

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR  
MONTELOMA

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THE LUSK COMPANY  
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DECLARATION OF  
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MONTELOMA

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS FOR  
MONTELOMA

This Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements ("Declaration") is made by TIERRASANTA L-L PARTNERSHIP, a California General Partnership ("Declarant").

RECITALS:

A. Declarant is the owner of certain real property ("the Property") located in the City of San Diego, in San Diego County, California, more particularly described as follows:

Lots 1 through 46, inclusive, of Tierrasanta Norte VII in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12117 (the "Map") filed in the Office of the San Diego County Recorder on July 13, 1988, as File No. 88-337848.

B. Declarant intends to develop the Property, and any additional real property annexed thereto as provided herein, as a planned residential development (the "Project") according to a general plan of improvement (the "General Plan"). Declarant desires to impose the Restrictions set forth herein upon the Property in furtherance of the General Plan.

Therefore, Declarant hereby declares that all of the Project shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following Restrictions all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Project, in furtherance of the General Plan for the development, maintenance, protection, sale, use, occupancy and enjoyment thereof. These Restrictions shall run with the land and shall inure to the benefit of and be binding upon Declarant, each of the Owners, and each of their respective successors, assigns, grantees, heirs, executors, administrators and devisees.

## ARTICLE I

### DEFINITIONS

Unless otherwise expressly provided, the following words and phrases when used herein shall have the following meanings.

Section 1.01 - Annexable Property: "Annexable Property" shall mean the real property (including all Improvements thereon) described on Exhibit "A" attached hereto and incorporated herein by this reference, which is subject to annexation to the Property by Declarant in Phases as provided in Article XVI of this Declaration.

Section 1.02 - ARC or Architectural Committee: "ARC" or "Architectural Committee" shall mean the architectural review committee created under Article III of this Declaration.

Section 1.03 - Articles: "Articles" shall mean the Articles of Incorporation of the Association, as such Articles may be amended from time to time.

Section 1.04 - Assessments: "Assessments" shall mean the combination of each of the following described charges:

(a) "Annual Assessment" shall mean the annual charge against each Owner and his Residence, representing that Owner's portion of the Common Expenses.

(b) "Capital Improvement Assessment" shall mean a charge against each Owner and his Residence, representing a portion of the costs to the Association for installation or construction of any Improvements on any portion of the Association Maintained Property which the Association may from time to time authorize under the provisions of this Declaration.

(c) "Reconstruction Assessment" shall mean a charge against each Owner and his Residence, representing a portion of the cost to the Association for reconstruction of any portion of the Improvements on the Association Maintained Property under the provisions of this Declaration.

(d) "Special Assessment" shall mean a charge against a particular Owner and his Residence, directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association at the request of that Owner, or for corrective action performed, or a reasonable fine or penalty assessed by the Board, plus attorneys' fees, interest and other charges on such Special Assessment, payable by that Owner under the provisions of this Declaration. Special Assessments shall not include any late payment penalties, interest charges or costs (including attorneys' fees) incurred by the Association in the collection of Annual, Capital Improvement and Reconstruction Assessments.



Section 1.05 - Association: "Association" shall mean MONTELOMA HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns.

Section 1.06 - Association Maintained Property: "Association Maintained Property" shall mean all those portions of the Property and the Improvements thereon (including, without limitation, the Wall Maintenance Areas and the Slope Maintenance Areas) to be maintained by the Association.

Section 1.07 - Beneficiary: "Beneficiary" shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee or Beneficiary.

Section 1.08 - Board or Board of Directors: "Board or Board of Directors" shall mean the Board of Directors of the Association, elected in accordance with the Bylaws.

Section 1.09 - Budget: "Budget" shall mean a written itemized estimate of the income and Common Expenses of the Association in performing its functions under this Declaration, prepared as provided in the Bylaws.

Section 1.10 - Bylaws: "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.11 - City: "City" shall mean the City of San Diego.

Section 1.12 - Close of Escrow: "Close of Escrow" shall mean the date on which a deed is recorded which conveys a Residence through a transaction requiring the issuance of a Public Report.

Section 1.13 - Common Area: "Common Area" shall mean the combination of the Association Maintained Property and all the real property and improvements, if any, including, without limitation, slopes, passageways and other landscape areas which are owned in fee simple by the Association. The Common Area to be owned in fee simple by the Association at the time of the first Close of Escrow for the sale of a Lot in Phase 1 of the Project includes the real property described on Exhibit "B" attached hereto and incorporated herein by this reference. Additional Common Area may be annexed to the Property pursuant to the provisions of Article XVI hereof. Title to any portion of the Common Area in any Phase of the Project may be subject to a prior dedication to the City.

Section 1.14 - Common Expenses: "Common Expenses" shall mean actual and estimated costs of (a) maintenance, management, operation, repair and replacement of the Association Maintained Property; (b) unpaid Capital Improvement, Reconstruction and Special Assessments; (c) any commonly metered charges for the Project; (d) management, administration of the Association including, but not limited to, compensation paid to Managers, accountants, attorneys and Association employees; (e) all utilities, gardening, security and other services benefiting the Common Area; (f) fire, casualty and liability insurance, workers' compensation insurance, and other insurance covering the Common Area, the directors, officers and agents of the Association; (g) the costs of obtaining any fidelity bonds as required hereunder; (h) taxes (including any blanket taxes on the Property) paid by the Association; (i) amounts paid by the Association for discharge of any lien or encumbrance levied against the Project, or portions thereof; (j) maintaining adequate reserves for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis; and (k) any other item or items designated by the Association for any reason whatsoever in connection with the Project, for the benefit of all of the Owners.

Section 1.15 - Declarant: "Declarant" shall mean:

(a) Tierrasanta L-L Partnership, a California General Partnership, and its successors and assigns by merger, consolidation or purchase of all or substantially all of its assets; and

(b) any Person or his successors and assigns, who purchases or ground leases from the Declarant named in subsection (a) above, five (5) or more Residences or one or more unimproved Lots within the Project for the purpose of selling or leasing Residences to the public if such purchaser or lessee agrees in writing with Declarant to accept assignment of Declarant's rights and duties as to the portion of the Project purchased and such writing is recorded against such portion of the Project.

Section 1.16 - Declaration. "Declaration" shall mean this instrument, as such instrument is amended from time to time.

