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*Lee A. Branch* Recorder

92-688113

2 Titles	10
12345	369
Page 3	369
Lien No	
Other	
Total Reg. Fees	379.-
D.T.I.	
PCOR	
SMP	
AD-19	

(Space Above For Recorder's Use)

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
LA MIRAGE

THIS INSTRUMENT FILED FOR RECORD BY  
FIRST AMERICAN TITLE INSURANCE COMPANY AND FOR  
ACCOMMODATION ONLY. IT HAS NOT BEEN EXAMINED AS TO  
ITS ACCURACY OR AS TO ITS EFFECT UPON THE TITLE.

jlr082/23210/000/0090/la.mirage  
09-15-92

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FOR  
LA MIRAGE**

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**EXHIBIT "B" - BYLAWS OF THE ASSOCIATION**

**EXHIBIT "C" - DRAWINGS DEPICTING EXCLUSIVE USE COMMON AREA  
PARKING SPACES IN PHASE 1**

**EXHIBIT "D" - LEGAL DESCRIPTION OF ANNEXABLE TERRITORY**

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04-01-92

**DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
LA MIRAGE**

THIS DECLARATION is made by TAHSIN INVESTMENT GROUP,  
L.P., a California limited partnership ("Declarant").

**P R E A M B L E:**

A. Declarant is the owner of certain real property ("Phase 1") located in the unincorporated area of the County of Orange, State of California, described as follows:

Lots 1 and 8 of Tract No. 14591, as shown on a Subdivision Map Filed on September 11, 1992, in Book 692, at Pages 17 to 24, inclusive, of Miscellaneous Maps, in the Office of the Orange County Recorder.

B. It is the desire and intention of Declarant to create a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the Property (as hereinafter defined) into "condominiums" as defined in Section 783 of the California Civil Code, and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the condominiums created pursuant to the Davis-Stirling Common Interest Development Act.

C. Declarant hereby declares that all of the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration and the Community Declaration, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including without limitation the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein and in the Community Declaration shall run with and burden the Property and shall be binding on and for the benefit of all

of the Property and all Persons having or acquiring any right, title or interest in the Property, or any part thereof, and their successive owners and assigns.

D. Declarant, its successors, assigns and grantees, covenant and agree that the undivided interest in the Common Area, the membership in the Association, any easements conveyed therewith and the fee title to each respective Unit conveyed therewith shall not be separated or separately conveyed, and each such undivided interest, membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit; provided, however, that this restriction upon the severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Property is suspended in accordance with Section 1359 of the California Civil Code and the provisions of Article X hereof. Any conveyance by an Owner of a Condominium, or any portion thereof, shall be presumed to convey the entire Condominium, together with a membership in the Association.

E. On March 24, 1992, Mission Viejo Company, a California corporation, executed a Notice of Annexation and Supplemental Declaration for Delegate District No. 46 of Aliso Viejo Community Association ("Notice of Annexation"). The Notice of Annexation annexed the Property to the Subject Property covered by the Community Declaration when it was Recorded on March 24, 1992, as Instrument No. 92-178281, of Official Records of Orange County, California.

#### ARTICLE I

##### 1. Definitions.

Unless otherwise expressly provided, the following words and phrases when used in this Declaration shall have the following specified meanings.

##### 1.1. Annexable Territory.

Annexable Territory shall mean the real property described in Exhibit "D" attached hereto and incorporated herein by this reference, all or any portion of which may from time to time be made subject to this Declaration pursuant to Article XVI hereof; provided that the maximum number of Units that may be added to the Project pursuant to said Article XVI shall be one hundred ten (110).



**1.2. Architectural Committee or Committee.**  
Architectural Committee or Committee shall mean the Architectural Review Committee created pursuant to Article IV hereof.

**1.3. Articles.**  
Articles shall mean the Articles of Incorporation of the Association, filed or to be filed in the Office of the Secretary of State of the State of California, a true copy of which is attached hereto, marked Exhibit "A," as such Articles may be amended from time to time.

**1.4. Assessment, Annual.**  
Annual Assessment shall mean a charge against a particular Owner and his Condominium, representing a portion of the Common Expenses which are to be levied among all of the Owners and their Condominiums in the Project in the manner and proportions provided herein.

**1.5. Assessment, Capital Improvement.**  
Capital Improvement Assessment shall mean a charge which the Board may from time to time levy against each Owner and his Condominium, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Property. Such charge shall be levied among all of the Owners and their Condominiums in the Project in the same proportions as are Annual Assessments.

**1.6. Assessment, Reconstruction.**  
Reconstruction Assessment shall mean a charge which the Board may from time to time levy against a particular Owner and his Condominium, representing a portion of the cost to the Association for reconstruction of any Improvements on any of the Common Property. Reconstruction Assessments shall be levied among all of the Owners and their Condominiums in the Project in the same proportions as the relative interior square foot floor areas of the residential elements of the Units (as such areas are depicted in the Condominium Plan or Plans for the Project), expressed as percentages, and computed by dividing the interior square foot floor area of the residential element of each Unit by the total interior square foot areas of the residential elements of all Units in the Project.

**1.7. Assessment, Special.**  
Special Assessment shall mean a charge against a particular Owner directly attributable to, or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this

Declaration, or a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessments as provided for in 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.

**1.8. Association.**

Association shall mean LA MIRAGE AT ALISO VIEJO HOMEOWNERS ASSOCIATION, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in Section 1351(a) of the California Civil Code. The Association is a "Sub-Association" as defined in the Community Declaration.

**1.9. Association Property.**

Association Property shall mean all of the real and personal property and Improvements to which the Association shall hold fee title or over which the Association shall hold an easement for the common use and enjoyment of the Members as provided herein. The Association Property located in Phase 1 shall include Lot 1 of said Tract No. 14591.

**1.10. 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.

**1.11. Board or Board of Directors.**

Board of Directors or Board shall mean the Board of Directors of the Association.

**1.12. Budget.**

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

**1.13. Bylaws.**

Bylaws shall mean the Bylaws of the Association as adopted by the Board initially in the form of Exhibit "B" attached hereto, as such Bylaws may be amended from time to time.

**1.14. Close of Escrow.**

Close of Escrow shall mean the date on which a deed is Recorded conveying a Condominium pursuant to a transaction requiring the issuance of a Final Subdivision Public Report by the DRE.

**1.15. Common Area.**

Common Area shall mean the entire Property, except the Separate Interests therein and the Association Property. In addition, "Common Area" shall include, without limitation, for maintenance purposes of the Association, but not necessarily by way of fee title, all gas, water and waste pipes, all sewers, all ducts, chutes, conduits, wires and other utility installations of the Project Improvements wherever located (except the outlets thereof when located within the Units), the land upon which the Project Improvements are located and the airspace above the Project Improvements, all bearing walls, columns, unfinished floors, the roofs, foundation slabs, party walls, utility walls, foundations, private streets or driveways, walkways, parking areas and landscaping on those areas of the Project which are not defined as a part of the Units.

**1.16. Common Expenses.**

Common Expenses shall mean those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Property; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments; the cost of maintenance of the recreational facilities on the Common Property; the costs of any utilities metered to more than one Unit and other commonly metered charges for the Property; the cost of maintenance of clustered mailboxes; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all gardening and other services benefiting the Common Property; the costs of fire, casualty and liability insurance, workers' compensation insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; the costs of bonding of the members of the Board; taxes paid by the Association, including any blanket tax assessed against the Property; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; and the costs of any other item or items incurred by the Association, for any reason whatsoever in connection with the Property, for the common benefit of the Owners.

**1.17. Common Property.**

Common Property shall mean the Common Area and the Association Property.

**1.18. Community Association.**

Community Association shall mean ALISO VIEJO COMMUNITY ASSOCIATION, a California nonprofit public benefit corporation, its successors and assigns.

**1.19. Community Association Properties.**

Community Association Properties shall mean all of the real and personal property and Improvements now or hereafter owned by the Community Association, as further provided in the Community Declaration. There are no Community Association Properties in Phase 1.

**1.20. Community Declaration.**

Community Declaration shall mean the Declaration of Covenants, Conditions and Restrictions for Aliso Viejo Community Association which was Recorded on April 6, 1982, as Instrument No. 82-118353, in the Official Records of Orange County, California.

**1.21. Condominium.**

Condominium shall mean an estate in real property as defined in California Civil Code Section 1351(f), and shall consist of an undivided fee simple ownership interest in the Common Area in a Phase of Development or portion thereof, together with a separate ownership interest in fee in a Unit and all easements appurtenant thereto. Subject to the provisions of Section 11.5 hereof, the undivided fee simple interest in the Common Area in a Phase of Development or portion thereof shall be appurtenant to each Unit in such Phase of Development or portion thereof; and shall be a fraction having one (1) as its numerator and the number of Units in that Phase of Development or portion thereof as its denominator; and shall be held by the Owners of Condominiums in that Phase of Development or portion thereof as tenants in common.

**1.22. Condominium Plan.**

Condominium Plan shall mean the Recorded plan, as amended from time to time, for all or a portion of a Phase of Development, consisting of (1) a description or survey map of the Phase of Development or portion thereof, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of the Phase of Development or portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Common Area and each Separate Interest, and (3) a certificate consenting to the recordation thereof signed and acknowledged by the record owner of fee title to the Phase of Development or portion thereof, and by

either the trustee or the Beneficiary of each Recorded Deed of Trust, and the Mortgagee of each recorded Mortgage encumbering the Phase of Development or portion thereof.

**1.23. County.**

County shall mean the County of Orange in the State of California, and its various departments, divisions, employees and representatives. If any portion of the Property becomes a portion of an incorporated city, then the term "County" shall be deemed to include the city in which the Property is located.

**1.24. Declarant.**

Declarant shall mean TAHSIN INVESTMENT GROUP, L.P., a California limited partnership, its successors, and any Person to which it shall have assigned any of its rights hereunder by an express written assignment.

**1.25. Declaration.**

Declaration shall mean the within Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as it may be amended from time to time. This Declaration is a "Supplemental Declaration" as defined in the Community Declaration.

**1.26. Deed of Trust.**

Deed of Trust shall mean a Mortgage as further defined herein.

**1.27. Delegate.**

Delegate shall mean a natural Person selected by the members in Delegate District No. 46 pursuant to Section 2.11 hereof to represent all such members and to vote on their behalf, as further described in the Community Declaration and in the Bylaws of the Community Association.

**1.28. Delegate District No. 46.**

Delegate District No. 46 shall mean the Delegate District (as defined in the Community Declaration) composed of the geographical area encompassed by the Project which is within the jurisdiction of the Community Association.

