

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO**

COPY

**MARK M. O'BRIEN
A LAW CORPORATION
50 WEST LEMON AVENUE, SUITE 29
MONROVIA, CA 91016-2895**

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR TRACT NO. 60676**

**TABLE OF CONTENTS FOR
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

	PAGE NO.
RECITALS -----	1
DECLARATION -----	1
 ARTICLE I - Definitions	
Section 1.01. Articles -----	1
Section 1.02. Assessment -----	1
Section 1.03. Association -----	2
Section 1.04. Association Rules -----	2
Section 1.05. Board of Directors-----	2
Section 1.06. Bylaws -----	2
Section 1.07. City -----	2
Section 1.08. Common Area -----	2
Section 1.09. Common Facilities -----	2
Section 1.10. Declarant -----	2
Section 1.11. Governing Documents -----	2
Section 1.12. Improvement -----	3
Section 1.13. Lot -----	3
Section 1.14. Member -----	3
Section 1.15. Mortgage -----	3
Section 1.16. Owner -----	3
Section 1.17. Party Wall-----	3
Section 1.18. Properties -----	3
Section 1.19. Residence -----	3
 ARTICLE II - Declaration and Property Rights	
Section 2.01. Owners' Nonexclusive Easements of Enjoyment-----	4
Section 2.02. Persons Subject to Governing Documents-----	4
Section 2.03. Delegation of Use -----	5
(a) Delegation of Use and Leasing of Units, Generally	5
(b) Discipline of Lessees -----	5
(c) Due Process Requirements for Disciplinary Action --	5

TABLE OF CONTENTS (Continued)

PAGE NO.

Section 2.04. Obligations of Owners -----	6
(a) Owner's Duty to Notify Association of Tenants ---	6
(b) Notification Regarding Governing Documents ----	6
(i) Delivery of Governing Documents and Financial Information, By Owner -----	6
(ii) Association's Obligation to Provide Information; Charges -----	7
(c) Payment of Assessments and Compliance with Restrictions and Rules -----	7
(d) Discharge of Assessment Liens -----	7
(e) Joint Ownership of Lots -----	7
(f) Prohibition on Avoidance of Obligations -----	7
(g) Termination of Obligations -----	7

ARTICLE III - Homeowners Association

Section 3.01. Formation -----	7
Section 3.02. Organizational and Regular Meetings -----	8
Section 3.03. Special Meetings -----	8
Section 3.04. Association Action; Board of Directors and Officers ---	8
Section 3.05. Association Membership -----	8
Section 3.06. One Class of Membership-----	8
Section 3.07. Voting Rights of Members -----	8
Section 3.08. Transfer of Memberships -----	9
Section 3.09. Assessments -----	9
Section 3.10. Powers and Authority of the Association -----	9
(a) Powers, Generally -----	9
(b) Association's Limited Right of Entry -----	10
(i) Right of Entry, Generally -----	10
(ii) Limitations on Exercise of Right -----	10
(c) Designation of Association as Attorney-in-Fact -----	10
(d) Management Contracts -----	11
Section 3.11. Association Action; Board of Directors and Officers ---	11
Section 3.12. Association Rules -----	11
(a) Rule Making Power -----	11
(b) Adoption and Amendment of Rules -----	11
(c) Distribution of Rules -----	12
(d) Validity and Enforceability of Rules -----	12
(e) Rules Subject to Special Requirements Relating to Proposed Rule Changes and Special Meetings ----	12
(f) Actions Not Subject to Special Requirements Relating to Proposed Rule Changes and Special Meetings --	12

TABLE OF CONTENTS (Continued)

PAGE NO.

(g) Special Requirements Relating to Proposed Rule Changes - - - - -	13
(h) Special Requirements Relating to Reverse Rule Changes - - - - -	13
Section 3.13. Breach of Rules or Restrictions - - - - -	14
Section 3.14. Limitation on Liability of the Association's Directors and Officers - - - - -	14
(a) Claims Regarding Breach of Duty - - - - -	14
(b) Other Claims Involving Tortious Acts and Property Damage- - - - -	15

ARTICLE IV - Assessments

Section 4.01. Assessments Generally - - - - -	15
(a) Covenant to Pay Assessments - - - - -	15
(b) Extent of Owner's Personal Obligation for Assessments	16
(c) Creation of Assessment Lien - - - - -	16
(d) No Avoidance of Assessment Obligations - - - - -	16
Section 4.02. Regular Assessments - - - - -	16
(a) Preparation of Annual Budget; Establishment of Regular Assessments - - - - -	16
(b) Establishment of Regular Assessment by Board/ Membership Approval Requirements - - - - -	17
(c) Allocation of Regular Assessment, Uniform Assessment	17
(d) Assessment Roll - - - - -	17
(e) Mailing Notice of Assessment - - - - -	17
(f) Failure to Make Estimate- - - - -	17
(g) Installment Payment of Assessments- - - - -	18
Section 4.03. Special Assessments	
(a) Purposes for Which Special Assessments May Be Levied - - - - -	18
(i) Regular Assessment Insufficient in Amount - - -	18
(ii) Capital Improvements - - - - -	18
(iii) Major Capital Repair and Reconstruction Projects	18
(b) Special Assessments Requiring Membership Approval	19
(c) Allocation and Payment of Special Assessments - -	19
(i) Division of Special Assessments - - - - -	19
(ii) Reconstruction Special Assessments - - - - -	19
(iii) Assessment Roll - - - - -	19

TABLE OF CONTENTS (Continued)

PAGE NO.

Section 4.04. Special Individual Assessments - - - - -	19
(a) Circumstances Giving Rise to Special Individual Assessments - - - - -	19
(i) Damage to Common Area or Common Facilities	20
(ii) Expenses Incurred in Gaining Member Compliance	20
(iii) Required Maintenance of Condominium Units -	20
(b) Levy of Special Individual Assessment and Payment	20
Section 4.05. Assessments to Address Emergency Situations - - - - -	21
Section 4.06. Purpose and Reasonableness of Assessments - - - - -	21
Section 4.07. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03- - - - -	22
Section 4.08. Maintenance of Assessment Funds - - - - -	22
(a) Bank Accounts - - - - -	22
(b) Expenditure of Assessment Funds - - - - -	22
(c) Separate Accounts; Commingling of Funds - - - - -	23
(d) Reserve Funds - - - - -	23
Section 4.09. Collection of Assessments; Enforcement of Liens - - - - -	24
(a) Personal Obligation - - - - -	24
(b) Assessment Lien - - - - -	24
Section 4.10. Transfer of Lot by Sale or Foreclosure - - - - -	27
Section 4.11. Priorities - - - - -	27
Section 4.12. Unallocated Taxes - - - - -	28

ARTICLE V - Architectural Control

Section 5.01. Approval of Improvements in General - - - - -	28
Section 5.02. Definition of Improvements Requiring Approval/Exclusion for Interior Projects - - - - -	28
Section 5.03. Appointment of Architectural Committee - - - - -	28
Section 5.04. Submission of Plans - - - - -	29
Section 5.05. Architectural Committee Rules - - - - -	29
Section 5.06. Variances - - - - -	29
Section 5.07. Estoppel Certificate - - - - -	30

ARTICLE VI - Association and Owner Maintenance Responsibilities

Section 6.01. Common Area - - - - -	30
Section 6.02. Association Maintenance Responsibility With Respect to Lots - - - - -	32
Section 6.03. Owner Maintenance Responsibility - - - - -	32
Section 6.04. Owners' Rights and Duties Regarding Utilities - - - - -	33

TABLE OF CONTENTS (Continued)

PAGE NO.

Section 6.05. Association's Right to Recover Certain Maintenance and Repair Costs - - - - -	34
(a) Association Maintenance Caused by Owner Negligence - - - - -	34
(b) Owner Defaults in Maintenance Responsibilities - -	34

ARTICLE VII - Use of Property and Restrictions

Section 7.01. Residential Use - - - - -	35
Section 7.02. Prohibition of Noxious Activities - - - - -	35
Section 7.03. Household Pets - - - - -	35
Section 7.04. Display of United States Flag - - - - -	36
Section 7.05. Display of Signs - - - - -	36
Section 7.06. Business Activities - - - - -	36
Section 7.07. Garbage and Storage - - - - -	37
Section 7.08. Clotheslines - - - - -	37
Section 7.09. Interior Improvements - - - - -	37
(a) Modify the Unit to Facilitate Access for the Handicapped - - - - -	37
Section 7.10. Restriction on Alteration of Common Areas or Building Exteriors - - - - -	38
Section 7.11. Television Antenna, Microwave or Satellite Dish Devices - - - - -	38
Section 7.12. Machinery and Equipment - - - - -	38
Section 7.13. Parking; Trailers, Boats and Motor Vehicles - - - - -	38
Section 7.14. Activities Affecting Insurance - - - - -	39
Section 7.15. Window Coverings - - - - -	39
Section 7.16. Restriction on Further Subdivision and Severability - -	40
Section 7.17. Variances - - - - -	40

ARTICLE VIII - Easements

Section 8.01. Encroachment Easements - - - - -	40
Section 8.02. Private Drive/Street Easements - - - - -	40
Section 8.03. Blanket Utility Easement - - - - -	40
Section 8.04. Maintenance Easements - - - - -	41
Section 8.05. Other Easements - - - - -	41
Section 8.06. Priority of Easements - - - - -	41

TABLE OF CONTENTS (Continued)

PAGE NO.

ARTICLE IX - Party Walls

Section 9.01. General Rules of Law to Apply	41
Section 9.02. Sharing of Repair and Maintenance	41
Section 9.03. Destruction by Fire or Other Casualty	41
Section 9.04. Weatherproofing	42
Section 9.05. Right to Contribution Runs With Land	42
Section 9.06. Rights of Contribution are Appurtenant	42
Section 9.07. Arbitration	42
Section 9.08. Party Wall Easements	42

ARTICLE X - Insurance

Section 10.01. Insurance Coverage	42
(a) Public Liability and Property Damage Insurance	43
(b) Fire and Casualty Insurance	43
(c) Director's and Officer's Liability Insurance	43
(d) Additional Insurance and Bonds	43
Section 10.02. Coverage Not Available	44
Section 10.03. Copies of Policies	44
Section 10.04. Individual Fire Insurance Limited	44
Section 10.05. Trustee	44
Section 10.06. Owner's Insurance	44
Section 10.07. Adjustment of Losses	44
Section 10.08. Earthquake Insurance	45
Section 10.09. Annual Insurance Review	45
Section 10.10. Insurance Deductibles	45
Section 10.11. Distribution to Mortgagees	45

ARTICLE XI - Damage or Destruction

Section 11.01. Destruction; Proceeds Equal or Exceed Eighty-Five Percent (85%) of the Reconstruction Costs	45
Section 11.02. Destruction; Proceeds Less Than Eighty-Five Percent (85%) of Reconstruction Costs	46
Section 11.03. Rebuilding Procedures	46
Section 11.04. Definition of "Eligible Members" Entitled to Vote	46
Section 11.05. Rebuilding Contract	47
Section 11.06. Rebuilding Not Authorized	47
Section 11.07. Minor Repair and Reconstruction	48
Section 11.08. Appraiser	48

TABLE OF CONTENTS (Continued)

PAGE NO.

ARTICLE XII - Condemnation	
Section 12.01. Sale by Unanimous Consent or Taking - - - - -	48
Section 12.02. Distribution and Sale Proceeds of Condemnation Award	
(a) Total Sale or Taking - - - - -	49
(b) Partial Sale or Taking - - - - -	49
Section 12.03. Appraiser - - - - -	50
ARTICLE XIII - Nonseverability of Interests	
Section 13.01. Prohibition Against Severability- - - - -	50
ARTICLE XIV - Breach or Default	
Section 14.01. Remedy at Law Inadequate - - - - -	50
Section 14.02. Nuisances - - - - -	51
Section 14.03. Costs and Attorneys' Fees - - - - -	51
Section 14.04. Cumulative Remedies - - - - -	51
Section 14.05. Failure Not a Waiver - - - - -	51
Section 14.06. Rights and Remedies of the Association - - - - -	51
(a) Rights Generally - - - - -	51
(b) Schedule of Fines - - - - -	52
(c) Definition of Violation - - - - -	52
(d) Limitations of Disciplinary Rights - - - - -	52
(e) Notices - - - - -	54
(f) Rules Regarding Disciplinary Proceedings - - - - -	54
Section 14.07. Court Actions and Alternative Dispute Resolution (ADR)	
Disclosure - - - - -	54
Section 14.08. Actions Pertaining to Claim for Defects - - - - -	55
Section 14.09. Arbitration - - - - -	55
ARTICLE XV - Protection of Mortgagees	
Section 15.01. Assessment Lien Subordinated - - - - -	55
Section 15.02. Amendment of This Declaration - - - - -	56
Section 15.03. Additional Subordinations - - - - -	56
Section 15.04. Breach; Obligation After Foreclosure - - - - -	56
Section 15.05. Exchange of Information - - - - -	56
Section 15.06. Certain Restrictions Affecting the Association - - - - -	57
Section 15.07. Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor - - - - -	58
Section 15.08. Right to Examine Books and Records of the Association	58
Section 15.09. Notices to First Mortgagees - - - - -	58
Section 15.10. Superiority of Mortgage to Condemnation Proceeds -	58

TABLE OF CONTENTS (Continued)

PAGE NO.

