

garage door closed. In addition, no Person shall park, store or keep anywhere in the Project or on any public or private street abutting or within the Project any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. In addition, parking which obstructs free traffic flow, constitutes a nuisance, violates the Rules and Regulations, or otherwise creates a safety hazard is not permitted. Restoring or repairing of vehicles shall not be permitted anywhere in the Project or on any public or private street abutting or within the Project. Notwithstanding the foregoing, such repair shall be permitted within an Owner's garage when the garage door is closed, provided such activity is not undertaken as a business and provided further that such activity may be prohibited entirely or in part by the Board if the Board determines that such activity constitutes a nuisance. The Board shall determine, in its discretion, whether there is noncompliance with the parking and vehicular restrictions herein. Without in any way limiting the obligations of the Owners as elsewhere herein described, the Association, or its authorized agents, shall have the right to enforce all parking restrictions herein set forth and to remove any vehicles in violation thereof in accordance with the provisions of Section 22658 of the California Vehicle Code, or other applicable laws, codes and statutes. If, for any reason, the Association fails to enforce the parking restrictions, the City, shall have the right to enforce such parking restrictions in accordance with the California Vehicle Code and all other applicable laws, codes, statutes and local ordinances. Vehicles owned, operated or within the control of an Owner, or of a resident of such Owner's Residence, shall be parked in the garage to the extent of the space available therein.

Section 9.03 - Nuisances: No noxious or offensive activities (including but not limited to the repair of motor vehicles) shall be carried on in the Project or on any public street abutting or within the Project. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents, shall be placed or used in any such Residence. No loud equipment or large power tools, unlicensed off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Project, shall be located, used or placed on any portion of the Property, or on any public street abutting or within the Project, or exposed to the view of other Owners without the prior written approval of the ARC. The Board shall have the right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner shall permit or cause anything to be done or kept in the Project or on any public street abutting or within the Project which may increase the rate of insurance on Residences or in the Project, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Owners. No Person

shall commit or permit any nuisance on the Project. Each Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Residence. Each Owner shall be accountable to the Association and other Owners for the conduct and behavior of children residing in or visiting his Residence and other Family members or Persons residing in or visiting his Residence. Any damage to the Common Area, personal property of the Association, or property of another Owner, caused by such children or other Family members, shall be repaired at the sole expense of the Owner of the Residence where such children or other Family members or Persons are residing or visiting.

Section 9.04 - Signs: No sign, poster, display or other advertising device of any kind shall, for professional, commercial or business purposes, be erected or maintained anywhere on the Property or on any public or private street abutting or within the Project, or shown or displayed from any Residence, without the prior written consent of the Architectural Committee; provided, however, that the restrictions of this Section shall not apply to any sign or notice of customary and reasonable dimension which states that the Residence is for rent or sale, so long as it is consistent with the standards promulgated by the ARC. This Section shall not apply to any signs used by Declarant or its agents in connection with the sale or lease of Residences or the construction or alteration of the Residences or Common Area, traffic and parking control signs installed with the consent of the Board. Notwithstanding the foregoing, nothing contained in this Section shall be construed in such a manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the City.

Section 9.05 - Antennae: No radio station or shortwave operators of any kind shall operate from any Residence or any other portion of the Property unless approved by the ARC. With the exception of any master antenna maintained by the Association, no exterior radio antenna, "C.B." antenna, television antenna, or other antenna of any type shall be erected or maintained anywhere in the Property.

Section 9.06 - Outside Installations: No outside installation of any type, including but not limited to patio covers, outdoor lighting and clotheslines, shall be constructed, erected or maintained on any Residence, excepting as installed by Declarant as a part of the initial construction of the Project and except as may be installed by, or with the prior consent of the ARC, and where appropriate, the City. Furthermore, no exterior addition, change or alteration to any Residence shall be commenced without the prior written approval of the ARC and, where appropriate, the City. All private outdoor lighting shall be shaded and adjusted to fall on the same Residence as where

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such lights are located. Nothing shall be done in, on or to any portion of the Project which will or may tend to impair the structural integrity of any Dwelling or which would structurally alter that Dwelling except as otherwise expressly provided herein. No Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Residence for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner for the cost of such discharge, which cost shall be added to, and constitute a part of, the Annual Assessment levied against such Owner.

Section 9.07 - Animal Regulations: No animals, livestock, reptiles, insects, poultry or other animals of any kind shall be kept in any Residence except that usual and ordinary domestic dogs, cats, fish, and birds inside bird cages may be kept as household pets within any Residence provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes as may be determined by the Board. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be either kept within an enclosure or on a leash held by a person capable of controlling the animal. Furthermore, any Owner shall be liable to each and all remaining Owners, their Families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by an Owner or by members of his Family, his tenants or his guests. It shall be the duty and responsibility of each such Owner to clean up after such animals which have deposited droppings on or otherwise used any area of public street abutting or within the Property.

Section 9.08 - Business or Commercial Activity: No business or commercial activity shall be maintained or conducted on the Project, except that Declarant may maintain sales and leasing offices as provided in Article VII. Notwithstanding the foregoing, professional and administrative occupations may be carried on within the Residences, so long as there exists no external evidence of them, and provided further that all of the applicable requirements of the City are satisfied. No Owner shall use his Residence in such a manner as to interfere unreasonably with the business of Declarant in selling Residences in the Project, as set forth in Article VII of this Declaration.

