as a parking space and shall not be converted to any other use. Each Owner shall park his vehicle in the garage portion of his Living Unit. No charge shall be made for the use of parking spaces. An Owner of a Condominium with a Private Driveway shall be permitted to park one vehicle on his Private Driveway in a manner which does not impede access to or from the garages of other Living Units. The motor vehicle parking provisions in the Declaration and rules and regulations adopted by the Board may be enforced by the Board which shall have the right and power to remove vehicles from the Project at the cost of the vehicle owner and to levy monetary penalties as provided in the Declaration. No pickup truck with a gross vehicle weight in excess of 10,000 pounds, tractor, truck cab, bus, dune buggy, boat, trailer, recreational vehicle, mobile home, motor home or camper detached from a vehicle shall be parked or stored in the Common Area except temporarily for purposes of loading and unloading.

(e) As Exclusive Use Common Areas to be used in the manner hereinafter described. Nothing herein shall be deemed to allow persons other than the Owner of a Living Unit to which an Exclusive Use Common Area is appurtenant (or his tenants, guests and lessees) to enjoy the use of the area.

(f) By Declarant, as sales offices, marketing activities, vehicular parking, construction access, ingress and egress and for display to prospective purchasers of Condominiums for the period described in Section 10.1 above and for the completion of construction of the Project.

(g) For such other purposes as the Board may authorize consistent with the Declaration or as provided in the Declaration. The Board shall have the right to grant permits, licenses and easements to others to use the Common Area the maintenance of which is the responsibility of the Association (other than those portions which are Exclusive Use Common Areas) for purposes the Board determines to be in the best interest of the Owners.

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof. Declarant reserves the right and easement to enter onto the Common Area for purposes of inspecting and documenting the level of maintenance and physical condition of the Common Area. The term "Common Area" as used in this Section shall mean the portion of the Common Area the maintenance of which is the responsibility of the Association.

10.13 Additional Use. The Board shall have the right to allow one or more Owners exclusively to use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Exclusive Use Common Area(s) or Living Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or

enjoyment of the Project. Each Owner shall also have the right to use those portions of the Common Area in which Declarant has installed heating, air conditioning, solar panel equipment or gas and water meters for purposes of serving that Owner's Living Unit as part of the initial construction of the Project, or which is thereafter installed by the Owner; provided, however, that no installation shall be made by an Owner without the prior written approval of the ARC. All heating, air conditioning and solar panel equipment shall be maintained and repaired by the Owner of the Living Unit being served.

10.14 Owners Liable for Damage. Each Owner shall be legally liable to the Association for all damages to the Association Property and Common Area, including, but not limited to, the Condominiums, recreation facilities and landscaping caused by such Owner, his licensee(s) or any occupant of such Owner's Living Unit as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of his Living Unit, and shall, after written notice and an opportunity for a hearing, pay the fines and penalties assessed pursuant to the Declaration, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Living Unit.

10.15 Living Units; Garages. Each Owner shall have the right, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish his Living Unit, including: (a) the exterior surfaces of the perimeter walls; (b) exterior surfaces of the foundations and of the roof, windows and doors; (c) interior surfaces of the ceilings, floors, window frames, door frames, trim of the Living Unit; (d) the surfaces of the bearing walls and partitions located within the Living Unit; and (f) other portions of each building described as being within a Living Unit. Each Owner shall keep in good repair all items mentioned in this Section 10.15. No foil or other reflective materials and no bed sheets, newspapers or other non-standard materials shall be used for any window coverings visible from outside of the Living Unit. Each Owner shall keep his Living Unit in good repair.

10.16 Exclusive Use Common Areas Appurtenant. Each Exclusive Use Common Area shall be (i) appurtenant to the Living Unit with which the Exclusive Use Common Area is conveyed; and (ii) used only for the purposes set forth in the Declaration. The right to so use an Exclusive Use Common Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's tenants and licensee(s). Conveyance of a Condominium shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer of all rights thereto to the vested Owner of the Condominium. Any license(s) thereto shall be terminated upon such conveyance. No Exclusive Use Common Area or any rights thereto (other than said revokable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which they are appurtenant. Each Exclusive Use Common Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Article X or Article V.

10.17 Use of Exclusive Use Common Areas.

(a) ***Yards.*** The horizontal dimensions of each Yard shall be as actually built by Declarant, and shall be bounded by the perimeter fences and building structures as constructed by Declarant. In the event of a dispute as to the location of the perimeter boundaries of a Yard, the Board shall have the power and authority to resolve the dispute. The general location of each Yard is shown on the Condominium Plan.