ARTICLE XX - Municipal Restrictions

Section 20.01 Enforcement by the City of El Monte - - - - -	63
(a) Common Area - - - - -	64
(b) Conditions of Approval - - - - -	64
(i) Exterior Equipment - - - - -	64
(ii) Guest Parking - - - - -	64
(iii) Security Gate - - - - -	64
(iv) Fire Lane - - - - -	64
(v) Perimeter Walls - - - - -	64
(vi) Lighting System - - - - -	65
(vii) Graffiti Removal - - - - -	65
(viii) Standard Stormwater Mitigation - - - - -	65
Section 20.02 Right of City to Compel Performance; Enforcement by the City of El Monte - - - - -	65
Section 20.03 Foreclosure of Lien - - - - -	66
Section 20.04 Priority of City Ordinances and Other Laws - - - - -	66
Section 20.05 Amendment of Declaration - - - - -	66

EXHIBITS -

EXHIBIT A

Maintenance Covenant for Standard Urban Stormwater Mitigation (SUSMP) Requirements

COVENANTS, CONDITIONS AND RESTRICTIONS

RECITALS

Declarant is the Owner of that certain real property (the "Properties") located in the City of El Monte, County of Los Angeles, State of California, which is more particularly described as follows:

Lots 1 through 5, inclusive, of Tract 60676, as per Map recorded in Book 1293, Pages 31 and 32, of Maps, in the Official Records of the County Recorder of said County.

DECLARATION

Declarant declares that before selling or conveying the interests described herein, Declarant desires to subject the Properties to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth herein, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in California Civil Code Section 1351(k). Finally, it is the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

ARTICLE I Definitions

Section 1.01. "Articles" means the Articles of Incorporation of the Association, filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 1.02. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV, below.

Section 1.03. "Association" means ELLIOTT COURTS, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in California Civil Code Section 1351(a).

Section 1.04. "Association Rules" means the rules and regulations as defined in Civil Code Section 1357.100 as "Operating Rules: and as adopted by the Board of Directors, pursuant to Section 3.12, below, as the same may be in effect from time to time.

Section 1.05. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 1.06. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.07. "City" means the incorporated municipal City of El Monte, in the County of Los Angeles, State of California, and its various departments, divisions, employees and representatives. "City Code" means any City Code or Ordinance.

Section 1.08. "Common Area" means all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of conveyance of the first lot is that real property located in the City of El Monte, County of California, County of Los Angeles, and more specifically described as follows:

Lot 5 of Tract 60676, as per Map recorded in Book 1293, Pages 31 and 32, of Maps, in the Official Records of the County Recorder of said County.

Unless the context clearly indicates a contrary intent, any reference herein to the "Common Areas" shall also include any Common Facilities located thereon.

Section 1.09. "Common Facilities" means the improvements and or fixtures and equipment to be constructed or installed, or currently located within the Common Area and owned by the Association.

Section 1.10. "Declarant" means the developer of the Properties, namely FOOTHILL PACIFIC HOMES, INC., a California corporation, its successors and assigns, if such successors and assigns acquire or hold record title to any portion of the Properties for development purposes.

Section 1.11. "Governing Documents" is a collective term that means and refers to this Declaration and to the Articles, the Bylaws and the Association Rules.

Section 1.12. "Improvement" shall be defined as set forth in Section 5.01, below.

Section 1.13. "Lot" means any parcel of real property designated by a number on the Subdivision Map, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other Improvements constructed or to be constructed on a Lot.

Section 1.14. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Section 14.06, below.

Section 1.15. A "Mortgage" means a mortgage or deed of trust encumbering all or a portion of the Properties. An "institutional Mortgagee" is a mortgagee that is a bank, 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. "First Mortgage" shall mean a recorded mortgage (made in good faith and for value) on a Lot with first priority over other mortgages encumbering said Lot. A "Mortgagee" shall include a beneficiary under a deed of trust. An "Eligible Mortgagee" is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

Section 1.16. "Owner" means any person, firm, corporation or other entity in which fee simple title to a Lot is vested as shown by the Official Records of the Office of the County Recorder. If a Lot is transferred or conveyed to a trust, the Owner is the trustee or the co-trustees of such trust. The Declarant for so long as the Declarant possesses any Lot within the Properties, and, except where the context otherwise requires, the term "Owner" shall include the family, guests, tenants and invitees of an Owner.

Section 1.17. "Party Wall" means any wall and or fence of a Residence located on a property line dividing any Lots, which wall is commonly used by any such Lot and the adjoining Lot. The rights and responsibilities of Owners with respect to Party Walls shall be governed by Article IX, below.

Section 1.18. "Properties" means all parcels of real property (Common Area and Lots) described in Recital "A" above, together with all buildings, structures, utilities, Common Facilities, and other Improvement located thereon, and all appurtenances thereto.

Section 1.19. "Residence" means a private, single-family dwelling constructed on a Lot.

ARTICLE II
Property Rights and Obligations of Owners

Section 2.01. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the properties, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to adopt Association Rules as provided in Section 3.12, below, (the "Association Rules") and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or tenant, to initiate disciplinary action against the violating Owner or tenant in accordance with Section 14.06, below.

(b) The right of the Association, in accordance with the Governing Documents, to borrow money for the purpose of improving the Common Area and Common Facilities and in aid thereof to Mortgage the Common Area; provided, however, that the rights of any such Mortgagee in the Common Area shall be subordinate to the rights of the Owners hereunder; and further provided that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Section 4.03, below.

(c) The right of the Association to consent to or join in the grant or conveyance of easements, leases, licenses or rights-of-way in, on or over the Common Areas; however, such grants or conveyances must be consistent with the intended use of the Properties as a planned development as that term is defined in California Civil Code Section 1351(k) and shall not impair the ingress and egress to or from any Lot.

(d) The right of each Owner to the exclusive use and enjoyment of the Exclusive Use Common Areas, if any, appurtenant to the Owner's Lot.

(e) The right of Declarant or its designees to enter on the Properties, to construct the Properties, to make repairs and remedy construction defects as well as for the use the Common Area for the displaying of signs, pennants, and flags or for the conducting of promotional activities for the purpose of disposing of the Lots by sale, lease, or otherwise so long as such entry or use does not interfere with the use of any occupied Residence unless authorized by the Lot Owner.

(f) All easements affecting the Common Area which are described in Article VIII, below.

Section 2.02. Persons Subject to Governing Documents. All present and future Owners, tenants and occupants of Lots within the Properties shall be subject to, and shall

comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one (1) or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Lot shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon him or her and that he or she will observe and comply with the Governing Documents.

Section 2.03. Delegation of Use.

(a) Delegation of Use and Leasing of Residences, Generally. Any Owner may delegate, in accordance with and subject to the Governing Documents, his or her rights to use and enjoy the Common Area and Common Facilities to his or her family members or tenants who reside in the Residence. An Owner who leases or rents his or her Residence shall retain the right to enter the Properties and the Owner's Residence to perform all the functions and responsibilities common of landlords.

Any lease or rental of a Residence shall be in writing, subject to the provisions of the Governing Documents, all of which shall be deemed incorporated by reference in the Lease. Said Lease shall specifically provide that failure to abide by the provisions of the Governing Documents shall be a default under said lease or rental agreement. The lessor-Owner shall provide each tenant or lessee with a copy of the Governing Documents, and shall be responsible for compliance by the Owner's tenant or lessee with all applicable Governing Document provisions during the tenant's/lessee's occupancy and use of the Residence.

(b) Discipline of Lessees. Subject to Subsection (c), below, in the event that any tenant or lessee fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems appropriate under the circumstances in order to preserve the quiet enjoyment of other Owners and residents within the Properties. Without limiting, the foregoing, the Association's actions may include suspension of the tenant's privileges to use the Common Area or the imposition of fines and penalties against such Owner.

(c) Due Process Requirements for Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction of the Properties or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner (or the Owner's lessee or tenant) on account of the misconduct of the Owner's lessee or tenant unless and until the following conditions have been satisfied: (i) the Owner has received written notice from the Board, the Association's property manager or an authorized committee of the Board detailing the nature of the lessee's/tenant's alleged infraction or

misconduct and advising the Owner of his or her right to a hearing on the matter if the Owner feels that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Section 14.06, below.

Section 2.04. Obligations of Owners. Owners of Lots within the Properties shall be subject to the following:

(a) Owner's Duty to Notify Association of Tenants and Contract Purchasers.

Each Owner shall notify the Secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant residing on the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(b) Notification Regarding Governing Documents.

(i) Delivery of Governing Documents and Financial Information by Owner. As more particularly provided in California Civil Code Section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser:

(A) a copy of the Governing Documents;

(B) the Association's most recent financial statement;

(C) a true statement in writing from an authorized representative of the Association as to: (1) the amount of any unpaid Assessments, together with information relating to late charges, attorneys' fees, interest, and costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold ("delinquency statement"); (2) the amount of the Association's current Regular and Special Assessments and fees; and (3) any monetary fines or penalties levied upon the Owner's interest and unpaid on the date of the statement;

(D) A copy or summary of any notice previously sent to the Owner pursuant to Civil Code Section 1363(h), that sets forth any alleged violations of the governing documents that remains unresolved at the time of the request; and

(E) Any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board but have not become due and payable as of the date the information is provided.

(ii) Association's Obligation to Provide Information; Charges. Within ten (10) days of the mailing or delivery of a written request for the information described in Subsection (c)(i), above, the Association shall provide the Owner with copies of the requested items. The Association shall be entitled to impose a fee for providing the requested items equal to (but not more than) the reasonable cost of preparing and reproducing the requested items.

(c) Payment of Assessments and Compliance With Rules. Each Owner shall pay, when due, each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(d) Discharge of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(e) Joint Ownership of Lots. In the event of joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this Subsection (e) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(f) Prohibition on Avoidance of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to Article IV, below.

(g) Termination of Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of Recording of the deed evidencing the transfer and, upon such Recording, all Association membership rights possessed by the transferor by virtue of the ownership of the Lot shall automatically cease.

ARTICLE III Homeowners Association

Section 3.01. Formation. The Association is formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California. On the close and recording of the first Lot sale to an Owner, the Association shall be charged with the duties and invested powers set forth in the Governing Documents, including, but not limited to,

control and maintenance of the Common Area, the Common Area facilities, and any other property which may be subject to the control of the Association.

Section 3.02. Organizational and Regular Meetings. An organizational meeting shall be held as soon as practicable after creation of the Association and all offices of the Board of Directors filled at said meeting as more specifically provided for in the Bylaws. The first annual meeting of Members of the Association shall be held within six (6) months after the closing and recording of the sale of the first Lot within the Properties and thereafter at least once each calendar year as more specifically provided for in the Bylaws. Notice of the organizational and regular meetings shall be given as given as provided in the Bylaws.

Section 3.03. Special Meetings. Special meetings of Members shall be called by and noticed as provided for in the Bylaws as well as provided for in this Declaration in Sections 3.12 and 11.03.

Section 3.04. Association Action; Board of Directors and Officers. Except as to matters requiring Members' approval as set forth in the Governing Documents, the Association's affairs shall be conducted by the Board and such officers as it may elect or appoint. Such election or appointment shall be in compliance with this Declaration and Article VII of the Bylaws. Meetings of the Board of Directors shall be held as provided in the Bylaws.

Section 3.05. Association Membership. Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one (1) membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Sole or joint ownership of a Lot shall be the sole qualification for membership in the Association. Each Owner shall remain a Member until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

Section 3.06. One Class of Membership. The Association shall have one (1) class of membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 3.07. Voting Rights of Members. Each Member shall be entitled to one (1) vote for each Lot owned by that Member. When more than one (1) person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one (1) vote be cast with respect to any Lot. Voting rights may be temporarily suspended under those circumstances described in Section 14.06, below.

Section 3.08. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale of the Lot to which it is appurtenant and then, only to the purchaser. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon Recording of a deed evidencing the transfer of title. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Section 2.03, above, do not thereby become Members, although the tenant and his or her family and guests shall, at all times, be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer of membership rights is void. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 3.09. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with Article IV, below. Any Assessments levied by the Association against its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

Section 3.10. Powers and Authority of the Association.

(a) Powers, Generally. The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws. The additional powers and rights described in Subsection (b) through (d) of this Section are not intended to limit the general statement of Association authority set forth in this Subsection (a).

(b) Association's Limited Right of Entry.

(i) Right of Entry, Generally. It is expressly agreed that the right of the Association, or its agents, when necessary, shall have the right to enter any Lot in order to: (A) perform the Association's obligations under this Declaration, including its obligation to enforce the covenants and restrictions set forth herein, to construct, maintain and repair Common Facilities as necessary for the benefit of the Common Areas or the Owners in common; (B) to remove any Improvement which is erected or constructed by an Owner or tenant contrary to Article V, below; or (C) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat or nuisance to, or cause an unreasonable interference with, portions of the Properties which the Association is obligated to repair or maintain or the Owners in common.

(ii) Limitations on Exercise of Right. The Association's right of entry pursuant to this Subsection (b) shall be subject to the following:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Lot where entry is required or any adjoining Lots or Common Area. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(B) In all non-emergency situations involving routine repair and/or maintenance activities, the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty-four (24) hours prior written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing on the Lot.

(C) In all non-emergency situations involving access by the Association for purposes of enforcing the Governing Documents against an Owner in default, the Association's entry shall be subject to observance of the notice and hearing requirements imposed by Section 14.06, below.

(c) Designation of Association as Attorney-in-Fact. The Association is hereby irrevocably appointed as the attorney-in-fact for the Owners of each and every Lot to: (i) manage, control and deal with the interest of such Owners in the Common Area so as to permit the Association to fulfill all of its duties and obligations hereunder and to exercise all of its rights hereunder; (ii) subject to compliance with Civil Code Section 1354, institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Owners 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 interest 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 (iii) deal with the Properties upon its destruction or obsolescence as hereinafter provided; and (iv) to deal with and handle insurance and insurance proceeds, as provided in Article X, below, and condemnation and condemnation awards, as provided in Article XI, below. The acceptance by any person or entity of any interest in any Lot shall constitute an appointment of the Association as the Owner's attorney-in-fact as provided above.

(d) Management Contracts. The Association shall have the authority to contract with a Manager for the performance of bookkeeping, maintenance and repair and for conducting other activities on behalf of the Association as may be determined by the Board.

Section 3.11. Association Action; Board of Directors and Officers. Except as to matters which under the Governing Documents require the approval of Members, the affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint. Such election or appointment shall be in accordance with this Declaration and the Bylaws.

Section 3.12. Association Rules.