Section 1.17 - Deed of Trust: "Deed of Trust" shall mean a Mortgage or a Deed of Trust, as the case may be.

Section 1.18 - DRE: "DRE" shall mean the California Department of Real Estate and any successors thereto.

Section 1.19 - Dwelling: "Dwelling" shall mean any structure and related Improvements located on a Lot which are designed for use and occupancy as a single-family residence.

Section 1.20 - Family: "Family" shall mean one (1) or more natural persons each related to the other by blood, marriage or adoption, or one or more natural persons not all so related, but who maintain a common household in a Residence.

Section 1.21 - FHA: "FHA" shall mean the Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to the FHA's function of insuring notes secured by Mortgages on residential real estate.

Section 1.22 - FHLMC: "FHLMC" shall mean the Federal Home Loan Mortgage Corporation (also known as The Mortgage Corporation) created by Title II of the Emergency Home Finance Act of 1970, and any successors to such corporation.

Section 1.23 - Fiscal Year: "Fiscal Year" shall mean the fiscal accounting and reporting period of the Association selected by the Board.

Section 1.24 - FNMA: "FNMA" shall mean the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and any successors to such corporation.

Section 1.25 - GNMA: "GNMA" shall mean the Governmental National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successor to such association.

Section 1.26 - Improvement: "Improvement" shall mean all structures and appurtenance thereto of any type and kind within the Project, including, without limitation, all Dwellings, buildings, outbuildings, sprinklers and sprinkler pipes and heads, utility installations, roads, drives, driveways and walkways, parking areas, fences, screening walls, retaining walls, hedges, windbreaks, trees and shrubs and other landscaping, antennae, poles and signs within the Project.

Section 1.27 - Lot: "Lot" shall mean any legal parcel of land shown on the Map or included in any real property annexed into the Project as provided herein.

Section 1.28 - Maintenance Funds: "Maintenance Funds" shall mean the accounts created for receipts and disbursements under Article IV, Section 4.02 hereof.

Section 1.29 - Manager: "Manager" shall mean the person or entity employed by the Association, pursuant to and limited by Article II, Section 2.09 hereof, and delegated the duties, power or functions of the Association as limited by said Section.

Section 1.30 - Map: "Map" shall mean the Map described in Recital A above.

Section 1.31 - Member: "Member" shall mean any Person holding a membership in the Association as provided in this Declaration. The term Member shall be synonymous with the term Owner herein.

Section 1.32 - Membership: "Membership" shall mean the property voting and other rights and privileges of the members as provided herein, together with their corresponding duties and obligations.

Section 1.33 - Mortgage: "Mortgage" shall mean any recorded Mortgage or Deed of Trust or other conveyance of a Residence or other portion of the Project to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" when used herein shall be synonymous with the term "Mortgage."

Section 1.34 - Mortgagee: "Mortgagee" shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust

Section 1.35 - Mortgagor: "Mortgagor" shall mean a Person who mortgages his Residence to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust.

Section 1.36 - Notice and Hearing: "Notice and Hearing" shall mean written notice and a public hearing before a forum appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person, or by counsel at the Owner's expense, in the manner further specified in the Bylaws.

Section 1.37 - Notice of Annexation: "Notice of Annexation" shall mean any instrument recorded under Article XVI hereof to annex all or any portion of the Annexable Property to the Property.

Section 1.38 - Owner: "Owner" shall mean the Person or Persons holding a fee simple interest in any Residence of the Project, including sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.39 - Person: "Person" shall mean a natural individual, a trustee, a partnership, a corporation or any other entity with the legal right to own real property.

Section 1.40 - Phase: "Phase" shall mean any portion of the Project for which a Public Report has been issued by the DRE. The Property and the Improvements constructed thereon shall be Phase 1 of the Project.

Section 1.41 - Project: "Project" shall mean the Property, any property annexed thereto as provided in this Declaration (including the Annexable Property, and all Improvements thereon).

Section 1.42 - Project Documents: "Project Documents" shall mean the combination of the Articles, Bylaws, this Declaration and the Rules and Regulations for the Project established by the Board from time to time, as the governing instruments of the Project.

Section 1.43 - Property: "Property" shall mean that certain real property described in Paragraph A of the Recitals, located in the City of San Diego, San Diego County, California.

Section 1.44 - Public Report: "Public Report" shall mean the final subdivision public report issued by the DRE for any Phase of the Project.

Section 1.45 - Record, File, Recordation: "Record," "File" or "Recordation" shall mean, concerning any document, the recordation or filing of that document in the Office of the County Recorder of the County.

Section 1.46 - Residence: "Residence" shall mean the combination of a Lot and all Improvements (including a Dwelling) intended for residential use thereon.

Section 1.47 - Restrictions: "Restrictions" shall mean the covenants, conditions, restrictions, easements, equitable servitudes, liens and charges created by, and described in, this Declaration.

Section 1.48 - Rules and Regulations: "Rules and Regulations" shall mean the rules and regulations adopted by the Board, from time to time, in the manner specified in the Bylaws and this Declaration.

Section 1.49 - Slope Maintenance Areas: "Slope Maintenance Areas" shall mean the slope areas on certain Lots over which the Association has an easement and is obligated to maintain. The Slope Maintenance Areas located in Phase 1 are depicted on Exhibit "C" attached hereto and incorporated herein by this reference.

Section 1.50 - VA: "VA" shall mean the Veterans Administration of the United States of America and any department or agency of the United States government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

Section 1.51 - VA Administrator: "VA Administrator" shall mean the Administrator of Veterans Affairs, an Officer of the United States of America.

Section 1.52 - Wall Maintenance Areas: "Wall Maintenance Areas" shall mean those certain walls and/or fences located on portions of certain Lots which will be maintained by the Association. The walls and/or fences in Phase 1 to be maintained by the Association are more particularly depicted on Exhibit "D" attached hereto and incorporated herein by this reference.

## ARTICLE II

### ASSOCIATION

Section 2.01 - Association is Management Body: The Association is hereby designated as the management body of the Project, and as such, shall have the right and power to do all things necessary and appropriate for its management and operation. The Association shall have those powers and duties specified in this Article as well as all those general and implied powers that a California nonprofit mutual benefit corporation may exercise in operating for the general welfare of its Members, subject only to the limitations on such powers set forth in the Project Documents. The affairs of the Association shall be managed by the Board, whose members shall be elected and shall operate as provided in the Bylaws.