In view of the importance of maintaining the operation of the drainage systems as originally designed and installed, no Owner shall modify, impede or interrupt any drainage without the prior approval of the ARC in accordance with Article VI.

Except as provided in the Declaration, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter an Exclusive Use Common Area or any other part of the Common Area or Association Property without the prior written consent of the Board.

(b) **Private Driveways.** The horizontal dimensions of each Private Driveway shall be as actually built by Declarant. In the event of a dispute as to the location of the perimeter boundaries of the Private Driveway, the Board shall have the power and authority to resolve the dispute. The general location of each Private Driveway is shown on the Condominium Plan. The Private Driveway shall be exclusive only for parking one motor vehicle, provided it is parked within the boundaries of the Private Driveway and the Owner shall first park his motor vehicles in the garage portion of the Living Unit to the capacity of the garage. Unless a motor vehicle is parked on the Private Driveway, access over the Private Driveway shall be the same as any other private driveway within the Project.

10.18 Courtyard Lighting. The light fixtures originally installed by Declarant on the exterior of the garage portion of the Living Units for purposes of lighting the courtyards shall not be removed or modified; provided, however, the Owners shall maintain, repair or replace, if necessary, their light fixtures in accordance with Section 5.1 of this Declaration.

10.19 Garages. Each Owner shall park his motor vehicles in the garage portion of his Living Unit which shall be maintained and kept available for the parking of two (2) vehicles at all times.

ARTICLE XI

DEVELOPMENT BY PHASES

11.1 Planned Development. Declarant shall have the right to construct Condominiums and to complete in Increments 1 and 2 and in Phases as set forth in Recital F to this Declaration. Declarant intends, but is not obligated, to complete the Project or to complete Increments 1 and 2 and the Phases. Members' voting rights and assessment obligations and Association maintenance obligations shall commence on a Phase by Phase basis commencing as to each Phase on the first day of the month following the first close of escrow for the sale by Declarant of a Condominium in that Phase.

11.2 Reservation of Rights to Complete Project. Until the first close of escrow for the sale by Declarant of a Condominium in a Phase of the Project, Declarant shall have the exclusive right to possession of that portion of the Project within that Phase for purposes of completing the construction of the Condominiums and other Common Area or Association Property in that Phase; provided, however, that each Owner shall have the right of vehicular and pedestrian access, ingress and egress across a Phase if necessary for access to the Owner's Living Unit. Declarant shall also have a non-exclusive right of access, ingress and egress across the Project as may be reasonably necessary or convenient for purposes of completing the construction and sale of the Real Property. Commencing on the first day of the month following the first close of escrow for the sale of a Condominium, Declarant shall, during construction of Condominiums in future Phases, carry public liability insurance which covers the Association and Owners for liability for personal injury and property damage arising out of or in connection with Declarant's construction of future Phases.

11.3 Failure to Complete Project.

(a) *Failure to Complete Increment 1.* In the event all Phases of Increment 1 are not constructed as originally intended by Declarant, Declarant may convey by quitclaim deed equally to the then Owners of Condominiums in Increment 1 or to the Association the undivided fractional interest in the Common Area within Increment 1 then owned by Declarant which is attributable to the uncompleted portion of Increment 1, and an undivided fractional interest in the Living Units within Increment 1 which have not then been constructed (collectively the "Undeveloped Phase(s) of Increment 1"). Upon the conveyance of the Undeveloped Phases of Increment 1, the Living Units which have not then been constructed shall thereafter be deemed to be Common Area if conveyed to the Owners or deemed to be Association Property if conveyed to the Association, and the Condominium Plan may be amended by Declarant in accordance with Section 11.5 of this Declaration. Within sixty (60) days following the conveyances set forth in this Section 11.3(a), Declarant shall at Declarant's expense clean-up and landscape with grass or other ground-cover all Undeveloped Phases of Increment 1.

(b) *Failure to Complete Increment 2.* In the event all Phases of Increment 2 are not constructed as originally intended by Declarant, Declarant may convey by quitclaim deed equally to the then Owners of Condominiums in Increment 2 or to the Association the undivided fractional interest in the Common Area within Increment 2 then owned by Declarant which is attributable to the uncompleted portion of Increment 2, and an undivided fractional interest in the Living Units within Increment 2 which have not then been constructed (collectively the "Undeveloped Phase(s) of Increment 2"). Upon the conveyance of the Undeveloped Phases of Increment 2, the Living Units which have not then been constructed shall thereafter be deemed to be Common Area if conveyed to the Owners or deemed to be Association Property if conveyed to the Association, and the Condominium Plan may be amended by Declarant in accordance with Section 11.5 of this Declaration. Within sixty (60) days following the conveyances set forth in this Section 11.3(b), Declarant shall at Declarant's expense clean-up and landscape with grass or other ground-cover all Undeveloped Phases of Increment 2.