(a) Rule Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners (Association Rules). The Association Rules may concern, but need not be limited to: (i) matters pertaining to use of the Common Area and facilities; (ii) regulation of pet ownership, parking, signs, collection and disposal of refuse, and any other subject or matter that is subject to regulation or restriction under Article VII, below; (iii) collection of delinquent Assessments; (iv) the conduct of disciplinary hearings and enforcement proceedings pursuant to Section 14.06, below; and (v) any other matter within the jurisdiction of the Association under the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of the Owners thereunder. In the event of any material conflict between any Association Rule and any provision of any other Governing Document, the conflicting provision contained in the other Governing Document shall prevail.

(b) Adoption and Amendment of Rules. Subject to Subsection (e), Association Rules may be adopted, amended or supplemented by a majority vote of the Board; provided, however, that the Board shall distribute to the Members, except in cases of emergency as provided herein, a copy of the text of any proposed new rule or rule amendment at least thirty (30) days prior to the scheduled date of the Board meeting at which the Board is scheduled to act on the matter. Association Rules shall become

effective immediately after their adoption by the Board or at such later date as the Board may fix considering the nature of the rule and the circumstances attendant to its adoption.

(c) Distribution of Rules. Notwithstanding any other requirement or responsibility to provide copy of the Governing Documents, a copy of the Association Rules, and any amendments thereto, shall be mailed or otherwise delivered to each Owner upon request. Furthermore, anytime a rule is amended, as well as when a new Rule is added to the Association Rules, a copy of the Rule amendment or new Rule shall be provided to each Member as provided in Section (f)(iii) below. Finally, a current copy of the Association Rules shall be available and open for inspection by all Members during normal business hours at the principal office of the Association.

(d) Validity and Enforceability of Rules. An operating rule is valid and enforceable only if all of the following requirements are satisfied: The rule is in writing, is reasonable, and within the authority of the Board conferred by law or the Governing Documents and shall further be consistent with governing law and of said Governing Documents as well as adopted, amended, or repealed in good faith and in substantial compliance with the requirements set forth below.

(e) Rules Subject to Special Requirements Relating to Proposed Rule Changes and Special Meetings. The requirements as set forth in Subsections (g) and (h) herein relating to proposed rule changes and special meeting of members to reverse a rule change shall only apply to one (1) or more of the following subjects:

(i) Use of the Common Area, Exclusive Use Common Area, or of a Lot, including any aesthetic or architectural standards that govern alteration of a Lot or Residence.

(ii) Member discipline, including any schedule of monetary penalties for violation of the Governing Documents and any procedure for the imposition of penalties.

(iii) Any standards for delinquent Assessment payment plans.

(iv) Any procedures adopted by the Association for resolution of disputes.

(v) Any procedures for reviewing and approving or disapproving a proposed physical change to a member's separate interest or to the Common Area.

(f) Actions Not Subject to Special Requirements Relating to Proposed Rule Changes and Special Meetings. The requirements as set forth in Subsections (g) and (h) below relating to proposed rule changes and special meeting of members to reverse a rule change shall not apply to the following actions of the Board:

(i) A decision regarding maintenance of the Common Area, a specific matter that is not intended to apply generally, or a decision setting the amount of a regular or special assessment.

(ii) A rule change that is required by law, if the Board has no discretion as to the substantive effect of the rule change or issuance of a document that merely repeats existing law or the governing documents.

(g) Special Requirements Relating to Proposed Rule Changes. Proposed Rule Changes pertaining to those items outlined in Subsections (e)(i) through (iii) above shall be subject to the following:

(i) The Board shall provide written notice of a proposed rule change to the members at least thirty (30) days before making the rule change. The notice shall include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change. Notice is not required if the Board determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the Association.

(ii) A decision on a proposed rule change shall be made at a meeting of the Board, after consideration of any comments made by Association members.

(iii) As soon as possible after making a rule change, but not more than fifteen (15) days after making the rule change, the Board shall deliver notice of the rule change to every Association member either by first class mail or personal delivery. If the rule change was an emergency rule change made under Subsection (g)(iv) below, the notice shall include the text of the rule change, a description of the purpose and effect of the rule change, and the date that the rule change expires.

(iv) If the Board determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the Association, it may make an emergency rule change; and no notice is required, as specified in Section (g)(i) above. An emergency rule change is effective for one hundred twenty (120) days, unless the rule change provides for a shorter effective period. A rule change made as provided herein may not be readopted under these provisions.

(h) Special Requirements Relating to Reverse Rule Changes. Reverse of a rule change pertaining to those items outlined in Subsections (e)(i) through (iii) above, except to an emergency rule change described in Subsection (g)(iv) above, shall be subject to the following:

(i) Members representing not less than five percent (5%) of the total voting power of the Association may call a special meeting of the members to reverse a

rule change by delivering a written request to the President or Secretary of the Board, after which the Board shall deliver notice of the meeting to the Association's members and hold the meeting in conformity with Section 7511 of the Corporation's Code. The written request may not be delivered more than thirty (30) days after the members of the Association are notified of the rule change. Members are deemed to have been notified of a rule change on delivery of notice of the rule change, or on enforcement of the resulting rule, whichever is sooner. For the purposes of Section 8330 of the Corporations Code, collection of signatures to call a special meeting as provided herein is a purpose reasonably related to the interests of the members of the Association. A member request to copy or inspect the membership list solely for that purpose may not be denied on the grounds that the purpose is not reasonably related to the member's interests as a member.

(ii) The rule change may be reversed by the affirmative 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 the Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in members other than the Declarant. Said meeting is governed by Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of, and Sections 7612 and 7613 of, the Corporations Code. As soon as possible after the close of voting, but not more than fifteen (15) days after the close of voting, the Board shall provide notice of the results of a member vote as provided herein to every Association member.

(iii) A rule change reversed as provided herein may not be readopted for one (1) year after the date of the meeting reversing the rule change. Nothing in this Section precludes the Board from adopting a different rule on the same subject as the rule change that has been reversed.

Section 3.13. Breach of Rules or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Section 14.06, below.

Section 3.14. Limitation on Liability of the Association's Directors and Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Members or to any other person, for any error or omission in the discharge of his or her duties and responsibilities or for his or her failure to provide any service required under the Governing Documents; provided that such Released Party has, upon the basis of such information as he or she possessed, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts and Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied:

- (i) The Board member or officer owns no more than two (2) Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made general liability and individual liability of officers and directors insurance with coverage of at least five hundred thousand (\$500,000) dollars.

The payment of actual expenses incurred by a Board member or officer in the execution of such person's Association duties shall not affect such person's status as a volunteer Board member or officer for the purposes of this Section. The provisions of this Subsection (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations pursuant to California Civil Code Section 1365.7. In the event said Civil Code Section is amended or superseded by another, similar provision of the California statutes, this Subsection (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

ARTICLE IV Assessments

Section 4.01. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of one (1) or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association:

(i) Regular Assessments; (ii) Special Assessments; and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Lot at the time the Assessment is levied. Each Owner who acquires title to a Lot (whether by conventional conveyance, at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Lot, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection), the Association may continue to exercise its foreclosure remedies against the Lot, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(c) Creation of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the provisions of this Article may be subject to foreclosure as provided in Section 4.09(b), below.

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself/herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him/her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his/her Lot or any other portion of the Properties.

Section 4.02. Regular Assessments.

(a) Preparation of Annual Budget; Establishment of Regular Assessments. Not less than thirty (30) days nor more than ninety (90) days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities or portions of the Lots which the Association is obligated to maintain by preparing and distributing to all Members a budget satisfying the requirements of Section 12.05 of the Bylaws. If the Board fails to distribute the budget for any fiscal year within the time period specified in the first sentence of this Section, the Board shall not be permitted to increase Regular Assessments for that fiscal

year unless the Board first obtains the Members' approval in accordance with Section 4.07, below.

(b) Establishment of Regular Assessment by Board/Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than Assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year; provided, however, that, except as provided in Section 4.05, below, the Board of Directors may not impose a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's immediately preceding fiscal year without the Members' prior approval in accordance with Section 4.07 below.

(c) Allocation of Regular Assessment. The total estimated Common Expenses, determined in accordance with Subsection (a), shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Properties owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(d) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member. The Assessment Roll (which may be maintained in the form of a computer printout) shall show, for each Lot, the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The delinquency statement required by Section 2.04(b)(i), above, shall be conclusive upon the Association and the Owner of such Lot as to the amount of such indebtedness appearing on the Association's Assessment roll as of the date of such statement, in favor of all persons who rely thereon in good faith.

(e) Mailing Notice of Assessment. Within the time requirements specified in Subsection (a), above, the Board of Directors shall mail to each Owner, at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year.

(f) Failure to Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 4.03(a)(i), below, for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment

payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Board.

(g) Installment Payment of Assessments. The initial Regular Assessment for all Lots, including those owned by Declarant, shall commence on the first (1st) day of the calendar month following the date on which the sale of the first (1st) Lot to a purchaser is closed and recorded. Thereafter, Regular Assessments levied against each Owner and his or her Lot shall be due and payable in advance to the Association in equal monthly installments on the first (1st) day of each month or on such other date or dates as may be established from time to time by the Board of Directors. Installments of Regular Assessments shall be delinquent if not paid within fifteen (15) days following the due date as established by the Board.

Section 4.03. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in Subsection (b), below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for that fiscal year, then the Board of Directors shall levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder.

(ii) Capital Improvements. The Board may also levy Special Assessments for additional capital Improvements within the Common Area (i.e., Improvements not in existence on the date of this Declaration that are unrelated to repairs for damage to, or destruction of, the existing Common Facilities). The Special Assessment power conferred hereunder is not intended to diminish the Board's obligation to plan and budget for normal maintenance, and replacement repair of the Common Area or existing Common Facilities through Regular Assessments (including the funding of reasonable reserves) and to maintain adequate insurance on the Common Area and existing Common Facilities in accordance with Article X, below.

(iii) Major Capital Repair and Reconstruction Projects. As more particularly provided in Section 11.03, below, the Board shall be entitled to levy a Special Assessment to fund uninsured major repairs or reconstruction of Common Areas, subject to the membership approval requirements of said Section 11.03.

(b) Special Assessments Requiring Membership Approval. The following Special Assessments require prior membership approval in accordance with Section 4.07, below: (i) any Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied; and (ii) any Special Assessments imposed pursuant to Subsection (a)(i) of this Section when the Board has failed to distribute a budget to the Members within the time specified in Section 4.02(a), above. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 4.05, below.

(c) Allocation and Payment of Special Assessments.

(i) Division of Special Assessments. When levied by the Board or approved by the Members as provided above, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Subsection 4.02(c), above. The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner.

(ii) Reconstruction Special Assessments. In the event that a Special Assessment is levied pursuant to Section 10.09 or Section 11.03 below, the aggregate amount of the Special Assessment shall be allocated among and assessed to all Owners upon the basis of the ratio of the square footage of the floor area of the Lot to be assessed to the total square footage of floor area of all Lot to be assessed.

(iii) Assessment Roll. Any Special Assessment duly levied hereunder shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner. Special Assessments for purposes described in Subsection (a)(i) of this Section be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association in equal monthly installments during the remainder of the then current fiscal year. Special Assessments for purposes described in Subsection (a)(ii) shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable in full to the Association within thirty (30) days after the mailing of such notice or within such extended period as the Board shall determine to be appropriate under the circumstances giving rise to the Special Assessment. Special Assessments levied pursuant to Subsection (a)(iii), above, and Section 11.03, below, shall be due as a separate debt of each Owner and a lien against the Owners' Lots at such time as required by the repair or reconstruction project, but in no event sooner than sixty (60) days following receipt of the Association's notice of levy of the Assessment.

Section 4.04. Special Individual Assessments.

(a) Circumstances Giving Rise to Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 4.03,

above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in Subsections (i) through (iii) below; provided, however, that no Special Individual Assessments may be imposed against an Owner pursuant to this Section until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 14.06, below, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, or any portions of the Lots which the Association is obligated to repair and maintain, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses to: (A) accomplish the payment of delinquent Assessments; (B) perform any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion; or (C) otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance on Lots. If any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles or improper weed or vegetation control, the Association shall have the right to enter the Lot, correct the condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner. Any entry on the Properties of any Owner by the Association shall be effected in accordance with Section 3.10(b), above.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in Subsection (a) of this Section, such Special Individual Assessment shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to the affected Owner. The Special Individual Assessment shall

thereafter be due as a separate debt of the Owner payable in full to the Association within thirty (30) days after the mailing of notice of the Assessment.

Section 4.05. Assessments to Address Emergency Situations. The requirement of a membership vote to approve:

(a) Regular Assessment increases in excess of twenty percent (20%) of the previous year's Regular Assessment; or

(b) Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments which are necessary to address emergency situations. For purposes of this Section, an emergency situation is any of the following:

(i) An extraordinary expense required by an order of a court.

(ii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities or any portion of the Lots which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas or Common Facilities or any portion of the Lots which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 4.02(a), above; provided, however, that prior to the imposition or collection of an assessment under this Subsection (iii), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 4.06. Purpose and Reasonableness of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively:

(a) to promote the recreation, health, safety and welfare of individuals residing within the Properties;

(b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and

(c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities and those portions of the Lots which the Association is obligated to maintain.

Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 4.07. Notice and Procedure for Member Approval Pursuant to Sections 4.02 and 4.03. If Member approval is required in connection with any increase pursuant to Sections 4.02 and 4.03, above, the affirmative vote at a meeting of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code shall be required to approve the increase. For the purposes of this Section "quorum" means more than fifty percent (50%) of the Owners of the Association. Notwithstanding the foregoing, any increase in assessments in excess of twenty-five percent (25%) shall require the additional approval as provided in Section 15.06(f) herein.

Section 4.08. Maintenance of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one (1) or more federally insured checking, savings or money market accounts in a bank or other financial institution selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code Section 1365.5 and Section 12.02 of the Bylaws. Any interest received on deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained on the books of the Association as provided in Subsection (b), below.