Section 2.02 - Specified Duties and Powers: In addition to its other powers and duties described elsewhere in the Project Documents, the Association, acting through the Board, shall have the power and, except where specified otherwise, the duty to do the following:

(a) Maintain, or provide for the maintenance of, the Association Maintained Property (including all Improvements thereon) in the condition and manner specified in Article VIII, Section 8.02;

(b) Enforce, by all means authorized in the Project Documents, the Owners' obligations to maintain and repair all portions of the Project subject to their exclusive control (including their Residences) in the condition and manner specified in Article VIII, Section 8.01;

(c) Assume and pay out of the Assessments, collected as provided in this Declaration, all Common Expenses;

(d) Adopt and enforce Rules and Regulations for the operation of the Association in the manner provided in the Bylaws;

(e) Cause financial statements and Budgets for the Association to be regularly prepared and copies distributed to the Members in the manner provided in the Bylaws;

(f) Subject to the limitations specified in the Project Documents, elect, in its discretion, to (1) employ or contract with a professional Manager to perform all or part of the Association's duties, and/or (2) delegate its powers to committees, officers and employees;

(g) Subject to the limitations specified in the Project Documents, contract for any materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations or insurance, or to pay any taxes or assessments which, in the Board's opinion, is necessary or proper for the operation of the Association or for the enforcement of this Declaration;

(h) Enforce by appropriate means all provisions of the Project Documents and any contracts or other agreements to which the Association is a party;

(i) Exercise the powers and perform the duties specified in Article IV of the Bylaws to be exercised by the Board;

(j) Make available for inspection and copying by any prospective purchaser of a Residence, any Owner, and the Beneficiaries, insurers and guarantors of the first Mortgages on any Residences, current copies of the Project Documents and all of the Association's other books, records and financial statements. "Available for inspection," as used in this subsection, means available for inspection upon request during normal business hours or under other reasonable circumstances. The Board shall establish reasonable rules with respect to (1) notice to be given to the custodian of records by an Owner desiring to make the inspection, (2) hours and days of the week when such an inspection may be made, and (3) payment of the cost of reproducing copies of documents requested by an Owner. Any fee established by the Board to reproduce requested documents shall not exceed the Association's reasonable costs of reproduction;

(k) Elect, in its discretion (but without the obligation to do so) to remove or replace any Improvement that extends into the Common Area under the authority of an easement when access to any utility lines and facilities is requested by the utility company responsible therefor; provided, however, that the cost thereof shall be assessed against the Owner of the Residence involved as a Special Assessment if that Owner caused the Improvement to be placed within the Common Area without the legal right to do so; and

(1) Grant licenses, easements and rights-of-way over the Common Area for private streets and utilities lines and facilities where necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Project or for the preservation of the health, safety, convenience and welfare of the Owners.

Section 2.03 - Membership: Every Owner of a Residence shall be a Member of the Association and shall comply with all of the provisions of the Project Documents. The foregoing is not intended to include any Person who holds an interest in a Residence merely as security for performance of an obligation.

Section 2.04 - Classes of Voting Membership: The Association shall have two (2) classes of voting Membership as follows:

Class A: Class A Members shall originally be all Owners, except Declarant for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Residence owned and subject to Assessment. Declarant shall become a Class A Member concerning the Residences it owns upon conversion of its Class B Membership as provided below.

Class B: The Class B Member shall be Declarant, and shall be entitled to three (3) votes for each Residence owned and subject to Assessment. The Class B Membership shall cease in each Phase and be converted to Class A Membership on the happening of any of the following events, whichever occurs earliest:

(1) The second anniversary of the original issuance of the most recently issued Public Report for a Phase; or

(2) The fourth anniversary of the original issuance of the Public Report for Phase 1; or

(3) The seventh anniversary of the Recordation of this Declaration.

Section 2.05 - Required Percentages: All voting rights shall be subject to the provisions of the Project Documents. Except as provided in Article IV, Sections 4.04(c) and 4.06, and Article XIII, Section 13.02 of this Declaration, and Article IV, Section 4.08 of the Bylaws: (a) as long as there exists a Class B Membership, any provision of the Project Documents which expressly requires the vote or written consent of a specified percentage of the voting power of the Association before action may be undertaken (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) shall require the vote or written consent of such specified percentage of the voting power of each class of Membership, and (b) when the



Class B Membership has terminated, any provision of the Project Documents which expressly requires the vote or written consent of Owners representing a specified percentage of the voting power of the Association before action may be undertaken shall then require the vote or written consent of Owners representing such specified percentage of both the total voting power of the Association and the voting power of the Association residing in Owners other than Declarant.

Section 2.06 - Membership and Voting Rights for Co-Owners:

As provided above, Class A Members shall be entitled to one (1) vote for each Residence in which they hold the interest required for membership. When more than one Person holds such interest or interests in any Residence, all such Co-Owners shall be Members and may attend Association meetings, but only one Co-Owner shall be entitled to exercise the vote to which the Residence is entitled. Co-Owners may, from time to time, designate one of their number to vote. Fractional votes shall not be allowed, and the Class A vote for each Residence shall be exercised, if at all, as a unit. Where no voting Co-Owner is designated or if such designation has been revoked, the vote for such Residence shall be exercised as a majority of the Co-Owners mutually agree. Unless the Board receives a written objection from a Co-Owner, it shall be presumed that the voting Co-Owner is acting with the consent of his Co-Owners. No vote shall be counted for any Residence where the majority of the Co-Owners present in person or by proxy and representing such Residence cannot agree to that vote or other action. The non-voting Co-Owner or Co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Residence and shall be entitled to all other benefits of ownership.

Section 2.07 - Vesting of Voting Rights: The voting rights attributable to any Residence shall not vest until an Assessment has been levied against that Residence by the Association as provided in Article IV of this Declaration.

Section 2.08 - Transfer: No Membership in the Association shall be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Residence to which that Membership is appurtenant and then only to the purchaser or Mortgagee of that Residence. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Residence to a contract purchaser under an agreement to purchase shall be entitled to delegate his Membership rights to such contract purchaser. Such delegation shall be in writing and shall be delivered to the Board before the contract purchaser may vote; however, the contract seller shall remain liable for all charges and Assessments attributable to his Residence until fee title thereto is transferred. If the Owner of any Residence fails or refuses to transfer the Membership registered in his

name to the purchaser of his Residence upon transfer of fee title thereto, the Board shall have the right to record the transfer upon the books of the Association. The Association may levy a reasonable transfer fee against a new Owner and his Residence (which fee shall be added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the membership to the new Owner on the records of the Association provided such fee does not exceed the Association's actual cost involved in changing its records of ownership.