**1.29. DRE.**

DRE shall mean the California Department of Real Estate and any successors thereto.

**1.30. Exclusive Use Common Area.**

Exclusive Use Common Area shall mean those portions of the Common Area over which exclusive easements are reserved for

the benefit of certain Owners, including without limitation for patio, balcony, yard, stair, landing and parking purposes and internal and external telephone wiring designed to serve a single Unit but located outside the boundaries of that Unit, in accordance with California Civil Code Section 1351(i).

**1.31. Family.**

Family shall mean one 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.

**1.32. 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.

**1.33. Fiscal Year.**

Fiscal Year shall mean the fiscal accounting and reporting period of the Association selected by the Board from time to time.

**1.34. 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.

**1.35. GNMA.**

GNMA shall mean the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and any successor to such association.

**1.36. Improvements.**

Improvements shall mean all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, walkways, sprinkler pipes, carports, swimming pools, spas and other recreational facilities, roads, driveways, parking areas, fences, screening walls, block walls, retaining walls, awnings, stairs, decks, landscaping, hedges, windbreaks, the exterior surfaces of any visible structure and the paint on such surfaces, planted trees and shrubs, poles, signs, and water softener fixtures or equipment.

**1.37. Maintenance Funds.**

Maintenance Funds shall mean the accounts created for receipts and disbursements of the Association pursuant to the provisions of this Declaration.

**1.38. Manager.**

Manager shall mean the Person employed by the Association pursuant to and limited by the provisions of this Declaration, and delegated the duties, power or functions of the Association as limited by this Declaration, the Bylaws and the terms of the agreement between the Association and said Person.

**1.39. Member, Membership.**

Member shall mean every Person holding a membership in the Association, pursuant to the provisions of this Declaration. Membership shall mean the property voting and other rights and privileges of Members as provided herein, together with the correlative duties and obligations contained in the Restrictions.

**1.40. Mortgage.**

Mortgage shall mean any Recorded mortgage or deed of trust or other conveyance of one or more Condominiums or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance.

**1.41. Mortgages, Mortgagor.**

Mortgages shall mean a Person to whom a Mortgage is made and shall include the Beneficiary of a Deed of Trust; Mortgagor shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgages."

**1.42. Notice and Hearing.**

Notice and Hearing shall mean written notice and a hearing before 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 provided in the Bylaws.

**1.43. Notice of Addition.**

Notice of Addition shall mean an instrument Recorded pursuant to Article XVI hereof to annex all or any portion of the Annexable Territory to the Property.

**1.44. Owner.**

Owner shall mean the record owner, whether one or more Persons, of a fee simple interest in a Condominium, including Declarant with respect to each Condominium owned by

**Declarant.** The term "Owner" shall include a seller under an executory contract of sale but shall exclude Mortgagees.

**1.45. Person.**

Person shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property.

**1.46. Phase 1.**

Phase 1 shall mean all of the real property described in Paragraph A of the Preamble of this Declaration with the exception of the Community Association Properties.

**1.47. Phase of Development.**

Phase of Development or Phase shall mean (a) Phase 1 or (b) all the real property covered by a Notice of Addition Recorded pursuant to Article XVI hereof for which a Final Subdivision Public Report has been issued by the DRE, unless otherwise defined in such Notice of Addition.

**1.48. Project.**

Project shall mean that portion of the Property which is, from time to time, divided into Condominiums, including the Common Area and the Units therein. The Project is a "condominium project" as defined in Section 1351(f) of the California Civil Code.

**1.49. Property.**

Property shall mean (a) Phase 1, and (b) each Phase of Development, described in a Notice of Addition. The Property is a "common interest development" as defined in Section 1351(c) of the California Civil Code.

**1.50. Record, File, Recordation.**

Record, File or Recordation shall mean, with respect to any document, the recordation or filing of such document in the Office of the Orange County Recorder.

**1.51. Residence.**

Residence shall mean a Unit, intended for use by a single Family, together with any Exclusive Use Common Area reserved for the benefit of such Unit.

**1.52. Restrictions.**

Restrictions shall mean this Declaration, the Articles, Bylaws and the Rules and Regulations of the Association from time to time in effect.



**1.53. Rules and Regulations.**

Rules and Regulations shall mean the rules and regulations adopted by the Board pursuant to this Declaration or the Bylaws, as such Rules and Regulations may be amended from time to time.

**1.54. Separate Interest or Unit.**

Separate Interest or Unit shall mean a separate interest in space as defined in Section 1351(f) of the California Civil Code. Each Separate Interest or Unit shall be a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the Condominium Plan and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and the boundaries of a building as constructed or reconstructed.

**ARTICLE II**

**2. La Mirage at Aliso Viejo Homeowners Association.**

**2.1. Organization of Association.**

The Association is or shall be incorporated under the name of LA MIRAGE AT ALISO VIEJO HOMEOWNERS ASSOCIATION, as a corporation not for profit under the Nonprofit Mutual Benefit Corporation Law of the State of California, as required by Section 1363 of the California Civil Code.

**2.2. Duties and Powers.**

The duties and powers of the Association are those set forth in the Declaration, the Articles and Bylaws, together with its general and implied powers of a nonprofit mutual benefit corporation, generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and in this Declaration. The Association shall further have the right to install or construct capital Improvements on the Common Property. The Association may at any time, and from time to time reconstruct, replace or refinish any Improvement or portion

thereof upon the Common Property in accordance with the original design, finish or standard of construction of such Improvement; replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Property. The Association may employ personnel necessary for the effective operation and maintenance of the Common Property, including the employment of legal, management and accounting services. The Association shall comply with all of the provisions and requirements of the Community Declaration which apply to the Association.

### **2.3. Membership.**

Every Owner, upon becoming the Owner of a Condominium, shall automatically become a Member of the Association and the Community Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his Membership in the Association and the Community Association shall automatically cease. Ownership of a Condominium shall be the sole qualification for Membership in the Association and the Community Association. All Memberships shall be appurtenant to the Condominium conveyed, and with the exception of Declarant, a Person shall be deemed an Owner of a Condominium only upon Recordation of a deed conveying the Condominium to such Person. Except as may otherwise be provided herein, the rights, duties, privileges and obligations of all Members of the Association shall be provided in the Restrictions.

### **2.4. Transfer.**

The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Condominium, and then only to the purchaser or Beneficiary of such Condominium. 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 Condominium to a contract purchaser under an agreement to purchase shall be entitled to delegate to the contract purchaser his Membership rights in the Association. The 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 Condominium until fee title to the Condominium sold is transferred, as further provided in Section 5.1 of this Declaration. If the Owner of any Condominium fails or refuses to transfer the Membership registered in his name to the purchaser of the Condominium upon transfer of fee title thereto, the Board of Directors 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 Condominium (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.

**2.5. Classes of Membership.**

The Association shall have two (2) classes of voting Membership.

**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 Condominium owned by such Class A Members and subject to assessment. Declarant shall become a Class A Member with regard to Condominiums owned by Declarant upon conversion of Declarant's Class B Membership as provided below. When more than one (1) Person owns any Condominium, all of those Persons shall be Members. The vote of such Condominium shall be exercised as they among themselves determine in accordance with Section 2.6, but in no event shall more than one (1) Class A vote be cast for any Condominium.

**Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Condominium owned and subject to assessment, provided that the Class B Membership shall cease and be converted to Class A Membership immediately upon the first to occur of the following events:

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

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

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

**2.6. Voting Rights.**

(a) All voting rights shall be subject to the Restrictions. Except as provided in Section 14.2 of this Declaration and Section 4.8 of the Bylaws, as long as there exists a Class B Membership, any

provision of this Declaration, the Articles or Bylaws which expressly requires the vote or written consent of a specified percentage (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) of the voting power of the Association before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of Membership. Except as provided in Section 14.2 of this Declaration and Section 4.8 of the Bylaws, when the Class B Membership has terminated, any provision of this Declaration, the Articles or Bylaws 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.

(b) At any meeting of the Association, each Owner, except as otherwise provided in Section 2.5 with respect to the voting power of Declarant, shall be entitled to cast no more than one (1) vote for each Condominium owned as shown on the Condominium Plan. Where there is more than one (1) record Owner of a Condominium ("co-owners"), all of those co-owners shall be Members and may attend any meeting of the Association, but only one (1) of those co-owners shall be entitled to exercise the single vote to which the Condominium is entitled. Co-owners owning the majority interests in a Condominium shall from time to time designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation has been revoked, the vote for the Condominium shall be exercised as the co-owners owning the majority interests in the Condominium mutually agree. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the corresponding voting co-owner is acting with the consent of his co-owners. No vote shall be cast for any Condominium if the co-owners present in person or by proxy owning the majority interests in such Condominium cannot agree to said vote or other action. The nonvoting co-owner or co-owners shall

be jointly and severally responsible for all of the obligations imposed upon the jointly-owned Condominium and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws of the Association, shall be deemed to be binding on all Owners, their successors and assigns.

**2.7. Repair and Maintenance by the Association.**

(a) Maintenance Standards. Subject to Article X pertaining to destruction of Improvements and Article XI pertaining to eminent domain, the Association shall paint, maintain, repair and replace the Common Property and Improvements thereon or shall contract for such maintenance, repair and replacement to assure maintenance of the Common Property and Improvements thereon in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current Budget on file with and approved by the DRE. However, the Association shall not be responsible for or obligated to perform those items of maintenance, repair or Improvement of the Units, Exclusive Use Common Area or Common Area, the maintenance of which is the responsibility of the Owners as provided in Section 2.9. The Board shall determine, in its sole discretion, the level and frequency of maintenance of the Common Property.

(b) Maintenance Items. Association maintenance, and repairs shall include, without limitation, the right, without obligation, to perform all corrective janitorial, landscaping and repair work within any Residence, if the Owner fails to repair it; the repair and payment for any centrally metered utilities, water charges, and mechanical and electrical equipment in the Common Property; payment of all charges for any utilities which serve individual Units but which are subject to a common meter; payment of all Common Expenses and charges for water and utilities serving recreational amenities; the repair and maintenance of all walks, private driveways and other means of ingress and egress within the Property; the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of the Exclusive

Use Common Area patios, balconies, stairs, landings and parking spaces and of the fence or wall which encloses the Exclusive Use Common Area yards, so long as the need for any of these activities is not caused by the willful or negligent acts of the Owner to whom the Exclusive Use Common Area is assigned or any of such Owner's Family, tenants or guests; the maintenance in accordance with the requirements of the County and Aliso Viejo community standards of the landscaping on the Common Property (including, without limitation, maintaining vegetation necessary to avoid erosion, controlling weed growth and providing for adequate irrigation); and if determined by the Board to be economically feasible, an inspection and preventive program for the prevention and eradication of infestation by wood-destroying pests and organisms in the Property.