(b) Expenditure of Assessment Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such Assessment was levied, such surplus

may, in the Board's discretion, be: (i) returned proportionately to the contributors thereof; (ii) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (iii) credited proportionately on account of the Owners' future Regular Assessment obligations.

(c) Separate Accounts; Commingling of Funds. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one (1) or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom; provided, however, that receipts and disbursements of Special Assessments made pursuant to Section 4.03(a)(i), above, shall be accounted for together with the receipts and disbursements of Regular Assessments, and a separate accounting shall be maintained for each capital improvement for which reserve funds for replacement are required to be maintained by the Association.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

(d) Reserve Funds. The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components of the Properties which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of moneys from a reserve fund to the Association's general operating fund to meet short-term cashflow requirements or other expenses, if the Board has provided notice of the intent to consider the transfer in a notice of meeting, which shall be provided as specified in Civil Code Section 1363.05 (the Open Meeting Act). The notice shall include the reasons the transfer is needed, some of the options for repayment, and whether a special assessment may be considered. If the Board authorizes the transfer, the Board shall issue a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the moneys will be repaid to the reserve fund.

The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, after giving the same notice required for considering a transfer, and, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Properties, temporarily delay the restoration. The Board shall exercise prudent fiscal management

in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required by this Subsection (d). This Special Assessment is subject to the Member approval requirements of California Civil Code Section 1366 and Section 4.03(b), above, if the aggregate amount of the Special Assessment exceeds five percent (5%) of the budgeted gross expenses of the Association for the year in which the Special Assessment is imposed. The Board may, at its discretion, extend the date the payment on the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid Special Assessment.

When the decision is made to use reserve funds or to temporarily transfer moneys from the reserve fund to pay for litigation, the Association shall notify the Members of that decision in the next available mailing to all Members pursuant to California Corporations Code Section 5016, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by Members at the Association's principal office.

Section 4.09. Collection of Assessments; Enforcement of Liens. The Association may elect to pursue one (1) or both of the following remedies in the event of a delinquent assessment:

(a) Personal Obligation. The Association may bring a legal action directly against the Owner for breach of the Owner's personal obligation to pay the assessment and in such action shall be entitled to recover the delinquent assessment or assessments, accompanying late charges, interest, costs and reasonable attorneys' fees. Commencement of a legal action shall not constitute a waiver of any lien rights as described in Subsection (b), below.

(b) Assessment Lien. Except as otherwise provided in Section 4.04, above, with respect to the limitation on the imposition of liens for Special Individual Assessments, the Association may impose a lien against the Owner's Lot for the amount of the delinquent assessment or assessments, plus any reasonable costs of collection (including reasonable attorneys fees), late charges and interest by taking the following steps:

(i) At least thirty (30) days prior to recording a lien upon the Owner's Lot to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the following (the "Delinquency Notice"):

(A) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner of the Lot has the right to inspect the Association records, pursuant to Section 8333 of the Corporations Code, and the following statement in

'14-point boldface type, if printed, or in capital letters, if typed: "IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION."

(B) An itemized statement of the charges owed by the Owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorneys' fees, any late charges, and interest, if any.

(C) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association.

(D) The right of the notified Owner to request a meeting with the Board as provided in Subsection(b)(iv), below.

(ii) Any payments made by the Lot Owner toward the delinquent assessment shall first be applied to the assessments owed; and only after the assessments owed are paid in full shall the payments be applied to the fees and the costs of collection, attorneys' fees, late charges or interest. When an Owner makes a payment, the Owner may request a receipt and the Association shall provide it. The receipt shall indicate the date of payment and the Person who received it. The Association shall provide its Members with a mailing address for overnight payment of Assessments.

(iii) An Owner may dispute the amounts claimed as due and owing in the Delinquency Notice by submitting to the Board a written explanation of the reasons for his or her dispute. If the Owner wishes to submit an explanation, it must be mailed to the Association within fifteen (15) days of the postmark of the Delinquency Notice. The Board shall respond in writing to the Owner within fifteen (15) days of the date of the postmark of the Owner's explanation.

(iv) An Owner may also submit a written request to meet with the Board to discuss a payment plan for the delinquent assessment. This request must also be made within fifteen (15) days of the postmark of the Delinquency Notice. The Association shall provide the Owners with the standards for payment plans, if such standards have been adopted. So long as a timely request for a meeting has been tendered, the Board shall meet with the Owner in executive session within forty-five (45) days of the postmark of the request for a meeting, unless there is no regularly-scheduled Board meeting within that period, in which case the Board may designate a committee of one (1) or more Members to meet with the Owner.

(v) The amount of the Assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code Section 1366 shall be a lien on the Owner's Lot from and after the time the Association causes to be recorded with the County Recorder a Notice of Delinquent Assessment, which shall state the amount of the Assessment and other sums imposed in accordance with Civil Code Section 1366, a legal description of the Owner's Lot against which the Assessment and other sums are levied, the name of the record Owner of the Owner's Lot against which the lien is imposed. In order for the lien to be imposed by non-judicial foreclosure as provided in Subsection (viii), below, the Notice of Delinquent Assessment shall state 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 any officer of the Association or by the person designated by the Association for that purpose and mailed in the manner set forth in Civil Code Section 2924b to all record Owners of the Owner's Lot no later than ten (10) calendar days after recordation. Within twenty-one (21) days of the payment of the sums specified in the Notice of Delinquent Assessment, the Association shall record or cause to be recorded in the Office of the County Recorder a lien release or notice of rescission and provide the Lot Owner a copy of the lien release or notice that the delinquent assessment has been satisfied.

(vi) A lien created pursuant to Subsection (v), above, shall be prior to all other liens recorded against the Owner's Lot subsequent to the Notice of Delinquent Assessment, except as described in Section 4.11, below.

(vii) Subject to the limitations of this Section 4.09(b), after the expiration of thirty (30) days following the recording of a Notice of Delinquent Assessment, the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with Civil Code Sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Civil Code Sections 2924c and 2924d.

(viii) If it is determined that a lien previously recorded against a Lot was recorded in error, the party who recorded the lien, within twenty-one (21) calendar days, shall record or cause to be recorded in the Office of the County a lien release or notice of rescission and provide the Lot Owner with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(ix) If the Association fails to comply with the procedures set forth in this Section 4.09(b) prior to recording a lien, the Association shall recommence the required notice process. Any costs associated with recommencing the notice process shall be borne by the Association and not by the Lot Owner.

The provisions of this Section 4.09(b) are intended to comply with the requirements of Civil Code Section 1367.1 in effect as of January 1, 2003. If these Sections are amended or rescinded in any manner, the provisions of this Section 4.09(b) automatically shall be amended or rescinded in the same manner. Civil Code Section 1367.1 may have been amended by the State Legislature, and the Board should confirm the current statutory requirements.

Section 4.10. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in Subsection (b), below, the sale or transfer of any Lot shall not affect any Assessment lien which has been duly Recorded against the Lot prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Lot pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien Recorded against the Lot at any time prior to Recordation of the Association's Assessment lien (see Section 4.11, below).

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.

(d) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 4.11. Priorities. When a Notice of Delinquent Assessment has been Recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances Recorded subsequent thereto, except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of Record (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale

or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

Section 4.12. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to Section 4.02, above, and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE V Architectural Control

Section 5.01. Approval of Improvements in General. No "Improvement" of any kind shall be commenced, erected or maintained on the Properties, nor shall any exterior addition to or change or alteration be made in or to any Lot or Common Area or Common Facility without approval as may be required by any City Code or Ordinance and until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing by the Board of Directors or duly appointed Architectural Committee as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines and topography and finish grade elevation.

Section 5.02. Definition of Improvements Requiring Approval/Exclusion for Interior Projects. As used herein, the term "Improvement" shall include, without limitation, any building, outbuilding, structural Improvement, exterior landscaping, fence, wall, exterior modification of existing structures, internal modification of any Residence involving any roof, bearing wall or other structural component thereof, any change in exterior color of any building Improvement or landscape structure, or the installation of spas, awnings, antennas, television satellite reception dishes or patio covers.

The term "Improvement" shall not include any work or Improvement within an Owner's Residence so long as the project does not involve any load bearing wall. Accordingly, each Owner shall have the exclusive right to paint, plaster, panel, tile, wallpaper or otherwise finish, refinish or decorate the inner surfaces of the walls, ceiling, floors, windows or doors of the Owner's Residence. Such projects shall not be subject to this Article.

Section 5.03. Appointment of Architectural Committee. The Board of Directors may, but shall not be obligated to, appoint an Architectural Committee in accordance with Article X of the Association Bylaws. If such a Committee is appointed, it shall be composed of not less than three (3) more than five (5) members. Committee members appointed shall be from the membership of the Association. Members of the Committee

shall serve for a term of one (1) year. In the event of the death or resignation of any member of the Architectural Committee, a successor shall be appointed by the Board. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. If an Architectural Committee is appointed, any references in this Article to the Board shall be deemed to be a reference to the Committee unless the context clearly indicates a contrary intent.

Section 5.04. Submission of Plans. Plans and specifications shall be submitted to the Board by personal delivery or first-class mail to the Secretary of the Association or the chairman of the Architectural Committee. In the event the Board fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted to it, the request shall be deemed to have been approved. Approval by the Board can contain conditions or requests for modification of particular aspects of the Owner's plans and specifications. If a Committee is appointed pursuant to Section 5.03, above, approval by the Committee shall be deemed to be a recommendation to the Board of Directors which must be confirmed or rejected by the Board at its next regularly scheduled meeting, but in no event later than thirty (30) days following action by the Committee.

Section 5.05. Architectural Committee Rules. The Board of Directors, may from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Committee Rules." The Architectural Committee Rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for review of plans and specifications and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended or required for use in connection with particular Improvement projects within the Properties; provided, however, that said rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Committee Rules and this Declaration, the provisions of the Declaration shall prevail. If an Architectural Committee is appointed, the Committee may recommend Architectural Committee Rules for adoption by the Board.

Section 5.06. Variances. The Board of Directors or its Architectural Committee, if duly authorized, shall be entitled to allow reasonable variances with respect to this Article or any restrictions specified in Article VII, below, in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided the following conditions are met:

- (a) All requests for variances shall be submitted to the Association in writing.
- (b) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Board or the Architectural Committee must conduct a hearing on the proposed variance after giving at least ten (10) days' prior written notice to the Board and to all Owners of Lots located

within one hundred (100) feet of the Lot for which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30) day comment period has expired.

(c) The Board or Committee must make a good faith determination that: (i) the requested variance, if granted, will not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein or that the variance proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area or Owner within the Properties.

Section 5.07. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall execute an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Lot owned by the applicant Owner) that as of the date thereof, either: (i) all Improvements made and other work completed by said Owner with respect to the Lot(s) comply with this Declaration; or (ii) that such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Lot through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

ARTICLE VI

Association and Owner Maintenance Responsibilities

Section 6.01. Common Area. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement of all portions of the Common Area. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

Without limiting the foregoing, the Association shall be responsible for:

(a) The reconstruction, replacement, or refinishing of any Common Facility or other Improvements within the Common Area as necessary in accordance with the original design, finish or standard of construction of such Improvement.

(b) The construction, reconstruction, replacement, refinishing of the private drive and guest parking spaces as well as any other paved surface upon any portion of Common Area.

(c) Repair and replacement of fences and/or walls bordering the perimeter of the Properties immediately adjacent to Common Areas, including those fences and/or walls within the enclosed Common Area within the twenty-five (25) foot setback along ELLIOTT Avenue, using like materials in order to preserve the harmony of external design. Said maintenance shall include the removal of all graffiti, and defacement of any type, including marks, words and pictures from said fences and or walls 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.

(d) The replacement of trees or other vegetation and the planting of trees, shrubs and ground cover upon any portion of Common Area, including the fenced Common Area within the twenty-five (25) foot setback along Elliott Avenue as well as within any adjacent landscaped parkway area along said street.

(e) Common lighting, irrigation, fire service lines, drainage, and sewer systems. Said maintenance shall also include the repair and maintenance of all common water and sewer lines, including but not limited to lines, laterals, and collector pipes, located within the Common Area to the point of connection to the public system located on Elliott Avenue.

(f) The placement and maintenance of such signs as the Association may deem necessary for the identification of the Properties and the regulation of traffic, including parking, and the regulation and use of Common Area and Common Facilities. Said maintenance shall specifically include the treatment of the private common access drive as a "Fire Lane" and the posting of same with "No Parking" signs.

(g) Any and all other personal or real property subject to the control of the Association.

The standards of landscaping and exterior structural maintenance shall be determined by the Association and in accordance with all City Codes and Ordinances as well as the General Development Plan and Conditional Use Permit No. 75-03 approved by the City for these Properties. The cost of general landscaping and exterior maintenance for all Lots, excluding maintenance as required by owners in Section 6.3, shall be included in

the annual budget and levied as a general assessment against all Lots. In order to carry out the foregoing responsibilities the Association may enter into contracts for services or materials, including contracts with Declarant. The duration and term of all such contracts shall comply with Section 9.02(b) of the Bylaws and with Title 10 of the California Code of Regulations, Article 12, Section 2792.21.

Section 6.02. Association Maintenance Responsibility With Respect to Lots.

The Association shall provide exterior maintenance upon each Lot which is subject to Assessment hereunder, as follows:

(a) Replace and care for trees, shrubs, grass, walks, and other landscaping improvements except for plantings and improvements located within fenced or enclosed patio areas on Lots; and

(b) Maintain, repair and replace any commonly metered system or fixture that may be constructed or installed within a Lot.

Section 6.03. Owner Maintenance Responsibility. Except as specifically provided in Section 6.02 above, each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot as follows:

(a) Maintain his or her Residence in a clean, attractive, and sanitary condition as well as maintain the exterior in a uniform color and condition in accordance with reasonable architectural standards in order to preserve the harmony of external design and as may further be required by the Board and any applicable City Code or Ordinance.

