

1183 DOC # 1998-0692723

OCT 26, 1998 4:48 PM

~~CHICAGO~~ TITLE COMPANY

RECORDING REQUESTED BY *Chicago*
AND WHEN RECORDED MAIL TO:

Bernardo Ridge, LLC
11939 Rancho Bernardo Road
Suite 200
San Diego, California 92128
Attention: Terrence L. Vogel, Esq.

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER

FEES: 198.00

WAY: 2



1998-0692723

*58
628
2W
1CON*
8351080-50

Above space for Recorder's use only

DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BERNARDO RIDGE

5
CHICAGO TITLE COMPANY

9/23/98

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Bernardo Ridge, LLC
11939 Rancho Bernardo Road
Suite 200
San Diego, California 92128
Attention: Terrence L. Vogel, Esq.

THE ORIGINAL OF THIS DOCUMENT
WAS RECORDED ON OCT 26, 1998
DOCUMENT NUMBER 1998-0692723
GREGORY J. SMITH, COUNTY RECORDER
SAN DIEGO COUNTY RECORDER'S OFFICE
TIME: 4:48 PM

835/080-50

Above space for Recorder's use only

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BERNARDO RIDGE

TABLE OF CONTENTS

	<u>Page</u>
Recitals	1
ARTICLE I Definitions	2
Section 1.1 "Annexed Property"	2
Section 1.2 "Architectural Committee"	2
Section 1.3 "Articles"	2
Section 1.4 "Assessment"	2
Section 1.5 "Association"	3
Section 1.6 "Association Property"	3
Section 1.7 "Association Rules"	3
Section 1.8 "Board"	3
Section 1.9 "Bylaws"	3
Section 1.10 "Common Area"	3
Section 1.11 "Common Expenses"	3
Section 1.12 "Condominium"	4
Section 1.13 "Condominium Plan"	4
Section 1.14 "County"	4
Section 1.15 "Declarant"	4
Section 1.16 "Declaration"	4
Section 1.17 "DRE"	4
Section 1.18 "Dwelling"	4
Section 1.19 "Encroachment Removal Agreements"	4
Section 1.20 "Family"	4
Section 1.21 "First Mortgage"	4
Section 1.22 "First Mortgagee"	4
Section 1.23 "Initial Property"	5
Section 1.24 "Jogging Trail"	5
Section 1.25 "Loop Road Landscaped Areas"	5
Section 1.26 "Maintenance Access Area"	5
Section 1.27 "Maintenance Area"	5
Section 1.28 "Master Association"	5
Section 1.29 "Master Declaration"	5
Section 1.30 "Member"	5
Section 1.31 "Mortgage"	5
Section 1.32 "Mortgagee"	5
Section 1.33 "Owner"	5
Section 1.34 "Party Fence"	5
Section 1.35 "Person"	6
Section 1.36 "Phase"	6
Section 1.37 "Project"	6
Section 1.38 "Project No. 1"	6

		<u>Page</u>
	Section 1.39 "Property"	6
	Section 1.40 "Slope Control Areas"	6
	Section 1.41 "Sub-Association Facility Area"	6
	Section 1.42 "Sub-Association Facility Area Improvements"	6
	Section 1.43 "Sub-Association Storm Drain Areas"	6
	Section 1.44 "Supplementary Declaration"	6
	Section 1.45 "Residential Unit"	6
	Section 1.46 "VA"	7
ARTICLE II	Annexation	7
	Section 2.1 Annexation Procedures	7
ARTICLE III	Membership and Voting Rights	9
	Section 3.1 Membership	9
	Section 3.2 Transfer	9
	Section 3.3 Voting Rights	9
ARTICLE IV	Common Area and Association Property Rights and Limitations	10
	Section 4.1 Transfer of Association Property	10
	Section 4.2 Members' Easements of Enjoyment	10
	Section 4.3 Delegation of Use	12
	Section 4.4 Damage to Common Area, Association Property and Maintenance Area	12
ARTICLE V	Assessments	12
	Section 5.1 Creation of the Lien and Personal Obligation of Assessments	12
	Section 5.2 Purpose of Assessments	13
	Section 5.3 Regular Assessments	13
	Section 5.4 Capital Improvement Assessments	14
	Section 5.5 Limitation on Increases in Regular and Capital Improvement Assessments	14
	Section 5.6 Reimbursement Assessments	14
	Section 5.7 Certificate of Payment	14
	Section 5.8 Assessment of Condominiums Owned by Declarant	15
	Section 5.9 Nonuse and Abandonment	15
	Section 5.10 Uniform Rate of Assessment	15

	<u>Page</u>
Section 5.11	Exempt Property 15
Section 5.12	Offsets 15
Section 5.13	Reserves 15
Section 5.14	Working Capital Fund 16
ARTICLE VI	Non-Payment of Assessments 16
Section 6.1	Delinquency 16
Section 6.2	Lien and Notice of Delinquent Assessment 16
Section 6.3	Remedies 17
Section 6.4	Curing of Default 17
Section 6.5	Cumulative Remedies 17
ARTICLE VII	Architectural Control 18
Section 7.1	Architectural Approval 18
Section 7.2	Number of Members and Term of Architectural Committee 18
Section 7.3	Failure to Approve or Disapprove Plans and Specifications 18
Section 7.4	Appeal 19
Section 7.5	No Liability 19
Section 7.6	Notice of Noncompliance 19
Section 7.7	Rules and Regulations 19
Section 7.8	Variances 20
Section 7.9	Appointment and Designation 20
Section 7.10	Review Fee and Address 20
Section 7.11	Inspection 20
Section 7.12	Repair 20
ARTICLE VIII	General Restrictions 20
Section 8.1	Residential Use 20
Section 8.2	Nuisance 21
Section 8.3	Association Property Use 21
Section 8.4	Projections 21
Section 8.5	Garages and Carports 21
Section 8.6	Open Parking Spaces 22
Section 8.7	Vehicles 22
Section 8.8	Animals 22
Section 8.9	Signs 22
Section 8.10	Unsightly Matters 23
Section 8.11	Slope Maintenance and Restrictions 23

	<u>Page</u>
Section 8.12	Landscaping Maintenance and View Obstructions . . 23
Section 8.13	Oil and Mineral Restrictions and Equipment 23
ARTICLE IX	Duties and Powers of the Association 23
Section 9.1	General Duties and Powers 23
Section 9.2	General Limitations on Powers 26
Section 9.3	Management and Certain Other Contracts 28
Section 9.4	Association Rules 28
Section 9.5	Enforcement of Bonded Obligations 28
Section 9.6	Commencement of Maintenance Obligations 29
Section 9.7	Transfer of Condominium 29
ARTICLE X	Additional Rights and Obligations 30
Section 10.1	Repair and Maintenance of Dwellings and Other Portions of Residential Units 30
Section 10.2	Sub-Association Storm Drain Areas and Sub- Association Facility Area Improvements Maintenance and Restrictions 30
Section 10.3	Party Fence Maintenance 31
Section 10.4	Maintenance Access Area Rights and Limitations . . 32
Section 10.5	Right of Association to Perform 32
ARTICLE XI	Easements 33
Section 11.1	Encroachment Easements for Owners 33
Section 11.2	Encroachment Easements for Association 33
Section 11.3	Reservation of Easements by Declarant 33
Section 11.4	Modification and Transfer of Easements 35
ARTICLE XII	Insurance 35
Section 12.1	Types 35
Section 12.2	Waiver By Members 36
Section 12.3	Other Insurances Annual Review 36
Section 12.4	Premiums, Proceeds and Settlement 36
Section 12.5	Abandonment of Replacement Cost Insurance 36
Section 12.6	Beneficiaries of Insurance 36
Section 12.7	Requirements of FHLMC and FNMA 37

		<u>Page</u>
ARTICLE XIII	Destruction	37
	Section 13.1 Association Property Improvements	37
	Section 13.2 Negotiations with Insurer	38
ARTICLE XIV	Eminent Domain	38
	Section 14.1 Definition of Taking	38
	Section 14.2 Representation by Board in Condemnation Proceeding	38
	Section 14.3 Procedure on Taking	38
	Section 14.4 Inverse Condemnation	39
	Section 14.5 Revival of Right to Partition	39
	Section 14.6 Awards for Owners' Personal Property and Relocation Allowances	39
	Section 14.7 Notice to Members	39
	Section 14.8 Change of Condominium Interest	39
	Section 14.9 Association Property	39
ARTICLE XV	Rights of Lenders	40
	Section 15.1 Priority of Mortgage Lien	40
	Section 15.2 First Mortgage Relationship with Assessment Liens.	40
	Section 15.3 Two-Thirds Vote of First Mortgagees or Owners	40
	Section 15.4 Other Rights of First Mortgagees	41
	Section 15.5 Notice to First Mortgagees of Owner Default	42
	Section 15.6 Right of First Refusal	42
	Section 15.7 Conflicts	42
	Section 15.8 Notice of Destruction or Taking	42
	Section 15.9 Payments of Taxes or Premiums by First Mortgagees	42
	Section 15.10 Proceeds and Awards Priority	42
	Section 15.11 Notice of Amendment Hearing	43
	Section 15.12 Development of Property	43
ARTICLE XVI	Limitations Upon the Right to Partition and Severance	43
	Section 16.1 No Partition	43
	Section 16.2 No Severance	43
	Section 16.3 Proceeds of Partition Sale	43

	<u>Page</u>
ARTICLE XVII	
General Provisions	44
Section 17.1	
Duration	44
Section 17.2	
Amendment	44
Section 17.3	
Notices	45
Section 17.4	
Enforcement	45
Section 17.5	
Severability and Enforceability	46
Section 17.6	
Construction	46
Section 17.7	
Phased Development	46
Section 17.8	
Construction by Declarant	46
Section 17.9	
Nonliability of Officials	47
Section 17.10	
Leases	48
Section 17.11	
Mergers and Consolidations	48
Section 17.12	
Assignment of Rights and/or Duties	48
Section 17.13	
Delivery of Documents by Declarant	48
Section 17.14	
Davis-Stirling Common Interest Development Act ..	50
Exhibit A	
DESCRIPTION OF INITIAL PROPERTY AND PROJECT NO. 1 ...	53
Exhibit B	
DESCRIPTION OF ANNEXABLE REAL PROPERTY	54

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BERNARDO RIDGE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BERNARDO RIDGE is made this ____ day of _____, 1998 by Bernardo Ridge, LLC, a California limited liability company ("Declarant").

Recitals

A. The Declarant is the owner of the real property ("Initial Property") described in Exhibit A.

B. The Declarant desires to create on the Initial Property and such additional property as may be annexed to the Initial Property pursuant to the Article entitled "Annexation" ("Annexed Property") an interrelated and interdependent residential real property development. The development is one or more "condominium projects" as defined in California Civil Code Section 1351.

C. As used in this Declaration, the term "Property" means the Initial Property and all Annexed Property and includes, without limitation, any three dimensional portions of the Initial Property and Annexed Property as may be shown on one or more condominium plans (as such plans are described in Section 1351(e) of the California Civil Code).

D. For the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, the Declarant deems it desirable to establish covenants, conditions, restrictions and easements upon the Property which will constitute a general plan for the maintenance, improvement, use and enjoyment of the Property.

E. For the efficient management of the Property and the preservation of the value, desirability and attractiveness of the Property, it is desirable to create a corporation to which will be delegated the powers of administering and enforcing these covenants, conditions, restrictions and easements.

F. Bernardo Ridge Homeowners Association, a nonprofit mutual benefit corporation, has been incorporated under the laws of the State of California for the purpose of exercising the foregoing powers.

G. The Declarant intends to convey all of the Property subject to the provisions of this Declaration.

NOW, THEREFORE, the Declarant hereby establishes covenants, conditions, restrictions and easements upon and subject to which all of the Property shall be held and conveyed, which are hereby declared to be for the benefit of all of the Property and each present and each future owner of the Property. These covenants, conditions, restrictions and easements shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property and shall inure to the benefit of and bind each present and each future owner of the Property and are imposed upon the Property as equitable servitudes in favor of the Property as the dominant tenement or tenements.

ARTICLE I

Definitions

As used in this Declaration, the terms set forth below shall have the following meanings:

Section 1.1 "Annexed Property" has the meaning set forth in paragraph B of the Recitals.

Section 1.2 "Architectural Committee" means the committee provided for in the Article entitled "Architectural Control."

Section 1.3 "Articles" means the Articles of Incorporation of the Association.

Section 1.4 "Assessment" means any or all, as the context in which the term is used shall require, of the assessments defined below:

(a) "Capital Improvement Assessment" means a charge against each Owner and his or her Condominium representing a portion of the cost to the Association for the installation or construction of any capital improvement on any of the Common Area within the Property or any Association Property or Maintenance Area as provided for in this Declaration.

(b) "Reconstruction Assessment" means a charge against each Owner and his or her Condominium representing a portion of the cost to the Association for the reconstruction of any portion of the Common Area within his or her Project or any Association Property as provided for in this Declaration.

(c) "Regular Assessment" means a charge against each Owner and his or her Condominium representing that portion of the Common Expenses attributable to such Owner and his or her Condominium as provided for in this Declaration.

(d) "Reimbursement Assessment" means a charge against a particular Owner and his or her Condominium, directly attributable to such Owner, for certain costs incurred by the Association as may be provided for in this Declaration.

Section 1.5 "Association" means the Bernardo Ridge Homeowners Association, a nonprofit mutual benefit corporation, incorporated under the laws of the State of California and its successors and assigns.

Section 1.6 "Association Property" means the Remainder Parcel as shown, described and defined on the Condominium Plan of "Bernardo Ridge Phase I" recorded in the Office of the County Recorder of San Diego County, California on _____, 1998 as File No. _____ and any other property, facilities and improvements owned or leased by the Association or in which the Association holds an easement or other interest for the common use and enjoyment of the Owners within the Property, including any such property, facilities and improvements which are designated as Association Property in any Supplementary Declaration.

Section 1.7 "Association Rules" means the rules adopted by the Association pursuant to the Article entitled "Duties and Powers of the Association".

Section 1.8 "Board" means the Board of Directors of the Association.

Section 1.9 "Bylaws" means the Bylaws of the Association.

Section 1.10 "Common Area" means the entirety or each Project, except the Residential Units in each Project. Unless otherwise provided in a Supplementary Declaration as to the Annexed Property covered by the Supplementary Declaration, (i) the lower horizontal boundary of the Common Area in each of the Projects within the Annexed Property covered by the Supplementary Declaration shall be the upper horizontal boundary of the Residential Units in such Project (i.e., fifty feet above the ground surface), and (ii) the upper horizontal boundary of the Common Area in each of the Projects within the Annexed Property covered by the Supplementary Declaration shall be twenty-five feet above the lower horizontal boundary of the Common Area in such Project, each as more specifically shown and described on the Condominium Plan for such Project.

