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TITLE(S)

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
DAHLIA ESTATES

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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF

DAHLIA ESTATES

This Declaration is made this 5th day of December 2002, by DAHLIA ESTATES, LLC, a California Limited Liability Company, hereinafter "Declarant").

A. Declarant is the owner of certain real property in the City of El Monte, County of Los Angeles, State of California, which is more particularly described as follows:

Lots 1 through 8, inclusive, in Tract 54066 as per map recorded in Book 1276, Pages 92 and 93, inclusive, of Maps in the Office of the County Recorder of the County of Los Angeles, State of California (the "Property").

B. Declarant intends to construct seven (7) single family residences on the real property described in Recital A, and one (1) common area lot.

C. It is the desire and intent of Declarant to subdivide and sell the Property and to impose on it mutual beneficial restrictions under a general plan or scheme of improvement for the benefit of all Lots in the Project and the common area, and the owners thereof and to create a type of ownership known as a planned development and to subject the Property to the laws of the State of California pertaining to common interest developments.

D. Declarant hereby declares that the Property and all improvements thereon is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, maintained, altered and improved subject to the following protective limitations, restrictions, covenants, conditions, reservations, liens and charges and equitable servitudes, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, and every part thereof. All of said limitations, covenants, conditions, restrictions, reservations, liens and charges and equitable servitudes shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof, whether as sole owners, joint owners, lessees, tenants, occupants, or otherwise, and they shall inure to the benefit of every portion of the Property and shall be for the benefit of each owner of any portion of the Property, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of Declarant and each owner, and may be enforced by Declarant, by any owner, by any successor in interest to Declarant, or any owner, or by the Board of Directors hereinafter described.

## ARTICLE I

### Definitions

Section 1. Articles. The Association Articles of Incorporation and their amendments.

Section 2. Assessment, Annual. "Annual Assessment" shall mean a charge against a particular Owner and his Lot representing a portion of the costs of maintaining, improving, repairing and managing the Project and all other Common Expenses, which are to be paid by each Owner to the Association for Common Expenses in the manner and proportions provided herein. Each Annual Assessment shall be paid in equal monthly assessments ("Regular Monthly Assessments") on the first day of each month.

Section 3. Assessment, Compliance. "Compliance Assessment" shall mean a charge against a particular Owner and his Lot directly attributable to, or reimbursable by, the Owner or Owners if the same be required to secure or satisfy any breach of the Declaration, the Articles, ByLaws, or Rules and Regulations of the Association, by said Owner or Owners, which breach shall require or has required an expenditure by the Association for repair or remedy. Such assessment shall be equal to the cost incurred by the Association for corrective action performed plus costs, interest, and attorney's fees incurred in connection therewith. Compliance Assessments shall not include any late payment penalties, interest charges, or costs incurred by the Association (including attorneys' fees) in the collection of Annual and Special Assessments.

Section 4. Assessment, Special. "Special Assessment" shall mean a charge against each Owner and his Lot representing a portion of the cost to the Association for installation or construction or reconstruction of any capital Improvement or other addition on any part of the Project, which the Association may from time to time authorize. Such charge shall be levied amongst all of the Owners in the Project as herein provided.

Section 5. Association. DAHLIA ESTATES HOMEOWNERS ASSOCIATION, a California Non-Profit Mutual Benefit Corporation, its successors and assigns, the Members of which shall be all of the several Lot Owners. Each Lot Owner shall automatically become and shall be required to be a Member of the Association, whose membership shall include and be limited to each of the Lot Owners of the Project. All memberships in the Association are hereby specifically made appurtenant to the Lots, and memberships shall be effective immediately upon the recording of the grant deed transferring the Lot. Membership may not be separated from the ownership of any Lot. Until such time as Declarant sells all of said Lots owned by it, Declarant shall remain a Lot Owner as to the Lots owned by it, and shall be a member of said Association.

Section 6. Beneficiary. "Beneficiary" shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee, or Beneficiary.

Section 7. Board of Directors. Shall mean and refer to the Board of Directors of the Association.

Section 8. Budget. "Budget" shall mean a written, itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration, which Budget shall be prepared pursuant to the ByLaws of the Association.

Section 9. ByLaws. The duly adopted ByLaws of the Association as the same may be amended, changed, or modified from time to time.

Section 10. City. The "City" shall mean the City of El Monte, a body corporation and politic. The city is a public agency charged with the responsibility of providing for the review and regulation of the subdivision and use of the real property as described herein and the City has an ownership interest in the public street right-of-way which abuts said real property (Public Parcel).

Section 11. Common Area Lot or Common Area. The term "Common Area Lot or Common Area" shall mean the Lot in the Project which has been conveyed to the Association.

The Association shall be responsible for the management and maintenance of the Common Area Lot.

Section 12. Common Expenses. The actual and estimated costs and expenses incurred or to be incurred by the Association in performing its duties hereunder.

Section 13. Declarant. DAHLIA ESTATES, LLC, a California Limited Liability Company, and their successors and assigns, if the rights of Declarant have been expressly assigned in writing.

Section 14. Declaration. This Declaration as the same may be amended, changed, or modified from time to time and recorded in the office of the County Recorder of the State of California where the Project is located.

SECTION 15. Deed of Trust. "Deed of Trust" shall mean a mortgage as further defined herein.

Section 16. Development. "Development" shall mean the Common Interest Development which consists of separately owned Lots and additional Lots and parcels which shall be owned by the Owners in undivided interest.

Section 17. Dwelling or Dwelling Unit. The building located on a Lot designed and intended for use and occupancy as a residence by a single family.

Section 18. Eligible Insurer or Guarantor. A guarantor or insurer of any first mortgage or deed of trust on a Lot, who has provided a written request to the Association, to be notified of any proposed amendment or action described in Article XVIII hereof.

Section 19. Eligible Mortgage Holder. The holder of a first mortgage or deed of trust on a Lot who has provided a written request to the Association to be notified of any proposed amendment or action described in Article XVIII hereof.

Section 20. Lot. Each individual Lot or plot of land as designated by number or letter on any recorded subdivision map of the Property including the Dwelling thereon.

Section 21. Manager. The managing agent, if any, whether individual or corporate, retained by Declarant or the Board, on contract, and charged with maintenance and upkeep of the Project.

Section 22. Member. Every person and entity who holds membership in the Association. Ownership of a Lot in the Project shall be the sole qualification for membership in the Association. All memberships in the Association are hereby specifically made appurtenant to the Lots, and memberships shall be effective immediately upon the recording of the grant deed transferring the Lot ownership. Membership may not be separated from the ownership of any Lot. Until such time as Declarant sells all of said Lots owned by it, Declarant shall remain a Lot owner as to the Lots owned by it, and shall be a Member of said Association.

Section 23. Mortgage. "Mortgage" shall mean any recorded mortgage or Deed of Trust or other conveyance of one (1) or more Lots or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed", when used herein, shall be synonymous with the term "Mortgage".

Section 24. Mortgage-Mortgagee-Mortgagor and Institutional Holder. "Mortgagee" shall mean an Institutional Holder to whom a Mortgage has been made by a Mortgagor and which is a bank or a savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

"Mortgagor" shall mean a person who mortgages his or its property to another (i.e., the maker of a Mortgage). Reference to a Mortgagee shall be deemed to include the beneficiary of a Deed of Trust; reference to a Mortgagor shall be deemed to include a trustor of a Deed of Trust.

Section 25. Owner or Lot Owner. The record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the property, including contract vendees, but excluding those having such interest merely as security for the performance of an obligation.

Section 26. Project and Property. The entire parcel of real property hereinabove described, including all structures thereon, divided or to be divided into Lots, said Project being known as DAHLIA ESTATES.

Section 27. Property or Properties. The Property described in Recital A above.

Section 28. Rules and Regulations. "Rules and Regulations" shall mean the Rules and Regulations of the Association adopted by the Board as the same may be amended from time to time.

## ARTICLE II

### Description of Land and Improvements

The property initially subject to the covenants, conditions and restrictions herein contained is located in the City of El Monte, County of Los Angeles, State of California according to the Tract Map for Tract 54066 recorded in the Office of the County Recorder of said county as the same may be amended or superseded from time to time (and is hereinafter referred to as said Tract Map). Any grant deeds conveying any interest in the Project to individual purchasers of Lots shall expressly refer to and incorporate this Declaration therein by reference. Whether or not a reference to this Declaration is made in any individual deed, each purchaser of a Lot, part or portion thereof, shall by acceptance of a deed or other conveyance for such Lot, part or portion thereof, thereby be conclusively deemed to have consented to and agreed to all of the covenants, conditions and restrictions contained herein for himself and his heirs, executors, administrators and assigns and does by said acceptance covenant for himself and his heirs, executors, administrators and assigns to observe, perform and be bound by the same.

## ARTICLE III

### Property Rights

Section 1. Owners' Easements of Enjoyment. Subject to the easements granted to Declarant over certain portions of the Common Area Lot as provided in Article X hereof, every Owner of a Lot shall have a nonexclusive easement of use and enjoyment in, to and throughout the Common Area Lot of the Project and for ingress, egress and support over and through the Common Area Lot. Each such easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

A. The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area Lot and any recreational facilities thereon.

B. The right of the Association, in accordance herewith and with its Articles and/or ByLaws, to borrow money for the purpose of improving the Common Area Lot and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in the Common Area Lot shall be subordinate to the rights of the Owners hereunder. The right of the Association to mortgage the Common Area Lot shall be subject, however, to first obtaining the written assent of sixty-six and two-thirds percent (66-2/3%) of each class of membership and sixty-six and two-thirds percent

(66-2/3%) of the holders of first mortgages or trust deed liens.

C. The right of the Association, acting through the Board, to grant and convey to any third party, permits, licenses, easements and rights of way in, on, over, or under the Common Area Lot for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, roads and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Project or for purposes which the Board deems to be in the best interest of the Association and its members, which purposes are not inconsistent with the intended use of the Project as residential. Each purchaser, in accepting a deed to a Lot, expressly consents to the grant of any such easement, license or right of way. However, no such easements may be granted if it would interfere with the use, occupancy, or enjoyment by any Owner of his Lot and Dwelling Unit, or the recreational facilities of the Project, if any.

D. The right of the Declarant or its designees to enter on the Project to construct the Project and to make repairs and remedy construction defects if such entry shall not unreasonably interfere with the use of any occupied Dwelling Unit unless authorized by the Owner.

E. There is hereby granted to the Association such easements over each of the Lots in the Project as are necessary to perform the duties and obligations of the Association.

F. Notwithstanding anything contained herein to the contrary, each Lot within the Property perpetually shall have access to dedicated and/or private streets or driveways and each Owner of said Lot shall perpetually have the right of ingress and egress from his Lot to a dedicated public street and/or private street or driveways.

#### ARTICLE IV

##### Membership and Voting Rights

Section 1. Membership in Association. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, shall be a member of the Association. Membership in the Association shall include an appurtenant nonexclusive easement of enjoyment in and to all Common Areas of the Project, subject to the rights of Declarant as provided in Article X hereof. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership.

Section 2. Transfer. Any attempt to make a prohibited transfer of a membership is void and will not be reflected upon the books and records of the Association.

Section 3. Classes of Voting Memberships. The Association shall have two classes of voting membership according to the following provisions:

Class A. Each Owner of a Lot other than Declarant shall be a Class A member and shall be entitled to one vote for each Lot owned.

Class B. Declarant shall be a Class B member. Class B membership entitles the holder to three (3) votes for each Lot owned. Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

A. The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member; or

B. Two (2) years from the date of the first conveyance a Lot in the Project.

Section 4. Commencement of Voting Rights. Voting rights shall commence for each Lot at such time as a Lot has been conveyed to a purchaser; provided, however, that assessments have been levied against that Lot by the Association in accordance with the provisions hereof. Notwithstanding the foregoing, if assessments are deferred pursuant to a subsidy agreement or a maintenance agreement to be entered into between the Declarant and the Association, the same shall not prevent the commencement of voting rights for each Lot in the Project. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles and ByLaws and any rules and regulations governing the Project.

Any provision in the governing instruments calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two outstanding classes of membership. Except with respect to the action to enforce the obligations of Declarant under any completion bond, any requirements in the governing instruments that the vote of Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of Class B members to Class A members, and the same shall be read as requiring the prescribed percentage of the Class A members and the prescribed percentage of the Class A members other than Declarant.

Section 5. Joint Owner Disputes. Each Lot Owner shall designate one Voting Owner. There shall be only one Voting Owner for each Lot. The Voting Owner shall be designated by the record Owner or Owners of each Lot, by written notice to the Association,

or the Manager. Said designation of a Voting Owner of a Lot shall be revocable at any time by actual notice to the Association or the Manager, of the death or judicially declared incompetence of any record Lot Owner, or by written instrument delivered to the Manager by any record Owner. Where no designation is made or where a designation has been made but is revoked and no new designation made, the Voting Owner of each Lot shall be the group composed of its record Owners. If the joint Owners are unable to agree as to how their vote shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Lot, it will be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. If more than one (1) person exercises the voting rights for a particular Lot, their votes shall not be counted and shall be deemed void. Declarant shall be the Voting Owner with respect to any Lots owned by it from time to time.