Section 2.09 - Use of Manager: The Board, acting on behalf of the Association, may contract with a Manager for the performance of such portion or portions of the Association's duties as the Board deems necessary or appropriate. The term of such contract, or any contract with Declarant for the furnishing of services to the Association shall not exceed one (1) year, renewable by agreement of the parties for successive 1-year periods, and such contract shall be terminable by the Association, acting through the Board, at any time (a) for cause upon thirty (30) days' written notice thereof, and (b) without cause or the payment of a termination fee upon ninety (90) days' written notice. The Contract shall also require the Manager to obtain, at its expense and to the extent available, fidelity bond coverage, naming the Association as obligee, for any employees of the Manager handling Association funds, in an amount not less than the estimated maximum funds, including reserve funds, in the custody of Manager at any given time during the term of each bond; however, in no event may the aggregate amount of such bonds be less than the sum equal to three (3) aggregate Annual Assessments on all Residences plus reserves.

Section 2.10 - Unsegregated Real Property Taxes: To the extent not assessed to or paid by the Owner, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Common Area. All such Association tax payments shall be included in the Common Expenses.

### ARTICLE III

#### ARCHITECTURAL REVIEW COMMITTEE

Section 3.01 - Members of the Committee: The Architectural Review Committee (sometimes called the "Architectural Committee," the "Committee," or the "ARC" in this Declaration) shall consist of three (3) members. The initial members of the Committee shall be appointed by Declarant. Declarant shall also have the right and power to appoint or remove a majority of the members of the ARC or to fill any vacancy of such majority until the "Turnover Date." The Turnover Date shall be the earlier to occur of the following:

(a) The date on which Close of Escrow has occurred for the sale of ninety percent (90%) of the Residences then subject to this Declaration [and, subject to subsection (b) below, Declarant's rights of appointment may be reinstated upon annexation of additional Residences pursuant to Article XVI hereof]; or

(b) Five (5) years after the date of original issuance of the Public Report for Phase 1 and continuing until the Turnover Date, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. ARC members appointed by the Board shall be from the Membership of the Association, but ARC members appointed by Declarant need not be Members of the Association. Board members may also serve as ARC members.

Section 3.02 - Architectural Control and Approval:

(a) Committee's Duties: The ARC shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and shall perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with ARC approved plans.

(b) Committee Approval Required: No construction, alteration, removal, relocation, repainting, demolishing, addition, modification, decoration, redecoration or reconstruction of any Improvement in the Project (including, without limitation, solar energy equipment) shall be commenced or maintained, until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to, and approved in writing by, the ARC. Notwithstanding the foregoing, however, (a) any Improvement may be repainted without the ARC's approval, so long as the Improvement is repainted the identical color which it was last painted and (b) the ARC's approval and control powers concerning solar energy equipment shall be subject to the provisions of California Civil Code Section 714.

(c) Plan Submission and Approval Criteria: Any Owner submitting plans and specifications for ARC approval (the "Applicant") shall obtain a written dated receipt for such plans and specifications from an authorized agent of the ARC. The ARC shall approve such submitted plans and specifications only if it determines that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from

the beauty, wholesomeness and attractiveness of the Project or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. The ARC may condition its approval upon (1) the Applicant furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be recorded against the Property as a result of such work, (2) such changes therein as it deems appropriate, (3) the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (4) the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (5) the Applicant's agreement to reimburse the Association for the cost of the maintenance, or (b) the Applicant's agreement to complete the proposed work within a stated period of time, or all of the above, and may require submission of additional plans and specifications or other information before approving or disapproving the material submitted. The ARC may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The ARC may provide that the amount of the fee shall be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or additions contemplated. The ARC may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until the ARC's receipt of all required submissions, it may postpone review of any partial submissions.

(d) Approval Time Period: The ARC's decision concerning any submitted plans and specifications and the reasons for such decision shall be transmitted by the ARC to the Applicant at the address set forth in the application for approval, within forty-five (45) days after receipt by the ARC of all materials required to be submitted. Any application submitted under this Section shall be deemed approved, unless written disapproval or a request for additional information or materials by the ARC has been transmitted to the Applicant within forty-five (45) days after the date of receipt by the Committee of all required materials.

(e) Governmental Approvals Also Required. The Applicant shall also satisfy all City and other governmental entity review or permit requirements before making any alterations or Improvements permitted hereunder. Such requirements include, without limitation, the requirement that the Applicant obtain the City's approval (in addition to the ARC's approval) of any building additions to his Residence, including patio covers, before installing such additions. Applicant should be advised that City

regulations may prohibit the construction of any building additions to his Residence due to the fact that the presently existing Residence, without any additions, may possess the maximum square footage permitted on Lots within the Project. Applicant should consider and verify all pertinent City regulations prior to installing any building additions.

Section 3.03 - Meetings of the Committee: The ARC shall meet from time to time as necessary to perform its duties hereunder. The ARC may, from time to time, by a resolution unanimously adopted in writing, designate an ARC Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the ARC, except the granting of variances pursuant to Section 3.08. In the absence of such designation, the vote of a majority of the ARC or the written consent of a majority of the ARC taken without a meeting, shall constitute an act of the ARC.

Section 3.04 - No Waiver of Future Approvals: The ARC's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the ARC's approval under this Article shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter subsequently or additionally submitted for approval or consent.

Section 3.05 - Compensation of Members. The members of the ARC shall receive no compensation for services rendered, other than reimbursements for expenses incurred by them in the performance of their duties hereunder. Notwithstanding the preceding sentence, however, any architect or similar professional employed by the ARC shall be entitled to a fee.

Section 3.06 - Inspection of Work and Correction of Defects: Inspection of work and correction of defects therein shall proceed as follows:

(a) The Owner shall give the ARC a written notice of completion promptly after the completion of any work which required the ARC's approval under this Article.

(b) At any time both during the course of construction and for a period of sixty (60) days after the ARC has received a notice of completion for such work, the ARC or its duly authorized representative may inspect it. If the ARC finds that the work was done without obtaining approval of plans therefor or was not done in substantial compliance with the approved plans, it shall notify the Owner in writing, specifying the particulars of noncompliance, and shall require the Owner to remedy the same.