11.4 Right of Declarant to Redesign Project. Declarant reserves the right in its sole discretion, but subject to any necessary City approvals, to redesign any portion of the Project other than Living Units and Exclusive Use Common Area which have been conveyed by Declarant to others. The redesign may alter the boundaries of any improvement, adjust the location of the Common Area, Living Units and Exclusive Use Common Areas, and change the elevation and appearance of improvements. However, in no event shall the redesign result in more than one hundred and eight (108) Living Units being constructed within Increments 1 and 2.

11.5 Amendment to Condominium Plan.

(a) If a redesign of all or any portion of the Project in accordance with the provisions of this Article affects any portion of the Project in a manner which requires an amendment of the Condominium Plan, including, without limitation, an amendment necessary to cause the Condominium Plan to comply with the improvements as actually built, Declarant shall prepare, execute, acknowledge and record an amendment to the Condominium Plan. An amendment of the Condominium Plan by Declarant pursuant to this Section shall, when recorded, have the effect of (a) relocating the Common Area and any Exclusive Use Common Area therein and each Living Unit to the extent set forth in the amendment; (b) vesting in each Owner (including Declarant with respect to unsold Condominiums) an undivided interest (to the extent

of each Owner's pro rata interest in the Common Area) in the Common Area as depicted in the amendment; (c) divesting each Owner (except Declarant) of all right, title and interest to any Condominium, other than such Owner's Condominium, depicted in the amendment; (d) vesting in each Mortgagee an undivided interest (to the extent of the interest in the Common Area of the Owner of the Condominium which is the subject of such Mortgage) in the Common Area as depicted in the amendment; and (e) divesting each Mortgagee of all right, title and interest to each Condominium (other than the Owner's Condominium which is the subject of such Mortgage or other encumbrance) depicted in the amendment. The adjustment of any Mortgage in accordance with the provisions of this Section shall not affect the priority of any Mortgage with respect to any other matters affecting title to the Condominium which is the subject of the Mortgage.

(b) In the event Declarant conveys the Undeveloped Phase(s) of Increment 1 or Undeveloped Phase(s) of Increment 2 to the Owners in accordance with Section 11.3 of this Declaration, Declarant shall prepare, execute, acknowledge and record an amendment to the Condominium Plan. An amendment of the Condominium Plan by Declarant pursuant to this subsection (b) shall, when recorded, have the effect of (i) eliminating the Living Units and Exclusive Use Common Areas within the Undeveloped Phase(s) of Increment 1 or Undeveloped Phase(s) of Increment 2 to the extent set forth in the amendment; (ii) vesting in each Owner (including Declarant with respect to unsold Condominiums) an undivided interest (to the extent of each Owner's *pro rata* interest in the Common Area) in the Common Area as depicted in the amendment; (iii) divesting Declarant of all right, title and interest to any Condominium within the Undeveloped Phase(s) of Increment 1 or Undeveloped Phase(s) of Increment 2 as depicted in the amendment; and (iv) vesting in each Mortgagee an undivided interest (to the extent of the interest in the Common Area of the Owner of the Condominium which is the subject of such Mortgage) in the Common Area as depicted in the amendment. The adjustment of any Mortgage in accordance with the provisions of this Section shall not affect the priority of any Mortgage with respect to any other matters affecting title to the Condominium which is the subject of the Mortgage.

(c) In the event Declarant conveys the Undeveloped Phase(s) of Increment 1 or Undeveloped Phase(s) of Increment 2 to the Association as Association Property in accordance with Section 11.3 of this Declaration, Declarant shall prepare, execute, acknowledge and record an amendment to the Condominium Plan. An amendment of the Condominium Plan pursuant to this subsection (c) shall, when recorded, have the effect of (i) eliminating the Living Units and Exclusive Use Common Areas within the Undeveloped Phase(s) of Increment 1 or Undeveloped Phase(s) of Increment 2 to the extent set forth in the amendment; (ii) vesting in the Association the Undeveloped Phase(s) of Increment 1 or Undeveloped Phase(s) of Increment 2 as depicted in the amendment; and (iii) divesting Declarant of all right, title and interest to any Condominium within the Undeveloped Phase(s) of Increment 1 or Undeveloped Phase(s) of Increment 2 as depicted in the amendment.