## ARTICLE V

### Covenant for Maintenance Assessments

Section 1. Creation of Lien and Personal Obligation of Owners. Declarant, for each Lot owned by it within the Project, hereby covenants, and each Owner of any Lot within the Project, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) Regular Monthly Assessments or charges to pay the Common Expenses of the Association which shall include an amount necessary to establish an adequate reserve fund for maintenance, repairs and replacement of the Common Area Lot improvements; (2) Special Assessments which are for capital improvements, emergencies and to cover any costs of the Association not covered by Regular Monthly Assessments; such assessments to be fixed, established and collected from time to time, as hereinafter provided; and (3) Compliance Assessments which are levied against an Owner, or group of Owners, for monetary obligations of an Owner levied as a fine or penalty or a disciplinary measure or some other specified reason in accordance with this Declaration, the Articles, ByLaws, or Rules and Regulations of the Association; such assessments to be fixed, established and collected from time to time, as hereinafter provided. Each such assessment (and all other assessments levied in accordance with this Declaration), together with late charges, interest, costs, penalties and reasonable attorneys fees, as provided for by this Declaration, shall be the joint and several personal obligation of each person who was an Owner of such Lot at the time the assessment fell due. The personal obligations for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the members of the Association and, in particular, for the improvement, repair and maintenance of the Common Area Lot and the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area Lot, as well as the payment of all taxes and insurance thereon. Payment of taxes and insurance shall be made only as the



same relate to the Common Area Lot. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

Section 3. Annual Assessments. The initial Annual Assessments shall be as set forth in the Final Subdivision Public Report issued by the California Department of Real Estate. Subject to any maintenance or subsidy agreement, Regular Monthly Assessments shall commence for all Lots in the Project, including those owned by Declarant, on the date of the first conveyance of a Lot pursuant to authority of a Public Report issued by the California Department of Real Estate and, thereafter, shall be due and payable in advance on the first day of each month, without notice.

Section 4. Change of Regular Monthly Assessments and Special Assessments. Changes in regular monthly assessments and special assessments may be made only as provided by the ByLaws and the Regulations of the California Department of Real Estate.

Section 5. Special Assessments. Special Assessments shall be due and payable in full thirty (30) days after appropriate notice thereof has been given to the Owners unless otherwise provided by the Board.

Section 6. Rate of Assessments.

A. Regular Monthly Assessments shall be paid by the Owners equally.

B. Special Assessments shall be assessed to Owners equally.

C. Compliance Assessments shall be assessed in full only against the Owner(s) liable therefore. The Board shall have the right after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code as provided in the ByLaws, to establish a Compliance Assessment on a single Owner or group of Owners, if the same be required to secure or satisfy any breach of this Declaration, the Articles, ByLaws or rules and regulations of the Association, by said Owner or Owners, which breach shall require or has required an expenditure by the Board for repair or remedy, including but not limited to, the violation of, or failure of such Owner(s) to comply with any applicable laws or directives of any lawful authority.

Section 7. Notice of Change in Assessments. The Board of Directors shall provide notice by first class mail to the Owners of a Lot of any increase in the regular or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 8. Deposit of Assessments. Assessment charges so collected shall be promptly deposited in a bank or savings account,

in a bank or savings and loan association to be selected by the Board, which account or accounts shall be under the name of the Association. The Board, and any officer of the Association or other person or firm designated by the Board, shall have exclusive control of said account or accounts, and shall be responsible to the Owners for the maintenance of accurate records thereof at all times. No withdrawal shall be made from any of said accounts except to pay for the charges and expenses or otherwise provide for the common benefit of all Owners.

The Board shall establish two (2) separate accounts into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. Each of the accounts shall be established as a separate trust savings or checking account at a bank or savings institution. The accounts shall include: (i) an operating fund for current common expenses of the Association, and (ii) a fund for reserves for capital improvements, replacements, painting and repair of the Common Area Lot (which cannot normally be expected to occur on an annual basis). The Board shall not commingle any amounts deposited into either of the above accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional maintenance funds by the Association, so long as the amounts addressed to, deposited into, and disbursed from any such fund are earmarked for specified purposes authorized by this Declaration.

Section 9. Uniform Rate of Assessment. Except as otherwise provided herein, both annual and special assessments (except assessments against one Owner or a group of Owners for breach of this Declaration, the ByLaws or any Rules and Regulations of the Association) must be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

Section 10. No Offsets. All assessments shall be payable in the amount specified in the notice of assessment and no offsets against such amount shall be permitted for any reason.

Section 11. Exemption from Assessments. Declarant, and its successor in interest, if any, is an Owner subject to the payment of regular and special assessments against subdivision interests which it owns provided, however, that Declarant and any other Owner of a subdivision interest which does not include a structural improvement for human occupancy shall be exempted from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. The exemption may include, but shall not necessarily be limited to, roof replacement, exterior maintenance, walkway and carport lighting, refuse disposal, cable television, and domestic water supplied to living units.

A. Any exemption from the payment of assessments attributed to a Lot Owner shall be in effect only until the earliest of the following events:

(1) A notice of completion of the structural improvements has been recorded.

(2) Occupation or use of the Dwelling Unit.

(3) Completion of all elements of the residential structures which the Association is obligated to maintain.

B. Developer and any other Owner of a subdivision interest may be exempted by the governing instruments from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. Any exemption from the payment of assessments attributed to common facilities shall be in effect only until the earliest of the following events:

(1) A notice of completion of the common facility has been recorded.

(2) The common facility has been placed into use.

Section 12. Maintenance and/or Subsidy Agreement. In the event that Declarant has entered into a subsidy agreement or a maintenance agreement with the Association, which has been approved by the California Department of Real Estate, monthly assessments may be reduced and/or abated in accordance with such agreements.

Section 13. Declarant's Obligation to Pay Assessments - Record Maintenance. The Declarant shall maintain or cause to be maintained in accordance with generally accepted accounting practices, records of:

A. All assessments paid by Declarant to the Association as an owner of subdivision interests in the Project.

B. All expenditures claimed by Declarant as offsets or credits against assessments owed.

C. Association receipts, expenditures and disbursements if Declarant has not turned over such records to the Association.

Such records shall be made available for examination, inspection and copying by the California Commissioner of Real Estate or his or her designated representative upon request during regular business hours. The Declarant's obligation to maintain or cause to be maintained, the records described in A, B or C shall terminate upon the earlier of (i) the conveyance of the last subdivision interest in the Project covered by a Subdivision Public Report; or (ii) three (3) years after the expiration of the most recent Public Report on the subdivision.

## ARTICLE VI

### Effect of Non-Payment of Assessments Remedies of the Association

Section 1. Creation of Lien. There is hereby created a lien against and on each Owner's Lot to secure payment of the amount of the maintenance fund, or of any assessment, regular or special, assessed to the Lot Owners as provided herein; provided, however, the lien shall not be deemed effective for any purpose unless and until a notice of claim of lien is recorded with the County Recorder of the County in which the Project is located. Before the Association may place a lien upon the interest of an Owner to collect a debt which is past due, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the rights of the Association to the reasonable costs of collection. In addition, any payments toward such a debt shall first be applied to the principal owed, and only after the principal owed as paid in full shall such payments be applied to interest or collection expenses. The notice of claim of lien shall state the amount of the assessment and other sums imposed in accordance with the provisions of this Article VI, a description of the Owner's interest in the Project against which the assessment and other sums are levied, the name of the record owner of the Owner's interest in the Project against which the lien is imposed, and, in order for the lien to be enforced by non-judicial foreclosure as provided in Section 2, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the president of the Association and said notice shall be mailed in the manner provided in Section 2924(b) of the Civil Code to all record owners of such Lot no later than ten (10) calendar days after recordation. No lien shall be created by way of an assessment for a monetary penalty imposed by the Association as a disciplinary measure for failure of an Owner to comply with the governing instruments of the Project or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area and facilities for which the Owner is allegedly responsible or in bringing the Owner and his interest into compliance with the governing instruments unless the lien is as a result of enforcing a judgment of a court or a decision arising out of arbitration. The limitations imposed by the preceding sentence on the Association's ability to create a lien for a monetary assessment, shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and/or costs reasonably incurred (including attorneys fees) in its efforts to collect delinquent assessments.

Section 2. Enforcement of Lien. If a Lot Owner fails to pay any assessment within fifteen (15) days of the due date, a late charge shall be imposed on each delinquent assessment in an amount equal to the greater of (i) Twenty Five Dollars (\$25.00), or (ii) ten percent (10%) of the delinquent assessment. The amount of the late charge may be increased by the Board from time to time if not in excess of that permitted by law. Assessments not paid within thirty (30) days after the due date shall bear interest at the highest rate permitted by law (but in no event to exceed twelve percent (12%) per annum) from the due date. If any assessment and other charges remain unpaid for thirty (30) days, the Board or any Lot Owner shall mail a notice of claim of lien to the Lot Owner and record a copy thereof in the office of the County Recorder of the county in which the Project is located. If, after thirty (30) days after such recording, the said sums remain unpaid, such lien may be enforced by sale by the Board, its attorney, or by any Owner, as trustee, in either case, for all Owners, such sale to be conducted in accordance with the provisions of Section 2924 et seq. of the California Civil Code applicable to the exercise of powers of sale in mortgages or deeds of trust or in any other manner permitted by law. The Board shall have the power to bid in at the foreclosure sale and to hold, lease, mortgage and convey the same. Reasonable attorneys fees, title fees and expenses in connection with such foreclosure and/or the collection of the debt secured by such lien shall be paid by the Lot Owner against whom such foreclosure or other action is taken in connection with such lien. Unless sooner satisfied and released or the enforcement thereof initiated, as herein provided, such lien shall expire and be of no further force and effect one (1) year from the date of recordation of said notice, provided said one (1) year period may be extended by the Board for not to exceed one (1) additional year, by recording a written extension thereof. Such lien and right to foreclosure shall be in addition to and not in substitution for all other rights and remedies which the Lot Owners and the Board may have hereunder, including appropriate legal or equitable action.

Section 3. Priority of Lien and Subordination. The lien provided for herein shall be prior and superior to all other liens and encumbrances except for taxes, bonds, and assessments which by law are superior. Any lien provided for herein shall at all times also be subject and subordinate to and shall not affect or defeat nor render invalid the lien of any first mortgage or first deed of trust made in good faith and for value that is of record as an encumbrance against such Lot prior to the recordation of a notice of assessment against such Lot. The sale or transfer of any Lot pursuant to a judicial foreclosure or foreclosure by power of sale of a first deed of trust shall extinguish any assessment lien and any "right of first refusal" created against the Lot which is the subject of such sale or transfer pursuant to a judicial foreclosure or foreclosure by power of sale of a first deed of trust by the filing of a notice of assessment prior to the date of such sale or transfer, and shall prohibit the creation of any assessment lien against such Lot on account of payments which became due prior to the date of such sale or transfer; provided, however, that the purchaser at such sale shall be subject to all of the obligations

of an Owner with respect to all assessments which become due after the date of such sale.

Section 4. Curing of Default. Upon payment of the delinquent assessment, all assessments becoming due thereafter, together with all interest, late charges, attorneys fees, and all additional charges incurred by the Association in connection with said notice of claim of lien and payment of a fee in the amount determined by the Board, the Board shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. Any Lot Owner may free his own Lot from the lien of any joint assessment on more than one Lot by payment of his share thereof, whereupon a similar further notice of satisfaction and release shall be recorded by the Board as to said Lot.

Section 5. Additional Remedies. Such lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the Lot Owners and the Board may have to enforce the provisions hereof.

Section 6. Certificate re Amounts Due. Upon written request of any Lot Owner and payment of a reasonable fee, the Board or the Manager will furnish, for the benefit of any prospective purchaser or present or prospective encumbrancer of such Lot, a statement showing all amounts then due which are secured by any lien hereunder.

Section 7. Homestead and Exemption Waiver. Each Lot Owner does hereby waive, to the extent of any liens created pursuant hereto, the benefit of any homestead or exemption laws of the State of California in effect at the time the claim of lien is recorded.

## ARTICLE VII

### Destruction of Improvements

In the event of partial destruction of any portion of the Common Area Lot, it shall be the duty of the Board of Directors to restore and repair the same to its former condition, as promptly as practicable and in a lawful and workmanlike manner subject to the provisions of Article XIX hereof. The proceeds of any insurance written pursuant to Article XI hereof shall be made available for such purpose and any deficiency in funds shall be the subject of a special assessment uniformly assessed against all Lots except as otherwise provided herein.

## ARTICLE VIII

### Management and Operation

Section 1. Meetings of Owners. The Properties and the Project shall be organized and operated as a planned residential development. The Owners shall be members of a non-profit corporation and an organizational meeting of such Owners shall be held within forty-five (45) days after the sale of the Lot in the Project which represents the fifty-first (51st) percentile of all

of the Lots under the first public report for the Project, provided that the first public report authorized the sale of fifty Lots or more in the Project. However, regardless of the number of Lots in no event shall the first meeting be held later than six (6) months from the date of the sale of the first Lot in the Project. Thereafter, annual meetings of such Owners shall be held at a time as provided in the ByLaws. Provision also may be made in the ByLaws for the calling of special meetings of the Owners. At any such meetings of the Owners, whether annual or special, the Owner or Owners of each Lot (excluding Declarant) shall be entitled to cast only one (1) vote for each Lot. At any such meetings, Declarant shall be deemed to be the Owner of any and all Lots then unsold, and shall be entitled to vote as a Class B member until such membership terminates by the provisions hereof and, thereafter, shall be entitled to one (1) vote for each such individual Lot then owned by Declarant.

Section 2. Rights and Duties of Board of Directors. After the sale of the first Lot in the Project and prior to the first meeting of members, and thereafter, until their successors are elected, the initial Board elected by Declarant, or their duly appointed successors, shall manage the affairs of the Association and the obligations and debts incurred in connection therewith shall be those of the Association. The Project shall be operated and maintained so as not to create a public nuisance. The Board of Directors as constituted from time to time, shall at all times be responsible for the day to day operation and management of the affairs of the Association and management of the Common Area and all facilities and equipment located thereon and shall have the sole power and duty to perform and carry out the powers and duties of the Association as set forth in this Declaration and the ByLaws, together with the powers and duties otherwise expressly delegated to the Board by this Declaration or the ByLaws, except for action or activity expressly set forth herein or in the ByLaws, the Articles or the California Corporations Code as requiring the vote or assent of the members of the Association or a given percentage thereof. Without limiting the generality of the foregoing, the Board shall have the following powers and duties:

A. Employ the services of personnel necessary to operate and maintain the Project, fix and pay their compensation, and oversee and control such management and otherwise delegate its powers to committees, officers and/or employees.