(c) If the Owner has not remedied the noncompliance within sixty (60) days after receipt of a noncompliance notice, the ARC shall notify the Board in writing of such failure. The Board, after Notice and Hearing, shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date the notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board, at its option, may Record a Notice of Noncompliance and may peacefully remedy the noncompliance. The Owner shall reimburse the Association, upon demand, for all expenses (including reasonable attorneys' fees) incurred in connection therewith and if such expenses are not promptly repaid, the Board shall levy a Special Assessment against the Owner for reimbursement as provided in this Declaration. The Association's right to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or in this Declaration.

(d) If for any reason the ARC fails to notify the Owner of any noncompliance within sixty (60) days after receipt of written notice of completion from the Owner, the Improvements shall be deemed to be in accordance with the approved plans.

Section 3.07 - Limitation of Liability and Review: Neither Declarant, the ARC, any member of the ARC, the Board nor their authorized representatives, shall be liable to any Owner for any loss, damage or injury arising out of or connected to the ARC's performance of its duties hereunder, unless due to the ARC's willful misconduct or bad faith. The ARC shall review and approve or disapprove all plans required to be submitted to it, solely on the basis of aesthetic considerations, consistency with this Declaration, the overall benefit or detriment which would result in the immediate vicinity and the Project generally, and the other considerations set forth in this Article. The ARC shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 3.08 - Variances: The ARC may permit variances from any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area structural placement, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, signed by at least a majority of the ARC members, and shall become effective upon Recordation. The granting of a variance shall not be deemed to waive any

provisions of this Declaration for any purpose except as to the particular Residence and particular provision(s) hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Residence or the construction of any proposed Improvement.

Section 3.09 - Appeal: If the ARC disapproves any plans and specifications submitted to it, the Applicant may appeal that decision in writing to the Board; provided, however, that to qualify for Board consideration, such appeal must be received by the Board within fifteen (15) days after the ARC's final decision. The Board may submit any appeal request to the ARC for review, and the ARC shall submit its written recommendations concerning the appeal to the Board. The Board shall render its written decision within sixty (60) days of the receipt of the appeal request. The Board's failure to render a decision within that 60-day period shall be deemed a decision in favor of the Applicant.

Section 3.10 - Declarant's Construction and Maintenance Activities Exempt: Notwithstanding anything to the contrary in this Article, Declarant need not seek approval for, and the ARC shall have no authority over Declarant's development and construction activities until the Close of Escrow for the sale of the last Residence (including Residences located in any Phase of Annexable Property) in the Project by Declarant under a Public Report.

#### ARTICLE IV

##### ASSESSMENTS AND ASSOCIATION MAINTENANCE FUNDS

Section 4.01 - Creation of the Lien and Personal Obligation of Assessments: Declarant, for each Residence it owns, hereby covenants and agrees to pay, and each Owner of a Residence, by acceptance of a deed therefor whether or not it is expressed in that deed, is deemed to covenant and agree to pay to the Association all Annual Assessments for Common Expenses and all applicable Special Assessments, Reconstruction Assessments and Capital Improvement Assessments. Except as otherwise provided in this Declaration, all such Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge and continuing lien on the Residence against which it is made as well as the personal obligation of the Person who was the Owner of the Residence against which it is made at the time when it fell due. This personal obligation cannot be avoided by abandonment of the Residence or by an offer to waive use and enjoyment of any Common Area. The personal obligation for delinquent Assessments shall not pass to any new Owner unless expressly assumed by the new Owner.

Section 4.02 - Maintenance Funds: The Board shall establish no fewer than two (2) separate accounts (the "Maintenance Funds"), into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. The Maintenance Funds may be established as trust accounts at a banking or savings institution. The Maintenance Funds shall include: (a) an Operating Fund for payment of current Common Expenses of the Association, (b) a Reserve Fund to be used solely for payment of expenses for capital improvements, replacements, painting and repairs of the Association Maintained Property (which cannot normally be expected to occur on an annual or more frequent basis), and (c) any other funds which the Board may establish to the extent necessary under the provisions of this Declaration. To qualify for higher returns on accounts held at banking or savings institutions, the Board may commingle any amounts deposited into any of the Maintenance Funds with one another, provided that the integrity of each individual Maintenance Fund shall be preserved on the books of the Association by accounting for disbursements from, and deposits to, each Maintenance Fund separately. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such Fund are earmarked for specified purposes authorized by this Declaration.

Section 4.03 - Purpose of Assessments: The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, for the operation, replacement, improvement and maintenance of the Project, and to discharge any other obligations of the Association under this Declaration.

Section 4.04 - Annual Assessments:

(a) Levy and Collection: The Association, acting through the Board, shall levy and collect Annual Assessments from the Owner (including Declarant) of each Residence in the Project on an equal basis (based upon the number of Residences owned by each Owner) in an aggregate amount sufficient to cover all the Common Expenses.

(b) Commencement and Due Dates: The Annual Assessments for all of the Residences in each Phase of the Project shall commence on the first day of the month after the Close of Escrow for the first Residence in that Phase. Annual Assessments shall be paid and collected in installments in such amounts at such frequency as the Board shall establish; provided, however, that no such installments may be levied or collected more frequently than monthly. Annual Assessments for fractions of any month shall be



prorated. No notice of the due date of any installment shall be required other than the annual notice [described in subsection (c) below] specifying the amount thereof.

(c) Amount and Limitation on Increase: Until the end of the Association's Fiscal Year immediately following the Close of Escrow for the first Residence in the Project, the Annual Assessment shall be that amount shown on the Project Budget approved by the DRE, which amount shall be prorated based upon the number of months remaining in that Fiscal Year. Thereafter, the Board shall determine and fix the amount of the Annual Assessment and shall give written notice of any change in the amount thereof to every Owner at least thirty (30) days before the effective date of such change. Notwithstanding the preceding sentence, however, the Annual Assessment shall not, except as otherwise expressly permitted in Section 4.07, be increased by more than twenty percent (20%) over the Annual Assessment for the Association's prior Fiscal Year without the vote or written assent of a majority of Members, constituting a quorum, at a meeting or election of the Association. For the purposes of this Article IV, "quorum" means more than fifty percent (50%) of the Members of the Association. The Annual Assessments shall also be subject to adjustment as provided in Article XVI, Section 16.04 after the annexation of any Phase of the Annexable Property as provided in Article XVI.