(c) Termite Eradication. If the Board adopts an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests and organisms, the Association, upon reasonable notice (which shall be given no less than fifteen (15) days nor more than thirty (30) days before the date of temporary relocation) to each Owner and the occupants of his Unit, may require such Owner and occupants to temporarily relocate from such Unit in order to accommodate efforts by the Association to eradicate such infestation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Any damage caused to a Unit by such entry by the Board or by any person authorized by the Board shall be repaired by the Board as a Common Expense of the Association. All costs involved in maintaining the inspection and preventive program as well as repairing and replacing the Common Property and Improvements thereon when the need for such maintenance, repair or replacement is the result of wood destroying pests or organisms shall be a Common Expense subject to the restrictions applicable to Capital Improvement Assessments.

(d) Charges to Owners. All such costs of maintenance, repairs and replacements for the Property shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration. It shall be the affirmative duty of the Board of Directors to require strict compliance with all provisions of this Declaration and to cause the Property to be inspected by the Architectural Committee for any violation thereof. The cost of any maintenance, repairs or replacements by the Association which is not the responsibility of the Association or which arises out of, or is caused by, the act of an Owner or such Owner's Family, tenants, guests, invitees, or agents shall, after Notice and Hearing, be levied by the Board as a Special Assessment against such Owner.

2.8. Unsegregated Real Property Taxes.

To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. In addition, if all of the Units in a Phase of Development or portion thereof are taxed under a blanket tax bill covering all of such Phase or portion thereof, each Owner shall pay his proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. Blanket taxes shall be allocated equally among the Owners and their Condominiums in such Phase or portion thereof, based upon the total number of Units in such Phase or portion thereof. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner in such Phase or portion thereof a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his proportionate share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill for a Phase of Development or portion thereof, which late charge results from the failure of the delinquent Owner to make timely payment of his proportionate share of the taxes. Until the Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Project,

the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Declarant.

**2.9. Repair and Maintenance by Owners.**

Each Owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole expense, all portions of his Unit, as well as the windows, light fixtures actuated from switches controlled from, or separately metered to, such Owner's Unit, and the interior surfaces of the walls, ceilings, floors, permanent fixtures and firebox in the fireplace, in a clean, sanitary and attractive condition, in accordance with the Condominium Plan and the original construction design of the Improvements in the Project. Each Owner shall also be responsible for the structural maintenance and repair of all doors (including the garage door) and for the painting of all doors except the exterior portion of the garage door, which shall be the responsibility of the Association. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for the alteration or repair by the Architectural Committee. It shall further be the duty of each Owner, at his sole expense, to keep his Exclusive Use Common Area patio, balcony, stairs, landing and parking space(s), as applicable, free from debris and reasonably protected against damage, and to maintain, repair and replace his Exclusive Use Common Area yard, as applicable, subject to the approval of the Architectural Committee. However, no Owner shall be responsible for the periodic structural repair, resurfacing, sealing, caulking, replacement or painting of his Exclusive Use Common Area patio, balcony, stairs, landing or parking space(s), so long as the need therefor is not caused by the willful or negligent acts of the Owner or his Family, tenants or guests. Notwithstanding any other provision herein, each Owner shall also be responsible for all maintenance and repair of any internal or external telephone wiring wherever located which is designed to serve only his Unit, and shall be entitled to reasonable access over the Common Area for such purposes, subject to reasonable limitations imposed by the Association. It shall further be the duty of each Owner to pay when due all charges for any utility service which is separately metered to his Unit. If the Board does not adopt an inspection and preventive program with regard to wood-destroying pests and other organisms pursuant to Section 2.7 herein, such a



program shall be the responsibility of each Owner. Subject to any required approval of the Architectural Committee, each Owner shall be responsible for maintaining those portions of any heating and cooling equipment and other utilities which are located within or which exclusively serve his Unit. In addition, each Owner shall be responsible for maintaining and repairing any air conditioning pad which supports or will support the air conditioning compressor serving such Owner's Unit.

**2.10. Use of Agent.**

The Board of Directors, on behalf of the Association, may contract with a Manager for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as may be determined by the Board. The maximum term of any such contract ("Management Contract") shall be one (1) year, unless a longer term is approved either by vote or written assent of a majority of the voting power of the Association (excluding the voting power of Declarant), in which case the maximum term of the Management Contract shall be three (3) years. The maximum term of any contract providing for Declarant's services to the Association or the Project shall also be three (3) years. Each such contract for Declarant's services and each Management Contract shall provide for its termination by either party thereto with cause upon no more than thirty (30) days' written notice to the other party, and without cause and without payment of a termination fee upon no more than ninety (90) days' written notice to the other party.

**2.11. Election of Delegate to Community Association.**

Delegate District No. 46 shall be represented at meetings of Delegates of the Community Association by a Delegate who must be either an Owner or an agent of Declarant for so long as Declarant owns a Condominium in the Project or the Annexable Territory. The Delegate shall receive no salary or compensation for services as a Delegate, provided that (1) nothing herein shall be construed to preclude any Delegate from serving the Community Association, the Association or Delegate District No. 46 in some other capacity and receiving compensation therefor, and (2) any Delegate may be reimbursed for actual expenses incurred in the performance of his duties as Delegate. A Delegate shall be elected by the vote of a majority of a quorum of the Members at the first annual meeting of the Members and at each subsequent annual meeting. The Delegate shall serve a term of one (1) year or until a successor has been elected and qualified. Any person serving as Delegate may be reelected and there shall be no limitation on the number of terms such Delegate may serve. A vacancy in the office of Delegate shall be deemed to exist in case of death, resignation, removal or judicial adjudication of

mental incompetence of any Delegate. Any vacancy caused by reason other than removal shall be filled by the vote of the Members at a meeting of the Members called for such purpose. A Delegate may be removed, with or without cause, by a vote of a majority of a quorum of the Members at a meeting of the Members called for such purpose. If a Delegate is so removed by vote of the Members, the Members shall elect a new Delegate at the same meeting. The term of office of any Delegate elected to fill a vacancy shall be the balance of the unexpired term of his predecessor. It shall be the duty of the Secretary of the Association to give written notice to the Secretary of the Community Association of the election of a Delegate or of a vacancy in the office of Delegate within ten (10) days of such election or vacancy.

### ARTICLE III

#### 3. Rights in Common Property.

##### 3.1. Association Easement.

The Association shall have an easement over the Common Area for performing its duties and exercising its powers described in this Declaration. The Association's obligations to maintain the Common Property in any Phase of Development shall commence on the date Annual Assessments commence on Condominiums in such Phase. Until commencement of Annual Assessments on Condominiums in any Phase, the Common Property in such Phase shall be maintained by Declarant.

##### 3.2. Partition.

Except as provided in this Declaration, there shall be no judicial partition of the Common Area, or any part thereof, for the term of the Project, nor shall Declarant, any Owner or any other Person acquiring any interest in any Condominium in the Project seek any such judicial partition.

##### 3.3. Members' Easements in Common Property.

Subject to the provisions of this Declaration, every Member of the Association shall have, for himself, his Family, his tenants and guests, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Property, and such easements shall be appurtenant to and shall pass with title to every Condominium in the Project.

##### 3.4. Extent of Members' Easements.

The rights and easements of use and enjoyment of the Common Property created by this Declaration shall be subject to the Restrictions, which include, without limitation, the following:

(a) The right of the Board to suspend the rights and easements of any Member, and the Persons deriving such rights and easements from any Member, for use and enjoyment of any recreation facilities located on the Common Property, for any period during which the payment of any Annual, Special, Capital Improvement or Reconstruction Assessment against the Member and his Condominium remains delinquent, and, after Notice and Hearing as provided in the Bylaws, to suspend such rights and easements for the period set forth in the Bylaws for any violation of the Restrictions, it being understood that any suspension for either nonpayment of any Assessment or breach of the Restrictions shall not constitute a waiver or discharge of the Member's obligation to pay assessments as provided in this Declaration;

(b) The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Property and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Property for the benefit of the Members of the Association;

(c) The right of the Association, acting through the Board, to grant, consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Property for purposes not inconsistent with the intended use of the Property as a residential Condominium project;

(d) Subject to the provisions of this Declaration, the right of each Owner to the exclusive use and occupancy for the purposes designated in this Declaration or in any Recorded Notice of Addition of the Exclusive Use Common Area assigned to his respective Unit;

(e) The rights and reservations of Declarant as set forth in this Declaration;

(f) The right of the Association, acting through the Board, to reasonably restrict access to roofs, maintenance and landscaped areas and similar areas of the Property;

(g) The right of the Association to reasonably limit the number of guests and tenants of the Owners using the Common Property; and

(h) The right of the Association, acting through the Board, to establish uniform Rules and Regulations for the use of the Common Property, as provided in this Declaration.

**3.5. Delegation of Use.**

Any Member entitled to the right and easement of use and enjoyment of the Common Property may delegate his right to use and enjoyment of the Common Property to his tenants, contract purchasers or subtenants who reside in his Condominium, subject to reasonable regulation by the Board. An Owner who has made such a delegation of rights shall not be entitled to use or enjoy the recreational facilities or equipment of the Property for so long as such delegation remains in effect.

**3.6. Waiver of Use.**

No Member may exempt himself from personal liability for Assessments duly levied by the Association, or effect the release of his Condominium from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning his Condominium.

**3.7. Damage by Member.**

To the extent permitted by California law, each Member shall be liable to the Association for any damage to the Common Property 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 the Common Property 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, after Notice and Hearing as provided in the Bylaws, to levy a Special Assessment 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 Condominium, the liability of the owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with the joint 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 Condominium, and may be enforced as provided herein.

#### ARTICLE IV

#### 4. Architectural Review Committee.

##### 4.1. Members of Committee.

The Architectural Review Committee, sometimes referred to herein as the "Architectural Committee" or the "Committee," shall be comprised of three (3) members. The initial members of the Committee shall consist of representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for Phase 1 ("First Anniversary"). After the First Anniversary the Board may appoint and remove one (1) member of the Committee, and Declarant shall have the right and power at all times to appoint or remove a majority of the members of the Committee or to fill any vacancy of such majority, until the earlier to occur of (i) Close of Escrow for the sale of ninety percent (90%) of all the subdivision interests in the Property and the Annexable Territory, or (ii) expiration of five (5) years following the date of original issuance of the Public Report for Phase 1, after which the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Committee members appointed by the Board shall be from the Membership of the Association, but Committee members appointed by Declarant need not be Members of the Association. Board members may also serve as Committee members.