Section 1.11 "Common Expenses" means the actual and estimated costs of: maintenance, management, operation, repair, reconstruction and replacement of Common Area and any Association Property (unless the cost of such repair, reconstruction or replacement is otherwise provided for in the Article entitled "Destruction") and any Maintenance Area; unpaid Assessments; management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees; utilities, trash pick-up and disposal, gardening and other services which benefit the Common Area or Association Property; insurance obtained pursuant to this Declaration; adequate reserves as appropriate, including any expressly required by this Declaration; bonding of the members of the Board; taxes paid by the Association; amounts paid by the Association for the discharge of any lien or encumbrance levied against any of the Common Area or any Association Property; amounts paid or incurred by the Association in collecting Assessments, including amounts expended to purchase a Condominium in connection with the foreclosure of an Assessment lien against such Condominium; and other expenses incurred by the Association for any reason in connection with any of the Common Area, any Association Property, any Maintenance Area, this Declaration, any Supplementary Declaration, the Articles, the Bylaws, the furtherance of the purposes of the Association or the discharge of any obligations imposed on the Association or the Board by this Declaration, any Supplementary Declaration, the Articles or Bylaws.

Section 1.12 "Condominium" means an estate in real property in a Project (as to that Project only) consisting of a fractional undivided fee interest in common with the other Owners in the Project in the Common Area of such Project, together with a separate fee interest in a Residential Unit and all appurtenant right, title and interest. Such fractional undivided fee interest in common of each Owner in Project No. 1 shall be a 1/18th undivided interest. Such fractional undivided interest in common of each Owner shall also be described in the instrument conveying a Condominium to such Owner and shall not be changed except as provided in this Declaration.

Section 1.13 "Condominium Plan" means any condominium plan for one or more Projects recorded by the Declarant in the Office of the County Recorder and any supplements, amendments or modifications to any such plan.

Section 1.14 "County" means the County of San Diego, California.

Section 1.15 "Declarant" has the meaning set forth in the first sentence of this Declaration and includes such of the Declarant's successors as shall acquire the Declarant's entire fee interest in the Property as of the date of acquisition. Persons who acquire less than all of such fee interest (including without limitation, those acquiring less than all of the Condominiums owned by the Declarant for purposes of development or residential use) shall not be successors of the Declarant for purposes of this Declaration, but rather shall be Owners. However, nothing in this Section shall be deemed to preclude the Declarant from assigning or delegating any of its rights or duties to anyone as provided in this Declaration.

Section 1.16 "Declaration" means this Declaration of Covenants, Conditions and Restrictions as the same may be amended or supplemented from time to time.

Section 1.17 "DRE" means the California Department of Real Estate.

Section 1.18 "Dwelling" means the residential dwelling, garage and other structures located within a Residential Unit.

Section 1.19 "Encroachment Removal Agreements" has the meaning set forth in Section 1.19 of the Master Declaration.

Section 1.20 "Family" means one or more Persons related to each other by blood, marriage or legal adoption, or a reasonable number of individual Persons not so related who constitute a bona fide single housekeeping unit, together with his, her or their domestic servants.

Section 1.21 "First Mortgage" means a Mortgage which has priority over any other Mortgage encumbering a specific Condominium.

Section 1.22 "First Mortgagee" means the Mortgagee of a Mortgage which Mortgage has priority over any other Mortgage encumbering a specific Condominium.

Section 1.23 "Initial Property" has the meaning set forth in paragraph A of the Recitals.

Section 1.24 "Jogging Trail" has the meaning set forth in Section 1.25 of the Master Declaration.

Section 1.25 "Loop Road Landscaped Areas" has the meaning set forth in Section 1.27 of the Master Declaration.

Section 1.26 "Maintenance Access Area" means any area designated on the Condominium Plan for Project No. 1 as a Maintenance Access Area or in a Supplementary Declaration and any other areas within the Property which are designated as Maintenance Access Area on a Condominium Plan or in a Supplementary Declaration.

Section 1.27 "Maintenance Area" means any area within or outside of the Property which is not Common Area or Association Property, but which the Association is required to maintain by the Master Declaration, this Declaration or any Supplementary Declaration or by contract between the Association and the Declarant or any other Person, including without limitation, any governmental authority.

Section 1.28 "Master Association" means Bernardo Vista del Lago Master Association, a nonprofit mutual benefit corporation, incorporated under the laws of the State of California and its successors and assigns.

Section 1.29 "Master Declaration" means the Master Declaration of Covenants, Conditions and Restrictions for Bernardo Vista del Lago, recorded March 21, 1995, as File No. 1995-0117523 in the Official Records of the County, as amended and supplemented from time to time.

Section 1.30 "Member" means every Person who holds membership in the Association as provided in the Section entitled "Membership."

Section 1.31 "Mortgage" means any recorded mortgage or deed of trust which encumbers a Condominium.

Section 1.32 "Mortgagee" means a mortgagee (including a First Mortgagee) under a Mortgage and includes the beneficiary under a deed of trust.

Section 1.33 "Owner" means one or more Persons who are the record owner, including the Declarant and the record vendee of a Condominium under an installment sales contract, of the fee title to any Condominium, but shall not mean those having such interest merely as security for the performance of an obligation.

Section 1.34 "Party Fence" means any fence, wall or any portion of a fence or wall which is constructed as part of the original construction of the Property and is located on the property line between two Residential Units. Party Fences may be located along side property lines or rear property lines separating Residential Units. Party Fences do not include any Structural Walls (as defined in the Section entitled "Maintenance Access Area Rights and Limitations").

Section 1.35 "Person" means an individual or any other entity, including, without limitation, a trustee, corporation, partnership, trust and unincorporated organization.

Section 1.36 "Phase" means each portion of the Property for which the DRE has issued a Final Subdivision Public Report.

Section 1.37 "Project" means any parcel of real property, three dimensional or otherwise, including all structures on such parcel, which is subject to this Declaration and which is divided, or to be divided, into Condominiums.

Section 1.38 "Project No. 1" means Module A, as shown, described and defined on the Condominium Plan of "Bernardo Ridge Phase 1" recorded in the Office of the County Recorder of San Diego County California on _____, 1998 as File No. _____ and, including all structures on such property. Project No. 1 is a Project.

Section 1.39 "Property" has the meaning set forth in paragraph C of the Recitals.

Section 1.40 "Slope Control Areas" has the meaning set forth in Section 1.51 of the Master Declaration.

Section 1.41 "Sub-Association Facility Area" means any area designated on the Condominium Plan for Project No. 1 as a Sub-Association Facility Area and any other areas within the Property which are designated as Sub-Association Facility Area on a Condominium Plan.

Section 1.42 "Sub-Association Facility Area Improvements" means all street lights, signs and irrigation lines installed by the Declarant or the Association within any Sub-Association Facility Area.

Section 1.43 "Sub-Association Storm Drain Areas" means those areas designated on the Condominium Plan for Project No. 1 as Sub-Association Storm Drain Areas and any other areas within the Property containing any private storm drain systems (consisting of pipes, inlets and clean outs) located in a Project and installed by Declarant which are designated as Sub-Association Storm Drain Areas in any Master Supplementary Declaration (as defined in Article I of the Master Declaration).

Section 1.44 "Supplementary Declaration" means any Supplementary Declaration of Covenants, Conditions and Restrictions or other similar instrument covering property to be annexed to the Initial Property as provided in the Article entitled "Annexation."

Section 1.45 "Residential Unit" means that portion of a Condominium which is not owned in common with the Owners of other Condominiums in a Project and shall consist of all air, earth and water located within the boundaries of the Residential Unit and all real property improvements now located or in the future constructed within the boundaries of the Residential

Unit, including, without limitation, the Dwelling, utility lines, entranceways and landscaping, except utility lines that are located within easements for public utility or other purposes. Each Residential Unit shall be identified on a Condominium Plan by the letters "RU" and a number. The description of each Residential Unit shall be set forth in the Condominium Plan for the Project in which the Residential Unit is located. In interpreting deeds, leases, declarations and condominium and other plans (including, the Condominium Plan for any Project), the existing physical boundaries of a Residential Unit, or of a Residential Unit reconstructed in substantial accordance with the original plans of such Residential Unit, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, lease, declaration or condominium or other plan.

Section 1.46 "VA" means the Department of Veterans Affairs.

ARTICLE II

Annexation

Section 2.1 Annexation Procedures. Additional real property, including any three dimensional portions of the Property, may be annexed to the Initial Property pursuant to the following procedures:

(a) Annexation by Declarant. The Declarant shall have the right from time to time to annex additional real property, including any three dimensional portions of real property, owned by it within the area described in Exhibit B, including any improved or unimproved Association Property, to the Initial Property without the approval of the Association, the Board, the Members or any other Person; provided the annexation of the additional real property is in substantial conformance with a detailed plan of phased development submitted to the DRE in connection with the first Phase of the Property. Any annexation of additional real property for which a final subdivision public report has been issued by the DRE shall be deemed conclusively to have been made in substantial conformance with a detailed plan of phased development submitted to the DRE in connection with the first Phase of the Property.

(b) Other Annexations. Additional real property, including any three dimensional portions of real property, may also be annexed to the Initial Property by the owner (including the Declarant) of the property to be annexed upon the approval by vote or written assent of not less than two-thirds of the voting power of the Association residing in Members other than the Declarant.

(c) VA Approval. If the owner of Annexed Property seeks VA approval of the Annexed Property, the owner shall obtain a determination by VA, if such determination is required by VA, that the annexation of the Annexed Property is in accordance with a development plan approved by VA prior to the conveyance of the first Condominium in the Annexed Property to an Owner.

(d) Conveyance of Association Property Within Annexed Property. At any time prior to the conveyance of any Condominium within any Annexed Property covered by a Supplementary Declaration to the purchaser of such Condominium, any Association Property within such Annexed Property shall be transferred to the Association, free and clear of any and all encumbrances and liens, except current real property taxes, which taxes shall be prorated to the date of transfer, and reservations, easements, rights, rights of way, offers of dedication, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

(e) Supplementary Declaration. The annexations authorized under this Section shall be made by filing of record a Supplementary Declaration covering the real property to be annexed which shall be executed by the owner of the real property. The filing of record of the Supplementary Declaration shall constitute and effectuate the annexation of the real property to the Initial Property, at which time the real property shall become Annexed Property. Upon annexation, the Annexed Property covered by the Supplementary Declaration shall become a part of the Property, become subject to and encompassed within the general plan of this Declaration and become subject to assessment by the Association and to the functions, powers and jurisdiction of the Association. In such event, the Owners of Condominiums in the Annexed Property shall automatically become Members of the Association. No annexation shall change the Owner of a Condominium's undivided interest in the Common Area of the Project within which his or her Residential Unit is located. The Supplementary Declaration shall, with respect to each Project, set forth the fractional undivided fee interest of each Owner in common with the other Owners in the Project in the Common Area of the Project and with respect to the Annexed Property covered by the Supplementary Declaration, may contain such additions and modifications to the provisions of this Declaration as may be necessary to reflect the different character, if any, of the Annexed Property or as the Declarant may deem appropriate, or as may be appropriate, in the development of the Annexed Property and as are not inconsistent with the general plan of this Declaration. In no event, however, shall a Supplementary Declaration change the covenants, conditions, restrictions or easements established by this Declaration as they pertain to the Initial Property or any other real property previously annexed to the Initial Property which is not covered by the Supplementary Declaration. Each Supplementary Declaration may be amended only in accordance with the provisions of the Section entitled "Amendment"; provided, however, prior to the conveyance of the first Condominium in Annexed Property covered by a Supplementary Declaration, the Supplementary Declaration may be amended or canceled by the Declarant without complying with the provisions of the Section entitled "Amendment". Upon any such cancellation of a Supplementary Declaration, the Annexed Property covered by the Supplementary Declaration shall be deannexed from the Initial Property, shall not be part of the Property, shall not be subject to or encompassed within the general plan of this Declaration and shall not be subject to assessment by the Association or to the functions, powers or jurisdiction of the Association and the Owners of Condominiums in such Annexed Property shall not be Members of the Association.

(f) No Amendment. Until the expiration of the Declarant's annexation rights set forth in the Section entitled "Annexation by Declarant", this Declaration shall not be amended to modify or eliminate this Article II without the prior written consent of the Declarant and any attempt to do so shall have no effect.

ARTICLE III

Membership and Voting Rights

Section 3.1 Membership. Every Person who is a record owner of a fee interest in any Condominium which is subject by this Declaration to assessment by the Association shall be a Member. Any Person having any such interest merely as security for the performance of an obligation shall not be a Member. Membership in the Association and the right to vote shall be appurtenant to, and may not be separated from, the fee ownership or any Condominium which is subject to assessment by the Association. Ownership of such Condominium shall be the sole qualification for membership in the Association.

Section 3.2 Transfer. The membership held by any Owner of a Condominium shall not be transferred, pledged or alienated in any way except upon the sale of the Condominium and then only to the purchaser of the Condominium. Any attempt to make a prohibited transfer will be void and will not be reflected upon the books or records of the Association. If any Owner of a Condominium shall fail or refuse to transfer the membership registered in his or her name to the purchaser of the Condominium, the Association shall have the right to record the transfer upon the books and records of the Association.

Section 3.3 Voting Rights. The Association shall have two classes of voting membership as follows:

(a) **Class A.** Class A Members shall be all those Owners entitled to membership, with, subject to the terms of the following subsection (b), the exception of the Declarant. Class A Members shall be entitled to one vote for each Condominium in which they hold the interest required for membership. When more than one Person holds such interest in any Condominium, all such Persons shall be Members and the vote for the Condominium shall be exercised as they determine among themselves but in no event shall more than one vote be cast with respect to any Condominium. Any votes cast with regard to any Condominium in violation of this provision shall be null and void.

(b) **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three votes for each Condominium in which it holds the interest required for membership; provided that the Class B membership shall forever cease and become converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

(i) On the second anniversary of the date of the conveyance of the first Condominium covered by the original final subdivision public report issued by the DRE for the most recent Phase of the Property; or

(ii) On the fourth anniversary of the date of the conveyance of the first Condominium covered by the original final subdivision public report issued by the DRE for the first Phase of the Property; or

(iii) One hundred twenty days after the date 53 Condominiums within the Property have been conveyed to Owners (other than Declarant or an assignee of some or all of Declarant's rights under this Section).

(c) Vesting of and Restrictions on Voting Rights. An Owner's right to vote shall vest immediately upon, and not before, the date Regular Assessments are levied by the Association against the Owner's Condominium as provided in this Declaration. The voting rights of both classes of membership shall be subject to the restrictions and limitations provided in this Declaration and in the Articles and Bylaws.

(d) Declarant's Vote. Except as otherwise provided in this Declaration, including without limitation, the provisions of the Sections entitled "Enforcement of Bonded Obligations" and "Amendment", any provision in this Declaration, the Articles or Bylaws which requires the vote or written assent of a prescribed percentage of the voting power of the Association, other than the Declarant, for action taken by the Association shall require (i) the approval of the prescribed percentage of the Class A membership and the approval of a majority of the Class B membership during the time that there are two outstanding classes of membership and (ii) the approval of a majority of the voting power of the Association and the approval of the prescribed percentage of the voting power of the Association, other than the Declarant, after there has been a conversion of the Class B membership to the Class A membership.