(d) Supplemental Annual Assessments: If the Board, by majority vote, determines that the important and essential functions of the Association may be properly funded by an Annual Assessment in an amount less than the authorized maximum amount, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is now or will become inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the then maximum authorized Annual Assessment, the Board shall have the authority to levy, at any time by a majority vote, a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Residence.

(e) Application of Excess Funds and Distribution Upon Dissolution: The Board may, from time to time, determine that all excess funds in the Operating Fund be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Project, any amounts remaining in any of the Maintenance Funds shall be distributed for the benefit of the Members in the same proportions as such monies were collected from them.

Section 4.05 - Special Assessments: Any maintenance, repair or replacement performed by the Association within the Project

which is required because of the willful or negligent act of an Owner, his family, guests or invitees shall be done at the Owner's expense or, after Notice and Hearing, a Special Assessment therefor shall be made by the Board against his Residence. Notwithstanding anything to the contrary in this Section or elsewhere in the Project Documents, however, no Special Assessment shall be made unless all of the requirements of the Bylaws concerning the discipline of Members have been satisfied.

Section 4.06 - Capital Improvement Assessments: In addition to the Annual Assessments authorized above, the Board may levy, in any Fiscal Year, a Capital Improvement Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement of a capital improvement or other such addition upon the Common Area, including fixtures and personal property related thereof; provided that, except as expressly permitted in Section 4.07, no Capital Improvement Assessment in the aggregate exceeding five percent (5%) of the Association's budgeted gross expenses for that Fiscal Year shall be levied without the vote or written assent of a majority of Members, constituting a quorum, at a meeting or election of the Association. This Section shall not be construed as creating an affirmative obligation on the part of the Association to undertake or perform any Improvements upon the Common Area.

Section 4.07 - Alternate Limits on Certain Assessments:

(a) Emergency Situations: Annual Assessment and Capital Improvement Assessment increases necessary for addressing an "Emergency Situation" shall not be limited as provided in Sections 4.04 and 4.06. For purposes of this section, "Emergency Situation" is any one of the following:

(1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain the Project or any part of the Project for which the Association is responsible where a threat to personal safety on the Property is discovered.

(3) An extraordinary expense necessary to repair or maintain the Project or any part of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing the Budget. Prior to the imposition or collection of an Assessment under this subparagraph (3), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting

process. The resolution shall be distributed to the Members with the Notice of Assessment.

(b) Compliance With California Law and DRE Requirements: The provisions of this Section 4.07 are intended to satisfy the requirements of Section 1366 of the California Civil Code. If there is any conflict between this Section 4.07 and those other legal requirements, the latter shall prevail and control over the former.

Section 4.08 - Uniform Rate of Assessment: All Assessments provided for in this Article must be fixed at a uniform rate for all Residences within the Project.

Section 4.09 - Certificate Verifying Payment: The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the Assessments on a specified Residence have been paid. The Association shall furnish the requested certificate within ten (10) days of mailing or receipt of said request.

Section 4.10 - No Offsets: All Assessments shall be payable in the amount levied by the Association. No offsets against any Assessment 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 4.11 - Limited Exemptions:

(a) Non-Habitable Improvements: Declarant and any other Owner of a Residence subject to Assessment which does not include a structural Improvement for human occupancy shall be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such structural Improvements. This exemption shall include, without limitation, that portion of any Assessment attributable to (1) roof replacement, (2) exterior maintenance, (3) walkway and carport lighting, (4) refuse disposal, (5) cable television, and (6) domestic water supplied to any Dwellings. This exemption shall be in effect only until the earliest to occur of the following events: (i) a notice of completion of the structural Improvement has been Recorded, (ii) occupation or use of the Residence, or (iii) completion of all elements of the residential structures which the Association is obligated to maintain.

(b) Uncompleted Common Area Facilities: Declarant and the Owner of each Residence subject to Assessment shall be exempt from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence of a Common Area facility that is

not complete at the time Assessments commence. This exemption shall be in effect only until the earliest to occur of the following events: (1) a notice of completion for that Common Area facility has been recorded, or (2) the Common Area facility has been placed in use.

## ARTICLE V

### EFFECT OF NONPAYMENT OF ASSESSMENTS. REMEDIES OF THE ASSOCIATION

#### Section 5.01 - Delinquency and Acceleration:

(a) Delinquency: Any installment of an Assessment provided for in this Declaration shall become delinquent if not paid within thirty (30) days after the due date as established by the Board.

(b) Interest and Late Charges: The Board may adopt a system under which any installment of any Assessments not paid within thirty (30) days after the due date shall bear interest from the due date until paid at the rate of up to twelve percent (12%) per annum, but in no event more than the maximum rate permitted by law. Additionally, the Board may require the delinquent Owner to pay a late charge not to exceed ten percent (10%) of the delinquent Assessment or Ten Dollars (\$10.00), whichever is greater to compensate the Association for increased bookkeeping, billing and other administrative costs; provided, however, that no such late charge shall exceed the maximum amount permitted by law.

(c) Notice of Delinquency: If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice of delinquency (the "Notice of Delinquency") to the Owner and to each Beneficiary of a first Mortgage of a Residence that has requested a copy of the notice. Such Notice of Delinquency shall specify (1) the fact that the installment is delinquent, (2) the action required to cure the default, and (3) a date, not less than thirty (30) days after the date the notice is mailed to the Owner, by which such default must be cured.

#### Section 5.02 - Creation and Release of Lien:

(a) Creation of Lien: All Assessments other than Special Assessments assessed against a Residence in accordance with the provisions of this Declaration shall constitute a lien on that Residence prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any purchase money Mortgage of Record made in good faith and for value and recorded prior to the date on which the lien became effective.

(b) Notice of Lien: An Assessment lien shall become effective upon Recordation by the Board or its authorized agent of a notice of lien (the "Notice of Lien") securing the payment of any Annual, Capital Improvement or Reconstruction Assessment or installment thereof, levied by the Association against any Owner as provided herein. The Notice of Lien shall state (1) the amount of the Assessment or installment, as the case may be, and other authorized charges and interest, including the costs of preparing and recording the Notice of Lien, (2) the expenses of collection (including, without limitation, any attorneys' fees), (3) a sufficient description of the Residence against which the same has been assessed, (4) the name and address of the Association, (5) the name of the Owner of the Residence in question, and (6) in order for the lien to be enforced by non-judicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Lien shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association or the Association's authorized agent or attorney. The lien shall relate only to the individual Residence against which the Assessment was levied and not to the Property as a whole.