##### 4.2. Review of Plans and Specifications.

The Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and 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 plans approved by the Committee. The Committee and its powers hereunder are in addition to the architectural committee under the Community Declaration and its powers thereunder. No construction, alteration, removal, relocation, repainting, demolishing, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Property 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 the Committee and approved in writing by the Committee; provided, however, that any

Improvement may be repainted without Committee approval, so long as the Improvement is repainted the identical color which it was last painted. Without limiting the generality of this Article IV, the provisions of this Article IV apply to the construction, installation, alteration and modification of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the Uniform Building Code of the County, applicable zoning regulations, and associated County ordinances. The Owner submitting the plans ("Applicant") shall obtain a written, dated receipt for the plans and specifications from an authorized agent of the Committee. Until changed by the Board, the address for the submission of such plans and specifications shall be the principal office of the Association. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems 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 Common Property or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. Declarant, and any Person to which Declarant may assign all or a portion of its exemption hereunder, need not seek or obtain Architectural Committee approval of any Improvements constructed on the Property by Declarant or such Person, as the case may be.

The Committee may condition its approval of proposals or plans and specifications for any Improvement (1) upon the Applicant's 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) on such changes therein as it deems appropriate, (3) upon the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (4) upon the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (5) upon the Applicant's agreement to reimburse the Association for the cost of maintenance, (6) upon the Applicant's agreement to complete the proposed work within a stated period of time, or (7) all of the above, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requir-

ing a fee to accompany each application for approval, or additional factors which it will take into consideration in reviewing submissions. The Committee 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 Committee 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 receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan submitted for approval. Decisions of the Committee and the reasons for the decisions shall be transmitted by the Committee to the Applicant at the address set forth in the application for approval, within forty-five (45) days after receipt by the Committee of all materials required by the Committee. Any application submitted pursuant to this Section 4.2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the Committee shall have been transmitted to the Applicant within forty-five (45) days after the date of receipt by the Committee of all required materials. The Applicant shall meet any review or permit requirements of the County prior to making any alterations or Improvements permitted hereunder.

**4.3. Meetings of the Committee.**

The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing designate a Committee 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 Committee, except the granting of variances pursuant to Section 4.8. In the absence of such designation, the vote of a majority of the Committee or the written consent of a majority of the Committee taken without a meeting, shall constitute an act of the Committee.

**4.4. No Waiver of Future Approvals.**

The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee, 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.

**4.5. Compensation of Members.**

The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

**4.6. Correction of Defects.**

The Architectural Committee or its duly authorized representative may at any time inspect any work for which approval of plans is required under this Article IV ("Work"), which right to inspect shall include the right to require any Owner to take such action as may be necessary to remedy any noncompliance with the Committee-approved plans for the Work or with the requirements of this Declaration ("Noncompliance").

(a) Time Limit. The Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the latest to occur of the following events: (i) submittal of the plans for the Work to the Committee for its approval as provided in this Article IV; (ii) completion of the Work as provided in the Committee-approved plans; and (iii) written notice from the Owner to the Committee that the Work has been completed. This time limit for inspection and notification by the Committee shall be extended indefinitely if any of these conditions has not occurred. If the Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

(b) Remedy. If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of notification from the Committee, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Board 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 that 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 commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.



#### **4.7. Scope of Review.**

The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed Improvement, alteration or addition, on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Committee's approval or disapproval shall be based solely on the considerations set forth in this Article IV, and the Committee 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. The Architectural Committee may consider the impact of views from other Residences or Condominiums and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, Declarant does not warrant any protected views within the Property and no Residence or Condominium is guaranteed the existence or unobstructed continuation of any particular view.

#### **4.8. Variences.**

The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by at least a majority of the members of the Committee, and shall become effective upon Recordation. After Declarant has lost the right to appoint a majority of the members of the Committee, the Board must approve any variance recommended by the Committee before any such variance shall become effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision 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.

**4.9. Appeals.**

For so long as Declarant has the right to appoint and remove a majority of the members of the Architectural Committee, decisions of the Architectural Committee shall be final, and there shall be no appeal to the Board of Directors. When Declarant is no longer entitled to appoint and remove a majority of the members of the Architectural Committee the Board may, at its discretion, adopt policies and procedures for the appeal of Architectural Committee decisions for reconsideration by the Board. The Board shall have no obligation to adopt or implement any such appeal procedures, and in the absence of Board adoption of appeal procedures, all decisions of the Architectural Committee shall be final.

**ARTICLE V**

**5. Association Maintenance Funds and Assessments.**

**5.1. Personal Obligation of Assessments.**

Declarant, for each Condominium owned by it, hereby covenants and agrees to pay, and each Owner, by acceptance of a deed of a Condominium whether or not it shall be so expressed in any such 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. The Association shall not levy or collect any Annual Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment that exceeds the amount necessary for the purpose for which it is levied. Except as provided in this Section 5.1, all such assessments, together with interest, costs, and reasonable attorneys' fees, shall be a separate, distinct and personal obligation of the Person who was the Owner of the Condominium at the time when the assessment fell due. This personal obligation cannot be avoided by abandonment of the Condominium or by an offer to waive use of the Common Property or the Exclusive Use Common Area. The personal obligation for delinquent assessments shall not pass to any new Owner ("Purchaser") unless expressly assumed by the Purchaser.

**5.2. Maintenance Funds of Association.**

The Board of Directors shall establish no fewer than two (2) separate Maintenance Fund accounts into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. The Maintenance Funds may be established as trust accounts at a banking or savings institution. The Maintenance Funds shall include: (1) an Operating Fund for

current Common Expenses of the Association, (2) an adequate Reserve Fund for capital improvements, replacements, painting and repairs of the Common Property (which cannot normally be expected to occur on an annual or more frequent basis), and for payment of deductible amounts for policies of insurance which the Association obtains as provided in Section 9.1 hereof, and (3) any other funds which the Board of Directors may establish to the extent necessary under the provisions of this Declaration. 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.

**5.3. Purpose of Assessments.**

The assessments levied by the Board of Directors on behalf of the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Condominiums, for the operation, replacement, improvement and maintenance of the Common Property, and to discharge any other obligations of the Association under this Declaration. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as may be necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Board of Directors only for the respective purposes specified in this Article V. Nothing in this Declaration shall be construed in such a way as to permit the use of Association assessments or funds to abate any annoyance or nuisance emanating from outside the boundaries of the Property. Annual Assessments shall be used to satisfy Common Expenses of the Association, as provided herein and in the Bylaws.

**5.4. Limitations on Annual Assessment Increases.**

The Board shall levy Annual Assessments in accordance with the following provisions:

(a) **Maximum Authorized Annual Assessment for Initial Year of Operations.** Until the first day of the Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Board may only levy an Annual Assessment per Condominium in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual As-

assessments disclosed for Phase 1 in the most current Budget filed with and approved by DRE at the time Annual Assessments commence if the Board first obtains the approval of Members casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Members are represented ("Increase Election"). Notwithstanding the foregoing, this Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 5.4(e).

(b) Maximum Authorized Annual Assessment for Subsequent Fiscal Years. Starting with the first Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Board may only levy Annual Assessments which exceed the Annual Assessments for the immediately preceding Fiscal Year as follows:

(i) If the increase in Annual Assessments is less than or equal to twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must either (a) have distributed the Budget for the current Fiscal Year in accordance with Section 1365(a) of the California Civil Code, or (b) obtain the approval of Members casting a majority of votes in an Increase Election;

(ii) If the increase in Annual Assessments is greater than twenty percent (20%) of the Annual Assessments for the immediately preceding Fiscal Year, then the Board must obtain the approval of Members casting a majority of votes in an Increase Election.

Notwithstanding the foregoing, this Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 5.4(e).

(c) 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 maximum authorized Annual Assessment described above, it

may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses for the Property for any reason, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in Sections 5.4(a) and (b) above and (d) and (e) below, 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 Condominium.

(d) Automatic Assessment Increases. Notwithstanding any other provisions of this Section 5.4, upon Declarant's annexation of any portion of the Annexable Territory pursuant to Article XVI, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Property in or abutting such Annexable Territory in accordance with the standards prescribed by the then current DRE Operating Cost Manual, or if the Operating Cost Manual is no longer maintained by the DRE, pursuant to standards prescribed by comparable maintenance cost guidelines prepared in accordance with prudent property management practices. However, such increase shall occur only if (i) the annexation of such Annexable Territory is permitted by the DRE, and (ii) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Property previously issued by the DRE.

(e) Emergency Situations. For purposes of Sections 5.4(a), 5.4(b) and 5.6, an "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 Property or any portion thereof for which the Association is responsible where a threat to personal safety on the Property is discovered; and

(3) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an assessment pursuant to 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.

(f) Notification. The Association shall provide notice of any increase in the Annual Assessments, Capital Improvement Assessments, Reconstruction Assessments or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the date on which the increased assessment becomes due.

5.5. Annual Assessments/Commencement-Collection.  
The Board of Directors shall authorize and levy the amount of the Annual Assessment upon each Condominium, as provided herein, by majority vote of the Board. The initial Annual Assessment shall begin on all Condominiums in a Phase of Development (including unsold Condominiums therein owned by Declarant) on the first day of the first calendar month following the first Close of Escrow for the sale of a Condominium in such Phase. All Annual Assessments shall be assessed equally against the Members and their Condominiums based upon the number of Condominiums owned by each Member. Annual Assessments for fractions of any month involved shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by the DRE. From time to time the Board may 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 Property, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

Declarant and any other owner of a Unit which has not been constructed shall be exempt from payment of that portion of the Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the Unit. The exemption shall include, without limitation, expenses and reserves relating to roof replacement, exterior maintenance, walkway and carport lighting, cable television, refuse disposal, and domestic water supplied to the Unit. Any such exemption from the payment of Annual Assessments shall be in effect only until the earlier to occur of (1) the recordation of a notice of completion of the building containing the Unit, (2) the occupation or use of the Unit, or (3) completion of all elements of the Condominium structures that the Association is obligated to maintain.

Notwithstanding any other provisions of this Declaration, until the earlier to occur of (1) the recordation of a notice of completion of an Improvement on the Common Area, or (2) the placement of such Improvement into use, each Owner (including Declarant) shall be exempt from paying that portion of any Annual Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Improvement.