(e) No Amendment. Until the conversion of the Class B membership to Class A membership in accordance with the provisions of subsection (b) of this Section 3.3, this Declaration shall not be amended to modify or eliminate this Article III without the prior written consent of the Declarant and any attempt to do so shall have no effect.

ARTICLE IV

Common Area and Association Property Rights and Limitations

Section 4.1 Transfer of Association Property. At any time prior to the conveyance of the first Condominium in Project No. 1, the Declarant shall transfer to the Association fee title to any Association Property within the Initial Property, free and clear of all liens and encumbrances, except current real property taxes, which taxes shall be prorated to the date of transfer, and reservations, easements, rights, rights of way, offers of dedication, covenants, conditions and restrictions then of record, including those set forth in this Declaration.

Section 4.2 Members' Easements of Enjoyment. Every Member shall have a right and easement of access, use, support, if necessary, and enjoyment in and to all Common Area and any Association Property, regardless of the Project in which such Member is an Owner, and such easement shall be appurtenant to and shall pass with the title to every Condominium subject to assessment, subject to the following:

(a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving any Association Property and in connection with any such borrowing, to deed in trust the Association Property; provided, however, that the rights of any beneficiary under such deed of trust shall be subordinate to the rights of the Members.

(b) The right of the Association to take such steps as are reasonably necessary to protect any Association Property against foreclosure.

(c) The right of the Association, as provided in its Bylaws, to suspend the right of a Member (including his or her delegates under the Section entitled "Delegation of Use") to use recreational or social facilities, if any, within the Common Area of any Project or any Association Property for any period during which any Assessment against his or her Condominium remains unpaid and delinquent, and for a period not to exceed thirty days for any infraction of the Association Rules.

(d) The right of the Association to dedicate or transfer all or any part of any Association Property to any public agency, authority or utility or any other Person for such purposes and subject to such conditions as may be agreed to by the Members; provided, that no such dedication or transfer shall be effective unless approved by the vote or written assent of not less than two-thirds of the voting power of the Association and an instrument in writing is recorded and signed by the Secretary of the Association certifying that such dedication or transfer has been approved by the required vote or written assent; provided further, that the granting of easements or other transfers for public utilities or for other public purposes consistent with the intended use of any Association Property shall not require such prior approval.

(e) The right of the Association to grant easements above, over and under the Common Area of any Project to any public agency, authority or utility or any other Person; provided that any such easement shall not unreasonably interfere with the right of any Owner to the use and enjoyment of his or her Residential Unit and such Common Area. No such easement shall be effective unless approved by the vote or written assent of not less than two-thirds of the voting power of the Members residing in the Project in which the easement will be granted and an instrument in writing is recorded and signed by the Secretary of the Association certifying that the granting of such easement has been approved by the required vote or written assent; provided that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not require such prior approval.

(f) The right of the Association to establish and enforce uniform and reasonable rules and regulations pertaining to the use and enjoyment of any of the Common Area and any Association Property.

(g) The right of the Association to limit the number of guests of Members and to limit the use of any of the Common Area and any Association Property by Persons not in possession of a Condominium, but owning a portion of the interest in a Condominium required for membership.

(h) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon any of the Association Property.

(i) The right of the Association to perform its duties and exercise its powers under the Article entitled "Duties and Powers of the Association".

(j) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of any of the Common Area or any Association Property imposed by the Declarant or any governmental authority, whether by agreement with the Association, the Declarant or otherwise.

(k) Such other rights of the Association, the Architectural Committee, the Board, the Owners and the Declarant with respect to any of the Common Area and any Association Property as may be provided for in this Declaration.

Section 4.3 Delegation of Use. Any Member may delegate, in accordance with the Bylaws, his or her right of use and enjoyment to any of the Common Area and any Association Property to the members of his or her Family, his or her tenants and contract purchasers who reside in his or her Condominium. Neither the Member nor his or her Family may exercise the right during any period in which the right is delegated to tenants or contract purchasers.

Section 4.4 Damage to Common Area, Association Property and Maintenance Area. Each Member shall reimburse the Association for the costs of correcting any damage to any of the Common Area, any Association Property or any Maintenance Area or to any of the furniture, furnishings, equipment or improvements on such property and areas which may be sustained by reason of the negligence or wilful misconduct of the Member or of his or her Family or his or her other guests or invitees (including, without limitation, relatives, tenants and contract purchasers who reside on his or her Condominium), both minor and adult. Such costs shall be reimbursed to the Association by any such Member within thirty days after the Association has furnished a statement for such costs.

ARTICLE V

Assessments

Section 5.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Condominium owned by it within the Property hereby covenants, and each Owner of any Condominium within the Property by acceptance of a deed or other conveyance for such Condominium, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant to pay to the Association: (a) Regular Assessments, (b) Reimbursement Assessments, (c) Capital Improvement Assessments and (d) Reconstruction Assessments, such Assessments to be levied and collected from time to time as provided in this Article. The Assessments, together with interest, late charges and reasonable costs of collection as provided in the Article entitled "Non-Payment of Assessments", shall be a continuing lien upon

the Condominium against which each such Assessment is made as provided in such Article. Each such Assessment, together with such interest, charges and costs, shall also be the personal obligation of the Person who was the Owner of such Condominium at the time when the Assessment fell due and shall bind such Person's heirs, devisees, personal representatives, successors and assigns; provided, however, the personal obligation shall not pass to such Person's successors in title unless expressly assumed by them.

Section 5.2 Purpose of Assessments. The Regular Assessments levied by the Association shall be collected, accumulated and used exclusively for the purpose of providing for and promoting the pleasure, recreation, health, safety and social welfare of the Members, including the enhancement of the value, desirability and attractiveness of the Property, the improvement and maintenance of Common Area, any Association Property and any Maintenance Area and the discharge of any obligations or duties imposed on the Association or the Board by this Declaration, the Articles or the Bylaws. Reimbursement, Capital Improvement and Reconstruction Assessments shall be used exclusively for the purposes for which such Assessments were levied as provided in this Declaration. The Association shall not impose Or collect any Assessment, penalty or fee that exceeds the amount necessary to defray the costs for the purpose or purposes for which it is levied.

Section 5.3 Regular Assessments.

(a) **Amount and Time of Payment.** Regular Assessments shall be levied on a calendar or fiscal year basis ("Assessment Period") as determined by the Board. The amount of Regular Assessments shall be determined by the Board after giving due consideration to the Common Expenses and the requirements of Section 5.10. Each Owner shall pay his or her Regular Assessment to the Association in regular installments as established by the Board; provided, however, that such installments shall be paid on a monthly basis until such time as the Board determines otherwise.

(b) **Date of Commencement of Regular Assessments.** Regular Assessments shall commence as to all Condominiums in Project No. 1 on the first day of the month following the conveyance of the first Condominium within Project No. 1 to an Owner. Regular Assessments for Condominiums annexed to the Initial Property by a Supplementary Declaration shall commence with respect to all Condominiums within the Annexed Property covered by the Supplementary Declaration on the first day of the month following the conveyance of the first Condominium within such Annexed Property to an Owner.

(c) **Assessment Procedures.** At least sixty days in advance of each Assessment Period, the Board shall estimate the total Common Expenses to be incurred by the Association for such Assessment Period and shall at that time, and in accordance with the terms of the Section entitled "Uniform Rate of Assessment", determine and fix the amount of the Regular Assessment to be levied against each Condominium subject to assessment for such Assessment Period, which amount shall include an adequate reserve fund for the maintenance, repair and replacement of all Common Area and any Association Property that must be replaced on a periodic basis. Written notice of such Regular Assessment shall be sent by first class mail to

every Owner subject to assessment not less than thirty days nor more than sixty days in advance of each Assessment Period.

(d) Increases, Decreases and Limitations. Subject to the terms of the Sections entitled "Limitation on Increases in Regular and Capital Improvement Assessments" and "Uniform Rate of Assessment", if the Board determines at any time that the Regular Assessments levied for a current Assessment Period are or will become inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy, issue a supplemental estimate of the total Common Expenses, increase the amount of Regular Assessments against each Owner and fix the date or dates when due. Written notice shall be sent by first-class mail to each Owner of any increase in the Regular Assessments not less than thirty days nor more than sixty days in advance of the date such increase becomes due. If the amount budgeted to meet Common Expenses for an Assessment Period proves to be excessive in light of the actual Common Expenses, the Board, in its discretion, may reduce the amount of the Regular Assessments.

Section 5.4 Capital Improvement Assessments. Subject to the terms of the Sections entitled "Limitation on Increases in Regular and Capital Improvement Assessments" and "Uniform Rate of Assessment", the Board may levy Capital Improvement Assessments for any Assessment Period, applicable to that Assessment Period only, for the purpose of defraying in whole or in part the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon any of the Common Area within the Property or any Association Property, to the extent the same is not covered by Reconstruction Assessments, or any unexpected improvement to or maintenance of any Maintenance Area, including necessary fixtures and personal property. Capital Improvement Assessments shall be due and payable at the times fixed by the Board. Written notice shall be sent by first-class mail to each Owner of any Capital Improvement Assessment not less than thirty days nor more than sixty days in advance of the date such assessment becomes due.

Section 5.5 Limitation on Increases in Regular and Capital Improvement Assessments. Notwithstanding any other provision of this Declaration to the contrary, the Board may not levy a Regular Assessment or a Capital Improvement Assessment in any Assessment Period without complying with the provisions of Section 1366 of the California Civil Code. The foregoing provisions shall not limit Assessment increases necessary for emergency situations pursuant to Section 1366 of the California Civil Code.

Section 5.6 Reimbursement Assessments. Reimbursement Assessments may be levied by the Board from time to time (a) against Condominiums with respect to which particular costs or expenses have been incurred by the Association for materials or services furnished at the request or with the consent of the Owner of any such Condominium or (b) in accordance with any provisions of this Declaration which may provide for the levying of Reimbursement Assessments by the Board. Reimbursement Assessments shall be due and payable at the times fixed by the Board.

Section 5.7 Certificate of Payment. Upon demand, the Association shall furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized

agent of the Association setting forth whether the Assessments have been paid. Such certificate shall be conclusive evidence of payment of any Assessments stated to have been paid. A reasonable charge may be made by the Board for the issuance of any such certificate.

Section 5.8 Assessment of Condominiums Owned by Declarant. Without exception, each Condominium owned by the Declarant shall be subject to assessment to the same extent and in the same manner as any other Condominium owned by any Owner.

Section 5.9 Nonuse and Abandonment. No Owner may waive or escape personal liability for Assessments or release the Condominium owned by the Owner from the Assessment liens by nonuse of any of the Common Area or any Association Property or abandonment of the Owner's Condominium.

Section 5.10 Uniform Rate of Assessment. Unless otherwise provided in a Supplementary Declaration as to the Condominiums within the Annexed Property covered by the Supplementary Declaration, all Regular and Capital Improvement Assessments shall be fixed at a uniform rate for all Condominiums.

Section 5.11 Exempt Property. The following property shall be exempt from the Assessments and liens created in this Declaration: (a) Association Property; (b) all properties dedicated to and accepted by a public authority; and (c) all properties exempted from taxation by the laws of the State of California, upon the terms and to the extent of such legal exemption. Notwithstanding any provision in this Section, no real property or improvements devoted to residential dwelling use shall be exempt from such Assessments or liens.

Section 5.12 Offsets. All Assessments shall be payable in the amount specified in the Assessment. No offsets against such amount shall be permitted for any reason, including without limitation, a claim that the Association is not properly exercising its duties of maintenance or enforcement.

Section 5.13 Reserves. That portion of Regular Assessments which are collected as Common Expense reserves shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other Association funds. Such reserves shall be deemed a contribution to the capital of the Association by the Members. The Board shall not expend funds designated as reserve funds for the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of, major components of the Association Property, Common Area or Maintenance Area which the Association is required to repair, restore, replace or maintain and for which the reserves were established ("Reserve Funds") for any purpose other than such repair, restoration, replacement, maintenance or litigation. However, the Board may authorize the temporary transfer of Reserve Funds to the Association's general operating fund to meet short-term cash flow requirements or other expenses of the Association provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed and describing when and how the money will be repaid to the Reserve Funds. Any transferred Reserve Funds shall be restored to the Reserve Funds within one year of the date of the initial transfer, except that the Board may, upon making a finding

supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay such restoration. The Board shall exercise prudent fiscal management in maintaining the integrity of the Reserve Funds, and shall, if necessary, levy a Capital Improvement Assessment against each Owner to recover the full amount of any of the transferred Reserved Funds within the time limits required by this Section. Any such levy of a Capital improvement Assessment shall be subject to the limitations provided in the Section entitled "Limitation on Increases in Regular and Capital Improvement Assessments." The Board may, at its discretion, extend the date the payment on the Capital Improvement Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of any unpaid Capital Improvement Assessment. When the decision is made to use any Reserve Funds or to temporarily transfer money from the Reserve Funds to pay for litigation in accordance with this Section, the Association shall notify the Members pursuant to Section 5016 of the California Corporations Code of that decision in the next available mailing to all Members 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 principal office of the Association.

Section 5.14 Working Capital Fund. Upon the first conveyance of record of each Condominium in the Initial Property to an Owner, the Owner shall contribute to the capital of the Association an amount equal to two monthly installments of the then annual Regular Assessment. Such contribution shall be in addition to the Regular Assessments required to be paid to the Association. This Section shall not apply to any resale of any Condominium nor to any Condominium located in a Phase other than the Initial Property.

ARTICLE VI

Non-Payment of Assessments

Section 6.1 Delinquency. Any Assessment that is not paid within fifteen days after it becomes due shall be delinquent. If an Assessment is delinquent, the Association may recover all of the following: (a) reasonable costs incurred in collecting the delinquent Assessment, including reasonable attorney's fees; (b) a late charge not exceeding ten percent of the delinquent Assessment or Ten Dollars, whichever is greater; and (c) interest on all sums imposed in accordance with this Section, including the delinquent Assessment, reasonable costs of collection and late charges, at an annual percentage rate equal to twelve percent interest, commencing thirty days after the Assessment becomes due, and shall be mailed in the manner set forth in Section 2924(b) of the California Civil Code to the Owner no later than 10 calendar days after recordation of the notice. The notice of delinquent assessment shall not be recorded until a written notice of default and demand for payment ("Demand Notice") is given by the Association to the Owner in the manner and in compliance with the requirements of Section 1367(a) of the California Civil Code.

Section 6.2 Lien and Notice of Delinquent Assessment. The amount of any delinquent Assessment, plus any costs of collection, late charges and interest assessed in accordance with the Article entitled "Assessments", shall be a continuing lien on the

Condominium against which the Assessment was levied 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 the Section entitled "Delinquency", a legal description of the Condominium, the name of the Owner, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in the Section entitled "Remedies", 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 any employee or agent of the Association authorized to do so by the Board. Any payments toward a delinquent Assessment shall first be applied to the principal owed and, after the principal owed is paid in full, such payments shall next be applied to interest and then to collection costs and late charges. Unless the Board considers the recording of the notice of delinquent assessment immediately after the Demand Notice is given to the Owner to be in the best interest of the Association, it shall not be recorded until twenty calendar days after the Association has given the Demand Notice to the Owner. Except as otherwise may be provided in this Declaration, a lien created by this Section shall be prior to all other liens recorded subsequent to the notice of delinquent assessment with regard to such lien.