(c) Notice of Release: Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board shall cause a notice of satisfaction and release of lien (the "Notice of Release") to be Recorded. The Notice of Release shall state the satisfaction and release of the amount claimed. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

Section 5.03 - Enforcement of Liens: The Board shall enforce the collection of any amounts due under this Declaration by one (1) or more of the alternative means of relief authorized herein. The Assessment lien on a Residence may be enforced by sale of the Residence by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Annual, Capital Improvement or Reconstruction Assessment, or installment thereof, as provided herein. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of power of sale in Mortgages and Deeds of Trust, or in a manner permitted by law. An action may be brought to foreclose the Association's lien by the Board, or by any Owner if the Board fails or refuses to act, after (a) at least thirty (30) days have expired since the date on which the Notice of Lien was Recorded, and (b) at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Owner affected thereby. Such action shall also be subject to the provisions of

Section 5.01, if the Board accelerates the due date of any Assessment installments. The Association, through its agents, shall have the power to bid on the Residence at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an unlawful detainer action may be brought by the Association on behalf of the purchaser at the sale in order to secure occupancy of the defaulting Owner's Residence, and the defaulting Owner shall be required to pay the reasonable rental value of such Residence during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing or waiving any lien securing the same, but neither this provision or the institution of any suit to recover a money judgment shall constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated under this Section may include reasonable attorneys' fees as fixed by the court.

Section 5.04 - Priority of Assessment Liens: The lien of the Assessments, including interest and costs of collection (including attorneys' fees) provided for herein, shall be subordinate to the lien of any purchase money Mortgage upon any Residence. Sale or transfer of any Residence shall not affect the Assessment lien; however, the sale or transfer of any Residence pursuant to judicial or non-judicial foreclosure of a purchase money Mortgage shall extinguish the Assessment lien as to payments that became due before such sale or transfer. No sale or transfer shall relieve such Residence from any Assessments thereafter becoming due. Where the Mortgagee of a purchase money Mortgage of record or other purchaser of a Residence obtains title, such acquirer of title, his successors and assigns, shall not be liable for the Assessments chargeable to such Residence which became due before the acquisition of title to such Residence. Such unpaid Assessments shall be deemed to be Common Expenses collectable from all of the Owners of the Residences in the Property including such acquirer, his successors and assigns. This specification of priority concerning a purchase money Mortgage is not intended to derogate the priority of any other Mortgage which may be determined by general legal principles.

Section 5.05 - Limitation on Remedies: Notwithstanding anything to the contrary in this Article or elsewhere in this Declaration:

(a) The Association shall have no power to cause a Member's right to the full use and enjoyment of his Residence to be abridged or forfeited because of that Member's failure to comply with the provisions of the Project Documents, except where that abridgement or forfeiture results from a court judgment, an arbitration decision, a judicial foreclosure or sale under a

private power of sale because of the Owner's failure to pay Assessments levied by the Association.

(b) No Board decision to impose discipline shall be reached against a Member accused of failing to comply with the provisions of the Project Documents until the minimum due process requirements of Section 7341 of the California Corporations Code are satisfied.

(c) A monetary penalty imposed by the Association as a disciplinary measure for failure to comply with the Project Documents, or as a means of reimbursing the Association for costs incurred by the Association in their repair of damage to the Common Area and facilities, if any, thereon for the which the accused Member was allegedly responsible, or in bringing the Member and his Residence into compliance with the Project Documents, may not be characterized or treated in the Project Documents as an Assessment which may become a lien against that Member's Residence enforceable by a sale of his Residence under Sections 2924, 2924(b) and 2924(c) of the California Civil Code. The provisions of this subsection (c) do not apply to charges imposed against the accused Owner which consist of reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments.

## ARTICLE VI

### EASEMENTS AND OTHER PROPERTY RIGHTS

Section 6.01 - Slope Maintenance Area Easements: The Association shall have and is hereby granted an easement over all Slope Maintenance Areas for the purpose of installing landscaping and irrigation and for the purpose of performing maintenance, repair and other necessary work thereon.

Section 6.02 - Wall Maintenance Area Easements: The Association shall have and is hereby granted an easement over all Wall Maintenance Areas for the purpose of performing maintenance, repair and other necessary work thereon.

Section 6.03 - Encroachments: The Owner of each Residence shall have an easement over all adjoining Residences and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of structures or any other cause as long as the encroachment remains. In no event, however, shall any Owner have a valid easement for any encroachment caused by his willful misconduct. If any Improvement on a Lot is partially or totally destroyed, and then repaired or rebuilt, the Owner of

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Section 6.04 - Drainage Easements: Declarant hereby reserves for the benefit of itself, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and upon the Common Area.

Section 6.05 - Utility Easements and Other Utility Matters: The rights and duties of the Owners and the Association concerning sanitary sewer, water, electricity, gas, telephone and television lines and other facilities (collectively called "Utility Lines and Facilities") shall be governed by the following:

(a) Each representative utility company shall maintain all Utility Lines and Facilities on or within their respective easements located in the Project, if any; provided, however, that if any such utility company fails to do so, the Association shall be obligated to maintain those Utility Lines and Facilities.

(b) Whenever Utility Lines and Facilities are installed within the Project and it is necessary to gain access to the portion thereof which is located within or under a Residence owned by someone other than the Owner of the Residence serviced by those Utility Lines and Facilities, the Owner of the Residence so served shall have the right, and is hereby granted an easement to the full extent necessary therefor, to enter the other Resi-



Section 6.06 - Rights of Entry: The Board shall have a limited right of entry in and upon the Common Area and all Lots in the Project (excluding the interior of any Dwellings thereon) for the purpose of inspection, and taking whatever corrective action that the Board deems necessary or proper, consistent with the provisions of this Declaration. However, any such entry upon a Lot shall be made, except to effect emergency repairs or other emergency measures, only after three (3) days' prior written notice to the Owner thereof and after authorization of two-thirds (2/3) of the Board. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any portion of the Project or any Improvements required to be maintained or repaired by the Owners or Declarant.