Section 9.09 - Further Subdivision: Subject to Article VII, unless at least seventy-five percent (75%) of the first Mortgagees (based upon one (1) vote for each mortgage owned), or Owners representing seventy-five percent (75%) of the voting power of the Association residing in Owners other than Declarant

have given their prior written approval, and all applicable laws and regulations have been complied with, no Owner shall physically or legally subdivide his Residence in any manner, including without limitation any division of his Residence into time-share estates or time-share uses; however, the right of an Owner to rent or lease all of his Residence by means of a written lease or rental agreement subject to the Restrictions shall not be impaired. Any failure by the lessee of the Residence to comply with the terms of this Declaration or the Bylaws of the Association shall constitute a default under the lease or rental agreement. Notwithstanding the foregoing, no Residence in the Project may be partitioned or subdivided without the prior written approval of the Beneficiary of any first Mortgage on that Residence. This Section may not be amended without the prior written approval of the Beneficiaries of at least seventy-five percent (75%) of the first Mortgages of Residences in the Project.

Section 9.10 - Drainage: There shall be no interference with the established drainage pattern within the Project, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the ARC. For the purpose hereof, "established" drainage in any Phase is defined as the drainage which exists at the time of the first Close of Escrow for the sale of a Residence in such Phase, or that which is shown on any plans approved by the ARC.

Section 9.11 - Water Supply System: No individual water supply or water softener shall be permitted in any Residence unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any applicable water district, the City and all other applicable governmental authorities. Any sewage disposal system shall be installed only after approval by the ARC and any governmental health authority having jurisdiction.

Section 9.12 - Solar Energy Systems: Each Owner may install a solar energy system on the roof of his Dwelling so long as (a) the design and location of the solar energy system meets the requirements of applicable zoning district ordinances and the Uniform Building Code and associated legal requirements, and (b) that design and location receives the prior written approval of the ARC as provided in this Declaration.

## ARTICLE X

INSURANCESection 10.01 - Coverage Obtained by Board:

(a) The Board shall obtain and maintain the following types of insurance:

(1) Adequate blanket public liability insurance (including medical payments), with such limits as may be considered acceptable to FNMA (not less than \$1,000,000 covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Area;

(2) Fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Association Maintained Property; and

(3) Such other insurance as the Board, in its discretion, deems necessary, including, but not limited to, fidelity bonds, errors and omissions, directors, officers and agents liability insurance, medical payments, malicious mischief, liquor liability and vandalism and workers' compensation insurance, and insurance covering such other risks as is customarily covered in connection with planned residential projects similar to the Project in construction, location and use.

All such insurance shall be maintained for the benefit of the Association, the named insured, subject, however, to loss payment requirements as set forth herein.

(4) Fidelity Bonds: Except as otherwise provided in Article II, Section 2.09, fidelity bond coverage naming the Association as an obligee must be obtained, to the extent available, by or on behalf of the Association for any Person handling Association funds, including, but not limited to, officers, directors, trustees, and employees of the Association, whether or not such Persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association 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) months aggregate Annual Assessments on all Residences plus reserves.

(b) VA, FHA, FHLMC, FNMA and GNMA Requirements: Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements for projects established by the VA, FHA, FNMA, GNMA and FHLMC, so long as any of such entities is a Mortgagee or Owner of a Residence within the Project, except to the extent such coverage is not available or has been waived in writing by the VA, FHA, FNMA, GNMA and FHLMC, as applicable.

Section 10.02 - Waiver of Claim Against Association: As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another, the Board and Declarant, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

Section 10.03 - Right and Duty of Owner to Insure: Each Owner is responsible for providing insurance on his Residence and upon all other property therein. Nothing herein shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to person or property occurring inside his Residence or elsewhere in the Project. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association occurs and the proceeds payable thereunder shall be reduced by reason of Owners insurance coverage, that Owner shall assign the proceeds of such insurance to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 10.04 - Notice of Expiration Requirements: If available, each of the policies of insurance maintained by the Association shall contain a provision that said policy shall not be cancelled, terminated, materially modified or allowed to expire by its terms, without ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Beneficiary, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be cancelled or substantially modified without ten (10) days prior written notice to any insurance trustee named pursuant to Section 10.06 and to each FNMA servicer who has filed a written request with the carrier for such notice.

Section 10.05 - Insurance Premiums: Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Annual Assessments levied by the Association.

Section 10.06 - Trustee for Policies: The Association, acting through the Board, is hereby appointed and shall serve as the trustee of the interests of all named insureds under all Association maintained insurance policies. All insurance proceeds shall be paid to the Board as trustee and the Board shall have full power to receive such funds and to deal with them as provided herein. 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 Article XI of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the Association's insurance carriers. Any two (2) officers 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 all the named insureds, with the exception of the VA Administrator. Notwithstanding the foregoing, there may be named as an insured, a representative chosen by the Board, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to that trustee who shall have exclusive authority to negotiate losses under any Association insurance policy and to perform such other functions necessary to accomplish this purpose.