Section 6.3 Remedies. In addition to all other legal and equitable rights or remedies which it may have, after the expiration of thirty days following the recordation of a notice of delinquent assessment in compliance with the requirements of Section 6.2, the Association may enforce any Assessment lien created by the recordation of such notice 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 California Civil Code Section 2934a or any successor or substitute law. Any sale by the trustee shall be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924b and 2924c applicable to the exercise of powers of sale in mortgages or deeds of trust or any successor or substitute law. The Association, through its duly authorized agents, using Association funds or funds borrowed for such purpose, may bid on the Condominium at the foreclosure sale, and may hold, lease, mortgage and convey the acquired Condominium.

Section 6.4 Curing of Default. Upon the timely curing of any default for which a notice of delinquent assessment was recorded by the Association, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien of the delinquent Assessment.

Section 6.5 Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have under this Declaration and by law and in equity (including, without limitation, the right to bring an action against the Owner of a Condominium to recover sums for which a lien is created pursuant to Section 6.2 and to take a deed in lieu of foreclosure).

ARTICLE VII

Architectural Control

Section 7.1 Architectural Approval. No fence, wall, building, patio cover, hardscape, landscape, sign, antenna, tennis court, solar panel, drainage or irrigation system, or other structure (including basketball standards) or exterior addition to or change or alteration of such items (including painting), shall be commenced, erected, planted or maintained on the Property until (a) plans and specifications shall have been submitted to and approved in writing by the Architectural Committee and (b) all applicable regulations and permit requirements of the City of San Diego, if any, shall have been complied with. The plans and specifications shall be prepared by a duly licensed architect or other Person approved by the Architectural Committee and shall include such matters as may be required by the Architectural Committee. All such plans and specifications shall be submitted in writing over the signature of the Owner of the affected Condominium or such Owner's authorized agent or any officer of the Association in the case of Common Area or any Association Property. Approval shall be based, among other things, on conformity and harmony of external design with neighboring structures; effect of location and use of improvements and landscaping on neighboring property; preservation of view and aesthetic beauty; assurance of adequate access to the Association in connection with the performance of its duties and the exercise of its powers under this Declaration; and conformity with such rules and regulations as may be adopted by the Architectural Committee in accordance with this Article.

Section 7.2 Number of Members and Term of Architectural Committee. The Architectural Committee shall consist of not less than three nor more than five members. The Declarant shall have the right to appoint all of the members of the Architectural Committee and their replacements until the first anniversary of the date of issuance by the DRE of the original final subdivision public report for the Initial Property ("Anniversary Date"). After the Anniversary Date, the Declarant shall have the right to appoint a majority of the members of such Committee and their replacements until ninety percent or more of the Condominiums within the Property have been sold, or until the fifth anniversary of the date of original issuance by the DRE of the final subdivision public report for the Initial Property ("Fifth Anniversary Date"), whichever shall first occur. After the Anniversary Date, the Board shall appoint all of the members of the Architectural Committee not appointed by the Declarant. After ninety percent or more of the Condominiums within the Property have been sold or after the Fifth Anniversary Date, whichever shall first occur, the Board shall appoint all of the members of the Architectural Committee. Those appointed to the Architectural Committee need not be Members. Those members of the Architectural Committee appointed by the Board may be dismissed and replaced at any time and from time to time as determined by the Board in its sole and absolute discretion. Until the expiration of the Declarant's right to appoint a majority of the members of the Architectural Committee, the Declaration shall not be amended to modify or eliminate this Section without the prior written consent of the Declarant and any attempt to do so shall have no effect.

Section 7.3 Failure to Approve or Disapprove Plans and Specifications. In the event the Architectural Committee fails to either approve or disapprove plans and specifications within thirty days after the same have been submitted to it, it shall be conclusively presumed that

the Architectural Committee has approved such plans and specifications. All improvement work approved by the Architectural Committee shall be diligently completed and constructed in accordance with the approved plans and specifications.

Section 7.4 Appeal. In the event plans and specifications submitted to the Architectural Committee are disapproved, the party Baiting such submission may appeal in writing to the Board. The appeal must be received by the Board not more than thirty days following the final decision of the Architectural Committee. Within forty-five days following receipt of the appeal, the Board shall render its written decision. The failure of the Board to render a decision within the forty-five day period shall be deemed a decision in favor of the appellant.

Section 7.5 No Liability. Neither the Declarant, the Association, the Architectural Committee, nor the members or designated representatives of the Architectural Committee shall be liable in damages to anyone (including an Owner) submitting plans or specifications to them for approval, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, or for any defect in any structure constructed from such plans and specifications. Plans and specifications are not approved for engineering design. Every Owner and other Person who submits plans or specifications to the Architectural Committee for approval agrees that he or she will not bring any action or suit against the Declarant, the Association, the Architectural Committee or any of the members or designated representatives of the Architectural Committee to recover any such damages.

Section 7.6 Notice of Noncompliance. Notwithstanding anything to the contrary contained in this Declaration, after the sixtieth day following the last to occur of (a) the date of completion any improvements constructed within the Property pursuant to plans and specifications approved by the Architectural Committee or (b) the date, if any, fixed by the Architectural Committee pursuant to its rules and regulations for the completion of such improvements, such improvements shall, in favor of purchasers and encumbrancers in good faith and for value and only in favor of such Persons, be deemed to be in compliance with all provisions of this Article, unless on or before such sixtieth day actual notice of such noncompliance specifying the nature of the non-compliance executed by the Architectural Committee shall appear of record in the office of the County Recorder or unless legal proceedings shall have been instituted to enforce compliance.

Section 7.7 Rules and Regulations. The Architectural Committee may from time to time in its sole discretion adopt, amend and repeal reasonable rules and regulations interpreting and implementing the provisions of this Article and establishing reasonable architectural standards for the Property. The Architectural Committee may regulate and control the installation and alteration of landscaping within the Property which is visible from neighboring property or streets by including procedures for such regulation and control in the rules and regulations. Any approval given by the Architectural Committee under the terms of this Declaration may be subject to such conditions as the Architectural Committee reasonably may require pursuant to its rules and regulations (including, without limitation, dates by which the construction of improvements approved by the Architectural Committee must be commenced

and/or completed and dates on which approvals will expire). The rules and regulations of the Architectural Committee shall be binding on all Owners.

Section 7.8 Variances. Where circumstances such as topography, location of property lines, location of trees or other matters require, the Architectural Committee, by the vote or written assent of a majority of its members, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under the jurisdiction of the Architectural Committee on such terms as it shall require.

Section 7.9 Appointment and Designation. The Architectural Committee may from time to time by a majority of its members delegate any of its rights or responsibilities to one or more duly licensed architects or other qualified Persons who shall have full authority to act on behalf of the Architectural Committee in all matters delegated.

Section 7.10 Review Fee and Address. All plans and specifications required by this Article shall be submitted in writing for approval together with a reasonable processing fee to be fixed from time to time by the Architectural Committee. The address of the Architectural Committee shall be the principal office of the Association. Such address shall be the place where any current rules and regulations of the Committee shall be kept.

Section 7.11 Inspection. Any member or agent of the Architectural Committee may from time to time, at any reasonable hour or hours and upon reasonable notice, enter and inspect any property subject to the jurisdiction of the Architectural Committee as to its improvement or maintenance in compliance with the provisions of this Article.

Section 7.12 Repair. The provisions of this Article shall not apply to any Repair covered by the provisions of the Article entitled "Destruction", except as otherwise provided in such Article.

ARTICLE VIII

General Restrictions

Section 8.1 Residential Use. Except as may otherwise be provided in a Supplementary Declaration with respect to Annexed Property covered by the Supplementary Declaration, no building or other structure shall be constructed, erected or permitted to remain within any Residential Unit in any Project other than a Dwelling and customary appurtenances designed for the occupancy of not more than one Family. The Condominiums shall be used only for Family residential use and shall not be used for any business, commercial, manufacturing, mercantile, storing or vending purposes or for other nonresidential purposes; provided, however, any Condominium may be used incidentally for the purpose of operating a home based small business if, and only if, (a) the business is operated solely within the Dwelling of the Residential Unit (b) the business is limited to arts and crafts, the rendition of professional services or other similar activities, (c) the business is operated by the Owner of the Condominium whose principal residence is the Dwelling located within his or her Residential Unit or by a member of such

Owner's Family whose principal residence is the Dwelling located within the Residential Unit, (d) the operation of the business is permitted by, and is at all times in compliance with, all applicable laws, and (e) the operation of the business does not result in (i) the violation of any of the other provisions of the Master Declaration or this Declaration, (ii) any unreasonable increase in the flow of traffic within the Property, or (iii) any odor, noise, or vibration outside of the Dwelling located within the Residential Unit, or create parking problems within the Property.

Section 8.2 Nuisance. No noxious or offensive activity shall be carried on upon any portion of the Property, nor shall anything be done or maintained on the Property which may be or become an annoyance or nuisance to the neighborhood, interfere with the quiet enjoyment by each Owner of his or her Condominium or increase the rate of the Association's or any Owner's insurance. Without limitation, nothing shall be done or maintained on the Property which may unreasonably interfere with the television or radio reception of any Condominium.

Section 8.3 Association Property Use. Any Association Property shall be used for recreational, social and pedestrian and vehicular movement and any other purposes authorized under this Declaration and any Supplementary Declaration.

Section 8.4 Projections. With the exception of one or more chimneys and one or more vent stacks, no projections of any type shall be placed or permitted to remain above the roof of any Dwelling or any other building unless and until the same shall have been approved by the Architectural Committee. No outside television or radio pole or antenna or other electronic device shall be erected or maintained on any building or on any portion of the Property or connected in such manner as to be visible from the outside of any such building unless and until the same shall have been approved by the Architectural Committee. Notwithstanding the foregoing, the Architectural Committee shall not effectively prohibit or restrict the installation or use of a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of thirty-six (36) inches or less; provided, however, the Architectural Committee shall be permitted to impose "reasonable restrictions," as such term is defined by California Civil Code Section 1376, on the installation or use of such video or television antenna, including a satellite dish. The application for approval by the Architectural Committee for the installation or use of a video or television antenna, including a satellite dish, shall be processed in the same manner as an application for approval of an architectural modification to the Property and the issuance of a decision on the application shall not be willfully delayed.

Section 8.5 Garages and Carports. When garages are not in use, garage doors shall be closed. Garages shall be used only for the purpose of parking automotive and other vehicles and equipment and storing an Owner's household goods; provided, however, that all such uses shall be accomplished in such a manner as to permit the parking of the number of automotive vehicles for which the garage was originally designed and constructed and so that garage doors can be closed. Unless otherwise provided in a Supplementary Declaration, open carports, if any, shall be used only for the purpose of parking automotive vehicles which have widths of less than eighty four inches and which when parked do not extend beyond the horizontal or vertical boundaries of the carports in which the vehicles are parked.

Section 8.6 Open Parking Spaces. Open parking spaces within the Property (including, without limitation, those spaces ["Parking Plan Spaces"] shown on the PRD #86-0897 Replacement Site Plan-Bernardo Vista Del Lago dated November 7, 1990, as amended or as may be further amended ["Open Parking Space Plan"]) shall be used only for the purpose of parking automotive vehicles which have widths of less than eighty four inches and which when parked do not extend beyond the horizontal boundaries of the open parking spaces in which the vehicles are parked, except as may otherwise be provided in the Section entitled "Vehicles" with respect to emergency vehicle repairs and temporary parking. No fence, wall, building (including garages) or other structure shall be commenced, erected or maintained on any open parking space within the Property. The Parking Plan Spaces shall be maintained within the Property in the approximate locations shown in the Open Parking Space Plan.

Section 8.7 Vehicles. Unless otherwise provided in a Supplementary Declaration, no automotive or other vehicle shall be stored, parked (other than temporarily), maintained, constructed or repaired on any portion of the Property in such a manner as to be visible from any other portion of the Property, except (a) in garages as may be permitted by the Section entitled "Garages and Carports", (b) in carports as may be permitted by the Section entitled "Garages and Carports", (c) in open parking spaces as permitted by the Section entitled "Open Parking Spaces" and (d) at such places within the Property and on such terms as may be determined by the Board; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs or temporary parking. Temporary parking shall mean parking of delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or the Owners and parking of vehicles belonging to or being used by Owners for loading or unloading purposes. Temporary parking precludes commercial vehicles, except those being used to furnish services to the Association or the Owners.

Section 8.8 Animals. No animals, fowl, reptiles or insects shall be kept within the Property, except that domestic reptiles, dogs, cats, birds and fish may be kept as household pets within a Residential unit, provided that they (a) are not so excessively noisy as to disturb the quiet enjoyment by each Owner of his Condominium and (b) are not kept, bred or raised for commercial purposes or, as determined by the Board, in unreasonable quantities. Unless otherwise provided in a Supplementary Declaration, all dogs permitted to be kept by this Section shall be kept on a leash within the Property when not within an enclosed area of a Residential Unit. Any dog feces deposited upon any portion of the Property shall be promptly removed and properly disposed of by the Owner of the dog.

Section 8.9 Signs. Except for a sign of reasonable dimensions and design which does not adversely affect public safety, including traffic safety, as determined by the Board, advertising a Condominium for sale, lease or exchange, or which advertises directions to the Condominium, such sign to be reasonably located within the Residential Unit of such Condominium or on other real property owned by others with their consent, in plain view of the public, all as determined by the Board, no sign or other advertising device of any character shall be erected, maintained or displayed upon any portion of the Property unless and until the same shall have been approved by the Board and the Architectural Committee.

Section 8.10 Unsightly Matters. All weeds, rubbish, debris and unsightly objects or materials of any kind shall be regularly removed from the Property and shall not be permitted to accumulate upon the Property. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers. All service yards or service areas, clothesline areas, sanitary containers and storage piles on any portion of the Property shall be enclosed or fenced in such a manner that such yards, areas, containers and piles will not be visible from any neighboring property or street. Sanitary containers may be set out for a reasonable period of time before and after scheduled trash pick-up times.

Section 8.11 Slope Maintenance and Restrictions. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken on any slope area or any other area within the Property which might damage or interfere with established slope ratios, drainage facilities or systems or create erosion or sliding problems. Any area drains, gutters, downspouts, berms, swales and other drainage facilities and systems which are not maintained by the Association shall be maintained by the Owner of such items in a neat, orderly, safe and sanitary condition and in such a manner as to facilitate the orderly discharge of water by means of same.