11.6 Power of Attorney. Each Mortgagee of a Mortgage and each Owner of a Condominium, with the exception of the Secretary of the VA, an officer of the United States of America, by accepting a Mortgage or deed to a Condominium, shall be deemed to have constituted and irrevocably appointed Declarant as his attorney-in-fact, for himself and each of his optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a power of attorney coupled with an interest to Declarant as his attorney-in-fact to effect

the redesign of all or any portion of the Project in accordance with the limitations and requirements set forth in this Article; and further:

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

(b) To prepare, execute, acknowledge and record any amendment to the Condominium Plan for the Project, including, without limitation, any amendments necessary to cause the Condominium Plan to conform with the improvements as actually built, which may be required or permitted by the laws of the State of California in effect on the date of the recording of this Declaration as thereafter enacted or amended, and any ordinances, rules and regulations of any applicable governmental entities and authorities having jurisdiction over the Project in effect on the date of the recording of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

(c) To prepare, execute, acknowledge and file for approval any application for zoning or setback changes or variance or special use permits or any other permits or reports required or permitted by statutes, ordinances and regulations applicable to the Project in effect on the date of the recording of this Declaration as thereafter enacted or amended, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations.

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

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

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

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

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

11.7 Indemnification of Owners on Exercise of Power of Attorney. Declarant shall indemnify and hold each Owner free and harmless from all liabilities, including attorney's fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the power of attorney set forth in Section 11.6.

11.8 Mortgage Interests and Other Encumbrances to Take Subject to Power of Attorney. The acceptance or creation of any Mortgage or other encumbrance whether or not voluntary, created in good faith or given for value shall be deemed to be accepted or created subject to each of the terms and conditions of the power of attorney described in Section 11.6.

11.9 Limitation on Amendment. This Article XI may not be amended without the written approval of Declarant attached to the instrument of amendment.

ARTICLE XII

GENERAL PROVISIONS

12.1 Enforcement. Except as otherwise provided in Section 12.2 below, the Association, Declarant and any Owner shall have the right to enforce by any proceedings at law or in equity, all covenants, conditions, restrictions and reservations now or hereafter imposed by the provisions of the Declaration. Each Owner shall have a right of action against the Association for any failure of the Association to comply with the provisions of the Declaration or of the Bylaws or Articles. Failure by the Association, Declarant or any Owner to enforce any covenant, condition, restriction or reservation in the Declaration shall not be deemed a waiver of the right to do so thereafter.

The City shall have the right, but not the obligation, to provide for the maintenance of the open space and recreational facilities on the Association Property (the maintenance of which

is the responsibility of the Association), if the Association fails to perform its maintenance obligations. In the event the City provides the maintenance, the cost for such services shall be assessed to the Association and shall become a lien upon the Association Property and each Condominium, as appropriate.

12.2 Severability. Should any provision in the Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions shall be and remain in full force and effect.

12.3 Amendments. During the period of time prior to conversion of the Class B membership to Class A membership in the Association, the Declaration may be amended by the vote or written consent of seventy-five percent (75%) of the voting power of each class of Members of the Association, which amendment shall become effective upon the recording of the amendment in the Office of the County Recorder of San Diego County, California. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by the vote or written consent of (i) seventy-five percent (75%) of the total voting power of the Association; and (ii) at least seventy-five percent (75%) of the voting power of Members of the Association other than Declarant. Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums which are subject to Eligible Mortgage Holder Mortgages. Any amendments to provisions of this Declaration governing any of the following subjects, shall be deemed "material to a Mortgagee":

- (a) The fundamental purpose for which the Project was created (such as a change from residential use to a different use).
- (b) Assessments, assessment liens or the priority of assessment liens.
- (c) Reserve for maintenance, repair and replacement of the Association Property and Common Area.
- (d) Responsibility for maintenance and repairs.
- (e) Insurance or fidelity bonds.
- (f) Restoration or repair of the Project after a hazard damage or partial condemnation.
- (g) Rights to use the Association Property, Common Area and Exclusive Use Common Area or re-allocation of interests in the Association Property, Common Area or Exclusive Use Common Area.
- (h) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project.
- (i) Voting rights.
- (j) Convertibility of Living Units into Common Area or of Common Area into Living Units.

- (k) Redefinition of boundaries of any Living Unit.
- (l) The interests in Association Property, Common Area or Exclusive Use Common Area.
- (m) Leasing of Condominiums.
- (n) Imposition of any restrictions on the right of an Owner to sell or transfer his Condominium.
- (o) Any action to terminate the legal status of the Project after substantial destruction or condemnation.
- (p) The requirement of retention of professional management of the Project.
- (q) Any provision which is expressly for the benefit of Mortgagees or insurers or guarantors of Mortgages.

An amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification. An Eligible Mortgage Holder who receives a written request delivered by certified or registered mail, return receipt requested, to approve amendments who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request.

Notwithstanding the above provisions, (i) the percentage of the voting power necessary to amend a specific clause or provision in the Declaration shall not be less than the percentage of affirmative votes necessary for action to be taken under that clause or provision; and (ii) any amendment to the Declaration which is contrary to City policy or the City approvals and associated plans referred to in Article VI of the Declaration shall require the prior written approval of the City. Any proposed amendment to the Declaration shall be submitted to the City for review and determination as to whether the amendment requires approval of the City.

Anything contained herein to the contrary notwithstanding, the percentage of voting power of Members necessary to amend a specific clause or provision of the Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause or provision. The percentage of membership votes or written consents required to amend the Declaration may be reduced under certain circumstances by Court Order obtained pursuant to California CIVIL CODE §1356. No amendment to Article XI of the Declaration shall be effective without the written approval of Declarant attached to the instrument of amendment.

12.4 Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2050, after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2050, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2050 or at the end of any such ten (10) year period.

12.5 FHA and VA Approval. So long as there is a Class B membership in the Association, the following actions shall require prior approval of the FHA and VA: annexation of additional properties to the Project, mergers and consolidations, special assessments and any amendment to this Declaration. If VA approval is required, a draft of the amendment to this Declaration shall be submitted to and approved by the VA prior to recordation of the amendment.

12.6 Encroachment Easement. In the event any portion of the Association Property or Common Area encroaches upon any Living Unit or any Living Unit encroaches upon the Association Property or Common Area or another Living Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. The easement shall apply only to minor encroachments. There shall be easements for the maintenance of encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by the encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if the encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Condominium Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Living Units, Association Property or Common Area shall be easements for the maintenance of encroachments so long as they shall exist.

12.7 Attorney's Fees. In the event the Association, Declarant or any Owner shall commence litigation or arbitration to enforce any of the covenants, conditions or restrictions contained in the Declaration or in the Bylaws, the prevailing party in the litigation or arbitration shall be entitled to costs of suit and such attorney's fees as the court or arbitrator may adjudge reasonable and proper. The "prevailing party" shall be the party who is entitled to recover costs of suit, whether or not the suit proceeds to final judgment or award. A party not entitled to recover his costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment or award for purposes of determining whether a party is entitled to recover costs or attorney's fees.

12.8 Annexation of Additional Property.

(a) The Condominium Property is the first Increment of a projected two (2) Increment and seven (7) phase condominium development. The additional Increment and phases are described in the Recitals to the Declaration. When completed, Declarant contemplates that the entire Project will consist of one hundred and eight (108) Condominiums. Nothing contained herein, however, shall require Declarant to complete Increment 2.

(b) If, within three (3) years following the date of the original issuance by the California Department of Real Estate of the most recently issued to the Final Subdivision Public Report for a phase of the Project, Declarant should develop additional lands within the property described above in Subsection 12.8(a), such additional lands or any portion thereof may be added to and included within the Condominium Property and the jurisdiction of the Association by action of Declarant without the assent of Members of the Association; provided, however, that the development of the additional lands shall be in accordance with the plan of development submitted to the Department of Real Estate prior to the time a Final Subdivision Public Report is issued in connection with the Condominium Property. Said annexation may be accomplished by the recording of a Declaration of Annexation which requires Owners of Condominiums therein to be Members of the Association. The obligation of Condominium Owners to pay dues to the Association and the right of such Condominium Owners to exercise voting rights in the

Association in such annexed property, shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that particular Phase of development.

(c) Subject to annexation of additional property as set forth above, Declarant hereby reserves for the benefit of Condominiums in the Project, non-exclusive easements on, over and across the Common Area within each Phase. However, this easement shall not become effective as to a particular Phase and shall not benefit or burden a particular Phase unless the particular Phase is located in Increment 1 or, if the particular Phase is located in Increment 2, Increment 2 has been annexed to this Declaration. This easement will not become effective as to a particular Phase and shall not benefit or burden such Phase until conveyance of the first Condominium within such Phase. It is not intended that this easement extend to or cover any Exclusive Use Common Area. It is intended that this easement provide each benefitted Owner the right to use the Common Area, other than Exclusive Use Common Areas, to the same extent as if such Owner owned an undivided interest in each Phase in which the easement becomes effective.