B. Contract and pay for the Common Expenses and such labor and materials as may be reasonably required to maintain the Common Area Lot and improvements thereon.

C. Enforce the applicable provisions of the Declaration, Articles, ByLaws, Rules and Regulations and other instruments for the management and control of the Project.

D. Pay all taxes, charges and assessments levied or which could become a lien against the Common Area Lot (except for charges levied solely against an Owner which charges shall be paid by such Owner).

E. Use, in the discretion of the Board, the funds paid by Owners as maintenance charges, as hereinafter more fully provided.

F. Provide financial statements of the Association to Owners as provided in the ByLaws of the Association.

G. Enter any Lot, Dwelling Unit or any portion of the Common Area Lot, when necessary, in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made only upon reasonable notice (except in the event of an emergency) with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the party responsible for said damage.

H. Hire and pay for legal and accounting services necessary or proper in the operation of the Project and enforcement of these restrictions, the ByLaws, Articles and any rules and regulations governing the Project.

I. Keep in good condition the Common Area Lot and all facilities, improvements and landscaping within the Common Area Lot. The Board shall exercise such authority and perform such duties on behalf of the Owners with a view toward preserving the attractiveness of the Project as a whole, and maintaining, insofar as may be practicable, the structural style and the color scheme established by Declarant.

J. Provide, acquire and pay for any other materials, supplies, furniture, labor, services, or assessments which the Board may be required to secure or pay for pursuant to the terms of these restrictions, or the Articles, or the ByLaws, or which the Board, in its opinion, shall deem necessary, proper, or convenient for the operation of the Project; provided, however, that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for a single Lot or only several but not all Lots, the cost thereof shall be specifically assessed to the Owner or Owners of such Lots.

K. Pay any amount necessary to discharge any lien or encumbrance levied against the Project, or any part thereof, which may, in the opinion of the Board, constitute a lien against the Project or against the Common Area Lot, rather than merely against the interests therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it.

L. Until such time as property taxes are separately assessed to each individual Owner, the Board may pay such property taxes singly assessed against the Project as a whole and collect the same from each Owner equally.



M. Comply with all applicable laws and orders and directives of any lawful authority.

N. The Board and Declarant are hereby precluded from taking any of the following actions except with assent, by vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the Members other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than Declarant:

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

(a) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

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

(d) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

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

(f) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of ten percent (10%), or more.

(g) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

(h) Such other contracts which may from time to time be permitted by the regulations of the Real Estate Commissioner of the State of California.

Notwithstanding the foregoing, any agreement for professional management of the Project, or any other contract providing for services by the Declarant, Sponsor or Builder, may not exceed one (1) year and must provide for termination by either party, without cause, and without payment of a termination fee on thirty (30) days, or less, written notice.

(i) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

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

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

O. The Board shall have the right to and shall receive complaints and hold hearings concerning violations of this Declaration, the ByLaws and/or other rules and regulations governing the management and control of the Association and the Project. The Board shall have the right to suspend the voting rights and right to use of the recreational facilities, if any, of a Lot Owner for any period during which any assessment against his interest in the Project remains unpaid and delinquent and may also impose monetary penalties and/or suspend the voting rights and right to use of the recreational facilities, if any, for any other infraction of this Declaration or the ByLaws or the rules and regulations of the Association. All procedures for notice and hearing to the accused Owner pursuant to this Paragraph P shall be as set forth in the ByLaws of the Association. A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the Declaration, or ByLaws, or Rules and Regulations of the Association or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage of Common Areas and facilities for which the member was allegedly responsible, or in bringing the member and his interest in the Project into compliance with the aforescribed governing instruments, may not be characterized nor treated as an assessment which may become a lien against the member's interest in the Project enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

P. The Association shall have the power to grant and convey to any third party permits, licenses, easements and rights of way in, on, over or under the Common Area Lot for utility purposes, cable television, and any other purpose reasonably necessary or useful for the proper maintenance, operation or aesthetics of the Project.

Q. The Board shall, within ten (10) days of the mailing or delivery of a written request by an Owner, prospective purchaser of a Lot, any first mortgagee or the Eligible Mortgage Holders, insurers or guarantors of a first mortgage on any Lot provide such requesting party with a copy of this Declaration and the Association's ByLaws, Articles, rules and regulations and all other books, records and financial statements of the Association. The Board shall also make available to a requesting party a true statement in writing as to the amount of any delinquent assessments, penalties, attorneys fees and other charges due and owing from the Owner in connection with his Lot as of the date of the request. The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

R. The right to borrow and to incur indebtedness for the benefit of the Association and to cause execution and delivery, in the Association's name, of promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, or other evidence of indebtedness or security therefor.

S. Permit utility suppliers to use portions of the Common Area Lot reasonably necessary for the ongoing development and operation of the Project.

T. To institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation or administrative proceedings in matters pertaining to: (a) enforcement of the governing instruments; (b) damage to the common areas; (c) damage to the separate interests which the Association is obligated to maintain or repair; or (d) damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the Association is obligated to maintain or repair.

U. Contract and pay for fire, casualty, liability, and other insurance on behalf of the Association as hereinafter provided.

V. Maintain, repair and replace and keep in good first class condition the perimeter block walls and perimeter fencing, common driveway, common lighting, and the hardscape and landscape areas located within the Common Area Lot.

W. The Board of Directors shall take all necessary action to ensure the following:

Graffiti which is visible from the Public Parcel must be removed from any exterior surface of the structures

and improvements on the project within seventy-two (72) hours following the application of the graffiti. Such graffiti shall be removed by either painting over the evidence of such vandalism with a paint which has been color-matched to the surface to which it is applied or graffiti may be removed with solvents or detergents, as appropriate. In the event that graffiti that is visible from the Public Parcel is not removed within seventy-two (72) hours, the City shall have the right to enter upon the Development and remove such graffiti. Any amounts expended by the City in removal of such graffiti shall become a lien on both the Common Area owned by the Association and on each Owner's lot. If the amount of the lien is not paid within thirty (30) days after written notice by the City to the Association and each Owner, the City shall have the right to enforce its lien on the same manner as provided under provision herein entitled the "Right of the City to Compel Performance".

Section 3. Association Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which shall govern matters in furtherance of the purposes of the Association, including without limitation, the use of the Common Area, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or ByLaws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or ByLaws, the provisions of the Rules and Regulations shall be deemed to be superseded.

Section 4. Title to the Common Area.

A. Transfer of Title to Common Area. Declarant hereby covenants, for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Area Lot, free and clear of all liens and encumbrances, subject to the Covenants set forth in this Declaration or which are of record at the time of the conveyance.

B. Commencement of Association Responsibilities. The Association's responsibility to maintain the Common Area Lot conveyed by Declarant to the Association shall commence concurrently with the commencement of Regular Monthly Assessments subject to the terms and provisions of any subsidy or maintenance

agreement which may have been entered into by and between Declarant and the Association. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain the landscaping or other improvements on the Common Area Lot for a specified period of time. The Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors of Declarant shall not serve to postpone the commencement of Regular Monthly Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Monthly Assessments.

C. Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of any of the improvements in the Common Area Lot of the Project, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept title to the Common Area Lot and undertake maintenance responsibilities pending resolution of the dispute by judicial reference as hereafter provided.

D. Maintenance of Common Area. The Association shall be obligated to undertake all maintenance responsibilities for the Common Area Lot when maintenance responsibilities are tendered by Declarant.

E. Right To Repair Law. Notwithstanding anything contained herein to the contrary, members of the Association, other than Declarant, shall have immediate control over the initiation of a claim for defect(s) in the Common Area as provided in Senate Bill 800 (California Civil Code, Section 895 and following). The Association shall only have the right to enforce defects in the Common Area and not in an Owners Dwelling.

## ARTICLE IX

### Board of Directors

Section 1. Number and Term of Directors. The management of the Project and the Association shall be governed by a Board of Directors consisting of three (3) persons, who need not be Owners of Dwelling Units in the Project until conversion of the Class B membership to Class A membership after which time all Directors must be Owners of Dwelling Units in the Project or the nominee of any corporate, partnership or other entity Owner.

The number of members of the Board and their term of office may be changed solely by an amendment to the ByLaws of the Association.

The Board may call, hold and conduct meetings in accordance with such reasonable rules and regulations as the Board may adopt. A majority of the Board shall constitute a quorum. Until election of the Board, its rights, duties and functions shall be exercised by Declarant.

Section 2. Cumulative Voting. The Owners shall vote for the election of the Board. Each Owner shall be entitled to cumulate his votes for one or more candidates to the Board of Directors if the candidate's name or candidates' names have been placed in nomination prior to the voting and if the Owner has given notice at the meeting prior to the voting of his intention to cumulate his votes. If any one Owner has given such notice all members may cumulate their votes for the candidates in nomination. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected. All voting at elections shall be by secret ballot.

Section 3. Removal of Directors. The entire Board of Directors or any individual Director may be removed by a vote of the Owners holding a majority of the voting power entitled to vote at any election of Directors. Unless the entire Board of Directors is removed from office, no individual Director shall be removed prior to the expiration of his term of office if the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the most recent election of the Board of Directors were then being elected. If any Director is removed in the manner authorized above, a new Director may be elected at the same meeting.

Section 4. Majority of Voting Power in Declarant. Notwithstanding anything to the contrary contained herein or in the ByLaws or in the Articles of Incorporation: (a) from the first election of the Board of Directors and thereafter for so long as a majority of the voting power of the Association resides in Declarant, or so long as there are two classes of membership in the Association, twenty percent (20%) but not less than one (1) of the incumbents on the Board of Directors shall be elected solely by the votes of Owners other than Declarant; and (b) a Director who has been elected to office solely by the votes of Owners other than Declarant may be removed from office prior to the expiration of his term solely by the vote of a majority of the voting power residing in Owners other than Declarant.

Section 5. Personal Liability. No Member of the Board or of any committee of the Association, or any officer of the Association, or Declarant, or the Manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager or any other representative or employee of the Association, the Declarant, or the Architectural Committee, if any, or any other committee, or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.

Section 6. Indemnification for Performance of Duties. Every member of the Board of Directors, officer and member of the Association shall be indemnified by the Association against all

reasonable costs, expenses and liabilities (including attorneys fees) actually or necessarily incurred by, or imposed upon him, in connection with any claim, action, suit, proceeding, investigation or inquiry, of whatever nature, in which he may be involved as a party, or otherwise, by reason of his having been an officer or member of the Association, or the Board of Directors, whether or not he continues to be such Director, officer, or member of the Association at the time of the incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation, or inquiry to be liable for willful misconduct or gross negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of, all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such persons.

In the event the Association is required to pay any such costs, expenses, or liabilities, the Association shall be entitled to assess all Lot Owners for the amount so expended in the manner provided for special assessments in Article V hereof and such assessments need not be first approved by the vote of the Owners.

Section 7. Certificate of Board of Directors. Any certificate executed by any two (2) Members of the Board shall be conclusive proof of all matters contained in the certificate as to any act or nonact of the Association and/or the Board, or any of their respective committees or agents, or as to the performance or nonperformance of any act of any Owner or nonpayment of any dues, fees, charges, assessments, interest, costs, or penalties, or as to any matters contained in the records of the Association or said Board.

## ARTICLE X

### Rights of Declarant

Nothing contained herein shall in any manner restrict or prohibit Declarant from the right to use the Common Area Lot in connection with the construction and sale of the Lots improved with Dwellings and in connection therewith to: use vehicles and equipment on the Common Area Lot; operate and maintain upon the Project a model complex, together with parking areas and/or real estate sales and development businesses; and place, erect and maintain thereon such customary sales and advertising signs, offices and parking areas as is usual and reasonable for such real estate sales and development operations.

Declarant, on behalf of itself, its agents, employees, contractors, subcontractors, invitees, successors, assigns and other authorized personnel, reserves a non-exclusive easement, during the hours of 7:00 A.M. to 8:00 P.M., Monday through

Saturday, and 9:00 A.M. to 6:00 P.M. on Sunday and Federal Holiday's, extending until the date on which one hundred percent (100%) of all Lots on the Property are sold (but not to exceed five (5) years after the conveyance of the first Lot in the Project), in, over, under and through each and every part of the Project together with the right to transfer and grant the same without the consent of any other person or entity for the purpose set forth above and for the following purposes:

A. Completion of original development of all portions of the Property including, without limitation, the Lots.

B. Marketing and selling Lots and improvements.

C. Customer relations and providing post-sale customer service to Owners.

D. Leasing and reselling of Lots and improvements.

E. Redesigning any portion of the Project, provided, that the Declarant's exercise of its redesign right shall be aesthetically consistent with the then existing theme of the Project and shall be in conformance with the tract map for the Project as the same may be amended.

F. Performing any and all work which may be required by any governmental agency in order to obtain certificates of occupancy for the Dwellings, acceptance of the Project by governmental agencies and release of bonds posted by Declarant or others to assure performance.

In connection with each of the foregoing purposes the Declarant shall have the right: (i) to perform any and all architectural, engineering, construction, excavation, landscaping or related work and activities; (ii) to store and use materials, equipment, vehicles, tools and machines which may be necessary or desirable in connection with such construction; (iii) to display signs and erect, maintain and operate, for sales, resales and administrative purposes, models and a fully staffed customer relations, services and sales and/or resales office complex within the Property; (iv) to perform maintenance, repair and replacement work on, and to make custom improvements, alterations and additions to uncompleted improvements; (v) to grant easements for utilities and other purposes related to the development of the Project provided that no such easement shall materially impair the ability of any Owner to use his Lot or the Project; and (vi) to take such other action consistent with such easements.