Each Member shall pay to the Association his Annual Assessment in installments at such frequency and in such amounts as established by the Board. Each Annual Assessment may be paid by the Member to the Association in one check or in separate checks as payments attributable to the deposits under the Operating Fund and the Reserve Fund. If any installment of an Annual Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

Notwithstanding any other provisions of this Declaration or the Bylaws regarding the term and termination of contracts with Declarant for providing services to the Association, Declarant may enter into a written maintenance agreement with the Association under which Declarant shall pay all or any portion of the operating Common Expenses and perform all or

any portion of the Association's maintenance responsibilities in exchange for a temporary suspension of Annual Assessments. Such maintenance agreement shall extend for a term and shall be on such conditions as are approved by the DRE, and may require Owners to reimburse Declarant, through the Association, for a portion of the costs expended in satisfaction of Common Expenses.

**5.6. Capital Improvement Assessments.**

Should the Board of Directors determine the need for a capital Improvement or other such addition to the Property, the cost of which in the aggregate exceeds five percent (5%) of the Budgeted gross expenses of the Association for the then current Fiscal Year, then the vote or written consent of Members casting a majority of votes at an Increase Election shall be required to approve and render effective a Capital Improvement Assessment levied by the Board of Directors to cover the cost of such expenditure. Capital Improvement Assessments may be levied by the Board without the consent of the Members, if the aggregate of such expenditures in each Fiscal Year does not exceed five percent (5%) of the Budgeted gross expenses of the Association for such Fiscal Year. Notwithstanding the foregoing, the Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Budgeted gross expenses of the Association for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 5.4(e).

**5.7. Delinquency.**

Any installment of an assessment provided for in this Declaration shall become delinquent if not paid within fifteen (15) days of the due date as established by the Board of Directors of the Association. The Board shall be authorized to adopt a system pursuant to which any installment of Annual Assessments, Capital Improvement Assessments, Special Assessments, or Reconstruction Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided herein, shall bear interest commencing thirty (30) days 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. The Board of Directors may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(c)(2). The Association need not accept any tender of a partial payment of an installment of an assessment and all costs and attorneys' fees attributable thereto, and any ac-



ceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter.

**5.8. Creation and Release of Lien.**

All sums other than Special Assessments assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective Condominium prior and superior to (a) any declaration of homestead Recorded after the Recordation of this Declaration, and (b) 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 first Mortgage of record (meaning any Recorded Mortgage or Deed of Trust with first priority or seniority over other Mortgages or Deeds of Trust) made in good faith and for value and Recorded prior to the date on which the "Notice of Lien" (described in this Section) against the respective Condominium was Recorded. The lien shall become effective upon Recordation by the Board or its authorized agent of a Notice of Assessment ("Notice of Lien") securing the payment of any Annual, Capital Improvement or Reconstruction Assessment or installment thereof, levied by the Association against any Condominium Owner as provided in Section 1367 of the California Civil Code. The Notice of Lien shall state (i) the amount of the assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and Recording the Notice of Lien, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a sufficient description of the Condominium against which the same has been assessed, (iv) the name and address of the Association, (v) the name of the Owner thereof, and (vi) in order for the lien to be enforced by nonjudicial 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 any authorized officer or agent of the Association. The lien shall relate only to the individual Condominium against which the assessment was levied and not to the Property as a whole. Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board of Directors shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board of Directors may demand and receive from the applicable Owner a reasonable charge, to be determined by the Board, for the preparation and Recordation of the Notice of Release before Recording it. 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.

**5.9. Enforcement of Liens.**

It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by sale of the Condominium 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 powers of sale in mortgages and deeds of trust, or in any manner permitted by law. An action may be brought to foreclose the lien of the Association by the Board, or by any Owner if the Board fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was Recorded; provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Owner affected thereby. The Association, through its agents, shall have the power to bid on the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Unit, and the defaulting Owner shall be required to pay the reasonable rental value for such Unit 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 shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

**5.10. Priority of Assessment Lien.**

The lien of the assessments provided for herein, including interest and costs of collection (including attorneys' fees), shall be subordinate to the lien of any first Mortgage upon one or more Condominiums which was Recorded before Recordation of the Notice of Lien on the Condominium(s). Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium

pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from liens for any assessments thereafter becoming due. When the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title pursuant to a judicial or nonjudicial foreclosure of the first Mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Owners of the Condominiums in the Property including such acquirer, his successors and assigns.

#### ARTICLE VI

#### 6. Project Easements and Rights of Entry.

##### 6.1. Easements.

(a) Access. Declarant expressly reserves for the benefit of the Owners reciprocal, nonexclusive easements for access, ingress and egress over all of the Common Property, including any private streets or driveways currently existing in the Property or subsequently added to it, which easements may be conveyed by Declarant to Owners and to the Association for so long as Declarant owns any interest in the Property. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by all Owners and their guests, tenants and invitees residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Condominium in the Project.

(b) Maintenance and Repair. Declarant expressly reserves for the benefit of the Board of Directors and all agents, officers and employees of the Association, nonexclusive easements over the Common Area (including the Exclusive Use Common Area) as necessary to maintain and repair the Common Area, and to perform all other tasks in accordance with the provisions of this Declaration.

Such easements over the Common Area shall be appurtenant to, binding upon, and shall pass with the title to, every Condominium conveyed.

(c) Exclusive Use Common Area. Declarant expressly reserves for the benefit of certain Owners exclusive easements over the Project for use of the Exclusive Use Common Area, including without limitation for patio, balcony, yard, stair and landing purposes as shown and assigned on the Condominium Plan or Plans for the Project, and for parking purposes as shown on Exhibit "C" hereto for Phase 1 and in the Notices of Addition or Condominium Plans for future Phases of Development and assigned to particular Units, if at all, in the individual grant deeds of such Units. Owners shall be entitled to exchange Exclusive Use Common Area parking spaces assigned to their respective Units, provided that (1) a reciprocal deed of conveyance identifying the exchanged Exclusive Use Common Area parking spaces, the exchanging Owners and their respective Condominiums, is executed by the exchanging Owners and the first Mortgagees of such exchanging Owners, and Recorded; and (2) no exchange of Exclusive Use Common Area parking spaces shall be effective if such exchange would result in a reduction of the number of parking spaces to which such Owners were originally entitled. A copy of the Recorded reciprocal deed of conveyance shall be delivered to the Board as soon as possible after Recordation. Upon the first to occur of (i) the Recordation by Declarant of a quitclaim deed conveying any unassigned Exclusive Use Common Area parking spaces to the Association, or (ii) the Close of Escrow for the sale of the last unsold Condominium in the Property and the Annexable Territory, any Exclusive Use Common Area parking spaces which have not been assigned to particular Units shall automatically cease to be Exclusive Use Common Area and shall instead become open parking spaces subject in all respects to the provisions of this Declaration concerning the Common Area.

(d) Utility Easements. Declarant expressly reserves for the benefit of the Association the right of Declarant to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and disposal of the Property. Such right of Declarant shall expire (1)

with respect to any Phase of Development, upon Close of Escrow for the sale of all Condominiums in such Phase by Declarant, or (ii) with respect to all Phases, upon expiration of seven (7) years from the date of original issuance by the DRE of the Final Subdivision Public Report for Phase 1.

(e) Encroachments. Declarant, the Association and Owners of contiguous Residences shall have a reciprocal easement appurtenant to each of the Residences over the Residences and the Common Property for the purpose of (1) accommodating any existing encroachment of any wall of any Improvement, and (2) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the Improvements or any other portion of the Project housing their respective Units. Easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of the same over all of the Common Property are specifically reserved for the benefit of the Owners. Declarant expressly reserves for the benefit of the Common Area, and for the benefit of the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and upon the Common Area. The foregoing easements shall not unreasonably interfere with each Owner's use and enjoyment of adjoining Residences. No portion of the Common Property, including without limitation parking spaces and other amenities contemplated as a part of the Property, are proposed to be leased by Declarant to the Owners or to the Association.

(f) Completion of Improvements. Declarant expressly reserves for its benefit the right and easement to enter the Property to complete any Improvement which Declarant deems desirable to implement Declarant's development plan.

#### 6.2. Rights of Entry.

The Board of Directors shall have a limited right of entry in and upon the Common Area and the interior of all Units for the purpose of inspecting the Project, and taking whatever corrective action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Declaration. However, such entry upon the interior of a Unit shall be made, except to effect emergency repairs or other

emergency measures, only after three (3) days prior written notice to the Owner of such Unit and after authorization of two-thirds (2/3rds) of the Board of Directors. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or Improvements required to be maintained or repaired by the Owners. Nothing in this Article VI shall in any manner limit the right of the Owner to exclusive occupancy and control over the interior of his Unit. However, an Owner shall permit a right of entry to the Board of Directors or any other person authorized by the Board of Directors, as reasonably necessary, such as in case of any emergency originating in or threatening his Unit, whether the Owner is present or not. Any damage caused to a Unit by such entry by the Board of Directors or by any person authorized by the Board of Directors shall be repaired by the Association as a Common Expense of the Association. Furthermore, an Owner shall permit other Owners, or their representatives, to enter his Residence for the purpose of performing required installations, alterations or repairs to the mechanical or electrical services to a Residence, provided that such requests for entry are made in advance and entry is made at a time reasonably convenient to the Owner whose Unit is to be entered; and provided further, that the entered Unit is left in substantially the same condition as existed immediately preceding such entry. In case of an emergency, such right of entry shall be immediate. Any damage caused to a Unit by such entry by an Owner or its representative shall be repaired by such Owner. Upon receipt of reasonable notice from the Association (which shall in no event be less than fifteen (15) days nor more than thirty (30) days) each Owner shall vacate his Unit in order to accommodate efforts by the Association to perform any other maintenance or repairs pursuant to the Declaration. The Board shall have the right of entry to the Units and the right to remove Owners from their Units, as necessary, to accomplish its duties as provided herein. The cost of performing any such maintenance or repairs shall be a Common Expense of the Association; however, each Owner shall bear his own costs of temporary relocation. If the Association acts to eradicate any wood destroying pests or organisms, then the procedure established in Section 2.7 shall control.