(d) Upon the approval in writing of the Association, pursuant to two-thirds ($\frac{2}{3}$) of the voting power of each class of Members of the Association, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership in the Association to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds ($\frac{2}{3}$) of the voting power of Members of the Association; and (ii) two-thirds ($\frac{2}{3}$) or more of the voting power of Members of the Association other than Declarant.

A Declaration of Annexation may be revoked or amended by Declarant without the approval of the Association or any Owner at any time before the conveyance of record by Declarant of a Condominium within the property annexed by the Declaration of Annexation. A draft of the notice of revocation or amendment must be submitted to and approved by the VA prior to its recordation.

12.9 Owner Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of the Declaration, the Bylaws, decisions and resolutions of the Association as lawfully amended from time to time. Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover damages for sums due or for injunctive relief.

12.10 Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Association Property or Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Condominium Property, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on the question if the improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond,

or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. The meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At the meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of 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.

12.11 Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential Condominiums and incidental improvements upon the Condominium Property and Association Property. The completion of that work, and the sale, rental and other disposal of Condominiums is essential to the establishment and welfare of the Condominium Property as a residential community. In order that the work may be completed and the Condominium Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Association Property, Condominium Property or in any Living Unit whatever is reasonably necessary or advisable in connection with the completion of the work, including access over the Association Property or Condominium Property; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Condominium Property or Association Property, such structures as may be reasonable and necessary for the conduct of its business of completing the work and establishing the Condominium Property as a residential community and transferring the Condominium Property in parcels by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Condominium Property or Association Property its business of completing the work, and of establishing a plan of Condominium ownership and of transferring the Condominium Property and Condominiums by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such signs, poles or flags on any of the Condominium Property and Association Property as may be necessary for the sale, lease or disposition thereof; provided, however, that the maintenance of any sign, pole or flag shall not unreasonably interfere with the use by any Owner of his Living Unit or the Association Property or the Common Area.

The rights of Declarant provided in Subsections (a) through (d) above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in Increments 1 and 2 are sold and conveyed by Declarant to separate owners, or seven (7) years following the date of original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the first Phase, whichever shall first occur. So long as Declarant, its successors and assigns owns one or more of the Condominiums established and described herein, Declarant, its successors and assigns shall be subject to the provisions

of this Declaration. Declarant, in executing its rights under this Section 12.11, shall not unreasonably interfere with the use of the Association Property or Common Area by any Owner.

12.12 Liens Not Invalid. No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise.

12.13 Provisions of Civil Code Section 1360. Section 1360 of the California CIVIL CODE provides as follows:

"(a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:

(1) Make any improvements or alterations within...the separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(A) The modifications shall be consistent with applicable building code requirements.

(B) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

(C) Modifications external to the dwelling shall not prevent reasonable passage by other residents, and shall be removed by the owner when the unit is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf or physically disabled.

(D) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

(b) Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law."

12.14 Documents to be Provided to Prospective Purchaser. Each Owner, other than Declarant, shall, as soon as practicable before transfer of title to a Condominium, provide to the prospective purchaser the following:

- (a) A copy of the Articles, Bylaws and Declaration.
- (b) A copy of the most recent financial statements of the Association.
- (c) A true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, and annual Landscape Maintenance District assessments, as well as any assessments levied upon the Condominium which are unpaid as of the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Condominium.
- (d) A statement setting forth any change in the Association's current regular and special assessments and fees which have been approved by the Board but have not become due and payable as of the date this statement is provided.

12.15 Existing Landscape Maintenance District. The Project is located within the boundaries of the District (as defined in Section 5.3). The District is administered by the City and provides maintenance and repair of certain landscaped medians, greenbelts, slopes, monument signs, drainage facilities and natural open space areas. The District is empowered to assess Condominiums and other real property within the District to pay the expenses of the District. The expenses of the District are estimated annually and then allocated among the different properties located within the District.

12.16 Agreement Not to Oppose New Facilities Districts. Declarant as the owner of the Project has entered into an agreement with the City not to oppose the formation of a Mello-Roos Community Facilities District, 1972 Lighting and Landscape District or other public assessment district which includes the Project. Public assessment districts may be established which will include the Project to raise funds by taxation of the Project for the cost of providing and maintaining future community facility improvements. Declarant and each Owner and Mortgagee, their successors and assigns, by acquiring title to a Condominium or a Mortgage encumbering a Condominium, acknowledges and agrees to the formation of any assessment district proposed by the City which includes the Project, and waives any right to protest or otherwise contest the formation of a public assessment district which includes the Project. This agreement and waiver shall bind Declarant and all subsequent owners of the Project or any portion of the Project and any owner of a beneficial interest in the Project, including their heirs, assigns, transferees and successors in interest.