Section 10.07 - Actions as Trustee: Except as otherwise specified in this Declaration, the Board, acting on behalf of the Association and the Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of seventy-five percent (75%) of the first Mortgagees who have filed requests under Article XI, Section 11.03. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment and premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

Section 10.08 - Review of Coverage: The Board shall annually determine whether the amounts and type of insurance coverage that it has obtained under this Article provides adequate coverage, based upon then current construction costs, insurance practices in the area which may indicate that either additional insurance coverage or increased coverage under existing policies is necessary or desirable to protect the

interest of the Association, the Owners and their respective Mortgagees. If the Board determines that increased coverage of additional insurance is appropriate, it shall obtain the same. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Association Maintained Property, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

Section 10.09 - Required Waiver: All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

(a) Subrogation of claims against the Owners and tenants of the Owners;

(b) Any defense based upon co-insurance;

(c) Any right of setoff, counterclaim, apportionment, proration of contribution by reason of other insurance not carried by the Association;

(d) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;

(e) Any right of the insurer to repair, rebuild or replace, and, if the Improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount not more than the replacement value of the Improvements insured;

(f) Notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Residence; and

(g) Any right to require any assignment of any Mortgage to the insurer.

## ARTICLE XI

### DAMAGE OR DESTRUCTION

#### Section 11.01 - To Association Maintained Property:

(a) Insurance Proceeds Exceed 85% of Reconstruction Costs: If there is a total or partial destruction of any of the Improvements in the Association Maintained Property, and if the available proceeds of the insurance carried under Article X are sufficient to cover not less than eighty-five percent (85%) of



the costs of repair and reconstruction, the Improvement shall be promptly repaired or reconstructed, unless within ninety (90) days from the date of destruction, Owners then holding at least seventy-five percent (75%) of the total voting power of each class of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the Improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction is to take place, the Association shall, not later than one hundred twenty (120) days after the date of the destruction, execute, acknowledge and Record a certificate declaring the Owners' intention to rebuild.

(b) Insurance Proceeds Less Than 85% of Reconstruction Costs: If the proceeds of insurance carried under Article X are less than eighty-five percent (85%) of the costs of repair and reconstruction, the Improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, Owners then holding at least sixty-six and two-thirds percent (66-2/3%) of the total voting power of each class of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall, not later than one hundred twenty (120) days after the date of destruction, execute, acknowledge and Record a certificate declaring the Owners' intention to rebuild.

(c) Apportionment of Reconstruction Costs: If the Improvements are to be rebuilt pursuant to subsection (a) or (b) above, the Owners of all Residences shall be obligated to contribute such funds as shall be necessary to pay their proportionate share of the cost of rebuilding or reconstruction, over and above the available insurance proceeds. The proportionate share of each such Owner shall be equal for each Residence. If any Owner fails to pay his proportionate share, the Association may levy a Reconstruction Assessment against that Owner and his Residence, which may be enforced under the lien provisions in this Declaration or in any other manner provided herein.

(d) Rebuilding Contract: If rebuilding is authorized, the Association or its authorized representative shall, after having obtained bids from at least two reputable contractors as required by subsection (a) or (b) above, award the repair and reconstruction work to the lowest bidder that otherwise meets the

requirements set forth by the Association in soliciting bids. The Association shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of the contract. The Association shall take all steps reasonably necessary to assure the commencement and completion of authorized rebuilding at the earliest possible date.

(e) Distribution of Insurance Proceeds If No Reconstruction: If the Owners determine not to rebuild, then, subject to rights of Mortgagees as set forth in Article XIII, any insurance proceeds then available for such rebuilding shall instead be distributed to the Owners equally. The Association shall, within one hundred twenty (120) days of the date of such destruction, execute, acknowledge and Record a certificate declaring the intention of the Association not to rebuild.

(f) Minor Repair and Reconstruction: The Association shall have the duty to repair and reconstruct Improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed \$20,000. The Association is empowered to levy a Reconstruction Assessment for the cost of repairing and reconstructing Improvements to the extent insurance proceeds are unavailable.

Section 11.02 - To a Residence: If all or any portion of the Improvements on any Lot are damaged or destroyed, the Owner of that Lot shall repair and restore those Improvements at his expense. Such repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the ARC as provided herein.

Section 11.03 - Notice to Owners and Listed Mortgagees: The Board, upon receiving notice of any damage or destruction affecting a material portion of the Common Area, shall promptly notify all Owners and Beneficiaries, insurers and guarantors of first Mortgages on Residence in the Project who have filed a written request for such notice with the Board. The Board, upon receiving notice of any damage or destruction affecting a Residence, shall promptly notify any Beneficiary, insurer or guarantor of any Mortgage encumbering such Residence who has filed a written request for such notice with the Board.

## ARTICLE XII

MORTGAGEE PROTECTION

Section 12.01 - Mortgagee Protection: Notwithstanding any other provision of this Declaration, to the contrary, to induce the FHLMC, FNMA, GNMA, VA, FHA and other lenders and investors to participate in the financing of the sale of Residences in the Project, the following provisions contained within this Article are added hereto and to the extent these added provisions, conflict with any other provisions in this Declaration, these added provisions shall control. The Project Documents are sometimes hereafter in this Article collectively called the "constituent documents".

(a) No Right of First Refusal: The right of an Owner to sell, transfer or otherwise convey his Residence and the right of any first Mortgagee holding a first Mortgage on that Residence to foreclose or take title to that Residence pursuant to the remedies in the first Mortgage, or to accept a deed or assignment in lieu of foreclosure in the event of the Owner's default, or to sell or lease the Residence if required by the first Mortgagee, shall not be subject to any right of first refusal or any similar restriction created or purported to be created by the constituent documents.