#### ARTICLE VII

##### 7. Declarant's Rights and Reservations.

Nothing in the Restrictions shall limit, and no Owner or the Association shall do anything to interfere with, the right of Declarant to subdivide or resubdivide any portion of the Property, or to complete Improvements to and on the Common Property or any portion of the Property 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 Property so long as any Condominium in the Project remains unsold. The rights of Declarant 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 conduct of its business of completing the work and disposing of the Condominiums by sale, resale, lease or otherwise. Each Owner by accepting a deed to a Condominium hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Condominium in the Project by a purchaser from Declarant to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Property. Declarant may use any Condominiums owned by Declarant 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 or placed on any portion of the Property by Declarant. The rights of Declarant hereunder and elsewhere in these Restrictions 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 written assignment. Notwithstanding any other provision of this Declaration, the prior written approval of Declarant, as developer of the Property, will be required before any amendment to this Article shall be effective. Each Owner hereby grants, upon acceptance of his deed to his Unit, 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. Declarant and its prospective purchasers of Condominiums shall be entitled to the nonexclusive use of the Common Property and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Property to its prospective purchasers, to dispose of the Property as provided herein, and to develop and sell the Annexable Territory. Declarant, its successors and tenants, shall also be entitled to the nonexclusive use of any portions of the Property which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the

Property and the Annexable Territory. The use of the Common Property by Declarant shall not unreasonably interfere with the use thereof by the other Members.

#### ARTICLE VIII

##### 8. Residence and Use Restrictions.

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

##### 8.1. Single Family Residences.

That portion of the Unit comprising the "residential elements" shall be used exclusively for single Family residential purposes, subject to the exemption granted Declarant under Article VII of this Declaration. The number of natural Persons residing in any Unit shall not exceed three (3) per bedroom in such Unit. An Owner may rent his Unit to a single Family provided that the Unit is rented pursuant to a lease or rental agreement which is (a) in writing, and (b) for a term of at least thirty (30) days, and (c) subject to all of the provisions of this Declaration.

##### 8.2. Parking and Vehicular Restrictions.

Those portions of the Property intended for parking of motorized vehicles, including the Exclusive Use Common Area parking spaces and the garages assigned to individual Units (collectively, "Parking Areas"), shall be used to park only the following motorized land vehicles designed and used primarily for non-commercial passenger transport: automobiles; passenger vans designed to accommodate ten (10) or fewer people; two-wheel motorcycles; and pick-up trucks having a manufacturer's rating or payload capacity of one (1) ton or less ("Authorized Vehicles"); provided, however, that a vehicle which is not an Authorized Vehicle may be parked in the Property if specifically authorized by the Board. Each Authorized Vehicle which is owned or operated by or within the control of an Owner or a resident of an Owner's Unit, if kept within the Property, shall be parked in the Exclusive Use Common Area parking space(s) (if any) or garage of that Owner to the extent of the space available; provided that unless otherwise authorized by the Board, each Owner shall ensure that any such parking space(s) and garage accommodates at least the number of vehicles for which it was initially constructed by Declarant. No repair, maintenance or restoration of any vehicle shall be conducted on the Property except within an enclosed garage when the garage door is closed, provided that such activity is not undertaken as a business, and provided that such activity may be prohibited



entirely by the Board if the Board determines that it constitutes a nuisance. The Board may establish additional regulations as it deems appropriate in its sole discretion with regard to any of the Parking Areas not assigned to individual Units, including without limitation designating "parking," "guest parking," and "no parking" areas thereon; and shall have the power to enforce all parking and vehicle use regulations applicable to the Property, including the power to remove violating vehicles from any portion of the Property pursuant to California Vehicle Code Section 22658.2 or other applicable statutes. If the Board fails to enforce any of the parking or vehicle use regulations, the County may, but need not, enforce such regulations in accordance with state and local laws and ordinances.

### **8.3. Nuisances.**

No noxious or offensive activities (including but not limited to the generation of loud noises and the generation of noxious odors) shall be carried on upon the Property or on any public street abutting or visible from the Property. 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 noisy or smoky vehicles, large power equipment or large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), 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 visible from the Property, or exposed to the view of other Owners without the prior written approval of the Architectural Committee. The Board of Directors of the Association 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 upon the Property or on any public street abutting or visible from the Property which may increase the rate of insurance on Units or on the Property, 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 Property. 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 Unit and other family members or persons residing in or visiting his Unit. Any damage to the Common Property, 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 Unit where such children or other family members or persons are residing or visiting.

**8.4. Signs.**

No sign, poster, display or other advertising device of any character shall be erected or maintained anywhere on the Property or on any public street abutting or visible from the Property, 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 Architectural Committee in accordance with Section 4.2 hereof. Such sign or notice may be placed within a Unit, and may also be placed upon the Common Property with the prior written approval of the Architectural Committee; provided that the location of such sign or notice on the Common Property shall be within an area specifically established by the Committee for such purpose. This Section shall not apply to any signs used by Declarant or its agents in connection with the sale of Condominiums or the construction or alteration of the Units or Common Property, traffic and visitor parking signs installed by Declarant, and 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 manner as to permit the maintenance of any sign which is not in conformance with any ordinance of the County.

**8.5. Antennae.**

No radio station or shortwave operators of any kind shall operate from any Unit or any other portion of the Property unless approved by the Architectural Committee. With the exception of any master antenna maintained by the Association, no exterior radio antenna, "C.B." antenna, television antenna, earth receiving station, satellite dish or other antenna of any type shall be erected or maintained anywhere in the Property unless approved by the Architectural Committee.

**8.6. Inside and Outside Installations.**

No outside installation of any type, including but not limited to clotheslines, shall be constructed, erected or maintained on any Residence, excepting antennae installed by Declarant as a part of the initial construction of the Property and except as may be installed by, or with the prior consent of the Architectural Committee. No balcony, patio or deck covers, wiring, or installation of air conditioning,

water softeners, or other machines shall be installed on the exterior of the buildings of the Project or be allowed to protrude through the walls or roofs of the buildings (with the exception of those items installed during the original construction of the Project), unless the prior written approval of the Architectural Committee is secured. Outdoor patio or lounge furniture, plants and barbecue equipment may be maintained pursuant to rules and procedures of the Architectural Committee. The type and color of all exposed window coverings shall be subject to the prior written approval of the Architectural Committee. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to any Residence shall be commenced without the prior written approval of the Architectural Committee. Nothing shall be done in any Unit or in, on or to the Common Area which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided herein. There shall be no alteration, repair or replacement of wall coverings within Units which may diminish the effectiveness of the sound control engineering within the buildings in the Project. 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 Condominium Unit 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 a Special Assessment for such cost of discharge.

#### **8.7. 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 used in the Declaration, "unreasonable quantities" shall ordinarily mean more than two (2) pets per Residence; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Board shall have the right to limit the size of pets and may prohibit maintenance of any animal which constitutes, in the opinion of the Board of Directors, a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property 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 or otherwise used any portion of the Property or on any public street abutting or visible from the Property.

**8.8. Business or Commercial Activity.**

No part of the Property shall ever be used for any business, commercial (including auctions or similar events), manufacturing, mercantile, storage, vending or other nonresidential purposes, including without limitation any activity for which the provider is compensated in any way or receives any form of consideration, regardless of whether the activity is engaged in full or part-time, generates or does not generate a profit, or requires or does not require a license; except Declarant, its successors and assigns may use any portion of the Property for a model home site and display and sales offices in accordance with Article VII hereof. The provisions of this Section 8.8 shall not preclude any of the above-described activities without external evidence thereof, provided that all of the following conditions are fulfilled: (a) such activities are conducted in conformance with all applicable governmental ordinances; (b) the patrons or clientele of such activities do not visit the Unit or park automobiles or other vehicles within the Property; (c) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside of the boundaries of the Unit; (d) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (e) such activities are consistent with the residential character of the Property and conform with the provisions of this Declaration.

**8.9. Rubbish Removal.**

No rubbish, trash, garbage or other waste material shall be kept or permitted upon any Condominium, the Common Area or on any public street abutting or visible from the Property except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers may be placed by the Owners thereof in front of their Units on the Common Area, but only for a reasonable period of time (not to exceed twelve (12) hours before and after scheduled trash collection hours). No portion of the Property shall be used for the storage of building materials, refuse or any other materials, except that building materials may be kept on any balcony,

patio or parking space temporarily during construction which has been previously approved by the Architectural Committee. No clothing, household fabrics or other unsightly articles shall be hung, dried or aired on any portion of the Property, including the interior of any Residence, so as to be visible from other Residences or the street. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor.

**8.10. Further Subdivision.**

Except as otherwise provided herein, no Owner shall physically or legally subdivide his Unit in any manner, including without limitation any division of his Unit or his Condominium into time-share estates or time-share uses; however, the right of an Owner to rent or lease all of his Unit by means of a written lease or rental agreement subject to the Restrictions shall not be impaired. Any failure by the lessee of the Unit 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 Unit in the Project may be partitioned or subdivided without the prior written approval of the Beneficiary of any first Mortgage on that Unit. 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 Condominiums in the Project.

**8.11. Drainage.**

There shall be no interference with the established drainage pattern over the Property, unless an adequate alternative provision is made for proper drainage with the prior written approval of the Architectural Committee. 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 Condominium in such Phase, or that which is shown on any plans approved by the Architectural Committee.

**8.12. Water Supply System.**

No individual water supply or water softener system shall be permitted in any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any applicable water district, the County, and all other applicable governmental authorities. Any sewage disposal system shall be installed only after approval by the Architectural Committee and any governmental health authority having jurisdiction.

**8.13. View Obstructions.**

No vegetation or other obstruction shall be planted or maintained in such location or of such height as to unreason-

ably obstruct the view from any other Residence in the vicinity thereof. If there is a dispute between Owners concerning the obstruction of a view from a Residence, the dispute shall be submitted to the Architectural Committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the Architectural Committee, be removed or otherwise altered to the satisfaction of the Architectural Committee, by the Owner of the Residence upon which the obstruction is located. Any item or vegetation which is exposed to the view of any Owner shall be removed or otherwise altered to the satisfaction of the Architectural Committee, if such Committee determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. The Architectural Committee shall ensure that the vegetation on the Common Property maintained by the Association is cut frequently, so that the view of any Owner is not unreasonably obstructed. Notwithstanding any of the foregoing, each Owner, by accepting title to a Condominium, hereby acknowledges that (a) there are no protected views within the Property, and no Condominium is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of improvements by Declarant or other Owners may impair the view from any Condominium, and the Owners hereby consent to such view impairment.

**8.14. Rights of Handicapped.**

Subject to the provisions of Article IV of this Declaration, each Owner shall have the right to modify his Residence and the route over the Common Area leading to the front door of his Residence, at his sole cost and expense, in order to facilitate access to his Residence by persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such persons.