(b) Maintain, repair, replace and restore the sanitary sewer, water, irrigation, drainage, plumbing, heating and air conditioning units, electrical lines, cable television service, water heaters and other internal installations and utilities and any other equipment, appliances, or services that are installed for the exclusive use and enjoyment for the Owner's Lot or Residence and which are located within the inside perimeter of the exterior bearing walls of said Residence or wherever said exclusive services or facilities may be installed or located within the Owner's Lot or the Properties. Reference is made to Section 6.04, below, regarding additional rules concerning utilities. Notwithstanding the foregoing, should any commonly metered system and or fixture be installed within an Owner's Lot, the maintenance and repair of same shall be the responsibility of the Association.

(c) Maintain and repair all paved areas within his or her Lot.

(d) Removal of all graffiti, and defacement of any type, including marks, words and pictures from any structure within his or her Lot that is his or her responsibility to maintain 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.

(e) Maintain any fenced or walled private yard areas within his or her Lot in a clean, attractive, and sanitary condition as well as maintain and repair said fences and wall enclosing said areas using like materials in order to preserve the harmony of external design. Party walls shall be governed by the provisions of IX herein. Except in the enclosed private yard areas appurtenant to a Residence, no planting or gardening shall be done on any Lot as the Association shall have said responsibility as provided in Section 6.02 above in order to preserve the external harmony and uniformity of the appearance of the Properties.

The standards of landscaping and exterior structural maintenance shall be determined by the Board and shall further be in compliance with any applicable City Code or Ordinance as well as the General Development Plan and Conditional Use Permit No. 75-03 approved by the City for the Properties. Every Owner shall be responsible for the prompt performance of all maintenance, repair and restoration work within his or her Lot and Residence or Exclusive Use Common Area, if any, which if omitted or unreasonably delayed, would adversely affect any portion of the Properties.

Every Owner shall be responsible for the prompt performance of all maintenance, repair and restoration work within his or her Lot and Residence or Exclusive Use Common Area, if any, which if omitted or unreasonably delayed, would adversely affect any portion of the Properties.

Section 6.04. Owners' Rights and Duties Regarding Utilities. The rights and duties of the Owners of Lots within the Properties with respect to sanitary sewer, water, electricity, gas, cable television receiving, telephone lines or connections, or any other type of service, facility or utility lines or connections, shall be as follows:

(a) Whenever sanitary sewer, water, electricity, gas, cable television receiving, telephone lines or connections, or any other type of service, facility or utility lines or connections, are installed within the Properties, which connections or any portion thereof lie in or upon Lots owned by other than the Owner of a Lot served by such connections, the Owners of any Lot served by such connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Lots or to have the utility company enter upon the Lots in or upon which such connections or any portion thereof lie, to repair, replace and generally maintain such connections, as and when necessary.

(b) Whenever sanitary sewer, water, electricity, gas or telephone lines or connections, or any other type of service, facility or utility lines or connections, are installed within the Properties which connections serve more than one (1) Lot, the Owner of each Lot served by such connection shall be entitled to the continued full use and

enjoyment of such portions of such connections as service his or her Lot. Any interruption in said services and or connections necessitated due to repair and or maintenance by another shall be kept to an absolute minimum and, except in cases of emergency which would pose an immediate threat to the safety of any of the Owners or the Properties, then only after reasonable notification to the affected Owner of the nature and extent of such interruption. Repairs and or maintenance required within Common Areas shall be subject to notice and approval as provided in Subsection (c) below.

(c) Whenever individual Owner maintained sanitary sewer, water, electricity, gas, cable television receiving, telephone lines or connections, or any other type of service, facility or utility lines or connections are installed and located within Common Areas, the Owner benefited by such services or connections shall, except in the case of an emergency which would pose an immediate threat to the safety of the Owners or the Properties, obtain the approval of the Association prior to performing any repair or maintenance relating to such services or connections located within Common Areas and shall further provide any affected Owner with reasonable notification of any repairs or maintenance to be performed. All repairs and maintenance within the affected Common Areas shall be performed in such a manner as to preserve the external harmony and uniform appearance of the Properties. To the greatest extent possible, each Owner and the Association shall be entitled to the continued full use and enjoyment of any involved portion of the Common Area.

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

Section 6.05. Association Recovery of Costs of Certain Repairs and Maintenance

(a) Association Maintenance Necessitated by Owner Negligence. If the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder, is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by insurance policies maintained by the Association or the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Section 4.04, above.

(b) Owner Defaults in Maintenance Responsibilities. If an Owner fails to perform maintenance or repair functions on the Owner's Lot for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within fifteen (15) days after receipt thereof. If the Owner refuses

or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Section 3.10(b), above, to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Section 14.06, below.

ARTICLE VII

Use of Properties and Restrictions

In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Lots, Common Areas and other parcels within the Properties.

Section 7.01. Residential Use. The use of any Residence within the Properties is hereby restricted to residential Use; provided, however, that nothing in this Declaration shall prevent an Owner from leasing or renting his or her Residence, subject to Section 2.03, above.

Section 7.02. Prohibition of Noxious Activities.

(a) No noxious or offensive activities shall be conducted within or upon any portion of the Properties nor shall anything be done or permitted within any Lot which is or could become an unreasonable annoyance or nuisance to the neighborhood.

(b) Without limiting any of the foregoing, no Owner shall permit noise of any sort (including, but not limited to, barking dogs, the operation of air conditioners, stereo amplifier systems, television sets, motor vehicles and power tools) to emanate from an Owner's Lot or any portion of the Common Area which would unreasonably disturb other Owners' enjoyment of their Lots or the Common Area. Excessive noise levels may be determined in the sole discretion of the Board which may, but shall not be obligated to, rely on the County Code or other applicable governmental regulation dealing with such matters.

(c) The Board may, in its sole discretion, prohibit maintenance within the Properties of any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) with respect to any other residents.

Section 7.03. Household Pets. A reasonable number of common household pets may be kept in each Lot so long as the same are not kept, bred or maintained for commercial purposes. No other animals, or poultry of any kind shall be kept, bred or raised in any Lot. The Board of Directors shall have the right to establish and enforce rules defining in a uniform and nondiscriminatory manner what constitutes a "reasonable number" of pets, depending on such criteria as size, disposition, maintenance requirements and/or noise and imposing standards for the reasonable control and keeping

of household pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners. Notwithstanding the foregoing, said rules shall not violate the right of an Owner to keep at least one (1) pet within the Properties subject to reasonable rules and regulations of the Association.

Section 7.04. Display of United States Flag. As provided in Civil Code Section 1353.5, except as required for the protection of the public health or safety an Owner may display the flag of the United States on or in the Owner's Lot or Residence or within the Owner's Exclusive Use Common Area as defined in Civil Code Section 1351. Display of the flag of the United States means a flag of the United States made of fabric, cloth, or paper displayed from a staff or pole or in a window and does not mean a depiction or emblem or the flag of the United States made of lights, paint, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component. In any action to enforce this provision, the prevailing party shall be awarded reasonable attorney's fees and costs.

Section 7.05. Display of Signs. As provided in Civil Code Section 1353.6, an Owner may post or display noncommercial signs, posters, flags, or banners on or in an Owner's Lot or Residence, except as required for the protection of public health or safety or if the posting or display would violate a local, state, or federal law. No signs of any kind shall be displayed to the public view on or from the Common Area without the approval of the Board. Notwithstanding the foregoing, one (1) sign of customary and reasonable dimensions advertising a Lot for sale or for rent may be placed within each Lot, the location and design of it to be subject to approval by the Board.

Section 7.06. Business Activities. No business activities of any kind whatsoever shall be conducted within any building or in any portion of any Lot; provided, however, that the foregoing restriction shall not apply to the activities, signs or maintenance of buildings by the Association in furtherance of its powers and purposes as set forth herein or be construed in such a manner as to prohibit any Owner from engaging in any of the following activities within the Owner's Residence: (a) maintaining the Owner's personal library; (b) keeping personal business records or accounts; (c) handling personal or professional telephone calls or correspondence therefrom; (d) leasing or renting the Residence in accordance with Section 2.03, above; or (e) conducting any other activities in the Owner's Residence otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or governmental regulations without the necessity of first obtaining a special use permit or similar specific governmental authorization so long as any such activity does not involve exterior signage or create customer traffic within the Properties. Such uses are expressly declared to be customarily incident to the Lot's principal residential use and not in violation of any provision of this Section.

Section 7.07. Garbage and Storage. No rubbish, trash, or garbage shall be allowed to accumulate on Lots. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered trash containers and facilities which shall be screened from view from any street, neighboring Lot or Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Properties to a public dump or trash collection area by the Owner or tenant at his or her expense. Storage of personal property shall be maintained within each Residence. There shall be no woodpiles nor storage piles accumulated in any area outside of a Residence unless the same are screened from view by neighboring Lots or Common Areas. Trash containers shall not be placed in the street or parkway before 12:00 noon the day immediately preceding the day of collection of the garbage or refuse or remain in the street or parkway longer than 12:00 noon of the day immediately following collection of the garbage or refuse. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this Section.

Section 7.08. Clotheslines. No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on the balconies, fences, patios, porches or other areas in any manner which is visible from any neighboring Lot or from the Common Area.

Section 7.09. Interior Improvements. No Owner shall undertake any activity or work with respect to the Owner's Residence that will impair the structural soundness or integrity of any adjoining Residence or impair any easement or hereditament, or do any act or allow any condition to exist in or around the Owner's Residence or Lot which will adversely affect any other Residences or their occupants. Any interior Improvement to a Residence involving structural components of the building structure, other than non-load bearing interior walls, shall require prior architectural approval in accordance with Article V, above. Notwithstanding the foregoing, an Owner may do the following:

(a) Modify the Residence and or Lot to Facilitate Access for the Handicapped. Modify his or her Residence and or Lot, at his or her 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 Residence for the purposes of this paragraph if the Residence is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this Section is subject to the following conditions:

(i) the modifications shall be consistent with applicable building code requirements;

(ii) the modifications shall be consistent with the intent of otherwise applicable Association Rules pertaining to safety or aesthetics;

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

(iv) any Owner who intends to modify his or her Residence pursuant to this Section shall submit plans and specifications to the Association for review to determine whether the modifications will comply with the provisions of this Section. The Association shall not deny approval of the proposed modifications under this paragraph without good cause.

Section 7.10. Restriction on Alteration of Common Areas or Building Exteriors.

In order to insure adequate aesthetic controls and to maintain the general attractive appearance of the Properties, no Owner, resident or lessee shall construct fences, walls, or make any alterations, additions or modifications to or on any part or portion of the Common Area or exterior surfaces of a Residence, except as authorized by the Association pursuant to Article V, above. No construction or alteration of structural improvements may be undertaken on or within any Lot or Residence, except as authorized in Section 7.9 above, without approval of the Board and as may be required by any City Code or Ordinance.

Section 7.11. Television Antenna, Microwave or Satellite Dish Devices.

No outside television antenna, microwave or satellite dish, aerial, or other such device (collectively "Antennas") with a diameter or diagonal measurement in excess of thirty-six (36) inches shall be erected, constructed or placed on any Common Area or Residence however antennas with a diameter or diagonal measurement of thirty-six (36) inches or less may be installed so long as they conform to the Association Rules which shall provide for reasonable restrictions which do not significantly increase the cost of the antenna system or significantly decrease its efficiency or performance. The Board shall, in acting upon requests for approval of a satellite dish or other signal reception or transmission devices, comply with California Civil Code Section 1376 and Federal Communications Commission Regulations..

Section 7.12. Machinery and Equipment.

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot by any Owner, except such machinery or equipment as is usual or customary in connection with the use and maintenance of a Lot or Residence within the Properties

Section 7.13. Parking; Trailers, Boats and Motor Vehicles.

Parking and the use, storage and operation of vehicles within the Properties shall be subject to the following restrictions:

(a) Unless otherwise permitted by the Board, no automobiles shall be parked or left on any private drive or on any portion of the Properties other than on or within an enclosed garage, assigned carport or parking space.

(b) Garages are to be used for the parking of cars and for storage purposes. They are not to be converted for any type of living or recreational activities. All Common Area parking spaces are to remain open for guest parking purposes only and are not to be used for the parking of boats, trailers, campers, or recreational vehicles.

(c) No vehicle, including mopeds and motorcycles, shall be parked on any areas surrounding the front of any Residence, including sidewalks that surround the buildings.

(d) No mobile home, trailer or any kind, permanent tent, or similar structure, recreational motor home, trailer or boat, and no truck camper shall be kept, placed, maintained, constructed, reconstructed or repaired within the Properties; provided, however, that the temporary parking of any such vehicles, boats or trailers within the Common Area for a period for purposes of loading or unloading the same shall not constitute a violation of this Section, so long as any such temporary parking does not block the entrance to the carport or parking space of any other Owner (or any guest parking space) and does not block ingress to or egress from the Properties.

(e) No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, or used exclusively in connection with, the construction of any work or Improvement approved by the Board.

(f) No commercial vehicles of any nature shall be parked or stored within the Properties, except for commercial vehicles providing services to Owners or the Association, and in that event only for the duration reasonably necessary to provide such service.

Section 7.14. Activities Affecting Insurance. Nothing shall be done or kept in any Lot or within the Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Board of Directors and no Owner shall permit anything to be done or kept in his or her Lot or within the Common Area which would result in the cancellation of insurance on any Lot or any part of the Common Area or which would be in violation of any law.

Section 7.15. Window Coverings. No bed sheets, paper or foil shall be used as window coverings.

Section 7.16. Restriction on Further Subdivision and Severability. No Lot shall be further subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof and no Owner of a Lot within the Properties shall be entitled to sever that Lot from the Common Area portion of the Properties.

Section 7.17. Variances. The Board of Directors may allow reasonable variances and adjustments of the Properties use restrictions contained in this Article in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided however, that any variance must be authorized in accordance with the procedures described in Section 5.06, above.