(b) Priority of and Effect of Foreclosure on Assessment Liens: The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage as hereafter recorded on any Residence. The sale or transfer of any Residence shall not affect the Assessment liens; however, the sale or transfer of any Residence under judicial or non-judicial foreclosure of a first Mortgage or under any remedies provided for in the Mortgage or under any remedies provided for in the Mortgage shall extinguish the lien of such Assessments as to payments which become due before that sale or transfer. No sale or transfer shall relieve such Residence from liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Residence under the remedies provided in the Mortgage, or by a foreclosure of the Mortgage, or any purchaser at a foreclosure sale of a first Mortgage will not be liable for any unpaid Assessments or charges which accrue before the acquisition of title to such Residence by the Mortgagee (except for claims for a share of such Assessments or charges resulting from a reallocation of such Assessments or charges to all Residences including the mortgaged Residence).

(c) Unless at least two-thirds (2/3) of the first Mortgagees (based upon one vote for each first Mortgage owned) and two-thirds (2/3) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

(1) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any or all of the Common Area (The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Area shall not be deemed a transfer within the meaning of this clause);

(2) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against a Residence Owner;

(3) By act or omission change, waive or abandon any scheme of regulations, or their enforcement pertaining to the architectural design or the exterior appearance or maintenance of the Residence within the Project, the maintenance of the Common Area, or the upkeep of lawns and plantings in the Project;

(4) Fail to maintain fire and extended coverage on insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); or

(5) Use hazard insurance proceeds for losses to the Common Area for other than the repair, replacement or reconstruction thereof.

(d) First Mortgagees' Right to Pay Taxes and Insurance Premiums: First Mortgagees may, jointly or singly, pay any charges that are in default and that may or have become a charge against any portion of the Common Area and may pay any overdue premiums on hazard insurance policies (or secure new hazard insurance coverage on the lapse of a policy for the Common Area. Any first Mortgagee making such payments shall be entitled to immediate reimbursement therefor from the Association.

(e) First Mortgagee Priority concerning Insurance Proceeds and Condemnation Awards: No provision of the constituent documents shall be interpreted to give any Residence Owner, or any other party, priority over any rights of the first Mortgagee of the Residence under its Mortgage in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

(f) Assessment Reserve Requirement: The Annual Assessments provided for in the constituent documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area periodically maintained, repaired or replaced, and shall be payable in regular installments rather than by Special Assessments or Capital Improvements Assessments.

(g) Notices to First Mortgagees: The Association shall be required to give first Mortgagees the following written notices:

(1) Upon the first Mortgagee's request, notice of any default in the performance of the Owner of the mortgaged Residence of any obligation under the constituent documents which is not cured within sixty (60) days;

(2) Upon the first Mortgagee's request, timely notice of all meetings of the Association's Members;

(3) Timely notice of any substantial damage to or destruction of the mortgaged Residence;

(4) Timely notice of the actual or threatened condemnation or taking by other eminent domain proceeding of the mortgaged Residence (or any portion thereof); and

(5) At least thirty (30) days prior notice of any proposed amendment of this Declaration if such amendment requires the approval of first Mortgagees as provided herein.

(h) Restrictions on Management and Services and Contracts: Any agreement for professional management of the Project, or any contract providing for services of the Declarant, may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Any such agreements must provide for termination by either party without cause and without payment of a termination fee on not more than ninety (90) days' written notice.

(i) Fidelity Bond: The Board shall secure and cause to be maintained in force at all times a fidelity bond for Persons handling funds of the Association as provided in Article X, Section 10.01(a)(4).

(j) Right to Examine Books, Receive Audited Statements and Attend Meetings: A first Mortgagee of a Residence shall, upon request, be entitled to (1) examine the books and records of the Association during normal business hours; (2) receive an annual audited financial statement of the Project within ninety (90) days following the end of any Fiscal Year, if such statement has been prepared for the Association; and (3) designate a representative to attend all meetings of the Association's Members.

(k) Mortgage Information to Association: Each Owner shall notify the Association in writing within ten (10) days after the Close of Escrow for the purchase of his Residence of the name and address of his first Mortgagee, and thereafter each Owner shall

promptly notify the Association of any changes of name or address for his first Mortgagee. Each Owner hereby authorizes his respective first Mortgagee to furnish the Association with information concerning the status of the first Mortgage on the Owner's Residence and concerning the loan secured thereby.

(l) Further Assurances: In addition to the foregoing, the Board may enter into such contracts or agreement on behalf of the Association as are required in order to satisfy the guidelines of the VA, FHA, FHLMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Residences. Each Owner hereby agrees that it will benefit the Association and the Membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their Residences, if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time.

(m) Bonding for Completion: All intended improvements in any Phase other than Phase 1 shall be substantially completed or the completion of such Improvements shall be secured by a bond or other arrangement acceptable to the DRE before the first Close of Escrow for the sale of a Residence in such Phase. All such Improvements shall be consistent with the Improvements in Phase 1 in terms of quality and construction.