**ARTICLE IX**

**9. Insurance.**

**9.1. Duty to Obtain Insurance: Types.**

The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered acceptable to FNMA (not less than \$1 million 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 Property. The Board shall also cause to be obtained and maintained 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 Common Property and those portions of the Units consisting of all fixtures, installations or additions comprising a part of the buildings housing the Units and all built-in or set-in appliances, cabinets and initial basic floor coverings, as initially installed or replacements thereof in accordance with the original plans and specifications for the Project, or as installed by or at the expense of the Owners. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein. The Board of Directors shall purchase such other insurance, as necessary, including, but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use. Fidelity bond coverage which names the Association as an obligee must be obtained, if reasonably available, by or on behalf of the Association for any Person handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the Manager 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 or the Manager, as the case may be, 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 one-fourth (1/4) of the Annual Assessments on all Condominiums in the Project, plus reserve funds. In addition, 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 condominium projects established by FNMA, GNMA and PHLMC, so long as any of which is a Mortgagee or Owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA, GNMA and PHLMC, as applicable.

**9.2. 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 of Directors 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.

**9.3. Right and Duty of Owners to Insure.**

It is the responsibility of each Owner to provide insurance on his personal property and upon all other property and Improvements within his Unit for which the Association has not purchased insurance in accordance with Section 9.1 hereof. 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 individual Unit or elsewhere upon the Property. 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 shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him 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.

**9.4. 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 9.6 and to each FNMA servicer who has filed a written request with the carrier for such notice.

**9.5. 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 and collected from the Owners. That portion of the Annual Assessments necessary for the required insurance premiums shall be separately accounted for by the Association in the Reserve Fund, to be used solely for the payment of premiums of required insurance as such premiums become due.



**9.6. Trustee for Policies.**

The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 9.1 of this Article shall be paid to the Board of Directors as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith 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 X of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 10.4 of this Declaration. 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. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

**9.7. Actions as Trustee.**

Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all 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 Mortgages held by first Mortgagees who have filed requests under Section 9.4. 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 of premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

**9.8. Annual Insurance Review.**

The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance

referred to in Section 9.1 above. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Property except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

**9.9. 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 coinsurance;
- (c) any right of setoff, counterclaim, apportionment, proration or 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 less 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 Condominium; and
- (g) any right to require any assignment of any Mortgage to the insurer.

ARTICLE X

10. Destruction of Improvements.

10.1. Restoration of the Property.

Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Property, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article IX hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Architectural Committee have been approved in writing by sixty-seven percent (67%) of the Owners and by the Beneficiaries of fifty-one percent (51%) of first Mortgages upon the Condominiums. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment shall be levied by the Board of Directors to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Board may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("Conditions to Reconstruction") have first been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Property is approved by the affirmative vote or written consent of sixty-seven percent (67%) of the Owners and by the written consent of the Beneficiaries of fifty-one percent (51%) of the first Mortgages on the Condominiums in the Project; and (b) within six (6) months after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("Reconstruction Certificate"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than eighty-five percent (85%) of the estimated cost of restoration and repair, it shall be conclusively presumed that the Owners have

determined not to proceed with restoration and repair and not to allow the Board to levy a Reconstruction Assessment, in which case the Owners may proceed as provided in Section 10.2 below.

**10.2. Sale of Property and Right to Partition.**

No Owner shall have the right to partition of his interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof, except as provided in Section 1359(b) of the California Civil Code as amended or in any successor statute. For purposes of Subsection 4 of said Section 1359(b), partition may occur only if all of the following conditions are satisfied: (a) either or both of the Conditions to Reconstruction described in Section 10.1 above have failed to occur; and (b) within six (6) months after the date on which destruction occurred, restoration or repair has not actually commenced; and (c) the Owners of sixty-seven percent (67%) of the Condominiums in the Project approve the partition by vote or written consent. In such event, the Association, acting through a majority of the Board, shall prepare, execute and Record, as promptly as practical, the certificate stating that a majority of the Board may properly exercise an irrevocable power of attorney to sell the Project for the benefit of the Owners and such other documents and instruments as may be necessary for the Association to consummate the sale of the Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. Such certificate shall be conclusive evidence of such authority for any Person relying thereon in good faith. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among the Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of a date immediately prior to such destruction (or condemnation), expressed as percentages, and computed by dividing such appraised valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is hereby authorized to hire one (1) or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. Notwithstanding the foregoing, the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to an Owner whose Condominium is so encumbered. Nothing herein shall be deemed to prevent partition of a cotenancy in any Condominium. Except as provided above, each Owner and the successors of each Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Units and for the benefit of all other Owners, specifically waive and abandon all rights,

interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

**10.3. Interior Damage.**

With the exception of any casualty or damage insured against by the Association pursuant to Section 9.1 of this Declaration, restoration and repair of any damage to the interior of any individual Residence, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Owner of the Residence so damaged. In the event of a determination to rebuild the Property after partial or total destruction, as provided in this Article X, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

**10.4. Notice to Owners and Listed Mortgagees.**

The Board, immediately upon having knowledge of any damage or destruction affecting a material portion of the Common Property, shall promptly notify all Owners and Beneficiaries, insurers and guarantors of first Mortgagees on Condominiums in the Project, who have filed a written request for such notice with the Board. The Board, immediately upon having knowledge of any damage or destruction affecting a Unit, shall promptly notify any Beneficiary, insurer or guarantor of any Mortgage encumbering such Unit who has filed a written request for such notice with the Board.

**ARTICLE XI**

**11. Eminent Domain.**

The term "taking" as used in this Article shall mean condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds shall be payable to the Association for the benefit of the Unit Owners and their Mortgagees, and shall be distributed to such Owners and Mortgagees as provided in this Article XI.

**11.1. Project Condemnation.**

If there is a taking of an interest in all or part of the Project such that the ownership, operation and use of the Project in accordance with the provisions of this Declaration

is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the Owners of Units (a) not taken, or (b) only partially taken but capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively, the "Remaining Units") do not by affirmative vote of at least one-third of their voting power approve the continuation of the Project and the repair, restoration and replacement to the extent feasible of the Common Area and the Remaining Units, then the Board shall proceed with the sale of that portion of the Project which was not taken and distribute the net proceeds of such sale after deducting any incidental fees and expenses, in the same proportion and manner as provided in Section 10.2.

**11.2. Condemnation of Common Property.**

If there is a taking of (a) all or any portion of the Common Area (other than Exclusive Use Common Area), or any interest therein, other than the taking of an undivided interest therein taken as a result of the taking of a Condominium, or (b) all or any portion of the Association Property, or any interest therein, then the award in condemnation shall be paid to the Association and shall be deposited in the Operating Fund.

**11.3. Condemnation of Exclusive Use Common Area.**

If there is a taking of all or any portion of an Exclusive Use Common Area which is not taken in connection with the taking of all or any portion of the Unit to which it is appurtenant, the award in condemnation shall be paid to the Owner of the Unit to which the taken Exclusive Use Common Area was appurtenant; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

**11.4. Condemnation of Condominiums.**

If there is a taking of a Condominium, the award in condemnation shall be paid to the Owner of the Condominium; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority.

**11.5. Condemnation of Portions of Units.**

(a) Minor Takings Within Limits. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (ii) restoration

can be accomplished at a cost less than or equal to the sum of (A) the amount of the condemnation awards for such takings plus (B) any amounts the Owners of the taken Units wish to contribute to restoration plus (C) an amount less than or equal to five percent (5%) of the Budgeted gross expenses of the Association for that Fiscal Year (collectively, the "Allowable Cost"), then the Board shall contract for such restoration and levy a Reconstruction Assessment in an amount equal to the Allowable Cost minus the amount of the condemnation awards and Owners' contributions, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration. If the restoration is accomplished at a cost less than the amount of the condemnation awards, then that portion of the condemnation awards in excess of the restoration costs shall be paid to the Owners of the partially taken Units in proportion to the decreases in the fair market values of their condominiums; provided, however, that such awards shall first be applied to the balance then due on any Mortgages encumbering such Owners' Condominiums, in order of priority.

(b) Minor Takings Exceeding Limits. If (i) there is a taking of a portion of one or more Units such that the intended use of the Units as residential dwellings is not substantially and adversely affected, and (ii) restoration cannot be accomplished at a cost less than or equal to the Allowable Cost, then the Board shall call a Special Meeting of the Members. If more than fifty percent (50%) of the Members are represented at such Special Meeting, either in person or by proxy, and a majority of the votes cast at such Special Meeting are in favor of levying a Reconstruction Assessment in an amount equal to the restoration costs minus the sum of the amount of the condemnation awards and the amounts the Owners of the taken Units wish to contribute to such restoration, then the Board shall contract for such restoration and levy a Reconstruction Assessment, and the condemnation awards, Owners' contributions and Reconstruction Assessment shall be applied to such restoration.

(c) Major Takings. If the requisite approval is not obtained at the Special Meeting referred to in Section 11.5(b), or if there is a taking of a portion of one or more Units such that the Units are not capable of being restored such that the intended use of the Units as residential dwellings is not substantially and adversely affected, then the award in condemnation shall be paid to the Owners of the taken Units; provided, however, that such award shall first be applied to the balance then due on any Mortgages encumbering such Owner's Condominium, in order of priority. The Board shall have the remaining portions of the taken Units

razed. The remaining portions of the taken Units and appurtenant Exclusive Use Common Areas shall become part of the Common Area, and the Owners of such taken Units in any Phase of Development or portion thereof, by acceptance of the award allotted to them in taking proceedings, hereby relinquish to the other Owners in such Phase of Development or portion thereof, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area. Each Owner relinquishing his interest in the Common Area pursuant to this Section shall, at the request of the Board and at the expense of the Association, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit or Residence shall not be liable for assessments under this Declaration which accrue on or after the date such Owner accepts his condemnation award.

**11.6. Portions of Awards in Condemnation Not Compensatory for Value of Real Property.**

Those portions of awards in condemnation which do not directly compensate Owners for takings of real property (e.g., awards for takings of personal property, relocation expenses, moving expenses, or other allowances of a similar nature intended to facilitate relocation) shall be paid to the Owners whose personal property is taken, or whose relocation is intended to be facilitated.

**11.7. Notice to Owners and Mortgagees.**

The Board, upon learning of any taking affecting a material portion of the Property, or any threat thereof, shall promptly notify all Owners and those Beneficiaries, insurers and guarantors of Mortgages on Condominiums in the Project who have filed a written request for such notice with the Association. The Board, upon learning of any taking affecting a Unit, or any threat thereof, shall promptly notify any Beneficiary, insurer or guarantor of a Mortgage encumbering such Unit who has filed a written request for such notice with the Association.