ARTICLE VIII Easements

Section 8.01. Encroachment Easements. Each Lot is hereby declared to have an easement over adjoining Lots and Common Area for the purpose of accommodating any encroachment due to roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, and due to engineering errors, errors in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of these encroachments as long as they shall exist, and the rights and obligations of the Owner shall not be altered in any way by the encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if the encroachment occurs due to the willful misconduct of the Owner or Owners. In the event a structure is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Lot agree that minor encroachments over adjoining Lots shall be permitted and that there shall be valid easements for the maintenance of the encroachments so long as they shall exist.

Section 8.02. Private Drive/Street Easements. Each Owner and the Association shall have and is hereby granted a nonexclusive easement for private drive/street and vehicular traffic purposes over and along the private drives/streets and paved parking areas within the Properties.

Section 8.03. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system so long as such easement will not interfere with the use, occupancy, or enjoyment by any Owner of his or her Lot, the Exclusive Use Common Area, if any, appurtenant to said Lot, or any recreational facilities of the Properties. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, drainage, electrical lines, water

lines, or other utilities may be installed or relocated on the Properties except as initially designed and approved by the Declarant or thereafter approved by the Board of Directors. The easements provided for in this Section shall in no way affect any other recorded easement on the Properties.

Section 8.04. Maintenance Easements. An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area and any Lot to perform the Association's duties of maintenance and repair of the Lots, Common Area, or Common Facilities; provided, however, that any entry by the Association or its agents onto any Lot and the roof, exterior or interior of any Residence shall only be undertaken in strict compliance with Section 3.10(b), above.

Section 8.05. Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Properties and each Lot and Common Area as shown on the Subdivision Map.

Section 8.06. Priority of Easements. Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over the other easements in all respects.

ARTICLE IX Party Walls

Section 9.01. General Rules of Law to Apply. Each wall or fence which is built as a part of the original construction upon the Properties and placed on the dividing line between the Lots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Article, 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 9.02. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make use of the wall in equal proportion to such use.

Section 9.03. Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in equal proportion without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 9.04. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 9.05. Right to 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.

Section 9.06. Rights of Contribution are Appurtenant. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 9.07. Arbitration. In the event of any dispute between Owners concerning a Party Wall, each party shall choose one (1) arbitrator, and such arbitrators shall choose one (1) additional arbitrator, and resolution of the dispute shall be decided by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board of Directors shall select an arbitrator for the refusing party. The arbitrators shall render a decision within thirty (30) days after appointment.

Section 9.08. Party Wall Easements. In all cases where a structural wall constituting a portion of a single Residence, or a structural wall constituting a common wall for two (2) Residences, is located upon the dividing line between adjacent Lots, the Owner of the adjoining Lot shall have reciprocal mutual nonexclusive easements for the maintenance of the wall, the reconstruction of the wall in the event of the partial or total destruction of the same, drainage associated with the wall or the Residence of which the wall is a part, and an easement to accommodate the foundation and/or roof or eaves encroachment as depicted in the original design, plans and specifications which were the basis for the original construction of the Residence or Residences on the Lot or Lots. The Owner of a Lot having a structural wall situated on the boundary line between his or her Lot and the adjoining Lot shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining Lot, and the Owner of the adjoining Lot upon which such a wall is situated shall not attach anything to the outside of the wall without the consent and permission of the Owner of the adjoining Lot upon which the Residence of which the wall is a part is situated.

ARTICLE X Insurance

Section 10.01. Types of Insurance Coverage. The Association shall purchase, obtain and maintain the following types of insurance, if and to the extent they are available:

(a) Public Liability and Property Damage Insurance. To the extent such insurance is reasonably obtainable, a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and 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 Two Million Dollars (\$2,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned 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.

(b) Fire and Casualty Insurance. The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance, written on all risk, replacement cost basis, on all Residence Improvements within the Properties and on any Common Facilities. The insurance shall be kept in full force and effect at all times and the full replacement value of the insured property shall be redetermined on an annual basis. Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this Section shall contain an agreed amount endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 10.05, below.

(c) Director's and Officer's Liability Insurance. To the extent such insurance is reasonably obtainable the Association shall maintain individual liability insurance for its directors and officers providing coverage for negligent acts or omissions in their official capacities. The minimum coverage of such insurance shall be at least Five Hundred Thousand Dollars (\$500,000.00).

(d) Additional Insurance and Bonds. To the extent such insurance is reasonably obtainable, the Association may also purchase such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this Section, demolition insurance, flood insurance, and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance which shall name the Association as obligee, shall be written in an amount not less than a sum equal to three (3) months aggregate assessments on all Lots

plus reserve funds, and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any Mortgagee.

Section 10.02. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 10.01, above, is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage hereinabove described. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 10.03. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 10.04. Individual Fire and Casualty Insurance Limited. Except as provided in this Section, no Owner can separately insure his or her Residence or any part of it against loss by fire or other casualty covered by the Association's blanket insurance carried under Section 10.01(b), above. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 10.01(b), above, that results from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any diminution. An Owner can insure the Owner's personal property against. In addition, any Improvements made by an Owner within his or her Lot may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional first Mortgagee of such Lot.

Section 10.05. Trustee. All insurance proceeds payable under Section 10.01, above, and subject to the rights of the Mortgagees under Section 10.11, below may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. The trustee shall be a commercial bank in the County that agrees in writing to accept such trust.

Section 10.06. Owner's Insurance. An Owner may carry whatever personal liability and property damage liability insurance with respect to the Owner's Lot that the Owner desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any first Mortgagee.

Section 10.07. Adjustment of Losses. 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 pursuant to Section 10.01, above. The Board is granted full right and

authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

Section 10.08. Earthquake Coverage. Earthquake coverage shall be optional; however, the Association shall not carry earthquake coverage without the approval of a majority of the total voting power of the Members. If the Members elect to require the Association to obtain earthquake coverage, the coverage may be subsequently cancelled on vote of a majority of the total voting power of the Members. If cancelled, the Association shall notify the Members as provided in Section 12.07 of the Bylaws.

Section 10.09. Annual Insurance Review. The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining if such insurance is adequate. Such responsibility may be performed and shall be deemed reasonably performed by the Board requesting the Association's insurance agent to verify that the insurance policies in existence meet the needs of the Association.

Section 10.10. Insurance Deductibles. The amount of the deductible portion of any insurance coverage maintained by the Association shall be established in the reasonable discretion of the Board. In the event that a loss is not the result of the negligent or willful misconduct of a particular Owner or a particular guest, tenant or invitee of an Owner, or if responsibility cannot clearly be established, the cost of the deductible shall be defrayed by the Association and, if necessary the deductible shall be recovered from the Owners through levy of a Special Assessment pursuant to Section 4.03(c)(ii), above. However, if a loss is established to be the result of the negligent or willful misconduct of a particular Owner or his or her guest, tenant or invitee, that Owner shall be charged with the deductible amount as a Special Individual Assessment pursuant to Section 4.04(a)(i), above. Before such a Special Individual Assessment may be imposed the Owner who is alleged to be responsible for the loss shall be entitled to notice and a hearing in accordance with Section 14.06, below.

Section 10.11. Distribution to Mortgagees. Subject to the provisions of Article XI, below, any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage of such Mortgagee.

ARTICLE XI

Damage or Destruction

Section 11.01. Destruction; Proceeds Equal or Exceed Eighty Five Percent (85%) of the Reconstruction Costs. If there is a total or partial destruction of any Residence or Common Facility Improvements within the Properties, and if the available proceeds of the insurance maintained pursuant to Article X, above, are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, seventy-five percent (75%) of the "eligible Members" (as defined in Section 11.04, below),

determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to Record, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 11.02. Destruction; Proceeds Less Than Eighty Five Percent (85%) of Reconstruction Costs. If the proceeds of insurance are less than eighty-five percent (85%) of the cost of repair and reconstruction, repair and reconstruction may nevertheless take place, if, within ninety (90) days from the date of destruction, eligible Members then holding at least fifty one percent (51%) of the total voting power, determine that such repair and reconstruction shall take place, the Board shall be required to Record, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 11.03. Rebuilding Procedures. If the eligible Members determine to rebuild, pursuant to Section 11.01 or 11.02, above, the Owner of each Lot wherein a structure that has been totally or partially destroyed shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration of the structure within his or her Lot, over and above the available insurance proceeds. Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area based upon the ratio the square footage of the floor area of his or her Lot bears to the total square footage of the floor area of all Lots. If any Owner fails or refuses to pay his or her proportionate share, the Board may levy a Special Individual Assessment against the Lot of such Owner which may be enforced under the lien provisions contained in Article IV, above, or in any other manner provided in this Declaration.

If any Owner disputes the amount of his or her proportionate liability under this Section, such Owner may contest the amount of his or her liability by submitting to the Board within ten (10) days after notice to the Owner of his or her share of the liability, written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting of Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by fifty one percent (51%) of the total voting power of the eligible Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 11.04. Definition of "Eligible Members" Entitled to Vote. For purposes of any vote pursuant to this Article, the Members eligible to vote shall be: (a) the

requisite percentage of the total voting power of the Association in the case of any damage or destruction of Common Facilities; and (b) in the case of any damage to, or destruction of, Residences, the requisite percentage shall be of those members whose Residences are located in the damaged or destroyed structure(s). Any membership vote required hereunder shall be conducted either at a duly convened meeting at which a quorum is present or by written ballot conducted in accordance with Section 4.06 of the Bylaws.

Section 11.05. Rebuilding Contract. If the Members who are eligible to vote on the matter determine to rebuild, the Board shall reconstruct the damaged or destroyed portions of the Properties substantially in accordance with the original plan. The Board or its authorized representative shall obtain bids from at least two (2) reputable contractors and shall award the repair and reconstruction work to the lowest qualified bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms and conditions of the agreement. It shall be the obligation of the Board to take all steps which are necessary or appropriate to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 11.06. Rebuilding Not Authorized. If the Members who are eligible to vote on the matter determine not to rebuild, then any insurance proceeds then available for rebuilding shall be used or distributed as follows:

(a) If, prior to the expiration of one hundred twenty (120) days from the date of destruction, seventy five percent (75%) of all Owners and institutional first Mortgagees with Mortgages encumbering the affected Lots within the Properties consent by vote or in writing, the Board acting on behalf of the Association shall have the right to purchase the Lots which were rendered uninhabitable by such damage or destruction at the fair market value thereof immediately prior to the damage or destruction (as determined by an appraiser), using the available proceeds of insurance for such purpose. The Board's decision as to whether or not a Lot is uninhabitable shall be final and binding on all parties. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of his or her Lot and each Owner by accepting a deed to a Lot agrees to be bound by these provisions and to sell his or her Lot by grant deed to the Association as provided herein. Concurrently with such purchase, the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Subdivision Map and this Declaration to eliminate from the Properties the Lots so purchased.

(b) Notwithstanding the determination of eligible Members not to rebuild pursuant to Section 11.01 or 11.02, above, any Lots which are not rendered uninhabitable shall be repaired and restored to a condition as near as possible to their condition immediately before such damage or destruction. Such repair and restoration shall be

paid first, from the insurance proceeds remaining after the purchase of Lots pursuant to Subsection (a) of this Section, if any, and second, from a Special Individual Assessment levied against all remaining Owners in the manner described in Section 11.04, above.

(c) If the required seventy-five percent (75%) of all Owners and institutional first Mortgagees do not consent to purchase the Lots which were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Lots in the Properties, as of a date prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such relative values. The Board shall have the duty, within one hundred twenty (120) days from the date of destruction, to Record a certificate declaring the intention of the Members not to rebuild.

Section 11.07. Minor Repair and Reconstruction. In any case, the Board shall have the duty to repair and reconstruct Improvements, without the consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Five Thousand Dollars (\$5,000). Any amounts paid by the Board up to and including Five Thousand Dollars (\$5,000) shall be assessed to the Lots which are damaged upon the basis of the ratio of the square footage of the floor area of the Lot to be assessed to the total square footage of the floor area of all Lots to be assessed. In the case of damage to Common Facilities which does not exceed Five Thousand Dollars (\$5,000), all Lots shall be assessed for an equal portion of any uninsured expense.

Section 11.08. Appraiser. Wherever in this Article or Article XII, below, reference is made to a determination of the value or fair market value of one (1) or more Lots by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each Lot. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

ARTICLE XII Condemnation

Section 12.01. Sale by Unanimous Consent or Taking. If an action for condemnation of all or a portion of the Properties is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Properties, or a portion thereof may be sold and conveyed to the condemning authority by the Board or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Properties hereby grants and which shall be coupled with the interest of all other Owners, for a price deemed fair

and equitable by the Board. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Properties, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

Section 12.02. Distribution and Sale Proceeds of Condemnation Award.

(a) Total Sale or Taking. A total sale or taking of the Properties means a sale or taking:

(i) that renders more than fifty percent (50%) of the Lots uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking); or

(ii) that renders the Properties as a whole uneconomical as determined by the vote or written consent of sixty-seven percent (67%) of those Owners and their respective institutional Mortgagees whose Lots will remain habitable after the taking. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Properties, after payment of all expenses relating to the sale or taking, shall be paid to all Owners and to their respective Mortgagees in the proportion that the fair market value of each Lot bears to the fair market value of all Lots on the Properties. The fair market value of Lots shall be determined in the condemnation action, if such be instituted, or by an appraiser.