Neither the Association nor any Owner (other than Declarant) shall enter any construction area within the Property or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction nor shall the Association or any Owner do anything to interfere with the right of Declarant to develop the Project. If any damage is occasioned to the Common Area Lot by Declarant or its



agents or employees, Declarant shall be obligated to repair the same.

For a period of three (3) years after the initial sales of all Lots in the Project to individual Owners have closed, this Declaration cannot be amended to modify or eliminate this Article or any of the rights reserved to Declarant hereunder without the prior written approval of Declarant and any attempt to do so shall have no effect whatsoever.

## ARTICLE XI

### Insurance

Section 1. Insurance to be Maintained by Association. The Association shall obtain and maintain in effect the following types of insurance:

A. Comprehensive public liability insurance shall be purchased by the Board and shall be maintained in effect at all times, insuring the Association, any Manager, the Declarant and the Owners and occupants of Lots and their respective family members, guests, invitees, and the agents and employees of each and all holders of first deeds of trust encumbering the Lots within the Project, against any liability incident to the ownership or use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Five Hundred Thousand Dollars (\$500,000.00) The limits of each of such insurance policies shall not be less than \$2,000,000 covering all claims arising out of a single occurrence if the Project consists of one hundred (100) or less separate interests and not less than \$3,000,000 if the Project consists of more than one hundred (100) separate interests.

The Association shall also obtain insurance coverage for negligent acts or omissions of those persons acting in their capacity as officers and directors. The limits of such insurance shall be not less than Five Hundred Thousand Dollars (\$500,000) if the Project consists of one hundred (100) separate interests or less and \$1,000,000 if the Project consists of more than one hundred (100) separate interests.

Comprehensive public liability insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

The Board shall, upon issuance or renewal of the insurance specified in this Section 1 but no less than annually, notify the Owners as to the amount and type of insurance carried by the Association, and it shall accompany this notification with statements to the effect that the Association is, or is not, insured to the levels specified by this Section, and that if not so insured, Owners may be individually liable for the entire

amount of a judgment, and if the Association is insured to the levels specified in this Section, then Owners may be individually liable only for their proportionate share of assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance.

B. Fidelity bond coverage on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the professional managing agent of the Association, whether or not such persons are compensated for their services.

C. Worker's compensation insurance, to the extent that it is required by law, for all employees of the Association; errors and omissions insurance for officers and directors of the Association; and any other insurance as the Board deems necessary or that is required by any mortgagee or by law.

Section 2. Proceeds Payable to Trustee. All insurance proceeds payable under subparagraph B of Section 1 of this Article XI shall be paid to a Trustee, to be held and expended for the benefit of the Association. The Trustee shall be appointed by the Board and shall be a commercial bank and/or trust company in the county in which the Project is located, which agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

Notwithstanding the foregoing, if the proceeds from a single claim do not exceed \$25,000 such proceeds shall be paid to the Association to be used for repair and reconstruction. If the Board fails to appoint a Trustee, the proceeds shall be payable to the Association.

Section 3. Board as Attorney in Fact. The Board is appointed attorney in fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any claim or endorse any claim by legal action or otherwise and to execute releases in favor of any insurer.

Section 4. Annual Review of Insurance. The Board shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage for the Project, Owners, mortgagees and Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 5. Owners Liability Insurance. Any personal liability and property damage liability insurance policy carried by an Owner with respect to his Dwelling Unit shall include a waiver of subrogation clause acceptable to the Board and to any mortgagee insofar as the same may be applicable.

Section 6. Owners Casualty Insurance. Each Owner shall be required to obtain and maintain in full force and effect, a policy of fire insurance for one hundred percent (100%) of current replacement cost of all of the improvements situated on his Lot. The form, content and term of the policy and its endorsements and the issuing company must be satisfactory to his institutional mortgagee. The policy shall contain an agreed amount endorsement or its equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement, a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.

The Association shall neither maintain nor be responsible for (and each Owner shall provide, at his sole cost and expense) insurance on an Owner's Lot including his Dwelling and all other improvements thereon and on his personal property.

Section 7. Notice of Cancellation. Any policy obtained by the Board must provide that it may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Eligible Mortgage Holder listed as a scheduled holder of a first mortgage in the policy.

## ARTICLE XII

### Maintenance of Lot

Section 1. Owner's Maintenance. Except as herein otherwise provided, regarding the obligation of the Association, each Owner of a Lot shall cause the interior and exterior of his Dwelling Unit, and the landscaping and sprinklers and all other improvements upon said Lot and the Lot to be maintained in a safe, sightly and first class condition subject to the restrictions and provisions set forth herein. It shall be the obligation of each Owner to keep his Lot free of trash, weeds and other unsightly materials.

In the event an Owner of any Lot in the Project shall fail to maintain his Lot, the improvements situated thereon and the landscaping in a manner satisfactory to the Board of Directors, the Board shall be required to enter upon said Lot and repair, maintain, and restore the Lot and the exterior of the buildings, the landscaping and any other improvements erected thereon to a good first class condition. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject, subject, however, to the provisions of Section 1 of Article VI hereof restricting the right of the Association to create a lien by way of an assessment for a monetary penalty imposed by the Association as disciplinary measure.

Section 2. Consent of Architectural Committee for Changes. Except as hereinafter provided, no Lot Owner shall, at his expense or otherwise, make any structural changes, repairs, or alterations to his Lot or Dwelling Unit visible from the exterior of the Dwelling, or the Common Area or any facilities or structures

thereon, without the prior written consent of the Architectural Committee provided for in this Declaration.

### ARTICLE XIII

#### Use Restrictions

In addition to all other covenants and restrictions contained herein, the Lots and Common Area Lot shall be further restricted to the following use and occupancy:

Section 1. Single Family Use. Each Lot shall be used as a residence for a single family and for no other purposes whatsoever. Individual Lots may not be subdivided nor may parts thereof be sold or rented as a separate dwelling. Except for occupations and businesses which do not involve any visible signs or regular conspicuous business activity or which do not involve regular deliveries to or pickups from the Project and which do not regularly involve customers, clients or patients who come to the Project or which do not otherwise interfere with the residential nature or character of the Project or the quiet enjoyment of other Owners and which comply with all laws and other governmental regulations, no part of any Lot shall ever be used or allowed to be used directly or indirectly for any business, commercial, manufacturing or mercantile or other non-residential use except Lots owned by Declarant may be used by Declarant or its designees, as models, sales offices, construction offices and general offices for the purposes of developing, improving and selling Lots in the Project. The rights of Declarant pursuant to this Section shall be subject to the time limitations set forth herein.

Section 2. Rental. Owners may lease or rent their Lot upon appropriate written notice to the Board of such intent; provided, however, that no Owner shall be permitted to lease or rent less than the entire of his Lot, nor may an Owner lease or rent his Lot for transient or hotel purposes and no such lease or rental shall be for a period of less than thirty (30) days. Any such lease or rental shall be in writing and shall require the tenant thereof to comply in all respects with the Declaration, the Articles, the ByLaws and all rules and regulations adopted by the Association, and any failure by the tenant to so comply shall be a default under said lease or rental.

Section 3. Common Area. Except as otherwise provided herein, there shall be no use or occupancy of any part of the Common Area Lot, except by the Owner, his family, tenants and guests and there shall be no construction of any Dwelling on, nor any obstruction of any portion of the Common Area Lot nor shall any improvement be constructed on the Common Area Lot.

Nothing shall be done or kept in or upon any Lot or in the Common Area Lot, which will increase the rate of insurance, without the prior written consent of the Board. No Owner shall permit anything to be done or kept on or within his Lot or in the Common Area Lot, which will result in the cancellation of

insurance on any improvements or which would be in violation of any governmental statute, ordinance, rule or regulation.

Section 4. Signs. No sign of any kind shall be displayed on the Common Area Lot without the prior written consent of the Board. One sign of reasonable dimensions and design advertising a Lot for sale, lease, or exchange, may be placed on the Owner's Lot, which sign is in compliance with all governmental regulations. Such sign may also contain directions to the Owner's Lot, the Owner's or his agent's name and the Owner's or his agent's address and telephone number. The foregoing restriction shall not apply to signs or other displays used by Declarant, or its agents, in connection with the original sale or resale of Lots in the Project so long as Declarant shall own a Lot in the Project.

Section 5. External Items. No antennae (television, radio, or of any sort), poles, wires (excluding telephone wiring), dishes, solar panels, or other external items shall be located on or outside of any Lot, or in the Common Area Lot, except with the express written consent of the Architectural Committee, or except as installed by Declarant. Notwithstanding the foregoing, an Owner shall be permitted to install a television satellite dish on or in his Lot, provided that the same is less than thirty-six (36) inches in diameter and provided further, that the installation complies with reasonable restrictions adopted by the Board or the Architectural Committee. For purposes hereof, "reasonable restrictions" means restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or performance.

Section 6. Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in or upon any Lot or Dwelling Unit or in the Common Area Lot except upon specific approval of the Board, except that an Owner shall be allowed to maintain a reasonable number of household family pets, so long as a pet does not annoy, molest or inconvenience any other Owner, and provided that such pet or pets shall, if and when declared to be a nuisance by the Board, forthwith be removed from the Project. Dogs must be "curbed" and kept on leash while on the Common Area Lot. Each Owner of a pet shall have the responsibility of removing the pet's waste matter from the Common Area Lot. Any inconvenience, damage, or injury caused by such household pet or pets shall be the sole responsibility of the respective Owner thereof and said Owner does hereby indemnify the Association, its Board of Directors, officers and agrees to hold each of them harmless from and against any and all loss, cost, liability and expense of any kind or nature arising out of having pets within the Project.

Section 7. Offensive Activities. No noxious or offensive activity shall be carried on or in any Lot or in the Common Area Lot, nor shall anything be done therein which may be or become an annoyance or nuisance.

Section 8. Exterior Clothes Drying Facilities. Outside clothes lines or other outside clothes drying or airing facilities

shall not be maintained unless hidden from view from the street and from any other Lot in the Project.

Section 9. Rubbish, Refuse Containers and Disposal. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom so as to render any Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to any Lot or to the occupants thereof. Rubbish, garbage, trash, and all other refuse shall be stored in sanitary, non-metallic containers, or such other containers as may be approved by the Board. Such containers shall be maintained within the enclosed portion of an Owner's Lot (but not within an Owner's garage) so as not to be visible from the street. Containers shall be placed in the places designated as the trash pick up areas; provided, however, that such containers shall not be placed in the designated areas earlier than 6:00 P.M. the day before collection and such containers must be retrieved not later than 8:00 P.M. the day of collection. Such containers shall be situated as to be readily accessible for collection.

Section 10. Exterior Lighting. No exterior lighting shall be placed upon any Lot so as to cause unreasonable glare or illumination upon any other Lot. Notwithstanding the foregoing (a) lighting installed in connection with the original construction of the Project, and any replacements thereof and lighting installed with the approval of the Architectural Committee, and any replacements thereof, shall be permitted; (b) lighting installed by the Association within the Common Area Lot which does not create an unreasonable glare or illumination upon any Dwelling Unit (as determined by the Architectural Committee) shall be permitted; and (c) nothing contained herein shall be construed as preventing Declarant and its agents, employees and assigns from engaging in all forms of construction and sales activity within the Project.

Section 11. Structural Changes. Nothing shall be done in any Lot or in or on or to the Common Area Lot which will impair the structural or esthetic integrity of the buildings or other improvements in the Common Area Lot or which would structurally alter the same, except as is otherwise provided herein.

Nothing shall be altered, installed, or constructed on the Common Area Lot except upon the written consent of the Board.

Section 12. Mineral Exploration. No drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot or the Common Area Lot or within 500 feet below the surface of the Property.

Section 13. Development of Air Space. No development shall be made of the air space above the exterior of any structure in any Lot or in the Common Area Lot except upon the written consent of the Architectural Committee and obtaining necessary permits or other approvals from appropriate governmental agencies.

Section 14. Violation of Rules and Laws. There shall be no violation of the rules or regulations for the use of Lots or the Common Area as set forth herein or as may be adopted by the Board.

There shall be no violation or failure to comply with applicable laws, orders, or directives of any lawful authority.

Section 15. Owner Liability. Each Owner shall be liable to the Board for any damage to any portion of the Common Area Lot or the equipment, facilities, or structures thereon which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, relatives, guests, invitees, or tenants, both minor and adult. In the case of joint ownership, the liability of such Owners shall be joint and several. In the event of personal injury or property damage sustained by any person while physically on the Lot of any Owner, and in the further event that any other Owner shall be sued, or a claim made against him or her for said injury or damage, the Owner or Owners of the Lot in which said injury or damage occurs, shall fully indemnify and hold harmless any such other Owners against whom such claim will be made, and shall further defend any such other Owners at his or her own expense in the event of litigation of such claim; provided, however, that such protection shall not extend to any other Owner whose own negligence may have caused or contributed to the cause of any such injury or damage.

Section 16. Exemption From Payment of Maintenance Fee. No Owner may exempt himself from liability for his contribution to the maintenance fund by any waiver of the use or enjoyment of the Common Area, or by the abandonment of his Lot.

Section 17. Parking. All parking shall be subject to the following restrictions:

A. No parking space may be sold or assigned to, or retained in the ownership of, any person not a Lot Owner and no parking space may be rented or leased to a non-Lot Owner except in connection with a lease of a Lot.