Section 8.12 Landscaping Maintenance and View Obstructions. All landscaping, including shrubs, trees, grass and other plantings, shall be neatly trimmed, properly cultivated and maintained continuously by the Owner of such items, other than any landscaping within any of the Common Area and/or Association Property maintained by the Association, in a neat and orderly condition and in such a manner as to enhance its appearance. The Board shall have the right, but not the obligation, to require any Owner to remove, top or prune any tree or other plant owned by such Owner which the Board reasonably believes materially obstructs the view from any Condominium. Without limitation, views from Condominiums may be (a) partially, materially or totally obstructed by trees, plants and other landscaping installed by the Declarant and (b) partially, materially or totally obstructed by any improvement of any type constructed by the Declarant within or outside of the Property.

Section 8.13 Oil and Mineral Restrictions and Equipment. No portion of the Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbon minerals of any kind, gravel, earth or any earth substance or any other mineral of any kind. No machinery or equipment of any kind shall be placed, operated or maintained upon the Property, except such machinery or equipment as is usual and customary in connection with the use or maintenance of a private residence.

ARTICLE IX

Duties and Powers of the Association

Section 9.1 General Duties and Powers. In addition to the duties and powers enumerated in the Articles and Bylaws or elsewhere provided for in this Declaration, and without limiting the generality of such duties and powers, the Association acting through the Board shall:

(a) Enforce the provisions of this Declaration, the Articles, Bylaws, Association Rules and other instruments for the ownership, management and control of the Property by appropriate means.

(b) Pay any real and personal property taxes and other assessments which are or could become a lien upon any of the Common Area or any Association Property, unless separately assessed to the Owners. Real and personal property taxes and other assessments which are jointly assessed against Condominiums and are or could become a lien upon the Common Area and/or Association Property shall not be a Common Expense. Each Member who owns such a Condominium shall reimburse the Association in advance for such Member's share of any costs to be incurred by the Association in connection with the payment of any such taxes or assessments. Such Member's share shall be in an amount which bears the same relationship to the total amount of such taxes and assessments as the price at which he or she purchased his or her Condominium bears to the total purchase prices of all the Condominiums included within the joint assessment (the purchase price for any such Condominium which has not been sold by the Declarant as of the date such Member's share is calculated shall be the price, which shall be furnished by the Declarant, at which the Declarant is offering or would offer such Condominium for sale). If such costs are not reimbursed to the Association by any such Member within fifteen days after the Association has furnished a statement for such costs, the Board shall have the right to levy a Reimbursement Assessment against the Member to cover the costs. Any unpaid Reimbursement Assessments shall be a Common Expense.

(c) Subject to the provisions of the Article entitled "Insurance", contract for casualty, liability and other insurance on behalf of the Association.

(d) Subject to the limitations set forth in this Article, contract for goods and/or services for all Common Area, any Association Property, any Maintenance Area or the Association.

(e) Delegate to committees, officers, employees or agents any of the Association's duties or powers under this Declaration, the Articles, Bylaws or Association Rules; provided, however, no such delegation shall relieve the Association of its obligations to perform such delegated duty.

(f) Prepare and review budgets and financial statements for the Association as prescribed in the Bylaws.

(g) Formulate rules of operation of all Common Area, any Association Property and any Maintenance Area owned or controlled by the Association.

(h) Initiate and execute disciplinary proceedings against Members for violations of the provisions of this Declaration, the Articles, Bylaws and Association Rules in accordance with any procedures set forth in such documents.

(i) Enter upon any Condominium as necessary in connection with construction, maintenance or emergency repair for the benefit of any of the Common Area, any Association Property or the Owners in common.

(j) Maintain, control, manage, repair, replace and reconstruct all Common Area in a neat, safe, attractive, sanitary and orderly condition.

(k) Own, maintain, control, manage, repair, replace and reconstruct (subject to the provisions of the Article entitled "Destruction") any Association Property and all other real and personal property acquired by the Association (including without limitation, landscaping, improvements, drainage and irrigation facilities and systems and private streets and roads) in a neat, safe, attractive, sanitary and orderly condition, except to the extent the Master Association under the Master Declaration is required to maintain, control, manage, repair, replace or reconstruct any Association Property. Without limitation:

(i) Maintain any landscaped slope areas within any Association Property in a neat, orderly, safe and sanitary condition (including the repair and replacement of landscaping and improvements when necessary or appropriate) and in such a manner as to enhance their appearance, maintain and preserve established slope ratios, prevent erosion or sliding problems and to facilitate the orderly discharge of water through established drainage facilities and systems;

(ii) Maintain any natural slope areas within any Association Property in such a manner as to prevent noxious or dangerous weeds, sagebrush, chaparral or any other brush or weeds from attaining such growth as to become, when dry, a fire menace or public nuisance;

(iii) Repair and maintain any Association Property occasioned by the presence of wood destroying pests or organisms in the manner and to the extent permitted by, and upon and subject to the provisions of, California Civil Code Section 1364;

(iv) Regularly (but not less frequently than monthly) inspect and clean all drainage facilities and systems (including, without limitation, the removal of fine-grained materials in such facilities and systems where necessary to prevent obstructions) within any Association Property;

(v) If required by the City of San Diego, install and maintain interim or permanent catchment structures within any Association Property to reduce offsite sediment transport in accordance with the requirements of the City of San Diego; and

(vi) Unless authorized to the contrary by the City of San Diego, sweep all streets and open parking areas within any Association Property in such a manner as to maximize the removal of fine grained particles which may exist in such areas;

(l) Except as otherwise provided in the Section entitled "Repair and Maintenance of Dwellings and other Portions of Residential Units", maintain, repair, replace and

reconstruct any Maintenance Areas, including without limitation, any Sub-Association Facility Area Improvements, in a neat, safe, attractive, sanitary and orderly condition.

(m) Perform the obligations of the Association set forth in the Master Declaration (including, without limitation, those with respect to Loop Road Landscaped Areas, Sub-Association Storm Drain Areas and Encroachment Removal Agreements).

(n) Negotiate and enter into contracts with First Mortgagees and First Mortgage insurers and guarantors as may be necessary or desirable to facilitate the availability of loans secured by First Mortgages within the Property.

(o) Subject to the limitations of the Section entitled "Members' Easements of Enjoyment", grant easements where necessary for utilities, sewer facilities and other purposes over any of the Common Area and any Association Property to serve the Property.

(p) Within ten days after the mailing or delivery of a written request by an Owner requesting items specified in paragraphs 1 through 4, inclusive, of California Civil Code Section 1368(a), provide such Owner with the requested items. The Association may charge a fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

(q) Perform the obligations of the Association under any agreement that may be executed by the Declarant and the Association providing access to any portion of the Property.

Except as otherwise may be provided to the contrary in the Declaration, the Articles or the Bylaws, the Association acting through the Board may exercise the powers granted to a non-profit mutual benefit corporation as enumerated in California Corporations Code Section 7140. The Association acting through the Board may exercise the powers granted to an association by California Code of Civil Procedure Section 383 and by the Davis-Stirling Common Interest Development Act.

In the event the Association fails to perform the Association's obligations under Section 9.1(m), the Master Association or its delegates shall have the right, subject to the provisions of California Civil Code Section 1364, if applicable, to perform such obligations (including, without limitation, the right to enter, at reasonable times, any portion of the Property to perform such obligations). The Association shall reimburse the Master Association for the costs of such performance within thirty days after the Master Association has furnished a statement for such costs. This paragraph and Section 9.1(m) shall not be modified or amended without the prior written consent of the Master Association and any attempt to do so shall have no effect.

Section 9.2 General Limitations on Powers. In addition to the limitations enumerated in the Articles and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality of such limitations, the Association acting through the Board shall be prohibited from taking any of the following actions except with assent, by vote at a meeting of the

Association or by written ballot without a meeting pursuant to California Corporations Code Section 7513, a simple majority of the Members, other than the Declarant, constituting a quorum consisting of more than fifty percent of the voting power of the Association residing in Members other than the Declarant:

(a) Enter into a contract with a third Person under which the third Person will furnish goods or services for any of the Common Area, any Association Property or the Association for a term longer than one year with the following exceptions:

(i) Any management contract, the terms of which have been approved by the Federal Housing Administration or VA.

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

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

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

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

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

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

(b) Incur aggregate expenditures for capital improvements to Common Area or any Association Property in any fiscal year in excess of five percent of the budgeted Common Expenses for that fiscal year.

(c) Sell during any fiscal year any property of the Association having an aggregate fair market value greater than five percent of the budgeted Common Expenses for that fiscal year.

(d) Pay compensation to directors or officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(e) Fill a vacancy on the Board, which the Association may fill in accordance with the Bylaws, created by the removal of a Board member.

In addition to the foregoing, the Association shall not have any power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his or her individually-owned Residential Unit on account of the failure by the Owner to comply with provisions of this Declaration, the Articles, the Bylaws or the Association Rules except by judgment of a court or a decision arising out of any arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments duly levied by the Association.

Section 9.3 Management and Certain Other Contracts. In addition to the limitations of Section 9.2, any agreement for professional management of the Property, employment contract or lease of recreational or parking areas or facilities entered into by the Association during any period that Declarant controls the Association or any contract or lease in which the Declarant and the Association are parties shall be terminable without cause and without payment of a termination fee or penalty on sixty days written notice by either party.

Section 9.4 Association Rules. The Association shall have the power, as provided in its Bylaws, to adopt, amend and repeal Association Rules. The Association Rules shall govern such matters in furtherance of the purposes of the Association as the Board shall deem appropriate, including without limitation, the use and enjoyment of the Common Area and any Association Property; provided, however, that the Association Rules may not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within any of the Common Area and/or Association Property. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were part of this Declaration. In the event of any conflict between the Association Rules and any provision of this Declaration, the Articles or Bylaws, the Association Rules shall be deemed to be superseded by such other provisions to the extent of any such inconsistency.

Section 9.5 Enforcement of Bonded Obligations. In the event any Common Area or Association Property improvements included within any portion of the Property have not been completed prior to the issuance by the DRE of the final subdivision public report covering such portion and the Association is the obligee under a bond or other arrangement ("Bond") to secure the performance of the commitment of the Declarant to complete such improvements, the following actions shall be taken:

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

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

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

(c) The only Members entitled to vote at such meeting shall be Members other than the Declarant. A vote of a majority of the voting power of the Association residing in Members other than the Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall implement the decision by initiating and pursuing appropriate action in the name of the Association.

Section 9.6 Commencement of Maintenance Obligations. Upon the conveyance or other grant of rights of record of or to any Association Property or Maintenance Area to the Association in accordance with the provisions of this Declaration, and upon the conveyance of the first Condominium within each Project, the Association shall be deemed to have accepted such Association Property and Maintenance Area and the Common Area within such Project, respectively, and the Association's duties with respect to such property and areas (including without limitation, the maintenance and management of such property and areas) as set forth in this Declaration shall automatically commence upon each such respective conveyance of record; provided, however, in the event that the Declarant's subcontractors or any other Person are contractually obligated to maintain such Common Area or any Association Property or Maintenance Area after such conveyance, any such maintenance shall not be assumed by the Association until the termination of such contractual obligation. If any excess of Assessments collected over actual Common Expenses incurred by the Association is caused by reason of maintenance pursuant to this Section or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

Section 9.7 Transfer of Condominium. The Association shall not impose or collect any Assessment, penalty or fee in connection with a transfer of title to or any other interest in a Condominium except the Association's actual costs to change its records.

ARTICLE X

Additional Rights and Obligations

Section 10.1 Repair and Maintenance of Dwellings and Other Portions of Residential Units. Subject to the provisions of the Article entitled "Architectural Control", the provisions of subsections (l) and (m) of the Section entitled "General Duties and Powers" and the Article entitled "Additional Rights and Obligations", all Dwellings and other improvements within, and front, rear and side yards of, any Residential Units (including, without limitation, any Sub-Association Facility Area, except for any Sub-Association Facility Area Improvements within such Sub-Association Facility Area, and all drains, gutters, downspouts, berms, swales and other drainage facilities and systems) shall at all times be maintained, repaired, replaced and reconstructed (collectively, "Maintenance") in a neat, safe, attractive, sanitary and orderly condition and in accordance with the provisions of this Declaration by the Owners of such Residential Units, which Maintenance shall include, without limitation, painting and repair of roofs and exterior building surfaces. Such Maintenance also shall include, without limitation, the maintenance and repair of any such Dwelling occasioned by the presence of wood destroying pests or organisms; provided, however, the responsibility for any such maintenance and repair so occasioned may be delegated to the Association in the manner and to the extent permitted by, and upon and subject to the provisions of, California Civil Code Section 1364.

Section 10.2 Sub-Association Storm Drain Areas and Sub-Association Facility Area Improvements Maintenance and Restrictions.

(a) The cost of any Sub-Association Storm Drain Areas and Sub-Association Facility Area Improvements maintenance, repair, replacement or reconstruction required to be performed by the Association which is caused by the negligence or misconduct of any owner or his or her Family or his or her other guests or invitees (including, without limitation, relatives, tenants and contract purchasers), both minor and adult, shall be borne entirely by such owner.

(b) Without the prior written approval of the Board, no Owner shall provide or cause to be provided any such maintenance, repair, replacement or reconstruction required to be performed by the Association.

(c) If any of the costs required to be paid by an Owner under subsection (a) is not paid within thirty days after the Association has furnished a statement for the costs to the Owner, the Board shall have the right to levy a Reimbursement Assessment against the Owner to cover the costs.

(d) Without the prior written consent of the Architectural Committee and Board, no improvements, material, plants or other landscaping shall be installed or placed by any Owner upon or from any Sub-Association Storm Drain Areas or Sub-Association Facility Area Improvements nor shall any Owner connect any drainage facilities or systems installed by such Owner within his or her Residential Unit to the private storm drain systems (consisting of

pipes, inlets and clean-outs) [collectively, "Sub-Association Storm Drain Systems"] located within Sub-Association Storm Drain Areas. Any such approved improvements, material, plants and other landscaping permitted by the Architectural Committee and the Board to be installed or placed upon any Sub-Association Storm Drain Areas or Sub-Association Facility Area Improvements or connected to any Sub-Association Storm Drain Systems shall be maintained, repaired, replaced and reconstructed by the Owner of such matters, at his or her own cost and expense entirely, in a neat, orderly, safe and sanitary condition and in such a manner as to enhance their appearance, and preserve established slope ratios, prevent erosion or sliding problems, and to facilitate the orderly discharge of water through established drainage systems and patterns (including, without limitation, any Sub-Association Storm Drain Systems); provided, however, upon approval of the Board, such maintenance, repair, replacement and reconstruction may be assumed by the Association upon such reasonable terms and conditions as the Board may determine.

Section 10.3 Party Fence Maintenance. Subject to the provisions of the Article entitled "Architectural Control".

(a) The adjoining Owners of a Party Fence jointly shall maintain, repair, replace and reconstruct the Party Fence in a neat, safe, attractive, sanitary and orderly condition and in such a manner as to assure the continued integrity of the Party Fence (collectively, "Party Fence Repair").