12.17 Governmental Regulations. The Project and its use are subject to the jurisdiction of the City, and the ordinances, regulations and permits issued by the City, including the conditions of approval contained in City Council Resolution No. 114-95 for Development Review Permit DR 95-03 ("City Approvals"). Use of the Project shall be consistent with the City Approvals unless otherwise permitted and approved by the City.

12.18 Use of Off-Site Property and Use Agreements.

- (a) Members of the Association shall have non-exclusive access to the unfenced portion of Lot F of City of Santee Tract No. 89-06 Unit No. 1, according to Map thereof No. 13101 filed in the Office of the County Recorder of San Diego County, California on May 5, 1994, which consists of an open space park and tot lot. Lot F is owned by Santee Mission Creek Homeowners Association, a nonprofit mutual benefit corporation. Declarant has entered into a Joint Use Agreement and First Amendment To Joint Use Agreement, recorded in the

Office of the County Recorder of San Diego County, California respectively as Document No. 1995-0368922 on August 22, 1995 and Document No. 1995-0400017 on September 8, 1995, on behalf of the Association, with Santee Mission Creek Homeowners Association to permit Members of the Association to use and to share in the cost of maintaining the unfenced portion of the open space park and tot lot.

(b) Members of the Santee Sommerset Homeowners Association, a nonprofit mutual benefit corporation, shall have non-exclusive access to the half court basketball court located on the Association Property. Declarant has entered into a Use Agreement recorded in the Office of the County Recorder of San Diego County, California as Document No. 1995-0486499 on October 27, 1995, on behalf of the Association to permit the members of the Santee Sommerset Homeowners Association to use the half court basketball court.

12.19 Use of Reclaimed Water. DUE TO THE USE OF RECLAIMED WATER FOR IRRIGATION PURPOSES, THE OWNERS UNDERSTAND AND ACKNOWLEDGE THAT RECLAIMED WATER SHOULD NOT BE CONSUMED BY PEOPLE OR ANIMALS. DECLARANT AND THE ASSOCIATION SHALL NOT BE RESPONSIBLE FOR ANY INJURIES CAUSED TO PEOPLE OR ANIMALS FROM CONSUMPTION OF THE RECLAIMED WATER INTENDED ONLY FOR IRRIGATION PURPOSES. EACH OWNER SHALL BE SOLELY RESPONSIBLE FOR RESTRICTING HIS OR HER CHILDREN, GUESTS AND ANIMALS FROM CONSUMING RECLAIMED WATER WITHIN THE PROJECT.

12.20 Provisions of Civil Code Section 1368.4. Section 1368.4 of the California CIVIL CODE provides as follows:

(a) Not later than thirty (30) days prior to the filing of any civil action by the Association against Declarant or other developer of the Project for: (i) alleged damage to the Common Area, Association Property, Living Units which the Association is obligated to maintain or repair; or (ii) alleged damage to Living Units or Exclusive Use Common Areas which arise out of, or are integrally related to, damage to the Common Areas, Association Property or Living Units which the Association is obligated to maintain or repair, the Board of Directors shall provide written notice to each Member of the Association. This notice shall specify all of the following:

(i) That a meeting will take place to discuss problems that may lead to the filing of a civil action;

(ii) The options, including civil actions, that are available to address the problems; and

(iii) The time and place of this meeting.

(b) Notwithstanding Subsection (a) above, if the Board has reason to believe that the applicable statute of limitations will expire before the Association files the civil action, the Association may give the notice, as described above, within thirty (30) days after the filing of the action.

12.21 Provisions of Civil Code Section 1375. Prior to commencement of litigation for construction defects, the Association must comply with §1375 of the California CIVIL CODE.

2010

EXHIBIT "A"

Description Of Real Property

PARCELS "A", "B" and "C" of that certain Certificate of Compliance recorded on October 11, 1995 as File No. 1995-0459684 filed in the Office of the County Recorder of San Diego County, California, on October 11, 1995 and described as follows:

PARCEL "A":