Section 6.07 - Damage by Member: To the extent permitted by California law, each Member shall be liable to the Association for any damage to the Common Area not fully reimbursed to the Association by insurance if the damage is sustained because of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Member, his guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of a Residence from the Member, or his or their respective Family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the cost of such damage, or equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the Person for whom the Member may be liable as described above. In the case of joint ownership of a Residence, the liability of the Co-Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with the Co-Owners to the contrary. After Notice and Hearing as provided in the Bylaws, the cost of correcting the damage, to the extent not reimbursed to the Association by insurance, shall be a Special Assessment against such Member's Residence, and may be enforced as provided herein.

Section 6.08 - Waiver of Use: No Owner may exempt himself from any personal liability for Assessments duly levied by the Association, or release his Residence or other property owned by him from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities, if any, thereon or by abandonment of his Residence or any other property in the Project.

## ARTICLE VII

DECLARANT'S RIGHTS AND RESERVATIONSSection 7.01 - No Limitation on Development of Project:

Nothing in the Project Documents shall limit, and no Owner or the Association shall do anything to interfere with, Declarant's right to subdivide or re-subdivide any portion of the Project, or to complete Improvements to and on the Association Maintained Property or any portion of the Project owned solely or partially by Declarant, or to alter the foregoing or its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Project so long as any Residence in the Project remains unsold. If the General Plan for the Project has been submitted to and approved by FHA and VA, any alteration of Declarant's construction plans shall require the prior approval of FHA and VA if such alteration is inconsistent with the General Plan. Declarant's right hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conducting of its business of completing the work and disposing of the Residences by sale, resale, lease or otherwise.

Section 7.02 - Further Impairments:

Each Owner, by accepting a deed to a Residence, hereby acknowledges that Declarant's activities may temporarily or permanently impair the view, if any, of such Owner and may constitute an inconvenience or nuisance to the Owner, and hereby consents to such impairment, inconvenience and nuisance. This Declaration shall not limit Declarant's right, at any time before it conveys title to a Residence in the Project to a purchaser, to establish on that Residence additional licenses, easements, reservations and rights-of-way to itself, to utility companies or others, including, without limitation, those set forth in Article VI, as may from time to time be reasonably necessary for the proper development and disposition of the Project.

Section 7.03 - Other Rights:

Declarant may use any Residences it owns in the Project as model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain Architectural Committee approval of any Improvement constructed, placed or altered by Declarant on any portion of the Property. Declarant's rights hereunder and elsewhere in the Project Documents may be assigned by Declarant to any successor-in-interest to any portion of Declarant's interest in any portion of the Property by a Recorded written assignment.

Section 7.04 - No Amendment of This Article:

Notwithstanding any other provision of this Declaration, Declarant's prior written approval will be required before any amendment to this Article shall be effective.

Section 7.05 - Power of Attorney: Each Owner (with the exception of the VA Administrator) hereby grants, upon acceptance of the deed of his Residence, 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 Article.

Section 7.06 - Termination of Rights: Declarant's rights and reservations in this Article shall terminate on the seventh (7th) anniversary of the first Close of Escrow for the sale of a Residence in the Project.

## ARTICLE VIII

### MAINTENANCE AND REPAIR OBLIGATIONS

Section 8.01 - Maintenance Obligations of Owners: Except for those Slope Maintenance Areas and Wall Maintenance Areas on certain Lots to be maintained by the Association as provided in Section 8.02 below, each Owner shall, at his expense and subject to the provisions of this Declaration (including, without limitation, those pertaining to ARC approvals), maintain, repair, replace and restore all areas subject to his exclusive control, in a neat, sanitary, workable and attractive condition. Areas subject to an Owner's exclusive control shall be deemed to include, without limitation, the Owner's Lot (except the Slope Maintenance Areas and Wall Maintenance Areas, if any, thereon), the Dwelling and other Improvements thereon. If any Owner permits any such area to fall into disrepair, become dangerous, obstructed, unsafe, unsightly or unattractive or otherwise violate this Declaration, the Board shall have the right to pursue any of its legal remedies in addition to the right (but not the duty), after Notice and Hearing, to enter upon such Owner's Lot to make the appropriate repairs or to perform the appropriate maintenance, and the cost thereof shall be charged to the Owner as a Special Assessment.

Section 8.02 - Maintenance Obligations of Association: Subject to Article XI concerning destruction of Improvements and Article XII concerning eminent domain, the Association shall maintain, repair, replace and restore the Association Maintained Property in a neat, sanitary, workable and attractive condition. The Association Maintained Property to be maintained under this Section includes the following:

(a) The Slope Maintenance Areas (including all Improvements thereon);

(b) The Wall Maintenance Areas (including all Improvements thereon); and

(c) All landscaping within the Association Maintained Property and all mechanical, electrical and irrigation equipment within or serving it.

The cost of the foregoing shall be paid for as Common Expenses out of the Assessments collected by the Association as provided in this Declaration.

Section 8.03 - Repair and Maintenance of Common Fences: Subject to the approval of the ARC and any limitations contained in this Declaration and any applicable Rules and Regulations, the Owners of adjoining Residences with a common fence shall jointly maintain, repair, replace, paint (where applicable) and restore such common fence and shall equally share in the cost of such maintenance and repair. Subject to any applicable Rules and Regulations, such adjoining Owners shall jointly decide upon the time and manner in which such maintenance and repair shall be made. If any dispute arises between such adjoining Owners concerning such maintenance and repair, the matter shall be submitted to the Board for resolution upon the written request of one of such Owners addressed to the Association. The Board's decision shall be final and conclusive on such Owners.

## ARTICLE IX

### RESIDENCE AND USE RESTRICTIONS

All of the Project shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemptions of Declarant set forth in this Declaration.

Section 9.01 - Single-Family Residences: Residences shall be used exclusively for single-Family residential purposes, subject to the exemption granted Declarant under Article VII of this Declaration. An Owner may rent his Residence to a single Family provided that the Residence is rented for a term greater than thirty (30) days, subject to all of the provisions of this Declaration.

Section 9.02 - Parking and Vehicular Restrictions: No Owner shall park, store or keep anywhere in the Project or on any public or private street abutting or within the Project any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck). No Person shall park, store or keep any recreational vehicle (including, but not limited to, any camper unit, or motor home), bus, trailer coach, camp trailer, boat, aircraft, mobile home, inoperable vehicle or any other similar vehicle anywhere in the Project or on any public or private street abutting or within the Project except wholly within a garage and only with the