(b) Except as otherwise provided in this Section, the cost of any such Party Fence Repair shall be borne equally by such Owners. If one such Owner refuses to join in any Party Fence Repair ("Non-Repairing Owner"), the other Owner ("Repairing Owner") may undertake the Party Fence Repair. In such event, the Non-Repairing Owner shall reimburse the Repairing Owner for one-half of the cost of the Party Fence Repair within five days after the Non-Repairing Owner has received a written statement from the Repairing Owner which describes the Party Fence Repair and the cost of Party Fence Repair incurred by the Repairing Owner.

(c) In the event any Party Fence Repair is required because of the negligent or wilful misconduct of one of the Owners ("Negligent Owner") or of his or her Family or his or her other guests or invitees (including, without limitation, relatives, tenants and contract purchasers who reside in his or her condominium), both minor and adult, the Party Fence Repair shall be the sole responsibility of the Negligent Owner at his or her own cost. The Negligent Owner shall perform any such Party Fence Repair as soon as reasonably possible after the misconduct. In the event the Negligent Owner fails or refuses to perform the required Party Fence Repair, upon ten days' prior written notice to the Negligent Owner, the other Owner may perform the Party Fence Repair and the Negligent Owner shall reimburse the other Owner for the cost of the Party Fence Repair within five days after the Negligent Owner has received a written statement from the other Owner which describes the Party Fence Repair and the cost of the Party Fence Repair incurred by the other Owner.

(d) No activity shall be undertaken on the Property which might damage or adversely affect the condition of any Party Fence, without the prior written consent of the Architectural Committee and the adjoining Owners of the Party Fence.

(e) No holes shall be drilled or otherwise placed in any Party Fence without the prior written consent of the Architectural Committee and the adjoining Owners of the Party Fence.

Section 10.4 Maintenance Access Area Rights and Limitations. Each Maintenance Access Area shall be used subject to the following rights and limitations:

(a) The Maintenance Access Area shall be used by the Owner (Maintenance Access Area User") of the Residential Unit adjoining or abutting the Maintenance Access Area only for the purposes of (i) access to the structural wall ("Structural Wall") of his or her Dwelling and (ii) maintaining, repairing, replacing and reconstructing the Structural Wall. The Maintenance Access Area User may enter the Maintenance Access Area during reasonable times for the purposes set forth in the preceding sentence, upon reasonable notice to the Owner of the Residential Unit on which the Maintenance Access Area is located.

(b) Without the prior written consent of the Architectural Committee and the Maintenance Access Area User, (i) no storage of any kind shall be permitted on the Maintenance Access Area, (ii) no object, device or improvement of any kind shall be affixed to any Structural Wall and (iii) no holes shall be drilled or otherwise placed in any Structural Wall.

(c) No improvements or landscaping of any kind shall be constructed, installed or maintained within the Maintenance Access Area, except improvements and landscaping constructed or installed (i) by the owner of the Residential Unit on which any Maintenance Access Area is located with the approval of the Architectural Committee and in compliance with the following terms of this subsection (c), (ii) by Declarant or (iii) by the Master Association with respect to any Maintenance Access Area located within the Jogging Trail. No Owner of a Residential Unit on which a Maintenance Access Area is located shall (i) commence, erect, plant or maintain any improvement or landscaping on the Maintenance Access Area which disrupts or could disrupt the foundation, or otherwise impair the structural integrity, of the Dwelling that adjoins or abuts the Maintenance Access Area or which unreasonably interferes or could unreasonably interfere with the use of the Maintenance Access Area by the Maintenance Access Area User as permitted in this Section or (ii) permit any trellis, eave, overhang, balcony or other projection from such Owner's Dwelling to extend within five feet of the Structural Wall.

(d) The owner of the Residential Unit on which any Maintenance Access Area is located and the Master Association with respect to any Maintenance Access Area located within the Jogging Trail shall have the right to the reasonable use and enjoyment of the Maintenance Access Area, subject to the limitations set forth in this Section.

(e) Any applicable rights of the holders of the easements provided for in the Section entitled "Reservation of Easements by Declarant".

Section 10.5 Right of Association to Perform. In the event any Owner fails to perform any of the duties or obligations imposed upon such Owner by this Article, the Association or its delegates shall have the right, subject to the provisions of California Civil Code Section 1364, if applicable, to perform such duties and obligations (including, without limitation,

the right to enter, at reasonable times, any portion of such Owner's Residential Unit to perform such duties and obligations). Such Owner shall reimburse the Association for the costs incurred by the Association in performing such duties and obligations within thirty days after the Association has furnished a statement for such costs to such Owner.

ARTICLE XI

Easements

Section 11.1 Encroachment Easements for Owners. There is hereby reserved by the Declarant, together with the right to grant and transfer the same to Owners, an easement appurtenant to each Condominium over all adjoining property (including Condominiums, Association Property and Common Area) for the purposes of (a) accommodating (i) trellises, eaves, overhangs, balconies, gas and electric meters and related facilities, telephone and television boxes and related facilities and other similar projections created during the original construction of the Property or the reconstruction or repair of a Dwelling in accordance with plans and specifications approved by the Architectural Committee, (ii) encroachments due to original engineering or surveying errors, errors in original construction, errors in reconstruction or repair in accordance with plans and specifications approved by the Architectural Committee and (iii) settlement, shifting or movement of a building or other structure and (b) maintaining, repairing and reconstructing such trellises, eaves, overhangs, balconies, meters and related facilities, boxes and related facilities, projections and encroachments.

Section 11.2 Encroachment Easements for Association. There is hereby reserved by the Declarant, together with the right to grant and transfer the same to the Association, an easement appurtenant to any Association Property over all adjoining property for the purposes of (a) accommodating (i) trellises, eaves, overhangs, balconies and other similar projections created during the original construction of the Property or the reconstruction or repair of any Association Property in accordance with plans and specifications approved by the Architectural Committee or in accordance with the provisions of the Section entitled "Destruction", (ii) encroachments due to original engineering or surveying errors, errors in original construction, errors in reconstruction or repair in accordance with plans and specifications approved by the Architectural Committee or in accordance with the provisions of the Section entitled "Destruction" and (iii) settlement, shifting or movement of a building or other structure and (b) maintaining, repairing and reconstructing such trellises, eaves, overhangs, balconies, projections and encroachments.

Section 11.3 Reservation of Easements by Declarant.

(a) **Utilities.** Easements over the Property for the installation, maintenance, operation, reconstruction, replacement and use of electric, telephone, cable television, water, gas, sanitary sewer, irrigation and drainage facilities, common driveways and other access ways and parking areas and facilities as are needed to serve the Property or any portion of the Property or as are shown on the recorded subdivision map or maps and parcel map or maps of the Property are hereby reserved by the Declarant, together with the right to grant and

transfer the same. As used in this subsection (a), the term "operation" includes, without limitation, the reading and other monitoring of electric, water and gas meters.

(b) Construction and Sale. There is hereby reserved by the Declarant, together with the right to grant and transfer the same (including, without limitation, to its sales agents and representatives and prospective purchasers of Condominiums), over the Property as the same may from time to time exist, easements for access, construction, display, sales offices and incidental parking and exhibit purposes in connection with the development of the Property and the area described in Exhibit B and the sale of Condominiums within the Property and for such other purposes and subject to such limitations as may be provided in the Section entitled "Construction by Declarant"; provided, however, that such use by the Declarant and others shall not unreasonably interfere with the reasonable use and enjoyment of any of the Common Area or any Association Property by the Members.

(c) Discharge of Rights and Obligations. There is hereby reserved by the Declarant, together with the right to grant and transfer the same to the Association and others, easements over the Property for the purpose of permitting the Association, the Board, the Architectural Committee, the Declarant and others to exercise their rights and discharge their obligations as described in this Declaration, the Articles, Bylaws or Association Rules.

(d) Access, Use and Enjoyment. There is hereby reserved by Declarant, together with the right to grant and transfer the same to the Owners, a nonexclusive easement of access, use and enjoyment in and to the Common Area of each Project. Such easement shall be subject to the rights and limitations set forth in the Article entitled "Common Area and Association Property Rights and Limitations".

(e) Maintenance Access Area. There is hereby reserved by Declarant, together with the right to grant and transfer the same to any Maintenance Access Area User (as defined in the Section entitled "Maintenance Access Area Rights and Limitations", an easement over the Maintenance Access Area which adjoins or abuts such Maintenance Access User's Residential Unit for the purpose of permitting the Maintenance Access User to exercise its rights and discharge its obligations set forth in the Section entitled "Maintenance Access Area Rights and Limitations," together with a license in favor of such Maintenance Access Area User to traverse upon such additional contiguous property as shall be necessary to gain access to the Maintenance Access Area.

(f) Repairs. There is hereby reserved by Declarant, together with the right to grant and transfer the same to Owners, an easement over the Property for the purpose of permitting the Owners to exercise their rights and discharge their obligations set forth in the Article entitled "Additional Obligations."

(g) Sub-Association Facility Area. There is hereby reserved by Declarant, together with the right to grant and transfer the same to the Association, an easement over the Sub-Association Facility Area for purposes of the maintenance, repair, replacement and reconstruction of Sub-Association Facility Area Improvements, in accordance with the provisions of the Article entitled "Duties and Powers of the Association", together with a license in favor of

the Association, its agents and representatives, to traverse upon such additional contiguous property as shall be necessary to gain access to the Sub-Association Facility Area.

Section 11.4 Modification and Transfer of Easements. This Declaration shall not be amended to modify or eliminate the easements reserved to the Declarant without the prior written approval of the Declarant and any attempt to do so shall have no effect. As to easements reserved by the Declarant together with the right to grant and transfer the same to the Owners or the Association, the Declarant shall convey such easements to the Owners in the instrument by which title to their Condominiums is conveyed or in any other instrument and to the Association in the instrument by which any Association Property is conveyed to the Association or any other instrument. If any such conveyance is not accomplished through inadvertence, mistake or any other cause, the easements shall nevertheless be deemed to be conveyed to each Owner and the Association by their Condominium and any Association Property conveyancing instruments, respectively.

ARTICLE XII

Insurance

Section 12.1 Types. The Association, to the extent available, shall obtain and continue in effect the following types of insurance:

(a) A comprehensive policy of public liability insurance covering any Association Property and any Maintenance Area with a limit of not less than Two Million Dollars per occurrence for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobiles and liability for property of others, and such other risks as are customarily covered with respect to similar real estate developments in the area of the Property and as are customarily required by private institutional mortgage investors for projects similar in construction, location and use to the Property. The policy shall contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners.

(b) A policy of fire and casualty insurance with extended coverage endorsement, for the full replacement value of any Association Property (including without limitation, all landscaping, improvements, furniture and equipment), and the landscaping and improvements upon any Maintenance Area, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent and clauses waiving subrogation against Members and the Association and Persons upon the Property with the permission of a Member. Such insurance shall afford protection against at least loss or damage by fire and other hazards covered by the standard extended coverage endorsement, including without limitation, loss or damage caused by sprinkler leakage, vandalism, malicious mischief, windstorm, water damage, and covering the cost of demolition and debris removal and such other risks as are customarily covered with respect to similar real estate developments in the area of the Property.

(c) Fidelity coverage against dishonest acts on the part of directors, officers, employees, volunteers, trustees, managers or any other Persons who handle the funds of the Association. Such fidelity insurance shall name the Association as an insured and be written in an amount equal to not less than the sum of three months' Regular Assessments for all Condominiums in the Property plus the Association's reserve funds and shall contain waivers of any defense based on the exclusion of Persons who serve without compensation from any definition of "employee" or similar expression.

Section 12.2 Waiver By Members. As to each of the policies provided for in this Article, which will not be voided or impaired by the requirements of this Section, the Members and Owners hereby waive and release all claims against the Association, the Board, the Declarant and their agents and employees, with respect to any loss covered by such insurance, whether or not caused by the negligence of or breach of any agreement by such Persons, but only to the extent of insurance proceeds received in compensation for such loss.

Section 12.3 Other Insurances Annual Review. The Association may purchase such other insurance as it may deem necessary, including but not limited to, plate glass insurance, workers' compensation, officers' and directors' liability and errors and omissions insurance. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for all Common Area, Residential Units, any Association Property and any Maintenance Area in light of increased construction costs, inflation, practice in the area in which the Property is located or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association and the Owners. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 12.4 Premiums, Proceeds and Settlement. Insurance premiums for any insurance coverage obtained by the Association pursuant to this Article shall be a Common Expense to be included in the Regular Assessments levied by the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or otherwise disposed of as provided in this Article or in the Article entitled "Destruction". The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim and such signatures shall be binding on the Association and the Members.

Section 12.5 Abandonment of Replacement Cost Insurance. Unless at least two-thirds of the First Mortgagees (based on one vote for each First Mortgage owned) or Owners (other than the Declarant) have given their prior written approval, the Association shall not be entitled to fail to maintain the extended coverage fire and casualty insurance required by this Article on less than a one hundred percent current replacement cost basis.

Section 12.6 Beneficiaries of Insurance. All insurance obtained by the Association shall be in the name of the Association and shall be maintained at least for the benefit of the Association, the Owners and the Mortgagees as their interests may appear.

Section 12.7 Requirements of FHLMC and FNMA. Notwithstanding the provisions of this Article, the Association shall continuously maintain in effect such insurance as meet the insurance requirements for planned unit development and condominium projects established by the Federal Home Loan Mortgage Corporation and Federal National Mortgage Association, so long as they are a First Mortgagee or Owner Within the Property, except to the extent such coverage is not available or has been waived in writing by them.

ARTICLE XIII

Destruction

Section 13.1 Association Property Improvements. In the event of the partial or total destruction of all or any portion of any Association Property, the following provisions shall be applicable:

(a) If the amount available from the proceeds of insurance maintained by the Association is at least eighty-five percent of the estimated costs of the repair, replacement or reconstruction (collectively, "Repair") of the Association Property, the Association Property shall be repaired, replaced or reconstructed (collectively, "Repaired").

(b) If the amount available from such proceeds is less than eighty-five percent of the estimated costs of the Repair of Association Property, the Association Property shall nevertheless be Repaired unless at least two-thirds of the Owners (other than the Declarant) determine by written consent not to proceed with such Repair. In such event, the Association Property shall be cleared and landscaped for community park uses provided, however, that there shall exist in such Association Property adequate vehicular and pedestrian rights of way for the Owners to insure legal access to their Condominiums and the Association Property. The costs of such clearing and landscaping shall be paid for with available insurance proceeds, and any deficiency shall be raised by the levy of uniform Reconstruction Assessments in an amount determined by the Board. If any excess insurance proceeds remain, the Board shall retain such sums in the general funds of the Association or distribute pro rata all or a portion of such sums to the Owners, subject to the prior rights of Mortgagees whose interests may be protected by the insurance policies.

(c) If the Repair of the Association Property is to proceed, it shall be the duty of the Association to Repair the Association Property to its former condition as promptly as is practical and in a lawful and workmanlike manner. Available insurance proceeds shall be used for such purpose and the Board shall levy a uniform Reconstruction Assessment against each Owner and his or her Condominium at such time and in such amount as the Board shall determine is necessary to cover any cost of Repair of the Association Property in excess of insurance proceeds.