(b) Partial Sale or Taking. In the event of a partial sale or taking of the Properties, meaning a sale or taking that is not a total taking as determined in Section 12.02(a), above, the proceeds from the sale or taking shall be paid or applied in the following order of priority and any judgment of condemnation shall include the following provisions as part of its terms:

(i) To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then

(ii) To Owners and to their respective Mortgagees, as their interests may appear, of Lots on the Properties whose Lots have been sold or taken, an amount up to the fair market value of such Lots as determined by the court in the condemnation proceeding or by an appraiser, less such Owners' share of expenses paid pursuant to Section 12.02(b)(i), above, (which share shall be in proportion to the ratio that the fair market value of each Owner's Lot bears to the fair market value of all Lots). After such payment, the recipient shall no longer be deemed an Owner and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the

Subdivision Map and this Declaration to eliminate from the Properties the Lots so sold or taken; then

(iii) To any remaining Owner and to his or her Mortgagees, as their interest may appear, whose Lot has been diminished in value as a result of the sale or taking disproportionate to any diminution in value of all Lots, as determined by the Court in the condemnation proceeding or by an appraiser, an amount up to the total diminution in value; then

(iv) To all remaining Owners and to their respective Mortgagees, as their interest may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Lot bears to the fair market value of all remaining Owners' Lots as of a date immediately prior to commencement of condemnation proceedings, as determined by the Court in the condemnation proceeding or by an appraiser.

Section 12.03. Appraiser. Wherever in this Article reference is made to a determination of the value or fair market value of one (1) or more Lots by an appraiser, this shall mean an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers (SREA) or other nationally recognized appraiser organization and who shall apply the SREA or other national appraisal organization's standards in determining the value or fair market value of each Lot. The costs of such appraisals shall be paid from the condemnation proceeds as an expense of the Association.

ARTICLE XIII NONSEVERABILITY OF INTERESTS

Section 13.01. Prohibition against Severability. An owner shall not be entitled to sever his lot from his membership in the Association by reason of sale, conveyance, hypothecation, or otherwise. Any violation or attempted violation of this provision shall be void. Similarly, no owner can sever the Exclusive Use Common Area from his lot, and any attempt to do so shall be void.

ARTICLE XIV Breach and Default

Section 14.01. Remedy at Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents

may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 14.02. Nuisance. Without limiting the generality of the foregoing Section 14.01, above, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 14.03. Attorneys' Fees and Costs. Reasonable attorneys' fees and costs shall be awarded to the prevailing party in any procedure to enforce the Governing Documents or a party's rights arising under the Governing Documents. Such enforcement procedure includes an action brought in any court having jurisdiction over any alternative dispute resolution procedure implemented pursuant to the Governing Documents or to California Civil Code Section 1354, as it may be renumbered and revised from time to time. In any enforcement procedure, such as mediation, conducted pursuant to California Civil Code Section 1354, in which there is not an agreement between all of the parties that attorneys will represent them, recoverable costs are limited to attorneys' fees and costs incurred in providing the notices required under such statute.

Section 14.04. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one (1) or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 14.05. Failure Not a Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 14.06. Rights and Remedies of the Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the

pursuit of legal action, or the suspension of the Owner's right to use recreation Common Facilities or suspension of the Owner's voting rights as a Member; provided, however, the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section.

The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as exist by virtue of California Civil Code Section 1354 or otherwise by law.

(b) Schedule of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles). Once imposed, a fine or penalty may be collected as a Special Individual Assessment.

(c) Definition of "Violation". A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one (1) component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations of Disciplinary Rights.

(i) The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of Subsection (iii), below.

(ii) Monetary penalties imposed by the Association: (A) for failure of a Member to comply with the Governing Documents; (B) as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common

Area or Common Facilities allegedly caused by a Member; or (C) in bringing the Member and his or her Lot into compliance with the Governing Documents, may not be characterized nor treated as an Assessment which may become a lien against the Member's Lot enforceable by a sale of the Lot in nonjudicial foreclosure except as expressed in Section 4.09(b)(vi) herein; provided, however, that this limitation on the Association's lien rights shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in the Association's efforts to collect delinquent Assessments.

(iii) No disciplinary action, penalty or temporary suspension of rights shall be imposed pursuant to this Article unless the Owner alleged to be in violation is given at least ten (10) days prior notices by personal delivery or first-class mail, that the Board of Directors will be meeting to consider imposing such discipline. The notice shall contain at a minimum, the date, time, and place of the meeting, the nature of the alleged violations for which the Owner may be disciplined, and a statement that the Owner has a right to attend and address the Board at the hearing. The Board shall meet in executive session if requested by the Owner.

If disciplinary action is taken, the Board shall notify the accused Owner, in writing, either by personal delivery or first-class mail, of the Board's decision within fifteen (15) days following conclusion of the hearing.

In accordance with Civil Code Section 1363(h), disciplinary action shall not be effective against an Owner unless the Board fulfills the requirements of this Section.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes: (A) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (B) a traffic or fire hazard; (C) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (D) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors, or its duly authorized agents, may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five (5) days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five (5) days following the date when the fine is levied.

The hearing shall be held no more than fifteen (15) days following the date of the disciplinary action or fifteen (15) days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

At the hearing, the accused shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within five (5) business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing unless: (i) the hearing merely affirms summary disciplinary action initiated pursuant to the immediately preceding paragraph; or (ii) earlier commencement is necessary to preserve the quiet enjoyment of other residents or to prevent further damage to, or destruction of, the Properties or any portion thereof.

(iv) The notice and hearing procedures set forth in this Section 14.06 shall not apply to any actions by the Association or its duly authorized agents to collect delinquent assessments. Assessment collections shall be subject to Section 4.09, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection.

(e) Notices. Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice; provided, however, that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

(f) Rules Regarding Disciplinary Proceedings. The Board, shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules.

Section 14.07. Court Actions and Alternative Dispute Resolution (ADR) Disclosure. Court actions to enforce the Governing Documents may only be initiated on behalf of the Association by resolution of the Board. Prior to the filing of any court action seeking declaratory or injunctive relief to interpret or enforce the Governing Documents [(including either such action coupled with a claim for monetary damages not in excess of Five Thousand Dollars (\$5,000)], the Association shall first comply with the provisions of California Civil Code Section 1354 relating to alternative dispute resolution. The Association's own notice and hearing procedures may be drafted to satisfy these statutory requirements. Notwithstanding the foregoing, on an annual basis, the Board shall provide

each Member a summary of the provisions of Civil Code Section 1354, which specifically references Section 1354 and which includes the language required by Section 1354(l) as follows: "Failure by any Member of the Association to comply with the pre-filing requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the Association or another Member of the Association regarding enforcement of the governing documents. The summary shall be provided either at the time the budget required by Section 12.05(a) of the Bylaws is distributed, or in the manner specified in Corporations Code Section 5016.

Section 14.08. Actions Pertaining to Claim for Defects. Notwithstanding the provisions of Section 14.07 above, actions by the Association pertaining to or based upon a claim for defects in the design or construction of improvements within the Properties against the Declarant, or any architect, engineer or other consultant, or any contractor, subcontractor or materials supplier engaged by or on behalf of Declarant for the design and/or construction of the Properties, or any element thereof, or otherwise defined in Civil Code Sections 896 or 897 as an Actionable Defect ("Claim"), shall be resolved and administered in accordance with Civil Code Sections 895 through 945.5, as elected by Declarant in Section 19.03 herein, and Civil Code Sections 1375 and 1375.05, as such Sections may be amended, revised or superseded, from time to time. If a Claim is subject to pre-litigation procedures in Civil Code Sections 910 through 938, or any successor statutes, each Owner, and the Declarant, prior to filing any civil action, arbitration or action in judicial reference regarding such Claim shall comply with the prelitigation procedures of said Sections. Notices of Claims shall specify all of the matters as set forth in Civil Code Sections 1368.4 and/or 910 through 938, as applicable, and any successor statutes or laws.

Section 14.09. Arbitration. Subject to any specific provision herein to the contrary, any controversy or claim relating to the Properties may be settled by arbitration at the option of the aggrieved owner, in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered (which award may include equitable relief) by the arbitrators may be entered in any court having jurisdiction. Notwithstanding the foregoing, the Association's power to establish, fix, and levy assessments against the owners of condominiums and to enforce payment of such assessments or carry out any of its responsibilities in accordance with the provisions hereof shall not be the subject of such arbitration without the Association's written consent.

ARTICLE XV

Protection of Mortgagees

Section 15.01. Assessment Lien Subordinated. Any lien created or claimed under the provisions of Section 4.09, above, shall be subject and subordinate to the lien of any first Mortgage given in good faith and for value. No such Mortgagee who acquires title to any Lot by judicial foreclosure or by exercise of power of sale contained in the

Mortgage shall be obligated to cure any breach of this Declaration by a former Owner of such Lot or shall be liable for any unpaid Assessments made against the Lot which accrued prior to the date the Mortgagee acquired such title. No lien created or claimed under the provisions of Article IV, above, shall in any way defeat, invalidate or impair the rights of any Mortgagee under any such Recorded Mortgage.

Section 15.02. Amendment of This Declaration. No amendment of this Declaration shall affect any of the rights of the holder of any Mortgage described in Section 15.01, above, which is made in good faith and for value, if such Mortgage is Recorded and notice of the delivery and Recording thereof is given to the Association prior to the Recording of such amendment.

Section 15.03. Additional Subordinations. Notwithstanding anything contained in this Declaration to the contrary, the Association may, upon the affirmative vote of the Owners entitled to vote and holding in the aggregate at least a majority of the voting power of membership of the Association, execute a subordination agreement or agreements to extend the benefits of Sections 15.01 and 15.02, above, hereof to Mortgages and Mortgagees not otherwise entitled thereto.

Section 15.04. Breach; Obligation After Foreclosure. No breach of any provision of this Declaration by the Association or any Owner shall impair or invalidate the lien of any Recorded Mortgage made in good faith and for value and encumbering any Lot. The Association or its successors and assigns shall be obligated to abide by all of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes provided for in this Declaration as it may be amended from time to time with respect to any person who acquires title to or any beneficial interest in any Lot through foreclosure, trustee's sale or otherwise.

Section 15.05. Exchange of Information. The Association shall, at the written request of any Mortgagee, insurer or guarantor, notify such party of:

- (a) Any condemnation or casualty loss that affects either a material portion of the Properties or the Lot(s) securing the Mortgage;
- (b) Any delinquency of sixty (60) days or more in the payment of Assessments or charges owed by the Owner(s) of the Lot(s) securing the Mortgage;
- (c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- (d) Any proposed action of the Association that requires the consent of a specified percentage of Eligible Mortgagees (see Section 15.12(a), below, for definition of "Eligible Mortgagee").

To be entitled to receive this information, the Mortgagee, insurer or guarantor must send a written request to the Association, stating both its name and address and the number or address of the Lot(s) securing the Mortgage. Any Mortgagee of any Lot is hereby authorized to furnish to the Board of Directors, upon written request by the Board therefor, the amount of any unpaid balance of any indebtedness secured by a lien of a Mortgage and the amount and due date of any delinquent payment or payments of such indebtedness.

Section 15.06. Certain Restrictions Affecting the Association. Notwithstanding any other provisions of this Declaration, without the prior written consent of at least sixty-seven percent (67%) of the Owners or sixty-seven percent (67%) of the first Mortgagees, such percentage to be based upon the total of number of Lots so mortgaged, with each such Mortgagee entitled to one (1) vote for each Lot, the Association shall not:

- (a) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or any Improvements thereon [except that the granting of any easement for public utilities, or for other public purposes consistent with the intended use of the Properties, shall not be deemed a "transfer" as that term is used in this Subsection (a)];
- (b) Change the method provided for in this Declaration of determining the Assessments or other charges which may be assessed against an Owner or the method of allocating distributions of hazard insurance proceeds or condemnation awards;
- (c) By act or omission, change, waive or abandon the scheme of maintenance and repair of the Properties, or the enforcement thereof, as provided for in this Declaration;
- (d) Fail to maintain blanket fire and extended coverage insurance on the Properties in the amount and against the risks provided for in Section 10.01, above; and
- (e) Use any insurance proceeds received as a result of the loss or damage to the Properties for any purpose other than the repair, replacement or reconstruction of such Properties.
- (f) Make any amendment to this Declaration to add or amend any provision thereof that establishes, provides for, governs or regulates any of the following matters: (i) voting; (ii) Assessments that raise the previously assessed amount by more than twenty-five (25%) except in cases of emergency as defined in Section 4.05, Assessment liens or the subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Facilities; (iv) insurance or fidelity bonds; (v) rights to use and enjoyment of the Common Facilities; (vi) responsibility for maintenance and repair of the Properties; (vii) expansion or contraction of the Properties or the addition, annexation or withdrawal of property to or from the Properties; (viii) the boundaries of any

Lot; (ix) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Lot; or (x) any provisions which are for the express benefit of Mortgage holders, eligible Mortgage holders or eligible insurers or guarantors of first Mortgages on Lots (as those terms are defined in the FNMA guidelines).

Section 15.07. Right of First Mortgagees to Make Certain Payments and Right of Reimbursement Therefor. The holders of first Mortgages on the Lots shall have the right (but not the obligation), jointly or singly: (a) to pay taxes or other Assessments or charges which are in default and which may or have become a lien or charge against the Common Facilities; (b) to pay overdue premiums on casualty insurance policies for the Common Facilities; and (c) to secure and pay for new casualty insurance coverage on the Common Facilities upon the lapse of any such policy, in the amount and against the risks provided for in Section 10.01, above. Any first Mortgagee making such payment shall be entitled to immediate reimbursement therefor from the Association. Upon the request of any first Mortgagee, the Association shall, by separate instrument, signed by the President or any Vice President and the Secretary, evidence its agreement to the provisions of this Section as the same affects the Mortgage held by such Mortgagee.

Section 15.08. Right to Examine Books and Records of the Association. All Mortgagees, insurers and guarantors of any Mortgages on any Lot shall have the right, upon written request to the Association, to:

(a) Examine current copies of the Governing Documents and the Association's books, records and financial statements, during normal business hours;

(b) Require the Association to provide an audited statement for the preceding fiscal year at the requesting entity's expense when the Properties consist of fewer than 50 Lots and no audited statement is available; and

(c) Receive written notice of all membership meetings and designate a representative to attend all such meetings.