B. No vehicle other than standard passenger automobiles, sports utility vehicles, vans holding no more than eight (8) passengers, three-quarter (3/4) ton pickup trucks and motor-cycles ("Permitted Vehicles") shall be permitted to be parked upon any area within the Project, except commercial vehicles making deliveries or providing services, to the Association or to an Owner or his Lot may temporarily park their vehicles in the Project. Lot Owners and their tenants may park Permitted Vehicles in their enclosed garage in the Project. No parking shall be permitted on the private driveway.

C. Busses, trailers, trailer coaches, housecars, campers, boats, recreational vehicles, mobile homes, watercraft, inoperable vehicles and the like shall not be permitted upon any area within the Project.

D. No repairs shall be made to any vehicle while parked in any area in the Project, except in the case of strict emergency.

E. The Board may establish rules and regulations regarding parking, including the establishment of "parking", "no parking" and "guest parking" areas.

F. Garage doors must be kept closed at all times except when entering or exiting or except as may be temporarily necessary.

G. An Owner shall keep the driveway apron to his garage clean and free of debris, oil and grease.

H. All applicable provisions of the California Vehicle Code will be enforced on any private streets within the Project.

I. Space sufficient for the parking of two vehicles shall be maintained within an Owner's garage at all times.

J. There shall be no business activities, day care or garage sales conducted within or from any garage.

K. The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above restrictions or in violation of the California Vehicle Code, whether the same shall belong to any Owner or a member of his family or to any relative, guest, or invitee of any Owner. Charges for such towing and storing shall be assessed against any Owner who shall violate such restrictions and also against any Owner whose family members, relatives, guests, or invitees may violate the same. Neither the members of the Board or the Association shall be liable for any damages incurred by the owner of the vehicle or for any damage to the vehicle because of its removal in compliance with this Section unless such damage resulted from the negligence of the Board.

Section 18. No Temporary Structures. No structure of a temporary character, trailer, tent, shack, barn, or other out-building shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 19. Payment of Real and Personal Property Taxes. Each Owner of a Lot shall pay any real and personal property taxes or charges assessed against his respective Lot and the utility charges for said Lot and all costs of maintaining said Lot and Dwelling Unit.

Section 20. Repair of Improvements After Casualty. Should the improvements on any Lot or Lots be damaged or destroyed by fire or other casualty, the Owner or Owners thereof shall cause the same to be repaired and restored substantially in accordance with the original plans and specifications therefor, subject to approval of the Architectural Committee. The repairs and restoration work



shall be commenced on the earlier of thirty (30) days after receipt of insurance proceeds covering said Lot or within one hundred twenty (120) days after the happening of the destruction or damage and once commenced, shall be pursued diligently to completion and should the same not be timely commenced or carried toward completion with diligence, the Association may elect to repair or restore the same, or to complete work or repair and restoration on behalf of and at the cost of such Owner or Owners. Any amounts expended by the Association for such repair or restoration and not reimbursed to the Association by the Owner shall be added to the assessments against said Lot or Lots proportionately based upon the nature and extent of the same as it affects the Lot of each Owner. Each Owner shall carry fire insurance with extended coverage endorsement or other form of coverage providing equal or greater protection in the amount of the full insurable replacement value of the residential improvements located on the Owner's Lot.

Section 21. Window Coverings. Windows can only be covered by drapes, shades, curtains, or shutters and cannot be painted or covered by foil, cardboard, newspaper, paint, or other similar materials.

Section 22. Liens. No labor performed or services or materials furnished with consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Project or against any other Lot, or against the Common Area Lot, unless such other Owner or the Board, as the case may be, has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by an Owner in the case of emergency repairs thereto, or in the case of an Owner failing to maintain those areas of the Project which he has the primary obligation to maintain hereunder. Labor performed or services or materials furnished for the Common Area, if duly authorized by the Board, shall be deemed to be performed or furnished with the express consent of each Owner. An Owner may remove his Lot from a lien against two or more Lots, or any part thereof, by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Lot.

Section 23. Electronic Equipment. No electronic transmitting equipment other than electronic garage door opening devices, if any, and other than electronic transmitting equipment and devices approved by the Board or the Architectural Committee shall be installed, maintained or used within the Project.

Section 24. No Easements for View Purposes; Disclaimer. The Article herein entitled "Architectural Control" sets forth procedures for the approval of Improvements which may be constructed upon Lots in the Project which are consistent with the architectural standards adopted, from time to time, pursuant to said Article. The architectural standards may have some effect on preserving views from and insuring the passage of light and air to individual Lots. However, by promulgation and enforcement of the architectural standards, or otherwise, neither Declarant, the Board

nor the Architectural Committee, or the members, employees or consultants of any of the foregoing, have made any representations whatsoever concerning the view, if any, that a particular Lot or other Improvement thereon will enjoy. There are no express or implied easements whatsoever appurtenant to any Lot for view purposes, or for the passage of light and air across any other Lot or any property not within the Project, regardless of whether such Lot is owned by Declarant. Each Owner, by accepting a deed to a Lot, hereby expressly acknowledges and agrees that further construction within the Project may impair the view from such Owner's Lot, and each Owner hereby expressly consents to any such impairment.

Section 25. Fences or Enclosures; Maintenance by Owner. No fences, awnings, ornamental screens, screen doors, sunshades, glass or screen enclosures or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within an Owner's Lot, except those that are installed in accordance with the original construction of the Project, and their replacements or those authorized and approved by the Architectural Committee. All fences or walls, including party walls, installed in accordance with the original construction of the Project shall be replaced with fences or walls of like design and materials and no such fence or wall shall be removed without the approval of the Architectural Committee. The Owner of each Lot whose Lot abuts or adjoins a portion of the wall originally constructed by Declarant around the perimeter of the Project shall paint and generally maintain the interior surfaces of that portion of said perimeter wall which abuts such Owner's Lot in accordance with standards established by the Architectural Committee. Repair of such wall shall be the obligation of the Association unless damage to the same shall have been caused by the Owner or his family, guests or invitees in which event the Owner shall be obligated to repair the same at his sole cost and expense. In the event any Owner required to maintain any portion of a wall pursuant to this Section fails or refuses to do so after written notice from the Architectural Committee, the Association can perform such maintenance and may recover the expense thereof and any incidental expense or consequential damages from the neglecting or refusing Owner. No Owner shall alter the shape, size, color, or construction or use any materials different from those used in the initial construction of any such wall without the written consent of the Architectural Committee.

Section 26. Quiet Enjoyment. No owner shall permit or suffer anything to be done or kept upon such Owner's Lot which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises or otherwise.

#### ARTICLE XIV

##### Architectural Control

Section 1. Appointment of Architectural Committee. Declarant shall initially appoint the original Architectural Committee, which shall consist of not less than three (3) nor more than five (5)

members. Said members shall remain until the first anniversary of the issuance of the Public Report for the Project. Declarant reserves to itself the power to appoint a majority of members of the Committee until ninety percent (90%) of all the Lots in the Project have been sold or until the fifth anniversary of the issuance of the Final Public Report, whichever first occurs. Until the earlier of the events specified in the preceding sentence, the provisions of this Section 1 may not be amended or deleted without the written consent of Declarant. Thereafter the Board shall have the power to appoint all of the members of the Committee. After one (1) year from the date of the issuance of the original public report, at least one (1) member shall be appointed to the Committee by the Board. Action taken by the Committee shall not be subject to review, revision or revocation by the Board.

Section 2. Consent of Architectural Committee Required. No Lot Owner shall, at his expense or otherwise, make any structural changes, repairs, or alterations to his Lot or the Common Area or any facilities or structures thereon, nor shall he make any alterations, additions, improvements, repairs, or modifications or changes in paint or finish or color of any facilities or structures thereon, or on his Lot, or install awnings or sunshades or perform any landscaping of any kind or character in or on his Lot, or make any change, alteration, improvement or repair visible from the exterior of his Lot, without the prior written approval of the Architectural Committee. Such approval may be withheld if in the view of the Committee, the Improvement would affect the uniformity and the attractiveness or the value of the Project as a whole. The Committee, on behalf of the Association, shall have the right to enjoin a breach, or threatened breach, of any of the provisions of this Article, which shall be in addition to any other rights and remedies available to the Board or any Lot Owner.

Section 3. Plans and Specifications. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Architectural Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures and topography. Approval may be withheld if in the view of the Architectural Committee the Improvements would affect the uniformity and the attractiveness or the value of the Project as a whole.

Section 4. Approval or Disapproval by Architectural Committee. The Committee or the Association shall approve or disapprove a proposed improvement by sending a written notice thereof to the Owner who so requested said proposed improvement. The approval thereof may be recorded in the office of the County Recorder, but such approval shall not have the effect of, or be construed as, in any manner modifying, altering or waiving any of the provisions, covenants, conditions or restrictions set forth herein. The Committee shall make its determination as to approval or disapproval of the proposed improvements within thirty (30) days of the submission of said proposed improvement to the Committee. Failure on the part of the Committee or the Association to record

such disapproval or to render a decision within the thirty (30) day period mentioned above, shall be deemed to be a waiver of any and all jurisdiction of said Committee or Association as to said plans and specifications, or either of them, and of said location and/or construction, but nothing contained herein, shall be construed as a waiver on the part of the Association or its successors or assigns or any other Owner in the Project, of their right to enforce the conditions recited herein or their right to enforce compliance of any other conditions, restrictions and covenants set forth herein. In the event of any disapproval by the Committee of either a preliminary or final submission of plans, a resubmission of revised plans will follow the same procedure as the original submission.

Section 5. Diligent Prosecution of Work. The approval of any improvement, erection, construction, refinishing, installation, placement, or alteration of a building, or other structure, shall be deemed conditional upon the commencement of said work within ninety (90) days after the approval of the Committee for the same shall have been obtained, or within such other period as shall have been specified by the Committee at the time of its approval. Work thereon must thereafter be prosecuted diligently to completion within a reasonable time and in any event before the expiration of such period as may be specified by the Committee. The Committee may for good cause, as determined by it, in writing, extend the period for completion of any such erection, construction, refinishing, installation placement or alteration. During said construction period, the area shall be kept clear of debris and refuse to the greatest extent possible. In the event the work is not commenced within said ninety (90) days, the approval of the Committee shall lapse and become void unless the Committee, in its discretion, shall give written notice of waiver of the time condition. Said written notice of waiver may contain such terms and conditions as the Committee may deem proper, and shall not be deemed a waiver of any rights or authority of the Committee except as expressly stated in said written notice. Upon such lapse of approval, all proceedings shall terminate, and approval shall be conditional on the filing of new plans and architectural review fee as provided herein.

Section 6. Failure to Complete. The Owner shall complete any approved work within the approved time schedule, except for such time as completion would result in great hardship to the Owner or is rendered impossible due to fire, natural calamities, strikes, national emergencies, or other forces beyond the control of the Owner.

Section 7. Inspection of Work. Upon the completion of any construction, reconstruction, or the alteration or refinishing of the exterior of any Improvement, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Committee. Within thirty (30) days thereafter, the Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was constructed, reconstructed, altered, or refinished in substantial compliance with the approved plans. If

the Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance. If the Owner fails to give written notice as provided herein, the period within which the Committee may inspect the Improvement and give notice of non-compliance shall be extended to one hundred eighty (180) days after actual completion.

If upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Committee shall then set a date on which a hearing shall be held regarding the alleged non-compliance. Said date shall not be more than sixty (60) nor less than thirty (30) days after said notice of non-compliance was given to the Owner. Written notice of the hearing date shall be given at least ten (10) days in advance thereof by the Committee to the Owner.

At the hearing, the Owner, the Committee, and any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Committee shall determine whether there is a non-compliance, and if so, shall determine the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Committee shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Committee ruling. If the Owner does not comply with the Committee ruling within such period or within any extension thereof as the Committee may grant in its discretion, the Committee, at its option, may enter the Lot after three (3) days' written notice to the Owner of such Lot and perform, or cause to be performed, such work or other acts as may be required to remove the non-complying Improvement or remedy the non-compliance, and the Owner of said Lot shall forthwith pay all costs and expenses incurred in connection therewith upon presentation to Owner of invoices therefor.

If, for any reason, the Committee fails to notify the Owner of any non-compliance within thirty (30) days after receipt of said notice of completion from the Owner, or within one hundred eighty (180) days of the date of completion in the event the Owner fails to give written notice, the Improvement shall be deemed to be in accordance with said approved plans.

Section 8. Unauthorized Improvements. If any Improvement is made without first obtaining approval of the Committee, the Committee shall give written notice to the Owner of violation of this Declaration within one hundred eighty (180) days after actual completion. If the Committee fails to give such notice, the Improvement shall be deemed to be in compliance with this Declaration. Within thirty (30) days of said notice, the Owner shall either (a) remove said Improvement at his own expense and restore the Lot to its condition prior to commencement of said Improvement, or (b) submit plans and all other items required by

the Committee, together with an additional late application fee in an amount determined by the Committee. If the Owner has failed to take such action within said thirty (30) day period, the Committee, at its sole option, may enter the Lot after three (3) days' written notice to such Owner and perform or cause to be performed, such work or other acts as may be required to remove the non-complying Improvement or remedy the non-compliance, and the Owner of said Lot shall forthwith pay all costs and expenses incurred in connection therewith upon presentation to Owner of invoices therefor. If the Owner elects option (b) described in this Section, the Committee shall determine within thirty (30) days from the date of filing the late application if the plans are acceptable and if the Improvement is in compliance with said plans. If the Committee notifies the Owner of disapproval of the plans or of non-compliance of the Improvement within said thirty (30) day period, the Improvement shall be removed by Owner unless an extension of time is granted in writing by the Committee in its sole discretion to permit modification of said plans and/or to permit the Owner to remedy the non-compliance. If the Committee fails to notify the Owner of disapproval or non-compliance within said thirty (30) day period, the plans shall be deemed approved and the Improvement shall be deemed in compliance with said plans. The Committee shall also have the right to obtain injunctive relief to prevent a breach, or threatened breach, of the provisions hereof in addition to any other rights and remedies the Committee shall have in law or in equity.