(d) Any Repair of the Association Property undertaken pursuant to this Article shall substantially conform to the original construction plans of such Association Property (if available and if not available, construction plans caused to be prepared by the Board which

substantially conform to the original construction plans, as determined by the Board), unless changes recommended by the Board and approved by the Architectural Committee have been approved in writing by seventy-five percent of the Owners.

Section 13.2 Negotiations with Insurer. The Board shall have full authority to negotiate in good faith with representatives of the insurer of the totally or partially destroyed Association Property and to make settlement with the insurer for less than the full insurance coverage on the damage to any Association Property. Any settlement made by the Board in good faith shall be binding upon all Owners. If it should become necessary in the judgment of the Board to incur costs for appraisals, legal fees, court costs or similar expenses in order to determine or collect insurance proceeds, such costs shall be first deducted before distribution or application of insurance proceeds as provided in this Article.

ARTICLE XIV

Eminent Domain

Section 14.1 Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain or sale under threat of such condemnation.

Section 14.2 Representation by Board in Condemnation Proceeding. In the event of a threatened taking of all or any portion of a Project or any Association Property, the Board shall, subject to the right of all Mortgagees who have requested the right to join the Board in the proceedings, represent (a) all of the Owners in that Project in an action to recover all awards with respect to such Project and (b) all of the Owners in an action to recover all awards with respect to any Association Property. No Owner shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Article. The Board is further empowered, subject to the limitations of this Article, to act as the sole representative of the Owners in all aspects of any condemnation proceedings including, without limitation, any sale to the condemnor in lieu of engaging in a condemnation action.

Section 14.3 Procedure on Taking. In the event of a taking of all or any portion of a Project, the Board shall distribute the award from the taking authority according to the provisions of this Section after deducting fees and expenses related to the condemnation proceeding including, without limitation, fees for attorneys and appraisers and court costs. If the taking is by judgment of condemnation and the judgment apportions the award among the Owners in the affected Project and their respective Mortgagees, the Board shall distribute the amount remaining after such deductions among such Owners and such Mortgagees on the allocation basis set forth in the judgment. If the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among such Owners and their respective Mortgagees, as their interests may appear, based upon the relative loss of value of the Condominiums affected by such taking as determined by the appraised value of each such Condominium prior to and after the taking as determined by a qualified real estate appraiser hired by the Board at the expense of the Association. The determination by such appraiser as to the value of each such Condominium prior to and after the taking shall be final and

binding on all Owners and Mortgagees. In no event shall any portion of any award be distributed by the Board to an Owner and/or the Mortgagees of his or her Condominium in a total amount greater than the portion allocated under this Section to such Condominium. Nothing contained in this Section shall entitle an Owner to any priority over a Mortgagee of his or her Condominium as to any condemnation award.

Section 14.4 Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

Section 14.5 Revival of Right to Partition. Upon a taking which renders more than fifty percent of the Condominiums in a Project incapable of being restored to at least ninety-five percent of their floor area and substantially their condition prior to the taking, the right of any Owner within such Project to partition through legal action as described in the Article entitled "Limitations upon the Right to Partition and Severance" shall immediately revive. The determination as to whether Condominiums partially taken are capable of being so restored shall be made by the Board, whose decision shall be final and binding on all Owners and Mortgagees.

Section 14.6 Awards for Owners' Personal Property and Relocation Allowances. Where all or any portion of a Project is taken, each Owner in that Project shall have the exclusive right to claim all of the award made for his or her personal property, and any relocation, moving expenses, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, the Board shall represent each such Owner in an action to recover all awards with respect to such portion, if any, of the Owner's personal property as is at the time of any taking, as a matter of law, part of the real property comprising any Condominium, and shall allocate to such Owner so much of any award as is attributed in the taking proceedings, or failing such attribution, attributed by the Board, to such portion of the Owner's personal property.

Section 14.7 Notice to Members. The Board, immediately upon having knowledge of any taking or threat of a taking with respect to a Project or any portion of a Project, shall promptly notify all Members.

Section 14.8 Change of Condominium Interest. In the event of a taking of all or any portion of a Project, the Board may amend the Condominium Plan for that Project to reflect the changes in the Project. If the Board decides to record such amendment to a Condominium Plan, all Owners in the affected Project and their Mortgagees shall execute and acknowledge the amendment if required to comply with Section 1351(a) of the California Civil Code or any similar statute then in effect. Such Owners and Mortgagees shall also execute such other documents and take such other actions as are required to make such amendment effective. The Board shall cause a notice of change in such Condominium Plan to be sent to each such Owner and Mortgagee within ten days of the filing of such amendments in the County Recorder's Office.

Section 14.9 Association Property. Any awards received on account of a taking of all or any portion of any Association Property shall be paid to the Association. In the event of a taking of less than all of any Association Property, the rules as to repair, replacement and reconstruction of Association Property shall apply as in the case of destruction of Association Property. In the event of a total taking of the Association Property, the Board shall either retain

any award in the general funds of the Association or distribute pro rata all or any portion of the award to the Members. Any such distribution shall be subject to the prior rights of Mortgagees.

ARTICLE XV

Rights of Lenders

Section 15.1 Priority of Mortgage Lien. No breach of the covenants, conditions, restrictions, or easements contained in this Declaration, nor the enforcement of any lien provisions in this Declaration, shall affect, impair, defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of such covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Condominium.

Section 15.2 First Mortgage Relationship with Assessment Liens.

(a) The Assessment lien provided for in the Article entitled "Assessments" shall be subordinate to the lien of any First Mortgage which was recorded prior to the date a notice of delinquent assessment is recorded with respect to any such Assessment in accordance with the Section entitled "Lien and Notice of Delinquent Assessment".

(b) Any First Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgagee's Mortgage or foreclosure of the First Mortgage will not be liable for the Condominium's unpaid Assessments, dues or charges which accrue prior to the acquisition of title to the Condominium by such First Mortgagee, but shall take title to the Condominium subject to any lien or claim for unpaid Assessments against the Condominium which accrues subsequently to the time the First Mortgagee obtains title to the Condominium.

(c) Nothing in this Section shall be construed to release any Owner from his or her obligation to pay any Assessment levied pursuant to this Declaration.

Section 15.3 Two-Thirds Vote of First Mortgagees or Owners. Unless at least two-thirds of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than Declarant) of the Residential Units have given their prior written approval, the Association shall not be entitled to do any of the following:

(a) By act or omission, seek to abandon or terminate a Project.

(b) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area of any Project or any Association Property; provided, however, the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area and any Association Property shall not require such approval.

(c) Change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying Assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in Common Area.

(d) Partition or subdivide any Condominium.

(e) Use hazard insurance proceeds for losses to any Association Property or a Project (whether to Residential Units or to Common Area) for other than the repair, replacement or reconstruction of such Association Property or Project.

(f) Change the method of determining the Assessments, obligations, dues or other charges which may be levied against an Owner.

(g) By act or omission change, waive or abandon any scheme of regulations, or enforcement of such regulations, pertaining to the architectural design or the exterior appearance of Condominiums, the exterior maintenance of Condominiums, the maintenance of any party walks on any of the Common Area or Association Property or common fences and drive-ways, or the upkeep of lawns and plantings within the Property.

Section 15.4 Other Rights of First Mortgagees.

(a) Any First Mortgagee, insurer of a First Mortgage or guarantor of a First Mortgage shall, upon written request to the Association, be entitled to:

(i) Inspect the books, records and financial statements of the Association and copies of this Declaration, the Articles and Bylaws, as amended, during normal business hours;

(ii) Receive the annual audited financial statements of the Association within ninety days following the end of the Association's fiscal year;

(iii) Receive written notice of all annual and special meetings of the Members or of the Board and to designate a representative to attend, but not vote at, all such meetings; and

(iv) Receive thirty days' written notice before the Association shall be entitled to (1) abandon, dissolve or terminate the Association, (2) effectuate any decision to terminate professional management and assume self-management of the Property or (3) amend a material provision of this Declaration, the Articles or Bylaws. Without limiting the generality of the foregoing, the following provisions shall be deemed material: (1) this Article, (2) the Article entitled "Insurance", (3) any rights granted specifically to Mortgagees, and (4) any provision which is a requirement of the Federal Home Loan Mortgage Corporation or Federal National Mortgage Association.

(b) No Condominium may be partitioned or subdivided, if at all, without the prior written approval of any First Mortgagee of such Condominium.

Section 15.5 Notice to First Mortgagees of Owner Default. Any First Mortgagee shall, upon written request to the Association, be entitled to written notification from the Association of any default in the performance of the obligations imposed by this Declaration, the Articles or Bylaws by the Owner whose Condominium is encumbered by such First Mortgagee's Mortgage, which default has not been cured within sixty days of a request by the Association.

Section 15.6 Right of First Refusal. If this Declaration is amended to provide for any right of first refusal, no such right shall impair the rights of any First Mortgagee to:

(a) Foreclose or take title to a Condominium pursuant to the remedies provided in any such First Mortgagee's Mortgage;

(b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor under any such First Mortgagee's Mortgage; or

(c) Sell or lease a Condominium acquired by such First Mortgagee.

Section 15.7 Conflicts. In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

Section 15.8 Notice of Destruction or Taking. If any of the Common Area or any Association Property is substantially damaged or destroyed or is made the subject of any condemnation or eminent domain proceeding, the Board shall promptly notify any First Mortgagee affected by the damage, destruction or proceeding. If requested in writing by a First Mortgagee, the Association shall evidence its obligation under this Section in a written agreement in favor of the First Mortgagee.

Section 15.9 Payments of Taxes or Premiums by First Mortgagees. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Association Property, unless such taxes or charges are separately assessed against the Owners in which case the rights of the First Mortgagees shall be governed by the provisions of their Mortgages. First Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for any Association Property and First Mortgagees making such payments shall be owed immediate reimbursement from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any First Mortgagee which requests the same to be executed by the Association.

Section 15.10 Proceeds and Awards Priority. No provision in this Declaration, the Articles or Bylaws shall give or be construed as giving an Owner, or any other party, priority over any rights of a First Mortgagee of a Condominium pursuant to its Mortgage in the case of a

distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominiums, Residential Units, Common Area or any Association Property.

Section 15.11 Notice of Amendment Hearing. Any First Mortgagee shall be entitled to receive not less than fifteen days' written notice of any court hearing held pursuant to California Civil Code Section 1356.

Section 15.12 Development of Property. So long as VA has jurisdiction over any loan secured by a Mortgage and so long as required by VA, the development of the Property shall be consistent with a development plan approved by VA.

ARTICLE XVI

Limitations Upon the Right to Partition and Severance

Section 16.1 No Partition. The right of partition is hereby suspended, except that the right to partition shall revive and a Project may be sold as a whole when the conditions for such action set forth in the Article entitled "Eminent Domain" have been met; provided, however, notwithstanding the foregoing, any Owner may, upon the prior written approval of the First Mortgagee encumbering his or her Condominium, bring an action for partition by sale of the Project in which his or her Condominium is located, as provided in Section 1359 of the Civil Code of the State of California or any similar statute then in effect upon the occurrence of any of the events provided in such Section; and provided, further, that if any Condominium shall be owned by two or more co-tenants, nothing contained in this Section shall be deemed to prevent a judicial partition as between such co-tenants.

Section 16.2 No Severance. The rights appurtenant to the ownership of a Condominium are inseparable, and each Owner agrees that he or she will not, while this Declaration or any similar declaration is in effect, make any conveyance of less than an entire Condominium and such appurtenances. Any conveyance made in contravention of this Section shall be void. The provisions of this Section shall terminate on the date that judicial partition shall be decreed.

Section 16.3 Proceeds of Partition Sale.

(a) Whenever an action is brought for the partition by sale of a Project whether upon the occurrence of any of the events provided in Section 1359 of the Civil Code of the State of California (or similar statute then in effect) or upon the revival of the right to partition pursuant to the Article entitled "Eminent Domain," a portion of the proceeds of such sale shall be allocated to each Condominium subject to such partition. The portion allocated to each such Condominium shall bear the same relationship to the total sale proceeds as the fair market value of each such Condominium bears to the total fair market value of all such Condominiums as of the date of partition as determined in accordance with an appraisal conducted by a qualified real estate appraiser hired by the Board at the expense of the Association. Such appraisal shall be final and binding upon the Association, all Owners and Mortgagees.

(b) The distribution of the proceeds of any such partition sale shall be adjusted as necessary to reflect any prior distribution of insurance proceeds or condemnation award as may have been made to Owners and their Mortgagees pursuant to the Article entitled "Eminent Domain." In the event of any such partition and sale, the liens and provisions of all Mortgages or Assessment liens encumbering Condominiums so encumbered shall extend to each applicable Owner's interest in the proceeds of such partition and sale. The Owner's share of such proceeds shall not be distributed to such Owner except upon the prior payment of any Mortgage or Assessment lien encumbering such proceeds.

ARTICLE XVII

General Provisions

Section 17.1 Duration. The covenants, conditions, restrictions and easements of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association or any Owner, including the Declarant, for a term of sixty years from the date this Declaration is recorded, after which time such covenants, conditions, restrictions and easements shall be automatically extended for successive periods of ten years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded with the County Recorder within one year prior to termination of the initial sixty year period or within one year prior to the termination of any successive ten year period, agreeing to terminate the covenants, conditions, restrictions and easements in whole or in part. In the event a Condominium is owned by more than one Owner, any one of the co-Owners may sign such instrument in writing on behalf of all co-Owners.

Section 17.2 Amendment. Subject to the other provisions of this Declaration, (a) until such time as there is a Class A membership, this Declaration may be amended or canceled by the Declarant; (b) so long as there is a Class B membership, this Declaration may be amended only by the affirmative vote or written assent of not less than sixty-six and two-thirds percent of each class of Members; and (c) when the Class B membership becomes converted to Class A membership, this Declaration may be amended only by the affirmative vote or written assent of not less than (i) sixty-six and two-thirds percent of the voting power of the Members and (ii) sixty-six and two-thirds percent of the voting power of the Members other than the Declarant. Notwithstanding the foregoing, any provision of this Declaration, the Articles, Bylaws or Association Rules which expressly requires the approval of a specified percentage of the voting power of the Association for action to be taken under such provision, can be amended only with the affirmative vote or written assent of not less than the same percentage of the voting power of the Association. In addition, so long as there is a Class B membership, so long as VA has jurisdiction over any loan secured by a Mortgage and so long as required by VA, the following actions shall require the prior written approval of the VA: mergers, consolidations and dissolutions of the Association, dedications, conveyances and mortgaging of any Association Property and any amendment to this Declaration. Any amendment that requires the vote or written assent of the Members shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been approved in accordance with the requirements of this Section and recorded with the County Recorder.

Section 17.3 Notices. Any notice sent to any Member, Owner or Mortgagee under the provisions of this Declaration shall be in writing and shall be deemed to have been properly sent when delivered personally or mailed, postage prepaid, if to an Owner or Member, to the last known address of the Person who appears as such Member or Owner on the records of the Association at the time of such mailing, and, if to a Mortgagee, to the address furnished to the Association by such Mortgagee for the purpose of notice or if no such address is furnished, to any office of the Mortgagee in the County, or if no such office is located in the County, to any office of the Mortgagee. In the case of co-owners, any such notice may be delivered or sent to any one of the co-owners.