(n) Encroachments: If any portion of the Common Area encroaches upon any Residence or any Residence encroaches upon the Common Area or another Residence as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Improvements, an easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

Section 12.02 - Breach or Amendment Does Not Defeat Lien: Notwithstanding any other provision of this Declaration, no breach or amendment of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Mortgage or Deed of Trust upon a Residence made in good faith and for value; provided, however, that after foreclosure of such Mortgage or Deed of Trust such Residence shall remain subject to this Declaration and all amendments thereto.

Section 12.03 - Status of Loan to Facilitate Resale: Any first Mortgage given to Secure a loan to facilitate the resale of a Residence after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgagees under this Declaration.

Section 12.04 - FHA Regulatory Agreement: To induce FHA to insure mortgages on Residences in the Project, the Association may enter into an agreement with FHA concerning the financial and maintenance affairs of the Association, which agreement may be executed on FHA form No. 3278. If the Association enters into such an agreement, its provisions shall control in the event of a conflict with the provisions of any of the Project Documents, so long as FHA is insuring loans secured by mortgages on Residences in the Project.

Section 12.05 - VA and FHA Approval: So long as a Class B Membership exists, the prior approval of VA and FHA shall be required as a condition to (a) Annexation of a Phase, (b) mergers and consolidations, (c) Special Assessments and (d) any amendments to this Declaration.

### ARTICLE XIII

#### DURATION AND AMENDMENT

Section 13.01 - Duration: This Declaration shall continue in full force for a term of fifty (50) years from the date of Recordation hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless within the expiration period of the initial 50-year term or any extension thereof, a Declaration of Termination is Recorded, meeting the requirements of an amendment to this Declaration as set forth in Section 13.02 below. There shall be no severance by sale, conveyance, encumbrance, hypothecation or otherwise of an interest in any Residence from the Association Membership appurtenant thereto as long as this Declaration is in effect. The provisions of this Article are subject to the provisions of Article XI, of this Declaration.

Section 13.02 - Amendment: Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which that proposed amendment is to be considered. A resolution adopting the proposed amendment may be proposed by any Owner at that Association meeting. To be adopted, the resolution must be approved by vote, in person or by proxy, or written consent of Members representing not less than (a) sixty-seven percent (67%) of the voting power of the Association, and (b) sixty-seven percent (67%) of the voting power of the Association residing in Members other than Declarant; provided, however, that the specified percentage of the voting power of the Association necessary to amend a specified Section or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision. So long as a Class B Membership exists, the prior approval of VA and FHA shall

be required for any amendment of this Declaration. A draft of this Declaration shall be submitted to the VA and FHA for each agency's approval before that amendment is Recorded. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment shall be effective when the certificate of amendment is Recorded.

Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by the Beneficiaries of seventy-five percent (75%) of the first Mortgages on all of the Residences in the Project at the time of such amendment.

(a) Any amendment which affects or purports to affect the validity or priority of Mortgages or the rights or protection granted to Beneficiaries, insurers or guarantors of first Mortgages as provided in Articles IV, XI, XII, XIII and XVII hereof;

(b) Any amendment which would necessitate a Mortgagee after it has acquired a Residence through foreclosure to pay more than its proportionate share of any unpaid Assessment or Assessment accruing after such foreclosure.

(c) Any amendment which would or could result in a Mortgage being cancelled by forfeiture, or in a Mortgage not being separately assessed for tax purposes.

(d) Any amendment relating to the insurance provisions specified in Article XI hereof, or to the disposition of any money received in any taking under condemnation proceedings;

(e) Any amendment which would or could result in termination or abandonment of the Project or partition or subdivision of a Residence, in any manner inconsistent with the provisions of this Declaration;

(f) Any amendment which would subject any Owner to a right of first refusal or other such restriction, if his Residence is proposed to be sold, transferred or otherwise conveyed;

(g) Any amendment concerning:

(1) Voting rights;

(2) Reserves and responsibility for maintenance, repair and replacement of the Common Area;

(3) Boundaries of any Residences;

(4) Leasing of Residences;



(5) Establishment of self-management by the Association where professional management has been required by any Beneficiary, insurer or guarantor of a first Mortgage;

(6) Annexation or de-annexation of real property to or from the Project;

(7) Assessments, assessment liens, or the subordination of such liens;

(8) Owners interest in the Common Area; or

(9) Convertibility of the Common Area into Residences or Residences into Common Area.

Notwithstanding the foregoing, if a first Mortgagee who receives a written request from the Board to approve a proposed amendment or amendments to this Declaration does not deliver a negative response to the Board within thirty (30) days of the mailing of such request by the Board, such first Mortgagee shall be deemed to have approved the proposed amendment or amendments.

A certificate, signed and sworn to by two (2) officers of the Association that the requisite number of Owners and Mortgagees have either voted for or consented in writing to any amendment adopted as provided above, when Recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. Such a certificate reflecting any amendment which requires the written consent of any of the Beneficiaries of first Mortgages shall include a certification that the requisite approval of such Mortgagees has been obtained.