Section 9. Architectural Control Committee Certificate. The Committee shall, upon approval by a majority of its members or within thirty (30) days after written demand is delivered to the Committee by any Owner, and upon payment of a reasonable fee (as fixed from time to time by the Committee), record a Certificate, executed by any two of its members, certifying (with respect to any Lot of said Owner) that as of the date thereof, either (a) all Improvements made and other work done upon or within said Lot comply with this Declaration, or (b) such Improvements or work do not comply, in which event the Certificate shall also identify the non-complying Improvements or work and set forth with particularity the cause or causes for such non-compliance. Any purchaser from the Owner, or from anyone deriving interest in said Lot through him, shall be entitled to rely on said Certificate with respect to the matters therein set forth, such matters being conclusive as between the Committee, Declarant, and all Owners and such persons deriving any interest through them.

Section 10. Access to Premises. Each member of the Committee, Declarant, and any agent or employee of said Committee or Declarant, after the Committee has given written notice shall at all reasonable hours have access to any building site, premises, residence, building, or structure constructed, placed or maintained upon any portion of the Project for the purpose of inspection of the same relative to compliance with this Declaration or for repairing or remedying any non-compliance as provided in this Declaration, and shall not be deemed guilty of trespass by reason of such entry.

Section 11. Non-Liability. Neither Declarant, the Committee, nor any member, agent, or employee of Declarant or the Committee, shall be liable to any Owner for any loss, damage, or prejudice suffered or claimed on account of (a) any defects in any building or other structure erected, constructed, installed, placed, altered, or maintained in accordance with or pursuant to any plans and specifications, exterior materials, color scheme, plot plan, grading plan, or other material approved by the Committee or any conditions or requirements that the Committee may have imposed with respect thereto, (b) approval or disapproval of any item submitted to the Committee by an Owner, or (c) the execution and filing of a Committee Certificate. Approval by the Committee shall not be deemed a representation or warranty that the Owner's plans and/or specifications or the actual construction of a Dwelling Unit or any other Improvement comply with applicable governmental ordinances or regulations, including but not limited to zoning ordinances and building codes.

Section 12. Declarant's Exemption. Declarant shall not be subject to the requirements of this Article XIV hereof until the expiration of four (4) years from the date of the original issuance of the most recently issued Final Subdivision Report for the Project.

Section 13. Fees. Members of the Architectural Committee who are members of the Association shall act without compensation but shall be permitted to charge a reasonable fee, to be paid to the Association for any set of plans which may be submitted to it for approval. In the event the Committee shall be reasonably required to engage a professional consultant to assist it in its determination, the Committee shall first obtain an estimate of the fees to be paid to such consultant and shall notify the Lot Owner of such fees. The Lot Owner shall be required, as a condition to proceeding further, to agree to pay such fees. If the Lot Owner shall not agree to pay such fees, the matter submitted before the Committee shall be deemed to be disapproved unless some alternative method of providing the necessary assistance to the Committee (which is in a form satisfactory to the Committee) shall be provided.

At the time plans are submitted to the Committee for approval, the Owner shall also be required to submit a deposit, in an amount determined by the Architectural Committee, to insure that the Owner's Lot and the street in front of the Owner's Lot will be left in a clean and neat condition after completion of the work of Improvement and damage, if any, to the street and adjacent Lots will be repaired to the standards of the Architectural Committee and applicable governmental regulations and ordinances. If the Owner shall not leave his Lot in a neat and clean condition, the Board shall give written notice to the Owner to clean his Lot. If the Owner shall not clean his Lot within thirty (30) days after such notice, the Board shall have the right to do so and the expense thereof shall be paid out of the deposit. Any sums remaining after payment therefor shall be returned to the Owner. If the cost is in excess of the deposit, the Owner shall forthwith pay the deficiency to the Association.

The Board shall have the right at any time and from time to time to increase or decrease the amount of the clean up deposit.

Section 14. Architectural Guidelines. The Architectural Committee shall have the right from time to time, to adopt architectural guidelines relating to any landscaping, improvement, alteration, or construction on any Lot or improvement thereon in order to provide for the uniformity and the attractiveness of the Project as a whole. Said guidelines may be enforced in accordance with the provisions of this Declaration.

Section 15. Failure to Establish Architectural Committee. In the event that for any reason the Architectural Committee shall not be established, or if established, shall thereafter cease to exist, all of the rights, powers, duties and obligations of the Architectural Committee shall be performed by the Board.

## ARTICLE XV

### Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Project and placed on the dividing line between the Lots shall constitute a party wall and in the event that such a wall not be placed exactly on the dividing line between Lots, the same may encroach on one of such Lots and shall be maintained in the location originally constructed, and, to the extent not inconsistent with the provisions of this Article XV, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The Owner of each residential Lot upon which there is located a common wall shall have a joint obligation to maintain such common wall (except perimeter block walls, the maintenance of which shall be the obligation of the Association) and each such Owner shall have a reciprocal non-exclusive easement to each contiguous Lot for the purpose of maintaining said common wall. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Provided, however, if any such party wall is damaged or destroyed through the negligent or willful act of one adjoining Owner or any of his agents or guests or members of his family so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining Owner.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by casualty, any Owner who has used the wall may restore it and the other Owners shall contribute to the cost of the restoration thereof without prejudice, however, to the right of any such Owners to call for a larger contribution from



the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE XVI

### Easements

Section 1. Encroachment Easement. Each Lot and its Owner within the Project is hereby granted an easement over all adjoining Lots for the purpose of accommodating any encroachment due to original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement, or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be easements for maintenance of said encroachments so long as they shall exist.

Section 2. Association Easement. The Association is hereby granted an easement and right of entry in, across, and over every Lot in the Project for the purpose of performing its duties hereunder.

Section 3. Entry for Repairs. The Board or its designated agents may enter upon any Lot when necessary in connection with any maintenance or construction for which the Board is responsible, or for any maintenance required by reason of the failure of the Lot Owner to maintain as provided herein. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. There is hereby reserved to Declarant and the Board, for the benefit of each Owner, easements over each Lot and the Common Area Lot, for the purpose of maintenance and repairs and such further purposes as are necessary to perform the duties and obligations of the Board and the Association.

Section 4. Access Easements.

Each Owner of a Lot in the Project is hereby granted an easement for ingress and egress over the private street within the Project.

Section 5. Maintenance Easement.

Each Owner of a Lot in the Project shall have an easement over a portion of a Contiguous Lot (the "Contiguous Lot")

for the right of ingress and egress in, to, over, under, and across an area of the Contiguous Lot which is required for the purpose of maintaining, repairing, altering, modifying and/or painting (hereafter "Maintenance") the Dwelling and all other improvements on the Lot adjoining the Contiguous Lot. Except in the event of an emergency, an Owner shall be required to give the Contiguous Lot Owner seventy-two (72) hours prior written notice of the necessity to enter the Contiguous Owner's Lot for the purpose of performing necessary Maintenance. The notice shall state the nature of Maintenance, the time the Maintenance will commence and the estimated time to complete the Maintenance. Any damage caused the landscaping, the Dwelling or other structures of the Lot of the adjoining Owner shall be repaired and/or replaced by the Owner causing the damage.

#### Section 6. Easements For Drainage.

A. There are hereby created and reserved over each Lot in the Project easements for drainage according to the patterns for drainage created by the grading plans for the Project as well as according to the actual, natural and existing patterns for drainage.

B. Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots in the Project over his Lot, or in the alternative, that in the event it is necessary and essential to alter said drainage pattern for the protection and use of his Lot, he will make adequate provisions for proper drainage, and submit alternative plans and specifications therefor to the Board for review and approval.

### ARTICLE XVII

#### Utilities

The rights and duties of the Owners with respect to lines for sanitary sewer, water, gas, electricity, telephone cables and heating and air conditioning, shall be governed by the following:

A. Wherever sanitary sewer connections and lines or electricity, gas, telephone lines, heating and air conditioning lines or television cables are installed within the Project, which connections or any portion thereof, lie in or upon portions of the Project owned by others than the Owner of a Lot served by said connections, the Owners of any Lots served by said connection, shall have the right and are hereby granted an easement, to the full extent necessary therefor, to enter upon the Lots or to have the utility companies enter thereupon to repair, replace and generally maintain said connection as and when the same may be necessary as set forth below.

B. Wherever sanitary sewer connections and lines, facilities and/or water connections and lines of electricity, gas, telephone lines, air conditioning and heating lines, or television cables are installed within the Project, which connections serve more than one

Lot, the Owners of each Lot served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as services their Lot.

C. In the event any portion of said connection or line is damaged or destroyed through the negligent act or acts of failure to act, or willful misconduct of one Owner or any of his employees, agents, invitees, tenants or guests, so as to deprive other Owners of the full use and enjoyment of said connection or line, then such connection or line shall be repaired or restored at the expense of the Owner who commits or whose guests, agents, or employees commit, such act or acts.

D. In the event any portion of a connection or line is damaged or destroyed by some other cause than the negligence or willful misconduct of one of the Owners, his employees, agents, guests, tenants or invitees (including ordinary wear and tear and deterioration from lapse of time) then in such event, such connection or line shall be repaired and restored at the joint expense of all Owners served by such connection or line.

E. In the event of a dispute between Owners with respect to the repair or rebuilding of said connection or line, or with respect to the sharing of the costs thereof the provisions hereof pertaining to "Alternative Dispute Resolution" shall apply.

Easements over the Properties for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities and television cable service and for drainage facilities are as shown on the recorded map of the properties.

## ARTICLE XVIII

### Protection of Mortgagees

Section 1. Subordination of Liens. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first mortgage that encumbers all or a portion of the Project, or any Lot, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the Mortgagee expressly subordinates his interest, in writing, to such lien.

Section 2. Material Amendments. If an Eligible Mortgage Holder informs the Association in writing of its appropriate address and requests in writing to be notified, the Association shall not make any material change to the Declaration, the ByLaws or the Articles unless agreed to by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of subdivision interests that are subject to mortgages held by Eligible Mortgage Holders. The term "material amendment" is defined to mean amendments to provisions of any such documents governing the following subjects:

A. Reallocation of interests of the Owners, if any, in the general or limited common elements of the Project or rights to their use.

B. The fundamental purpose for which the Project was created (such as a change from residential use to a different use).

C. Voting rights.

D. Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens and the priority of assessment liens.

E. Reductions in reserves for maintenance, repair and replacement of the Common Area.

F. Responsibility for repair and maintenance obligations.

G. Hazard or fidelity insurance requirements.

H. Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration.

I. Rights to use the Common Area Lot.

J. Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project.

K. Redefinition of the boundaries of any Lot.

L. Convertibility of Lots into Common Area or of Common Area into Lots.

M. Imposition of any restrictions on leasing of Lots.

N. Imposition of any right of first refusal or similar restriction on the right of a Lot Owner to sell, transfer, or convey his Lot.

O. If the Project consists of fifty (50) or more Lots, to terminate professional management (but only if such professional management is required by this Declaration or by any Eligible Mortgage Holder and assume self control of the Project.

P. Any provision, which by its terms, is specifically for the benefit of first Mortgagees, Insurers, or Guarantors, or specifically confers rights on first Mortgagees, Insurers, or Guarantors.

An addition or amendment to the Declaration, the Articles or to the ByLaws shall not be considered material if it is for the

purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder or Eligible Guarantor or Insurer who receives a written request to approve additions or amendments, who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 3. Required Consent of Mortgagees. Unless at least two-thirds (66-2/3%) of the first Mortgagees (based upon one vote for each mortgage owned) of the individual Lots or two-thirds (66-2/3%) of the Lot Owners (other than the sponsor, developer, builder or Declarant) have given their prior written approval, neither the Association nor the Owners shall be entitled:

A. By act or omission to seek to abandon or terminate the Project, except in the case of a taking by condemnation or eminent domain or substantial loss or damage to the Common Area Lot.

B. To change the pro rata interest or obligations of any Lot for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the prorata share of ownership, if any, in the Common Area Lot.

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

D. To use hazard insurance proceeds for losses to the Common Area in the Project or to use proceeds received from third party litigation for losses to, or claimed defects in, the Common Area for other than the repair, replacement, or reconstruction of improvements.

E. By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area.

F. Fail to maintain fire and extended coverage on insurable Association Common Area improvements on a current replacement cost basis in any amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

G. To partition or subdivide any Lot.

Section 4. Examination of Books and Records by Mortgagees. First Mortgagees can examine and copy the books and records of the Association and can require the submission of financial data

concerning the Association or the Project, free of charge, including annual audited financial statements for the immediately preceding fiscal year. Such financial statements shall be furnished within a reasonable time following such request.

Section 5. Priority of First Mortgagees-Insurance Proceeds and Condemnation Awards. No Lot Owner, or any other party, shall have priority over any right of first Mortgagees of Lots pursuant to their mortgages in case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of Dwelling Units or Common Area. Any provision to the contrary in this Declaration or in the ByLaws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees naming the Mortgagees, as their interests may appear.

Section 6. Notice to Mortgagees. Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lot number or address, such Eligible Mortgage Holder or insurer or guarantor will be entitled to timely written notice of:

A. Any loss casualty to any Dwelling Unit covered by a mortgage, if such loss exceeds One Thousand Dollars (\$1,000.00), or any loss to the Common Area if such loss exceeds Ten Thousand Dollars (\$10,000.00) or on any taking of the Common Area.

B. Any default in performance of obligations under the Declaration, the Articles, or the ByLaws or rules and regulations adopted by the Association, which default is not cured within sixty (60) days after written notice to such Owner.

C. Any lapse, Cancellation or material modification of any fidelity bond required to be maintained by the Association or of any insurance policy required to be maintained by the Association.