Section 15.09. Notices to First Mortgagees. The Association shall furnish to the holder of any first Mortgage on any Lot or on the Common Area, upon written request by the first Mortgagee, thirty (30) days prior written notice of: (a) abandonment or termination of the Association; (b) the effective date of any proposed material amendment to the Declaration; (c) the effectuation of any decision by the Association to terminate professional management, if any, and assume self-management of the Properties; (d) any condemnation or eminent domain proceeding; and (e) any extensive damage to or destruction of any Improvements located in or on the Common Area.

Section 15.10. Superiority of Mortgage to Condemnation Proceeds. If any Lot, or portion thereof, or the Common Area, or any portion thereof, is made the subject of

any condemnation or eminent domain proceeding, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of the Lots or Common Area with respect to any distribution of the proceeds of any condemnation award or settlement.

Section 15.11. Superiority of Mortgage to Insurance Proceeds. In the event of any substantial damage to or destruction of the Improvements on any Lot, or on any part of the Common Area, the lien of any first Mortgage shall be prior and superior to the claims of the Owners of the Improvements with respect to any distribution of any insurance proceeds relating to such damage or destruction.

Section 15.12. Approval of Material Amendments or Termination.

(a) Material Amendments. In addition to the approvals required by Section 15.06, above, Eligible Mortgagees who represent at least fifty one percent (51%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any amendment to this Declaration of a material nature. An Eligible Mortgagee is the beneficiary of a first Mortgage who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A change to any of the following would be considered as material:

- (i) voting rights;
- (ii) assessments that raise the previously assessed amount by more than twenty-five (25%) except in cases of emergency as defined in Section 4.05, assessment liens or the priority of assessment liens;
- (iii) reserves and responsibility for maintenance, repair and replacement of the Common Area;
- (iv) convertibility of Lots into Common Area and vice versa;
- (v) annexation or deannexation of property to or from the Properties;
- (vi) insurance or fidelity bonds;
- (vii) leasing of Lots;
- (viii) imposition of any restrictions on an Owner's right to sell or transfer his or her Lot;
- (ix) a decision by the Association to establish self-management when professional management had been required previously by the Governing Documents or by an Eligible Mortgagee;

(x) restoration or repair of the Properties (after a hazard damage or partial condemnation) in a manner other than that specified in the Governing Documents;

(xi) any action to terminate the legal status of the Properties after substantial destruction or condemnation occurs; or

(xii) any provisions that expressly benefit Mortgagees, insurers or guarantors.

(b) Termination. In addition to the approvals required by Section 15.06, above, Eligible Mortgagees who represent at least sixty-seven percent (67%) of the votes of Lots that are subject to Mortgages held by Eligible Mortgagees must approve any proposed termination of the legal status of the Properties for reasons other than substantial destruction or condemnation of the Properties.

(c) Implied Approval. Each Eligible Mortgagee which receives notice of a proposed amendment or termination of this Declaration by certified or registered mail, with a "return receipt" requested, shall be deemed to have approved the amendment or termination if the Eligible Mortgagee fails to submit a response to the notice within thirty (30) days of receiving the notice.

ARTICLE XVI Notices

Section 16.01. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner:

To the street address of his or her Lot or to such other address as he or she may from time to time designate in writing to the Association.

If to the Association:

ELLIOTT COURTS, at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners)

Section 16.02. Personal Service Upon Co-Owners and Others. Personal service of a notice or demand to one (1) of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot, shall be deemed delivered to all such co-Owners, to such partnership, or to such corporation, as the case may be.

Section 16.03. Deposit in United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered seventy-two (72) hours after deposit in the United States mail in the County.

ARTICLE XVII
No Public Rights in the Properties

Section 17.01. No Public Rights in the Property. Nothing contained in this Declaration shall be deemed to be gift or dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

ARTICLE XVIII
Amendment of Declaration

Section 18.01. Amendment of the Declaration, Generally. This Declaration may be amended or revoked in any respect upon compliance with the following provisions:

(a) Amendment Before Close of First Sale. Prior to the close of the first sale in the Properties 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 and all Mortgagees of record of an instrument amending or revoking the Declaration.

(b) Member Approval Requirements After Close of First Sale. Subject to approval by Owners as provided in Section 15.06 herein, after the close of the first sale of a Lot in the Properties to a purchaser other than Declarant, any amendment shall be approved by the vote or assent by written ballot of the holders of not less than fifty-one percent (51%) of the Voting Power of the Members other than Declarant. Notwithstanding the foregoing, the percentage of the voting power necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

(c) Additional Approvals For Amendments to Particular Provisions:

(i) Mortgagee Approvals. Mortgagee approvals shall be required to amend any of the provisions described in Sections 15.06 and 15.12, above.

(ii) City Approval. City approval as required by Section 20.05 herein.

(d) Amendment by Petitioning Superior Court. Notwithstanding any other provision herein contained, the Association or any Owner of a Lot may petition the superior court of the county where the Properties are located for an order reducing the percentage of affirmative votes necessary for such an amendment pursuant to California Civil Code Section 1356.

(e) Consent Required to Become Effective. 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 shall be evidenced by an instrument certified by the Secretary or other duly-authorized officer of the Association, shall make appropriate reference to this Declaration, shall comply with California Civil Code Section 1355.

ARTICLE XIX General Provisions

Section 19.01. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of thirty (30) years from the date of the Recording of this Declaration. After the expiration of the initial term, the term of this Declaration shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial thirty (30) year term or any such ten (10) year extension period, a recordable written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association terminating the effectiveness of this Declaration, is Recorded.

Section 19.02. Construction.

(a) Restrictions Construed Together. All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of Subsection (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

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

(e) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

(f) References to State Statutes. Any references in this Declaration to State Statutes shall be to the referenced statute as in effect on the date that this Declaration is Recorded in the Official Records of the County. In the event that any referenced statute is subsequently amended or superseded, all such references shall thereupon mean and refer to the referenced statute as so amended, modified or superseded, so long as the amended statute continues to regulate or pertain to the same subject matter.

Section 19.03. Declarant's Election Under Title 7 of the California Civil Code. Declarant hereby places the Association and each Owner on notice that it intends to engage in the nonadversarial procedure referred to in Title 7 of the California Civil Code, Requirements for Actions for Construction Defects, Sections 895 through 945.5, which provides, among other provisions, for certain prelitigation procedures which affect the legal rights of a homeowner (including individual Owners of single family homes, individual Lot Owners of attached dwellings and, in the case of a Common Interest Development, the Association as defined in Subdivision (a) of Section 1351 of said California Civil Code) should they be dissatisfied with the quality of construction of as described in said Title.

ARTICLE XX Municipal Restrictions

Section 20.01. Enforcement by the City of El Monte. The Declarant, the Association, and each Owner of a Lot in the Properties 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 City in such a manner as to provide for the health, safety and welfare of persons working and residing in the vicinity of Properties and the entire City. The City shall have the right and power to enforce the Common Area use and maintenance 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 other action of the City. Any provision of this Declaration to the contrary notwithstanding, the City may, by public nuisance abatement proceeding, and/or an action at law or in equity, enforce the following provisions of the Declaration as the governing municipality:

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

(b) Conditions of Approval. Any provision or conditions of approval of Tract 60676 and Conditional Use Permit No. 75-03 as approved on March 9, 2004, by the El Monte Planning Commission, and including the following provisions:

(i) Exterior equipment. Installation of heating and air conditioning units, exterior dish antennas and electronic equipment shall be screened from view from Elliott Avenue and from the Common area.

(ii) Guest Parking. The eight (8) guest vehicle parking spaces located in the Common Area shall be used and reserved for the parking of motor vehicles of guests only and no Owner may be assigned the permanent use of any such guest parking space.

(iii) Security Gate. In the event that the Declarant and/or Association may install a security gate to control motor vehicle access between Elliott Avenue and the Properties, then in such event said security gate shall be set back a minimum of twenty (20) feet from the front property line and shall be equipped with a telephone or intercom communication device that permits a guest to communicate with the host and said security gate shall also be designed and installed in such a fashion as to automatically stop or reverse its operation if an obstruction of the gate may occur during its operation.

(iv) Fire Lane. The access driveway shall be posted and maintained as a Fire Lane/No Parking Area.

(v) Perimeter Walls. In the event that the masonry walls as constructed upon abutting lands located along either the north, south, or east property lines of the Properties may hereafter be removed either in whole or in part, then in such event the Declarant and/or Association shall promptly cause to be constructed and installed a replacement masonry wall on the Properties of at the height originally constructed in order to replace the masonry wall or portions thereof which have been removed. Any wall within the twenty-five (25) foot front yard setback must be reduced to four (4) feet in height.

(vi) Lighting System. An on-site lighting system shall be provided and maintained in all parking areas, vehicular access ways and along major walkways. Said system shall be automated using either a timing or photoelectric activating device and shall be directed away from adjacent properties.

(vii) Removal of Graffiti. Graffiti which is visible from Elliott Avenue must be removed from any exterior surfaces of the structures and improvements on the Properties 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 which is visible from Elliott Avenue is not removed within seventy-two (72) hours, the City shall

have the right to enter upon the Properties 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 in the same manner as provided in Section 20.02 hereof relating to the "Right of the City to Compel Performance; Enforcement by the City of El Monte."

(viii) Standard Stormwater Mitigation. Each Owner within his or her own Lot and the Association within the Common Area of the Properties shall be responsible for the maintenance of all on-site structural stormwater pollution removal devices as more specifically provided in that Maintenance Covenant for Standard Urban Stormwater Mitigation (SUSMP) Requirements, a copy of which is attached hereto as Exhibit A and incorporated herewith as if set forth in full. Said maintenance shall further require that an annual maintenance inspection be conducted following best management practices covering all specified on-site structural stormwater pollution removal devices as well as verification of the legibility of all required stencils and signs which shall be repainted and labeled as necessary. Proof of such inspection shall be retained by the respective Owner or Association.

Section 20.02. Right of City to Compel Performance; Enforcement by the City of El Monte. In addition to all other remedies which the City may have to enforce this Declaration, including administrative public nuisance abatement proceedings and any action in law or equity, the City shall 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, and the City shall have the same right as that of the Association to enter the Common Area for the purpose 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 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 in the same manner as provided in Section 4.9 hereof relating to non-payment of assessments. In the event that the City may 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.

Section 20.03. Foreclosure of Lien. No approval by an Owner, Association, or Board of Directors shall be necessary to establish and foreclose any lien of the City for non-payment 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.

Section 20.04. Priority of City Ordinances and Other Laws. Notwithstanding any provision in this Declaration to the contrary, execution of this Declaration by the City shall not be deemed a waiver or release of any applicable provision of the subdivision or improvement plans for the Properties, as previously approved by the City or as they may be amended from time to time, or of any other 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.

Section 20.05. Amendment of Declaration. Any amendment or modification of this Declaration affecting the maintenance obligations of the Association or any 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 Section 20.05, shall require the prior written approval of the City.

DATED: March 18, 2005

FOOTHILL PACIFIC HOMES, INC.
a California corporation

By  _____
RICHARD TIPPING, Its President

RECORDING REQUESTED BY AND MAIL TO:

CITY OF EL MONTE
PUBLIC WORKS ENGINEERING DEPARTMENT
11333 VALLEY BOULEVARD,
EL MONTE, CA 91731

EXHIBIT A

Space above this line is for Recorder's use

MAINTENANCE COVENANT FOR STANDARD URBAN STORMWATER MITIGATION (SUSMP) REQUIREMENTS

Pursuant to Title 13, Chapter 13.20 of the El Monte Municipal Code relating to the control of pollutants carried by stormwater runoff, and El Monte Public Works Engineering Requirements, structural and/or treatment control Best Management Practices (BMP's) have been installed on the following property:

LEGAL DESCRIPTION

ASSESSOR'S ID # 8109-002-045 TRACT NO. 60676 LOT NO. 1 - 5
through 049
ADDRESS: 12413, 12415, 12417 and 12419 Elliott Avenue
El Monte, CA 91732

I (we) FOOTHILL PACIFIC HOMES, INC., hereby certify that I (we) am (are) the legal owner(s) of
(Legal Name of Property Owners)
property indicated above, and as such owners for the mutual benefit of future purchasers, their heirs, successors, and assigns, do hereby fix the following protective conditions to which their property, or portions thereof, shall be held, sold and/or conveyed.

That owner(s) shall maintain the drainage devices such as paved swales, bench drains, inlets, catch basins, downdrains, pipes, and water quality devices on the property indicated above and as shown on plans permitted by the El Monte Public Works Engineering Department, in a good and functional condition to safeguard the property owners and adjoining properties from damage and pollution.

That owner(s) shall conduct maintenance inspection of all Structural or Treatment Control BMP's on the property at least once a year and retain proof of the inspection. Said maintenance inspection shall verify the legibility of all required stencils and signs and shall repaint and label as necessary.

That owner(s) shall provide printed educational materials with any sale of the property which provide information on what stormwater management facilities are present, the type(s) and location(s) of maintenance signs that are required, and how the necessary maintenance can be performed.

Owner(s): ~~FOOTHILL PACIFIC HOMES, INC.~~

By: [Signature] Date: 3/18/2005

RICHARD TIPPING, President

By: _____ Date: _____

(PLEASE ATTACH NOTARY)

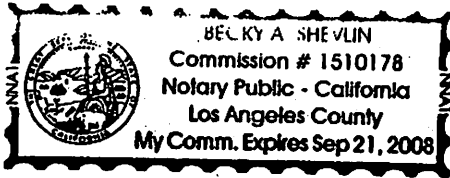
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Los Angeles } ss.

On March 18, 2005 before me, BECKY A. SHEVLIN
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared RICHARD TIPPING
Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.
Becky A. Shevlin
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

MAINTENANCE COVENANT FOR STANDARD URBAN
Title or Type of Document: STORMWATER MITIGATION (SUSMP) requirements

Document Date: March 18, 2005 Number of Pages: 1

Signer(s) Other Than Named Above: None

Capacity(ies) Claimed by Signer

Signer's Name: RICHARD TIPPING

- Individual
- Corporate Officer -- Title(s): President
- Partner -- Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: FOOTHILL PACIFIC HOMES, INC.