LOT 107 AND THAT PORTION OF LOT 108 IN THE CITY OF SANTEE TRACT NO. 89-06 UNIT NO. 1, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 13101 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF SAID LOT 108 WHICH BEARS S 65°20'22" W 209.72 FEET FROM THE MOST NORTHERLY CORNER OF SAID LOT 108; THENCE N 65°20'22" E 209.72 FEET ALONG SAID NORTHWESTERLY LINE TO SAID MOST NORTHERLY CORNER; THENCE S 03°00'35" W 129.20 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE S 40°54'10" E 175.52 FEET TO THE MOST EASTERLY CORNER OF SAID LOT 108; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LOT THE FOLLOWING COURSES: S 68°02'15" W 46.77 FEET, S 64°16'28" W 49.81 FEET, S 67°02'21" W 98.10 FEET, S 67°39'23" W 95.44 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE N 81°54'02" W 74.38 FEET; THENCE N 08°05'58" E 157.68 FEET; THENCE S 81°54'02" E 29.38 FEET; THENCE N 08° 05'58" E 20.00 FEET; THENCE N 65°20'22" E 32.82 FEET; THENCE N 24°39'38" W 101.13 FEET TO THE POINT OF BEGINNING.

PARCEL "B":

THAT PORTION OF LOT 108 IN THE CITY OF SANTEE TRACT NO. 89-06 UNIT NO. 1 , IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 13101 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF SAID LOT 108 WHICH BEARS S 65°20'22" W 209.72 FEET FROM THE MOST NORTHERLY CORNER OF SAID LOT; THENCE S 24° 39'38" E 101.13 FEET; THENCE S 65°20'22" W 32.82 FEET; THENCE S 08°05'58" W 20.00 FEET; THENCE N 81°54'02" W 29.38 FEET; THENCE S 08° 05'58" W 157.68 FEET; THENCE S 81°54'02" E 74.38 FEET TO THE SOUTHEASTERLY LINE OF SAID LOT 108; THENCE S 67°39'23" W 1.76 FEET TO AN ANGLE POINT IN SAID SOUTHEASTERLY LINE; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE THE FOLLOWING

COURSES: S 65°21'34" W 48.88 FEET, S 66°32'48" W 50.50 FEET, S 68° 21'55" W 50.36 FEET; THENCE LEAVING SAID SOUTHEASTERLY LINE N 14°54'59" W 63.13 FEET; THENCE N 73°13'36" E 37.96 FEET; THENCE N 16° 46'24" W 75.50 FEET; THENCE N 09°23'36" W 31.55 FEET; THENCE N 24°44'05" W 108.86 FEET TO A POINT ON THE NORTH-WESTERLY LINE OF SAID LOT 108 WHICH BEARS S 65°20'22" W 87.73 FEET FROM THE MOST WESTERLY CORNER OF LOT C OF MAP NO. 12946, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE N 65° 20'22" E 87.73 FEET TO SAID MOST WESTERLY CORNER OF SAID LOT C; THENCE ALONG THE FOLLOWING COURSES OF SAID LOT C: S 24°39'38" E 47.00 FEET, N 65°20'22" E 31.29 FEET, N 08° 05'58" E 21.63 FEET, N 24°39'38" W 28.81 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 108; THENCE ALONG SAID NORTHEASTERLY LINE N 65° 20'22" E 45.00 FEET TO THE POINT OF BEGINNING.

PARCEL "C":

LOT 109 AND THAT PORTION OF LOT 108 IN THE CITY OF SANTEE TRACT NO. 89-06 UNIT NO. 1, IN THE CITY OF SANTEE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 13101 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF SAID LOT 108, SAID POINT BEING THE SOUTHWESTERLY TERMINUS OF THAT CERTAIN COURSE SHOWN AS "N 68°21'55" E 50.36 FEET"; THENCE ALONG SAID SOUTHEASTERLY LINE S 65° 42'29" W 49.93 FEET; THENCE S 65°50'01" W 32.58 FEET TO A CORNER OF SAID LOT 109; THENCE ALONG THE NORTHEASTERLY LINE OF SAID LOT 109 THE FOLLOWING COURSES: N 23°09'39" W 118.43 FEET, N 45°16'07" E 99.60 FEET, N 23° 09'39" W 120.00 FEET TO A POINT ON A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 470.00 FEET, SAID POINT BEING THE CORNER COMMON TO SAID LOTS 108 AND 109, A RADIAL LINE FROM SAID POINT BEARS N 19°18'51" W; THENCE EASTERLY AND NORTHEASTERLY ALONG SAID CURVE AND ALONG THE NORTHWESTERLY LINE OF SAID LOT 108 43.86 FEET THROUGH A CENTRAL ANGLE OF 05° 20'47"; THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE N 65°20'22" E 5.76 FEET; THENCE S 24°44'05" E 108.86 FEET; THENCE S 09°23'36" E 31.65 FEET; THENCE S 16°46'24" E 75.50 FEET; THENCE S 73°13'36" W 37.96 FEET; THENCE S 14°54'59" E 63.13 FEET TO THE POINT OF BEGINNING.