D. Any proposed action which would require the consent of mortgagees as specified in Sections 2 and 3 of this Article.

Section 7. Effect of Foreclosure by First Mortgagee.

A. No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any first mortgage in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

B. If any Lot is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments shall not operate to

affect or impair the lien of the mortgage. On exercise of power of sale or judicial foreclosure of the first mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser taking title to the Lot free of the lien for assessments, or installments that have accrued up to the time of the foreclosure sale. On taking title to the Lot, the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Lot. The subsequently levied assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser, and his successors and assigns, are required to pay their proportionate share as provided in this Article.

C. Any Mortgagee who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

D. Any mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed in lieu of foreclosure or by assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

Section 8. Mortgagee's Attendance at Meetings. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments or for any other purpose. Written notice of any or all meetings of the Members and the Board will be provided to any Mortgagee upon its written request.

Section 9. Providing Information to Board. Any Mortgagee may furnish information to the Board concerning the status of any mortgage.

Section 10. Restriction on Right of First Refusal. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Lot shall be granted to the Association without the consent of any Mortgagee, of the Lot. Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Lot, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the Lot pursuant to the remedies provided in its mortgage or by reason of foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure.

Any right of first refusal shall not impair the rights of a first Mortgagee to: (a) foreclosure or take title to a Lot pursuant to the remedies provided in the mortgage; (b) accept

a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor; or (c) sell or lease a Lot acquired by the first Mortgagee.

Section 11. Termination of Certain Contracts. Any contract for professional management of the Project, or any other contract providing for services by Declarant shall provide for termination by either party with or without cause and without payment of a termination fee upon no more than thirty (30) days written notice. Such agreement shall be renewable with the consent of the Board and the management agent. No contract with the Association negotiated by Declarant shall exceed a term of one (1) year.

Section 12. Tax Liens. All taxes, assessments and charges which may become liens prior to the first mortgage under the local law, shall relate only to the individual Lots and not to the Project as a whole.

Section 13. Reserves for Maintenance. Assessments on Lots shall include an adequate reserve for maintenance, repairs and replacement of the Common Area facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments.

Section 14. Termination of the Project. Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project must require the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgage Holders and sixty-seven percent (67%) of the Lot Owners.

Section 15. Reallocation of Interests. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project may be affected without the prior approval of Eligible Mortgage Holders holding mortgages on all remaining Lots, whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Lots subject to Eligible Mortgage Holders and the vote of sixty-seven percent (67%) of the Lot Owners.

Section 16. Payment of Taxes and Premiums. First mortgagees may, jointly or singly, pay taxes or other charges which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of policy, for such Common Area property and first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association, provided that said first mortgagees have given notice to the Association prior to the making of such payments and the Association has failed to pay the same.

Entitlement to such reimbursement shall be reflected in an agreement in favor of all first mortgagees of Lots to be executed by the Association. An original copy of such agreement shall be possessed by the Declarant.



Section 17. Conflicts. If there is any conflict between any Section of this Article and any other provision of this Declaration, or the ByLaws of the Association, the language contained in this Article shall control.

## ARTICLE XIX

### Destruction of Improvements

Section 1. Partial Damage. In the event any improvements or any fixtures or personal property in the Common Area of the Project are partially destroyed by fire or other casualty, or by partial condemnation, it shall be the duty of the Board to restore and repair the same to its former condition, as promptly as practicable and in a lawful and workmanlike manner. The proceeds of any insurance shall be made available for such purpose, subject to the prior rights of beneficiaries of deeds of trust whose interest may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such partial reconstruction shall be less than eighty-five percent (85%) of the cost of the repair or construction and/or in the event such destruction is in an amount equal to fifty percent (50%) or more of the total value of the entire improvements in the Common Area of the Project, the Owners of Lots, by vote of the Owners holding seventy-five percent (75%) of the voting power of each class of membership, in person or by proxy, at a duly constituted meeting, shall determine whether the Board shall be authorized to proceed with such partial reconstruction or not, and in the event of an affirmative vote, a Special Assessment of the Owners may be levied to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purposes. In the event of a determination by the Owners that the cost of such reconstruction would be so substantial that it would not be in their best interests to proceed with the same, the Owners may, in their discretion, proceed as provided hereinafter.

Section 2. Total Destruction. In the event of the total destruction of the improvements in the Common Area of the Project, the Owners, by the requisite vote as set forth in Section 1 above, shall likewise have the authority to determine whether said improvements shall be rebuilt. In the event of the determination to rebuild and if the insurance proceeds shall be insufficient for the same, the necessary funds shall be raised by Special Assessment of the Owners as provided in Section 1 above.

## ARTICLE XX

### Amendments

Section 1. Prior to First Sale. Before the close of the first sale in the Project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect, or revoked by the execution by Declarant of an instrument amending or revoking this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its

amendments and shall be acknowledged and recorded in the office of the County Recorder where the Project is located.

Section 2. After Close of First Sale. After the close of the first sale of a Lot in the Project to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect as follows: (1) If a two class voting structure is still in effect in the Association, this Declaration may be amended only with the vote or written consent of members entitled to cast at least sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the voting power of each class of members in the Association; (2) if a two class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership as provided herein, this Declaration may be amended only with the vote or written assent of: (i) members holding sixty-six and two thirds percent ( $66\frac{2}{3}\%$ ) of the voting power of the Association; and (ii) members holding sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the voting power held by members other than Declarant.

Notwithstanding the foregoing, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of members in order to take affirmative or negative action under such provision the same percentage of such class or classes of members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, mortgagee or other person, firm, agency, or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale need only be evidenced by an instrument certified by the secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the county recorder where the Project is located.

Section 3. Amendment to Meet Requirements of Mortgagees and Governmental Agencies. It is the intent of Declarant that this Declaration and the Articles and ByLaws of the Association, and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Lot in the Project by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Veteran's Administration. In furtherance of that intent, Declarant expressly reserves the right and shall be entitled by unilateral amendment of the Declaration so long as Declarant owns more than twenty-five percent (25%) of the Lots in the Project to amend this Declaration in order to incorporate any provisions or to enter into any agreement on behalf of and in the name of the Association that are, in the opinion of any of the cited entities or governmental agencies, required to conform to the Declaration, the Articles, the ByLaws or the Project to the requirements of any of the entities or governmental agencies, including without limitation, the execution on

behalf of and in the name of the Association of a regulatory agreement between the Association and the Federal Housing Commissioner and any other agreement sufficient to satisfy the requirements for mortgage purchase, guarantee or insurance by any of said entities or agencies. Declarant is hereby granted an irrevocable power of attorney to execute any such amendment or agreement by and in the name of the Association. Any such provision shall first be approved by the California Department of Real Estate in connection with its issuance of a final subdivision public report or amendment to it with respect to the Project. Each Owner of a Lot and each Mortgagee of a Lot by acceptance of a deed or encumbrance of a Lot, consents to the incorporation in this Declaration of any such provisions as if they were incorporated in this Declaration. The Board and each Owner shall take any action or shall adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration of the Project to the requirements of any of said entities or agencies.

Section 4. Presumption of Validity. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

Section 5. Compliance with Law. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 to the extent said Section is applicable.

Section 6. Petition to Superior Court. If in order to amend the Declaration, the Declaration requires Owners having more than fifty percent (50%) of the votes in the Association, in a single class voting structure, or Owners having more than fifty percent (50%) of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the Association, or any Owner of a separate interest, may petition the Superior Court of the county in which the Project is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the Association Members in the manner provided in the Declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing Declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- A. The governing documents.
- B. The complete text of the amendment.
- C. Copies of any notice and solicitation materials utilized in the solicitation of Owner approvals.
- D. A short explanation of the reason for the amendment.

E. Any other documentation relevant to the Court's determination.

## ARTICLE XXI

### Enforcement of Bonded Obligations

If Common Area Lot improvements which are included in a subdivision offering covering this Project have not been completed prior to the issuance of a Final Subdivision Public Report and the Association is an obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure performance of the commitment of Declarant pursuant to such subdivision offering to complete the improvements, then the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of such Declarant and the surety under the Bond shall govern:

A. The Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any improvement to the Common Area Lot, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

B. A special meeting of members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question may be held. Said special meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by members representing five percent (5%) of the total voting power of the Association.

C. At any special meeting called for the purpose set forth in subparagraph B above, the vote shall be by members of the Association other than Declarant.

D. A vote of a majority of the members of the Association who reside in the Project, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## ARTICLE XXII

### Right of Owner of Unit To Make Improvements or Modifications

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:

A. Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the Common Interest Development.

B. Modify his Dwelling, 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 Dwelling for the purposes of this paragraph if the Dwelling 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:

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

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

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

(4) Any Owner who intends to modify a Dwelling pursuant to this Paragraph shall submit his or her plans and specifications to the Association of the 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.

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

## ARTICLE XXIII

### Documents to be Provided to Prospective Purchaser

The Owner of a Lot shall, as soon as practicable before

transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following to the prospective purchaser:

A. A copy of the governing documents of the Project.

B. If there is a restriction in the governing documents limiting the occupancy, residency or use of a separate interest on the basis of age in a manner different from that provided in California Civil Code Section 51.3, a statement that the restriction is only enforceable to the extent permitted by said Section and a statement specifying the applicable provisions of said Section.

C. A copy of the Association's most recent financial statement distributed in accordance with Section 1365 of the California Civil Code.

D. 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 as well as any assessments levied upon the Owner's interest in his Lot and the Project which are unpaid on 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 Owner's interest in the Project pursuant to Section 1367 of the California Civil Code.

E. Any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board of Directors, that have not become due and payable as of the date disclosure is provided pursuant to this Article.

Upon written request the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Lot with a copy of the requested items specified in Subparagraphs A, B, C, D and E of this Article. The Association may charge a fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

#### ARTICLE XXIV

##### Enforcement

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all obligations, restrictions, conditions, covenants, reservations, liens and charges nor or hereafter imposed by the provisions of this Declaration or any amendment thereto or by the Articles or ByLaws or rules and regulations. The result of every act or omission whereby any of the covenants contained in this Declaration, the Articles, the ByLaws and the rules and regulations are violated in whole or in part are hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a

nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, or its successor in interest. The remedies herein provided for breach of the covenants contained in this Declaration shall be cumulative, and none of such remedies shall be deemed exclusive. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, nor shall any such failure to enforce the same or any other violation of such covenants or restrictions impair or invalidate the lien of any first mortgage or first deed of trust. Each remedy provided for herein shall be cumulative and not exclusive.

## ARTICLE XXV

### Term of Declaration

The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and be enforceable by Declarant, the Association or any Owner of land subject to this Declaration, their respective heirs, representatives, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the Owners has been recorded within six (6) months prior to the termination of the forty (40) year initial term or within six (6) months prior to the termination of any successive ten (10) year period, agreeing to terminate said covenants, conditions and restrictions in whole or in part.

## ARTICLE XXVI

### Resolution of Disputes

Section 1. Disputes. If any dispute should arise between the Association and/or an Owner or Owners on the one part and the Declarant, or any officer, shareholder, partner, member, employer, contractor, subcontractor, employee, or agent of the Declarant on the other part (hereafter collectively the "Declarant Group") whether the dispute arises under the Declaration of any other management document, or relating to any claim of defects in construction of the Project or any individual, or group of individual Condominiums, or otherwise, the dispute shall be resolved in the manner provided in this Article XXVI.

Section 2. Construction Defects. Before the Association, or an Owner or Owners commence an action for damages against Declarant or any member of the Declarant Group based on a claim for defects in the design or construction of the Project, or any individual or group of individual Dwellings in the Project, the Association or Owner or Owners must first comply with all of the requirements of the Prelitigation Procedure set forth in California Civil Code, Sections 910 through 938. Attached hereto, marked Exhibit "A", and by this reference made a part hereof is a copy of the Prelitigation Procedure.

In the event the parties are unable to resolve the dispute after complying with the Prelitigation Procedure, the matter shall be referred to judicial reference for binding resolution in accordance with Section 4 below.

Section 3. Non Construction Disputes. Any other dispute arising between the Association and/or an Owner or Owners on the one part and any member of the Declarant Group on the other part shall, except for failure of Declarant to pay assessments, and except for an action for declaratory relief or injunctive relief related to the enforcement of this Declaration, or the ByLaws, the Articles of Incorporation, or the Rules and Regulations be resolved in accordance with Section 4 below. Resolution of a dispute arising under this section by judicial reference shall be in lieu of and in satisfaction of the requirements of Civil Code §1354 relating to Alternative Dispute Resolution.

Section 4. Judicial Reference. Any unresolved dispute under Sections 2 and 3 above, shall be submitted to binding judicial reference pursuant to California Code of Civil Procedure Sections 638(1) through 645.1 or any successor statutes thereto or other binding alternative dispute resolution procedure selected by Declarant. In no event shall any reference proceeding or any appeal therefrom result in an award of punitive damages or consequential damages (except as otherwise provided in Senate Bill 800) and all such damages are waived. The parties shall use the procedures adopted by the Streamlined or Comprehensive Rules and Regulations of JAMS/Endispute for judicial reference or other alternative dispute resolution procedure selected by Declarant, provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(1) Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the dispute shall be considered communications undertaken in the course of effecting a settlement and compromise and, as such, shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any purpose in any reference proceeding.

(2) The judicial reference or arbitration shall not be deemed a waiver of the attorney/client or attorney/ work product privilege.

(3) The proceeding shall be held in the County where the Project is located.

(4) The reference proceeding shall commence on a date agreed to by the parties and, if the parties cannot agree, then at a date determined by the referee.

(5) The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such



acts as may be necessary to obtain a prompt and expeditious resolution of the dispute.