Section 17.4 Enforcement.

(a) Subject to California Civil Code Sections 1354(b) through 1354(h), the Association or any Owner shall have the right to enforce by proceedings at law or in equity all covenants, conditions, restrictions and easements now or in the future imposed by this Declaration, the Articles and the Bylaws, including without limitation, the right to prosecute a proceeding at law or in equity against the Person or Persons who have violated or are attempting to violate any of these covenants, conditions, restrictions or easements to enjoin or prevent them from doing so, to cause the violation to be remedied and/or to recover damages for the violation.

(b) Should any Owner fail to comply with the provisions of this Declaration, the Articles, Bylaws or Association Rules and should any such failure continue for a period of thirty days following written notice of such failure from the Association to the Owner, the Association shall have the right, but not the duty, to correct any such noncompliance, and the cost of such correction shall be borne by the Owner. The cost shall be reimbursed to the Association within thirty days after the Association has furnished a statement for the cost.

(c) The result of every action or omission by which any covenant, condition, restriction or easement is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an Owner, either public or private, shall be applicable against every such result and may be exercised by the Association or any Owner.

(d) Subject to California Civil Code Sections 1354(b) through 1354(h), in any legal or equitable proceeding for the enforcement or to restrain the violation of these covenants, conditions, restrictions or easements, the losing party or parties shall pay the reasonable attorneys' fees of the prevailing party or parties in such amount as may be fixed by the court in such proceedings.

(e) Failure by the Association or by any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of any breach or violation or a waiver of the right to do so after such failure.

(f) All remedies provided in this Declaration or at law or in equity shall be cumulative and not exclusive.

(g) Nothing contained in this Declaration shall be deemed to require any Owner (including the Declarant) to enforce any covenant, condition, restriction or easement.

Section 17.5 Severability and Enforceability. Invalidation of any one or more of the provisions of this Declaration or any Condominium Plan by judgment or court order shall not in any way affect any other provisions, which shall remain in full force and effect. The Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, any Condominium Plan, the Articles or Bylaws.

Section 17.6 Construction. The provisions of this Declaration and any Condominium Plan shall be liberally construed to effectuate this Declaration's purpose of creating a uniform general plan for the development and operation of an interrelated and interdependent residential real property development. Whenever the context of this Declaration requires, the singular shall include the plural and the masculine, feminine and neuter shall include the others. The Article and Section headings contained in this Declaration are for purposes of reference and convenience only and shall not limit or otherwise affect the meaning of this Declaration. Unless otherwise indicated, all references to Articles, Sections and subsections are to this Declaration. All exhibits referred to in this Declaration are attached and incorporated by reference. If the day on which a party is required to take any action under the terms of this Declaration is not a business day, the action shall be taken on the next succeeding business day. Any reference in this Declaration to an agreement or other instrument shall mean such agreement or instrument as it may from time to time be supplemented, modified, amended and extended in accordance with the terms of this Declaration. This Declaration shall be construed and enforced in accordance with and governed by the laws of the State of California. In the event of any conflict between the provisions of the Articles of Incorporation or Bylaws of the Master Association and the provisions of the Articles and Bylaws, the provisions of the Articles of Incorporation and Bylaws of the Master Association shall be deemed to supersede such other provisions to the extent of any such conflict. In the event of any conflict between the provisions of the Master Declaration and the provisions of this Declaration, the Articles or Bylaws, the provisions of the Master Declaration shall be deemed to supersede such other provisions to the extent of any such conflict.

Section 17.7 Phased Development. It is the intention of the Declarant to develop or cause to be developed the Property into a single interrelated and interdependent residential real property development. The Declarant contemplates that it and/or others will construct the Property and/or cause it to be constructed in several phases and annex each phase to the Initial Property in accordance with the Article entitled "Annexation". Although the Declarant contemplates the annexation and construction of such additional phases, it shall in no way be obligated to either annex or construct or cause to be annexed or constructed such phases.

Section 17.8 Construction by Declarant. Nothing in this Declaration shall limit the right of the Declarant to commence and complete construction of improvements to the Property (including without limitation, constructing, maintaining and/or using temporary improvements during the course of such construction) or to alter the foregoing or the Condominiums or any Association Property or to construct such additional improvements as the Declarant deems advisable prior to the completion and sale of the entire Property. Without

limiting the foregoing, the Declarant shall not be subject to the provisions of the Articles entitled "Architectural Control" or "General Restrictions". The Declarant may use any of the Property owned or leased by it for model home sites and incidental parking and for any other purpose for which the Declarant may use any of the Common Area or any Association Property as provided in this Section. The Declarant shall have the right and an easement to enter upon, use and enjoy and designate and permit others (including, without limitation, the Declarant's agents, employees, representatives, contractors and prospective purchasers) to enter upon, use and enjoy any of the Common Area and any Association Property for any purpose in connection with or incidental to (a) the construction, development, sale, lease or other transfer of the Property and/or the area described in Exhibit B (including without limitation, the erection, construction and maintenance of displays, sales offices and incidental parking, exhibits, signs and other structures), (b) the management, operation or maintenance of the Property and/or the area described in Exhibit B and/or (c) the exercise of any rights or powers granted under this Declaration to the Declarant; provided, however, that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of any of the Common Area and any Association Property by the Members or of any Condominium by the Owner of the Condominium and shall terminate on the third anniversary of the date of original issuance by the DRE of the most-recently-issued final subdivision public report for any Phase of the Property. The Declarant reserves the right to alter its construction and development plans and designs as it deems appropriate; provided, however, so long as VA has jurisdiction over any loan secured by a Mortgage and so long as required by VA, any material alteration in the construction plans for a Project by Declarant shall require the prior approval of VA. This Declaration shall not limit the right of the Declarant at any time prior to acquisition of title by a purchaser from the Declarant to an undivided interest in the Common Area (a) to establish on any of the Common Area or any Association Property additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be necessary or appropriate to the proper development and disposal of the Property and (b) to subdivide and resubdivide any Property and/or the area described in Exhibit B owned by Declarant; provided, however, so long as VA has jurisdiction over any loan secured by a Mortgage and so long as required by VA, the foregoing actions set forth in this sentence shall require the prior approval of VA. Each owner by accepting a deed conveying ownership of a Condominium to such Owner acknowledges that the activities of Declarant in developing, constructing, selling and leasing the various portions of the Property and/or the area described in Exhibit B may constitute a temporary inconvenience or nuisance to the Owners and other users of the Property and/or the area described in Exhibit B. Such inconveniences and nuisances may include, without limitation, noise, vibrations, traffic, dust, fumes and other odors. Each Owner consents, for such Owner and such Owner's Family, delegates under Section 4.3, successors and assigns, to all such inconveniences and nuisances. Each such Owner hereby grants, upon acceptance of such deed and/or other instrument, an irrevocable special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Section. This Declaration shall not be amended to modify or eliminate this Section without the prior written approval of the Declarant and any attempt to do so shall have no effect.

Section 17.9 Nonliability of Officials. To the fullest extent permitted by law, neither the Board, any committees of Association nor any member of the committees shall be liable to any Member, Owner or the Association for any damage, loss or prejudice suffered or

claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committee or member reasonably believed to be the scope of their duties.

Section 17.10 Leases. Any Owner who shall lease or rent his or her Condominium to any Person shall be responsible for assuring compliance by any such Person with all of the provisions of this Declaration. Any lease or rental agreement between an Owner and a lessee must provide that the terms of the lease or rental agreement shall be subject in all respects to the provisions of this Declaration, the Articles, Bylaws, and the Association Rules and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease or rental agreement. All such leases and rental agreements shall be in writing. No Condominium shall be leased or rented for any period less than seven (7) days.

Section 17.11 Mergers and Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may, subject to the provisions of this Declaration, administer the covenants, conditions, restrictions and easements established by this Declaration, with respect to the Property, together with the covenants, conditions, restrictions and easements established upon any other property, as one general plan or in such other plan of administration as the surviving or consolidated corporation deems reasonable.

Section 17.12 Assignment of Rights and/or Duties. Any or all of the rights and/or duties, if any, of the Declarant under this Declaration may be assigned or delegated, respectively, to any other Person and upon any such assignment or delegation any such Person shall, to the extent of such assignment or delegation, have the same rights and/or duties as are given to and/or assumed by the Declarant under this Declaration and the Declarant shall be relieved of the performance of any further duty, if any, under this Declaration. This Declaration shall not be amended to modify or eliminate this Section without the prior written approval of the Declarant and any attempt to do so shall have no effect.

Section 17.13 Delivery of Documents by Declarant.

(a) Commencing not later than ninety days after the conveyance of the first Condominium within the Initial Property to an Owner, copies of the documents listed below, as soon as readily obtainable, shall be delivered, unless previously delivered, by the Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the documents listed below shall apply to any such documents obtained by the Declarant no matter when obtained, provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last Condominium covered by a final subdivision public report for the Initial Property or (ii) three years after the expiration of the most recent final subdivision public report for the Initial Property:

- (i) the recorded subdivision map or maps for the Property,
- (ii) the recorded condominium plan for the Property and all amendments to the condominium plan,
- (iii) the deeds and easements executed by the Declarant conveying any Association Property or other interest to the Association, to the extent applicable,
- (iv) the recorded Declaration, including all amendments and annexations of the Declaration,
- (v) the filed Articles and all amendments to the Articles,
- (vi) the Bylaws and all amendments to the Bylaws,
- (vii) all architectural guidelines and all other rules regulating the use of an Owner's interest in the Property or use of any Association Property or Common Area which have been promulgated by the Association,
- (viii) the plans approved by the County or other local agency for the construction or improvements of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as-build plans and may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy,
- (ix) all notice of completion certificates issued for any Association Property or Common Area improvements,
- (x) any bond or other security device in which the Association is the beneficiary,
- (xi) any written warranty being transferred to the Association for any Association Property or Common Area equipment, fixtures or improvements,
- (xii) any insurance policy procured for the benefit of the Association, the Board or any Association Property or Common Area,
- (xiii) any lease or contract to which the Association is a party,
- (xiv) the membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members, of the Board and of committees of the Board; and
- (xv) any instrument referred to in Section 11018.6(d) of the California Business and Professions Code but not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of the Members.

(b) Commencing not later than ninety days after the annexation of additional Phases, copies of those documents listed under subsection (a) above which are applicable to that Phase, shall, as soon as readily obtainable, be delivered by the Declarant to the Board at the office of the Association, or at such other place as the Board shall prescribe. The obligation to deliver the document listed in subsection (a) which are applicable to the annexed Phase shall apply to any documents obtained by the Declarant no matter when obtained provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last Condominium covered by a final subdivision public report for the Phase or (ii) three years after the expiration of the most recent final subdivision public report for the Phase.

Section 17.14 Davis-Stirling Common Interest Development Act As applied to this Declaration, under the Davis-Stirling Common Interest Development Act (California Civil Code, Section 1350 et. seq.) ("Act"), the term "major components" means the major components of the Common Area and Maintenance Area. In the event of any conflict between the mandatory provisions of the Act and the provisions of the Declaration, the Articles or the Bylaws, the mandatory provisions of the Act shall control. The Board shall comply and shall cause the Association to comply with all provisions of the Act with which they are required to comply. Each Owner and Member also shall comply with those provisions of the Act with which they are required to comply. All of the requirements of the Act are not set forth in this Declaration, the Articles or the Bylaws.

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

BERNARDO RIDGE, LLC, a California limited liability company

By: Laguna Bernardo Company, a California corporation, Manager

BY  _____

ITS President _____
"Declarant"

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

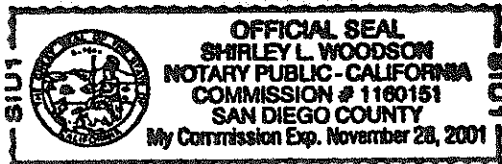
State of California

County of San Diego

On October 13, 1998 before me, Shirley L. Woodson, Notary Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Terrence L. Vogel
NAME(S) OF SIGNER(S)

☒ personally known to me - ~~OR~~ ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Shirley L. Woodson
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☒ CORPORATE OFFICER
President
TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ ATTORNEY-IN-FACT ☐ GENERAL
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
Laguna Bernardo Company, Mgr. of
Bernardo Ridge, LLC, Declarant

DESCRIPTION OF ATTACHED DOCUMENT

Bernardo Ridge HOA

CC+R's

TITLE OR TYPE OF DOCUMENT

50+Notary, Sub, ExA+B

NUMBER OF PAGES

9/23/98

DATE OF DOCUMENT

signer of Subordination Agent
= Grossmont Bank

SIGNER(S) OTHER THAN NAMED ABOVE

Subordination Agreement

The undersigned, Grossmont Bank, a California banking corporation, beneficiary under that certain Construction Deed of Trust recorded on December 23, 1997 as Document No. 1997-0653510 in the Official Records of San Diego County, California, and as beneficiary under that certain Deed of Trust recorded February 23, 1998 as Document No. 1998-0091627 in the Official Records of San Diego County, California, hereby consents to the within Declaration of Covenants, Conditions and Restrictions for Bernardo Ridge and hereby subordinates the lien of said deeds of trust to the provisions contained herein.

GROSSMONT BANK, a California
banking corporation

By: *Walter Stenger* *Att.*
Its:

By: *Kathy M. Carlin*
Its: *H.U.P.*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of San Diego

On October 19, 1998 before me, Berry P. Fieck

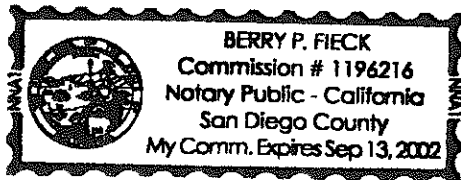
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Walter Strangman and Kathy M. Galvin

NAME(S) OF SIGNER(S)

☒ personally known to me - ~~OR~~ - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Berry P. Fieck
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

Exhibit A

DESCRIPTION OF INITIAL PROPERTY AND PROJECT NO. 1

Module A and the Remainder Parcel as shown, described and defined on the Condominium Plan of "Bernardo Ridge Phase I" recorded in the Office of the County Recorder of San Diego County on Oct. 26, 1998, as File No. 1998-0692720 ("Condominium Plan").

Those portions of Module M as shown, described and defined on the Condominium Plan, which are designated as Maintenance Access on the Condominium Plan.

Exhibit B

DESCRIPTION OF ANNEXABLE REAL PROPERTY

All of Parcels 1 and 3 of Parcel Map No. 18051, in the City of San Diego, County of San Diego, State of California, filed in the Office of the San Diego County Recorder on June 17, 1998, except Module A and the Remainder Parcel, as shown, described and defined on the Condominium Plan of "Bernardo Ridge Phase I", recorded in the Office of the County Recorder of San Diego County on Oct. 26, 1998, as File No. 1998- 0692720.