Section 13.03 - Protection of Declarant: Until the seventh (7th) anniversary of the first Close of Escrow for the sale of a Residence in the Project, the prior written approval of Declarant, as developer of the Property, will be required before any amendment which would impair or diminish the rights of Declarant to complete the Project or sell or lease Residences therein in accordance with this Declaration shall become effective. Notwithstanding any other provisions of the Restrictions, until such time as (a) Declarant is no longer entitled to add Annexable Property to the Property without the consent of the Association pursuant to Article XVI, Section 16.01, or (b) Declarant no longer owns any Residences in the Project, whichever occurs last, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

(a) Any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Section 13.02;

(b) The annexation to the Property of real property other than the Annexable Property pursuant to Article XVI, Section 16.01;

(c) The levy of a Capital Improvement Assessment for the construction of new improvements not constructed on the Common Area by Declarant; or

(d) Subject to Article IV, Section 4.04, regarding limitations on Annual Assessment increases, any significant increase of Association maintenance or other service requirements.

#### ARTICLE XIV

##### ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS

Section 14.01 - Consideration by Board of Directors: If (a) the Improvements to be located on the Common Area are not completed before the issuance of a Public Report for the sale of Residences in the Project, and (b) the Association is obligee under a bond or other arrangement (the "Bond") required by the DRE to secure performance of the commitment of Declarant to complete such Improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, concerning any such Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Improvement on the Common Area, the Board shall be directed to consider and vote on the aforesaid question (if a Notice of Completion has not been filed), within thirty (30) days after the expiration of the extension.

Section 14.02 - Consideration by the Members: A special meeting of Members, 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, shall be held no fewer than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing five percent (5%) of the total voting power of the Association residing in Members other than Declarant. A vote at such meeting to take action to enforce the obligations under the Bond by Members representing a majority of the total voting power of the Association residing in Members other than Declarant shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## ARTICLE XV

GENERAL PROVISIONSSection 15.01 - Enforcement:

(a) Declarant (so long as Declarant is an Owner), the Association or the Owner of any Residence in the Project, shall have the right to enforce, by proceedings at law or in equity, all of the Restrictions and other provisions now or hereafter imposed by the Project Documents, 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 those Restrictions and other provisions, to enjoin or prevent them from doing so, to cause the violation to be remedied, and/or to recover damages for the violation.

(b) The result of every act or omission whereby any of the Restrictions or other provisions of the Project Documents is violated in whole or in part is hereby declared to be and constitutes a nuisance. Every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by Declarant, the Association or any Owner.

(c) The remedies herein provided for breach of the Restrictions and other provisions of the Project Documents shall be deemed cumulative. None of such remedies shall be deemed exclusive.

(d) The Association's failure to enforce any of the Restrictions and other provisions of the Project Documents shall not constitute a waiver of the right to enforce the same thereafter.

(e) A breach of the Restrictions or other provisions of the Project Documents shall not affect or impair the lien or charge of any bona fide first Mortgage or Deed of Trust made in good faith and for value on any Residence; provided, however, that any subsequent Owner of such Residence shall be bound by such Restrictions and other provisions, whether such Owner's title was acquired by foreclosure in a trustee's sale or otherwise.

(f) Without limiting the foregoing in any way, the Association (1) may take such disciplinary action, perform such corrective maintenance and repair work, and/or impose such Special Assessments, and (2) shall conduct such Notice and Hearing procedures, as permitted or required in the Bylaws and this Declaration in any case where an Owner fails to comply with the provisions of the Project Documents.

Section 15.02 - Attorneys' Fees: If any Owner defaults in making a payment of Assessments or in the performance or observance of any provision of this Declaration, and the Association has retained the services of an attorney in connection therewith, the Owner agrees to pay to the Association any costs or fees incurred, including reasonable attorneys' fees, regardless of whether legal proceedings are instituted. If a suit is instituted, the prevailing party shall recover the cost of the suit, in addition to the aforesaid costs and fees.

Section 15.03 - Severability: The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

Section 15.04 - Interpretation: The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a planned residential development and for the maintenance of Common Area, and any violation of this Declaration shall be deemed to be a nuisance. The Article and Section headings, titles and captions have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise.

Section 15.05 - Mergers or Consolidations: Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association and a surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other property, as one (1) plan.

Section 15.06 - No Public Right or Dedication: Nothing herein shall be deemed to be a gift or dedication of all or any part of the Project to the public, or for any public use.

Section 15.07 - No Representations or Warranties: No representations or warranties of any kind, express or implied, other than the standard warranty required by VA and FHA, have been given or made by Declarant, or its agent or employees in connection with the Property, or any portion thereof, its physical

condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a planned residential development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the DRE.

Section 15.08 - Non-Liability and Indemnification: Except as specifically provided in the Restrictions or as required by law, no right, power or responsibility conferred on the Board or the Architectural Committee by this Declaration, the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Architectural Committee, any member of the Board or the Architectural Committee, or any other officer, employee or agent of the Association. No such Person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions if reasonably believed by such persons to be within the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. No such Person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct.

The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against any Person as a result of any action or threatened action against such Person to impose liability on such Person for his Official Acts, provided that:

(a) The Board determines that such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the Association;

(b) In the case of a criminal proceeding, the Board determines that such Person had no reasonable cause to believe his conduct was unlawful; and

(c) In the case of an action or threatened action by or in the right of the Association, the Board determines that such Person acted with care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section 15.08 must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or

refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members of the Association, provided that the Person to be indemnified shall not be entitled to vote.

Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

The entitlement to indemnification hereof shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

Section 15.09 - Notices: Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, it shall be in writing. Any such notice may be delivered personally to the Owner, in the case of personal delivery to one (1) or more co-owners of a Residence or to any general partner of a partnership owning a Residence such delivery shall be deemed to have been made to all Co-Owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, a notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Owner's Residence. A mailed notice shall be deemed delivered three (3) business days after the time of the mailing, except that in the case of notice of a meeting of Members of the Board of Directors, the notice provisions of the Bylaws of the Association shall control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

Section 15.10 - Priorities and Inconsistencies: If there are conflicts or inconsistencies between this Declaration and either the Articles or the Bylaws, the terms and provisions of this Declaration shall prevail.

Section 15.11 - Constructive Notice and Acceptance: Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Residence or other portion of the Project does and shall be conclusively deemed to have consented and agreed to every Restriction contained herein, whether or not any reference to these Restrictions is contained in the instrument by which such Person acquired his interest in the Project.

Section 15.12 - Potential Existence of Military Ordnance: The Project is located in an area that was previously utilized by the United States Government as an artillery training area. As such, the Project area may contain unexploded military shells or ordnance. In the Fall of 1987, Declarant retained a contractor to sweep the Project area to remove any ordnance related items discovered. Despite this sweep, some ordnance items may remain within the Project area.

## ARTICLE XVI

### ANNEXATION

Section 16.01 - Additions by Declarant: Additional property may be annexed to the Project by either of the methods described in this Section.

(a) Annexable Property: Declarant shall have the right to annex any one or more Phases of the Annexable Property to the Project without the assent of the Association or its Members being required on the condition that:

(1) The annexation of any new Phase is made before the third anniversary of the issuance of the original Public Report for the immediately preceding Phase;

(2) The development of the annexed Phase is in accordance with the General Plan that Declarant submits to VA and FHA in connection with obtaining its approval of the Project;

(3) Declarant Records the appropriate Notice of Annexation; and

(4) Declarant satisfies the requirements of Section 16.03 below, if applicable.

(b) Other Property: Property other than the Annexable Property may be annexed to the Project on the condition that:

(1) The annexation is made before the seventh (7th) anniversary of the Recordation of this Declaration;

(2) The annexation is approved by the vote or written assent of at least two-thirds (2/3) of the total votes residing in Members other than Declarant; and

(3) The appropriate Notice of Annexation is Recorded.

Section 16.02 - Notice of Annexation: The annexation of any Phase of the Annexable Property or any other property shall be

implemented by Recording an appropriate Notice of Annexation. Each such Notice of Annexation shall (a) specifically describe the property being annexed and (b) incorporate this Declaration by reference. Any Notice of Annexation may also contain such complementary additions to and modifications of the restrictions set forth in this Declaration as are necessary to reflect the different character, if any, of the annexed property, so long as such additions or modifications are not inconsistent with the general theme of this Declaration.

Section 16.03 - Reserves and Deferred Maintenance: If the Residences in the Phase of the Annexable Property to be annexed under Section 16.01(a) above, have been occupied and used under a rental program conducted by Declarant for a period of not less than one (1) year before the date of Close of Escrow for the first sale of any such Residence, Declarant shall, as a condition to the exercise of its annexation power over that Phase, give the Association a written commitment to pay the Association, concurrently with the Close of Escrow for such first sale, the appropriate amounts for reserves for replacement or deferred maintenance of the Common Area annexed Phase.

Section 16.04 - Commencement of Assessments: After annexation of any Phase of the Annexable Property, Annual Assessments chargeable to the Residences within that Phase shall commence on the first day of the month after the month in which the conveyance by the Declarant to an Owner of the first Residence within that Phase occurs. At the time of commencement of the Annual Assessments, (a) the anticipated authorized Common Expenses of the Association shall be adjusted to reflect the Common Expenses arising from such annexation and (b) the Annual Assessment upon each Residence within the Project then subject to Annual Assessment shall be accordingly adjusted so as to apportion all of the Common Expenses equally among such Residences; provided, however, that any adjustment shall be in accordance with the plan for phased development approved by the DRE in conjunction with its approval of the Public Report for Phase 1.

Section 16.05 - Voting: After annexation and before the commencement of the Annual Assessment of the Residences within the property annexed, no vote shall be attributable thereto. Upon commencement of the Annual Assessment, the record Owner, including the Declarant, of each such Residence shall be entitled to the voting rights set forth in this Declaration and in the Bylaws.

Section 16.06 - No Amendment of This Article: No amendment, revocation, or rescission of this Article may be made before the Close of Escrow for the sale of the last Residence in the Project without the (a) written consent of the Declarant, and (b) Recordation of such consent.



Section 16.07 - Deannexation: Any Phase of the Annexable Property annexed to the Project by Declarant as provided in this Article may be deannexed by Declarant and deleted from the jurisdiction of the Association and this Declaration on the condition that:

(a) No Residence has, as of the date on which the deannexation occurs, been sold to a member of the general public;

(b) Declarant Records an appropriate notice of deannexation; and

(c) A draft of the notice of deannexation has been submitted to VA and VA has determined that the deannexation is acceptable and in accordance with the revised General Plan and has so advised Declarant.

Section 16.08 - Public Report Required: Nothing in this Article shall be construed to permit (expressly or by implication) Declarant to sell Residences in the annexed increments without first having obtained a Public Report thereon.