(6) The referee or arbitrator shall have the power to decide all issues of fact and law and report his/her decision thereon, and to issue all legal and equitable relief appropriate under the circumstances of the controversy before him/her. The referee or arbitrator shall conduct neutral and impartial proceedings in accordance with rules and procedures which are fair and reasonable to the parties.

(7) The parties shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon. If the parties are unable to agree upon a referee or arbitrator within ten (10) days of a written request to do so by any party, then any party may seek to have a referee or arbitrator appointed pursuant to the California Code of Civil Procedure Sections 638 and 640. In selecting the referee the provisions of Sections 1297.121 and 1297.124 of the Code of Civil Procedure shall apply.

(8) Declarant shall advance all fees necessary to initiate the judicial reference or arbitration with subsequent costs to be paid as agreed by the parties or if necessary as determined by the referee. The overall costs shall be borne by the parties as determined by the referee or arbitrator.

(9) The referee or arbitrator to be appointed must be a retired judge or an attorney or a contractor or other person with experience in relevant real estate matters and must be a neutral and impartial person.

(10) The parties shall be entitled to discovery and the referee or arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial judge.

(11) The referee or arbitrator shall not have the power to award punitive damages.

(12) A stenographic record of the proceeding shall be made.

(13) The decision of the referee or arbitrator upon all of the issues shall be binding upon the parties.

Section 5. Injunctive Relief. If the Association or any Owner shall breach the provisions of this Article, Declarant shall be entitled to injunctive relief (without the necessity of proving any damages) to compel the Association and/or Owner to comply with the procedures set forth in this Article.

Section 6. No Amendment Without Consent. Notwithstanding any other provision or this Declaration neither this Article nor any provision hereof shall be amended, altered, rescinded, or deleted without the written consent of Declarant.

Section 7. Disputes Relating To Governing Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of this Declaration, the Articles of Incorporation, the ByLaws, the Rules and Regulations, or other governing documents of the Association, the issue or issues, at the request of any party, shall be submitted to arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of AAA. Where a vote or written assent is required, either for or against an action, the arbitrator shall be considered a provisional director and/or member of the Association who is authorized to attend any regular, special or adjourned meeting of the Association. In the event of referral to arbitration, the Owner requesting arbitration shall remit the fee to initiate the arbitration. However, the final cost of said arbitration shall ultimately be borne as determined by the arbitrator.

## ARTICLE XXVII

### Condemnation

Section 1. Action for Condemnation. In the event that an action for condemnation of all or a portion of the Common Area of the Project is proposed or threatened by any governmental agency having the right of eminent domain, written notice thereof shall be given by the Association to each Owner of record within ten (10) days after the same becomes known to the Association.

Section 2. Distribution of Proceeds. The proceeds resulting from the condemnation shall be distributed to the Association or any trustee appointed by the Board, for the use and benefit of the Association.

## ARTICLE XXVIII

### General Provisions

Section 1. Purchasers. Each purchaser, by accepting a deed or a valid contract of sale to any Lot accepts the same, subject to all of the covenants, conditions and restrictions herein contained and agrees to be bound by each and all thereof.

Section 2. Construction and Conflicts. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a planned unit development project. In the event of any conflict between this Declaration and the ByLaws of the Association, this Declaration shall control.

Section 3. Captions and Gender. The titles or headings of the Articles or Paragraphs of this Declaration are not a part hereof and shall have no effect upon the construction or interpretation of any part hereof. The singular shall include the plural and the plural the singular unless the context requires the

contrary and the masculine, feminine and neuter shall include the masculine, feminine or neuter as the context requires.

Section 4. Binding on Heirs. This Declaration shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns, grantees and lessees of the Declarant and each Owner.

Section 5. Payment of Municipal Charges. The Board of Directors of the Association shall include in the assessments provided for in Article V hereof provisions for adequate sums for the payment of municipal charges to insure payment of any invoice by the city, for water, landscape and lighting maintenance, sewer service charge, garbage, trash, or rubbish charge, in such manner that either the Board of Directors, Owners of Lots, or management agent shall continually guarantee payment to the appropriate governmental authority.

Section 6. Interpretation and Severability. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Project. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

Section 7. Notice of Sale or Lease of Dwelling Units. Within five (5) business days after the consummation of the sale, transfer or lease of any Lot under circumstances whereby the transferee becomes an Owner or lessee thereof, the transferee, or the Owner in the case of a lease, shall notify the Board in writing of such sale or lease. Such notification shall set forth (i) the names of the transferee or lessee and his transferor or lessor, (ii) the street address of the Lot purchased or Dwelling Unit leased by the transferee, (iii) the number and names of all persons and the ages of all minors who intend to occupy said Lot, (iv) the transferee's mailing address, and (v) the date of sale or lease. Prior to receipt of such notification, any and all communications required or permitted to be given by Declarant, the Board or the Architectural Committee or any agent or representative thereof shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor or lessor.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, the same shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each such person at the address given by such person to the Board for the purpose of service, or to such person's Dwelling Unit, if no address has been given to the Board. An address may for any reason be changed from time to time by notice in writing to the Board.

Section 9. No Restrictions for Race, Color or Creed. No Owner shall execute or file for record any instrument which imposes

Section 9. No Restrictions for Race, Color or Creed. No Owner shall execute or file for record any instrument which imposes a restriction upon the sale, leasing or occupancy of his Lot on the basis of race, color or creed.

## ARTICLE XXIX

### Provisions Regarding City of El Monte

Section 1. Local Jurisdiction. The government entity with primary jurisdiction over this project is the City of El Monte, in the County of Los Angeles. The Association shall abide by codes and/or ordinances of the primary jurisdiction above stated, and the laws of the State of California.

Section 2. Right of Public Entity To Common Area. The city, the county, the Government of the United States, and any department bureau, official inspector, or agency thereof, shall have the right of immediate access to the Development, including all buildings and structures thereon for the purpose of preserving the public health, safety and welfare.

Section 3. Traffic enforcement. By the execution and recording of this document, Declarant does hereby request that the City enforce traffic regulations on any private street within the Development pursuant to Vehicle Code Section 21107.5 and/or 21107.7.

Section 4. Right of the City To Compel Performance.

A. Enforcement By the City of El Monte. The Declarant, the Association, and each Owner of a Lot in the Project hereby confers upon the City the power to enforce the Common Area use and maintenance covenants of the Association and the Owners with respect to the maintenance thereof, as contained in this Declaration for the benefit of the Public Parcel in such a manner to provide for health, safety and welfare of person working and residing in the vicinity of the Property, and the entire City. The City shall have the right and power to enforce the Common Area use and maintain covenants of the Association and the Owners; provided, however, no duty to enforce said use and maintenance covenants shall be deemed to arise by virtue of this Declaration or any provision of this or any other action of the City. Any provision of this Declaration to the contrary notwithstanding, the City may, by action at law or in equity, enforce the following provisions of the Declaration as a party hereto and as owner of the Public Parcel and as the governing municipality.

(1) All provisions relating to the proper maintenance, repair, and use of the Common Area.

(2) Any provision or conditions of approval of Tract Map 54066 as approved by the El Monte City Council.

(3) In addition to all other remedies which the City may have to enforce this Declaration, including any action in law or equity, the City shall have, in the event of default of any Owner or the Association in performing their obligations to maintain the Common Area as set forth in this Declaration, the same right as that of the Association to enter the Common area for the purposes of discharging the obligations of the Association. Any amounts expended by the City in maintaining the Common Area shall become a lien on both the Common Area owned by the Association and each Owner's Lot. If the amount of the lien is not paid within thirty (30) days after written notice by the City to the Association and each Owner, the city shall have the right to enforce its lien by civil suit or otherwise in the same manner as provided in Article VI related to nonpayment of assessments.

(4) In the event that the City shall be the prevailing party in an enforcement action authorized by this section, the City shall also have the right to collect its reasonable attorney's fees, costs and expenses associated with any action or proceeding to enforce its rights hereunder.

(5) No approval by an Owner, the Association, or the Board of Directors shall be necessary to establish and foreclose any lien of the City for nonpayment of amounts expended by the City to maintain the Common Area. No failure by the City to enforce any default pertaining to the use and maintenance of the Common area shall be deemed to be a waiver of the right or power of the City to enforce any subsequent default thereof.

B. Priority of City Ordinances and Other Laws. Notwithstanding any provisions in the Declaration to the contrary, execution of this Declaration shall not be deemed a waiver or release of any applicable provision of the subdivision or improvement plans for the Property, as previously approved by the City or as they may be amended from time to time, or of any applicable ordinance or law or the general police power of the City. In the event of any conflict between any provision hereof and any ordinance, law or the general police power of the City, the latter shall prevail.

C. Amendment of This Declaration and Prior Approval of the City. Any amendment or modification of this Declaration affecting the maintenance obligations of the Association or any other Owner, any covenant to pay assessments and to provide capital replacement reserves, the use restrictions affecting the Common Area, the enforcement and lien powers of the City or this paragraph shall require the prior written approval of the City.

D. Notice Requirements. Prior to commencing any action to enter the Common Area, except any actions taken to remove graffiti, for the purposes of discharging the obligations of the Association, the City shall provide ten (10) days advance notice of the intention to institute such action and shall specify the manner in which any Owner or the Association has defaulted in performing

their obligation to maintain the Common Area, and shall afford the Owner and/or the Association the opportunity to remedy any such default.

#### ARTICLE XXX

##### Mold

Each Owner, by acceptance of a deed to a Dwelling, acknowledges, recognizes and understands that there is, and will always be, the presence of certain biological organisms within the Dwelling. Most typically, this will include the common occurrence of mold. In recent years, mold has received significant attention, as significantly increased levels of mold have accumulated and spread through residential dwellings. It is important to note that mold tends to proliferate in warm, wet areas. High levels of mold in an enclosed setting can lead to mild to significant detrimental health effects. As such, it is each Owner's responsibility to maintain his or her Dwelling so as to avoid the accumulation of moisture and/or mold within the Dwelling. Such mitigation matters should include, without limitation, the frequent ventilation of the Dwelling, removal of standing water on balcony, patio or deck areas, prompt repair of any leaks which permit water intrusion into the Dwelling, and prompt repair of plumbing leaks within the Dwelling (irrespective of who or what may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase mold levels within the Dwelling. Also, the propping of large pieces of furniture against wall surfaces may lead to mold spore accumulation. It is the responsibility of each Owner to monitor and maintain his or her Dwelling so as to mitigate and avoid the conditions which are likely to lead to the presence and/or spreading of mold. In the event that mold does appear within the Dwelling, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to, cleaning mold-affected surfaces with chlorine bleach. Each Owner is responsible to learn how to clean any affected Improvements.

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

DAHLIA ESTATES, LLC,  
a California Limited Liability  
Company

By: WESTERN PACIFIC DEVELOPMENT  
AND CONSTRUCTION COMPANY,  
a California corporation, Member

By Margda Zolezzi  
MAGDALENA ZOLEZZI  
Executive Vice President

ACKNOWLEDGEMENT

STATE OF CALIFORNIA            )  
                                      ) ss.  
COUNTY OF LOS ANGELES        )

On Dec 13<sup>th</sup>, 2002, before me Laura Y Aldaz, appeared MAGDALENA ZOLEZZI, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Laura Y. Aldaz  
Notary Public in and for said  
County and State

**EXHIBIT "A"**

**Prelitigation Procedure**



#### CHAPTER 4. PRELITIGATION PROCEDURE

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.

(b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.

911. For purposes of this title, "builder" means a builder, developer, or original seller and applies to the sale of new residential units on and after January 1, 2003.

912. A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the

time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative. This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide with the original sales documentation, a written copy of this part which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.

913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.

914. (a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative nonadversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable. At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the nonadversarial procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.

(b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding

resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed.

915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision shall not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The

offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.

918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.

920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

(b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.

922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.

924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.

925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.

926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.

927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.

929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.

930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.

931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.

932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinitiate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinitiate this process as to that standard.

933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.

934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.

936. Each and every provision of the other chapters of this title apply to subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a subcontractor, material supplier, design professional, individual product manufacturer,

or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, this section does not apply to any subcontractor, material supplier, individual product manufacturer, or design professional to which strict liability would apply.

937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

938. This title applies only to residences originally sold on or after January 1, 2003.



## **PURCHASER DOCUMENTS**

**“DAHLIA ESTATES”**

**TRACT NO. 54066**

- **DECLARATION OF RESTRICTIONS**
- **NOTICE REGARDING SENATE BILL 800**
- **ARTICLES OF INCORPORATION**
- **BYLAWS**
- **BUDGET**

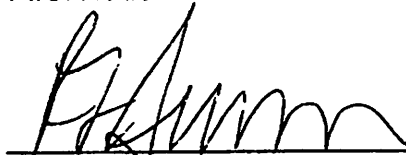


SUBORDINATION

The undersigned, First National Bank, Successor in Interest to Rancho Santa Fe National Bank, Beneficiary under that certain Deed of Trust recorded August 13, 2002, as Instrument No. 02-1901310, Official Records, Los Angeles County, California, does hereby consent to each and all of the provisions contained in the Declaration of Covenants, Conditions and Restrictions for Dahlia Estates and does hereby agree that the lien and charge of said Deed of Trust shall be and is hereby made subordinate to, junior to and subject to said Declaration of Covenants, Conditions and Restrictions and any Amendments/Annexations thereto and the entire effect thereof.

Date: JULY 29, 2003 ✓

First National Bank



By: R.L. SIMONSON, SR. VICE PRESIDENT

STATE OF CALIFORNIA     )  
  ) ss.  
COUNTY OF San Diego     )

On July 29, 2003, before me Jean Miller, Notary Public ✓  
appeared R.L. Simonson, personally known to me (or proved to me  
on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacities, and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Jean Miller  
Notary Public in and for said County and State