## ARTICLE XVII

### CONDEMNATION

Section 17.01 - Sale by Consent: If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of at least fifty-one percent (51%) of all of the Owners and with the prior written consent of seventy-five percent (75%) of all first Mortgagees, the Common Area, or a portion of it, may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all Owners (except the VA Administrator) under an irrevocable power of attorney, which each owner (except the VA Administrator) by accepting a deed to a Residence in the Project grants to the Board and which shall be coupled with the interest of all other Owners. Any such sale shall be made for a price deemed fair and equitable by the Board.

Section 17.02 - Distribution of Proceeds of Sale: On a sale occurring under Section 17.01, the proceeds shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

Section 17.03 - Distribution of Condemnation Award: If the Common Area, or a portion of it, is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of

condemnation, and if not so apportioned, then the award shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.

Section 17.04 - Notice to Owners and Listed Mortgagees: The Board, upon receiving notice of any condemnation affecting a material portion of the Common Area, or any threat thereof, shall promptly notify all Owners and those Beneficiaries, insurers and guarantors of first Mortgages on Residences in the Project who have filed a written request for such notice with the Board. The Board, upon receiving notice of any condemnation affecting a Residence, or any threat thereof, shall promptly notify any Beneficiary, insurer or guarantor of a Mortgage encumbering such Residence who has filed a written request for such notice with the Board.

## ARTICLE XVIII

### RESTRICTIONS ON PARTITION

Section 18.01 - General Prohibition: Except as provided in this Article, the Common Area shall remain undivided, and there shall be no judicial partition thereof. Nothing in this Article, however, shall prohibit partition of a co-tenancy in a Residence.

Section 18.02 - Permitted Exceptions: The Owner of a Residence may maintain a partition action as to the entire Project as if the Owners of all Residence in the Project were tenants in common in the entire Project in the same proportion as their interests in the Common Area. The court shall order partition under this Section only upon a showing that all of the following conditions have been satisfied:

(a) One of the following must have occurred:

(1) The Association must have Recorded a certificate as provided in Section 11.01(e) declaring the intention of the Association not to rebuild the Improvements on the Association Maintained Property after material damage or destruction thereof; or

(2) The Project must have been in existence more than fifty (50) years, be obsolete and uneconomic and the Owners of at least fifty percent (50%) of the total of all of the Residences in the Project be opposed to the restoration or repair of the Project.

(b) The VA Administrator must have approved the partition of the Project.

(c) The Mortgagee approval requirements set forth in Article XII must have been satisfied.

THIS DECLARATION is dated for identification purposes  
September 29, 1988.

Declarant: TIERRASANTA L-L PARTNERSHIP,  
 a California General Partnership  
 By: The Lusk Company,  
 a California corporation,  
 Partner

By: Richard T. Deihl  
 Richard T. Deihl, Vice Pres.  
 By: Frank J. Gootrad  
 Frank J. Gootrad, Assistant  
 Secretary

STATE OF CALIFORNIA )  
 ) SS.  
 COUNTY OF ORANGE )

On September 29, 1988 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard T. Deihl and Frank J. Gootrad personally known to me or proved to me on the basis of satisfactory evidence to be the persons who executed the within instrument as the Vice President, and Assistant Secretary, respectively, of The Lusk Company, a California corporation, the corporation that executed the within instrument on behalf of TIERRASANTA L-L PARTNERSHIP, a California General Partnership, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Vicki L. Johnson  
 Signature



## EXHIBIT A

ANNEXABLE PROPERTY

Lots 1 through 69 inclusive of Tierrasanta Norte I, Unit 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12188 filed in the Office of the County Recorder of San Diego County September 14, 1988.

and

Lots 1 through 88 inclusive of Tierrasanta Norte I, Unit 3, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12189 filed in the Office of the County Recorder of San Diego County September 14, 1988.

EXHIBIT "B"

COMMON AREA OWNED IN FEE

THERE IS NO COMMON AREA OWNED IN FEE.

EXHIBIT "D"

WALL MAINTENANCE AREAS

THERE ARE NO WALL MAINTENANCE AREAS TO BE MAINTAINED.

SUBORDINATION

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust recorded on November 18, 1987, as File No. 87-643172, in Official Records of the San Diego County Recorder (the "Deed of Trust"), which Deed of Trust is by and between TIERRASANTA L-L PARTNERSHIP, a California General Partnership, as Trustor; AMERICAN SECURITIES COMPANY, a Corporation as Trustee; and WELLS FARGO BANK, N.A., a National Banking Association, as Beneficiary, hereby expressly subordinates the Deed of Trust and its beneficial interest thereunder to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Monteloma referred to therein, and to all maintenance and other easements to be conveyed to the Association or Owners in accordance with the Declaration.

Dated: 12-4-88, 1988

WELLS FARGO BANK, N.A.  
a National Banking Association

By: [Signature]

By: [Signature]

STATE OF CALIFORNIA )  
 ) SS.  
COUNTY OF )

On 12-4-88, before me, [Signature]  
a Notary Public, in and for said State, personally appeared [Signature] and [Signature],  
personally known to me or proved to me on the basis of  
satisfactory evidence to be the [Signature] and  
[Signature], respectively, of [Signature]  
[Signature], the Banking Association that  
executed the within instrument and known to me to be the persons  
who executed the within instrument on behalf of said Banking  
Association and acknowledged to me that such Banking Association  
executed same as beneficiary.

WITNESS my hand and official seal.

Notary Public