**ARTICLE XII**

**12. Rights of Mortgagees.**

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Deed of Trust upon one or more Condominiums made in good faith and for value, provided that after the foreclosure of any such Deed of Trust such Condominium(s) shall remain subject to this Declaration, as amended. For purposes of this Declaration, "first Mortgage" shall mean a Mortgage with



first priority over other Mortgages or Deeds of Trust on a Condominium, and "first Mortgage" shall mean the Beneficiary of a first Mortgage. For purposes of any provision of this Declaration or the other Restrictions which require the vote or approval of a specified percentage of first Mortgages, such vote approval shall be determined based upon one (1) vote for each Condominium encumbered by each such first Mortgage. In order to induce FHLMC, GNMA and FNMA to participate in the financing of the sale of Condominiums within the Project, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgages, FHLMC, FNMA and GNMA conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

(a) Each Beneficiary, insurer and guarantor of a first Mortgage encumbering any Condominium, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (1) any condemnation or casualty loss which affects either a material portion of the Project or the Unit(s) securing the respective first Mortgage; and (2) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including without limitation the payment of assessments or charges owed by the Owner(s) of the Unit(s) securing the respective first Mortgage, which notice each Owner hereby consents to and authorizes; and (3) a lapse, cancellation, or material modification of any policy of insurance or fidelity bond maintained by the Association; and (4) any proposed action of the Association which requires consent by a specified percentage of first Mortgages.

(b) Every Owner, including every first Mortgagee of a Mortgage encumbering any Condominium who obtains title to such Condominium pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal" created or purported to be created by the Restrictions.

(c) Each first Mortgagee of a Mortgage encumbering any Condominium, which obtains title to such Condominium, pursuant to judicial foreclosure or the powers provided in such Mortgage, shall take title to such Condominium free and clear of any claims for unpaid assessments or charges against

such Condominium which accrued prior to the time such Mortgagee acquires title to such Condominium in accordance with Section 5.10.

(d) Unless at least sixty-seven percent (67%) of the first Mortgagees or sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, neither the Association nor the Owners shall:

(1) by act or omission seek to abandon or terminate the Property; or

(2) change the method of determining the obligations, assessment dues or other charges which may be levied against any Owner; or

(3) partition or subdivide any Condominium Unit; or

(4) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property. (The granting of easements for public utilities or for other purposes consistent with the intended use of the Common Property under this Declaration, and the granting of exclusive easements to Owners over portions of the Common Property to conform the boundaries of the Common Property to the as-built location of Improvements installed or constructed by Declarant shall not be deemed a transfer within the meaning of this clause); or

(5) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design, the exterior appearance or the maintenance of the Units or the Common Property; or

(6) fail to maintain or cause to be maintained Fire and Extended Coverage insurance on insurable Common Area as provided in Article IX of this Declaration; or

(7) use hazard insurance proceeds for losses to any condominium property (i.e., Improvements to the Units or Common Property) for other than the repair, replacement or reconstruction of such condominium property, subject to the provisions of Article X of this Declaration; or

(8) change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Condominium in the Common Area.

(e) All Beneficiaries, insurers and guarantors of first Mortgages, upon written request to the Association, shall have the right to:

- (1) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours; and
- (2) require the Association to submit an annual audited financial statement if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Association; provided that, upon annexation of additional Units to the Project such that fifty (50) or more Units are subject to this Declaration, the Association may be required to submit such a statement without expenses to the requesting entity; and
- (3) receive written notice of all meetings of Owners; and
- (4) designate in writing a representative who shall be authorized to attend all meetings of Owners.

(f) All Beneficiaries, insurers and guarantors of first Mortgages, upon written request, shall be given thirty (30) days' written notice prior to the effective date of (1) any proposed material amendment to the Restrictions or Condominium Plans; (2) any termination of an agreement for professional management of the Property following any decision of the Owners to assume self-management of the Project; and (3) any proposed termination of the Property as a condominium project.

(g) The Reserve Fund described in Article V of this Declaration must be funded by regular scheduled monthly, quarterly, or semiannual payments rather than by large special assessments.

(h) The Board shall secure and cause to be maintained in force at all times a fidelity bond for any Person handling funds of the Association, including, but not limited to, employees of the professional Manager.

(i) In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of 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 Condominiums. 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 residential Condominiums, if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Condominium.

(j) Each Owner hereby authorizes the first Mortgagee of a first Mortgage on his Condominium to furnish information to the Board concerning the status of such first Mortgage and the loan which it secures.

(k) When professional management has been previously required by a Beneficiary, insurer, or guarantor of a first Mortgage, any decision to establish self-management by the Association shall require the approval of sixty-seven percent (67%) of the voting power of the Association and the Beneficiaries of fifty-one percent (51%) of the first Mortgages of Condominiums in the Project.

(l) All intended Improvements in any Phase of Development 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 prior to the first Close of Escrow for the sale of a Condominium in such Phase. All such Improvements shall be consistent with the Improvements in Phase 1 in terms of quality of construction. The requirements of the immediately preceding sentence are for the benefit only of and may be enforced only by FNMA.

(m) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Property and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

#### ARTICLE XIII

#### 13. Duration and Amendment.

##### 13.1. 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 a Declaration of Termination is Recorded, satisfying the requirements of an amendment to this Declaration as set forth in Section 13.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Unit from the concomitant Membership in the Association, as long as this Declaration shall continue in full force and effect. The provisions of this Article are subject to the provisions of Sections 10.2 and 11.5 of this Declaration.

**13.2. Amendment.**

(a) 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 or election of the Association at which a proposed amendment is to be considered. The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members representing not less than (i) sixty-seven percent (67%) of the voting power of the Association, and (ii) sixty-seven percent (67%) of the voting power of the Association residing in Members other than Declarant, provided 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.

(b) In addition to the required notice and consent of Members and Declarant provided above, the Beneficiaries of fifty-one percent (51%) of the first Mortgages on all the Condominiums in the Project who have requested the Association to notify them of proposed action requiring the consent of a specified percentage of first Mortgagees must approve any amendment to this Declaration which is of a material nature, as follows:

(1) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to Beneficiaries, insurers or guarantors of first Mortgages as provided in Articles V, IX, X, XI, XII and XIII hereof.

(2) Any amendment which would necessitate an encumbrancer after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(3) Any amendment which would or could result in an encumbrance being cancelled by forfeiture, or in a Condominium not being separately assessed for tax purposes.

(4) Any amendment relating to the insurance provisions as set out in Article IX hereof, or to the application of insurance proceeds as set out in Article X hereof, or to the disposition of any money received in any taking under condemnation proceedings.

(5) Any amendment which would or could result in partition or subdivision of a Condominium Unit in any manner inconsistent with the provisions of this Declaration.

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

(7) Any amendment concerning:

(A) Voting rights;

(B) Rights to use the Common Property;

(C) Reserves and responsibility for maintenance, repair and replacement of the Common Property;

(D) Boundaries of any Unit;

(E) Owners' interests in the Common Area;

(F) Convertibility of Common Area into Units or Units into Common Area;

(G) Leasing of Units;

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

(I) Annexation or deannexation of real property to or from the Property; or

**(J) Assessments, assessment liens, or the subordination of such liens.**

**(c) Termination of this Declaration shall require approval by the Members as provided in subsection (a) of this Section 13.2. No such termination shall be effective unless it is also approved in advance either by fifty-one percent (51%) of the Beneficiaries of the first Mortgages on all of the Condominiums in the Project (if said termination is proposed by reason of the substantial destruction or condemnation of the Project) or by sixty-seven percent (67%) of such Beneficiaries (if said termination is for reasons other than such substantial destruction or condemnation).**

**(d) Each Beneficiary of a first Mortgage on a Condominium in the Project which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested shall be deemed to have approved the amendment or termination if the Beneficiary fails to submit a response to the notice within thirty (30) days after the Beneficiary receives the notice.**

**(e) A copy of each amendment shall be certified by at least two (2) officers of the Association, and the amendment shall be effective when a Certificate of Amendment is Recorded. The 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.**

**(f) Notwithstanding any other provisions of this Section 13.2, at any time prior to the first Close of Escrow for the sale of a Condominium within Phase 1, Declarant may unilaterally amend or terminate this Declaration by Recording a written instrument which effects the amendment or termination and is signed and acknowledged by Declarant.**



(g) Notwithstanding any other provisions of this Section 13.2, for so long as Declarant owns any portion of the Properties or the Annexable Territory, Declarant may unilaterally amend this Declaration by Recording a written instrument signed by Declarant in order to conform this Declaration to the requirements of DRE, FNMA, GNMA, FHLMC or the County then in effect.

**13.3. Protection of Declarant.**

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 Property or sell or lease Condominiums therein in accordance with this Declaration shall become effective. Notwithstanding any other provisions of the Restrictions, until such time as (i) Declarant is no longer entitled to add Annexable Territory to the Property without the consent of the Association pursuant to Section 16.1, or (ii) Declarant no longer owns any Condominiums in the Property, whichever occurs last, the following actions, before being undertaken by the Association, shall 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 Sections 13.2;

(b) The annexation to the Property of real property other than the Annexable Territory pursuant to Section 16.2;

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

(d) Subject to Section 5.4 regarding limitations on Annual Assessment increases, any significant reduction of Association maintenance or other services.

**ARTICLE XIV**

**14. Enforcement of Certain Bonded Obligation.**

**14.1. Consideration by Board of Directors.**

If (1) the Improvements to be located on the Common Property are not completed prior to the issuance of a Final Subdivision Public Report by the DRE for the sale of Condominiums in

the Project, and (2) the Association is obliged under a bond or other arrangement ("Bond") required by the DRE to secure performance of the commitment of Declarant to complete such Improvements, the Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Improvement on the Common Property, 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.

**14.2. 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**

**15. General Provisions.**

**15.1. Legal Proceedings.**

Failure to comply with any of the terms of the Restrictions by an Owner, his family, guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision, or any other provision hereof. The Board, any Owner (not at the time in default hereunder), or Declarant (so long as Declarant is an Owner) shall be entitled to bring an action for damages against any defaulting Owner, and in addition may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant to this

Declaration shall include a sum for attorneys' fees in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive. Each Owner shall have a right of action against the Association for the failure by the Association to comply with the Restrictions.

**15.2. Violation of Restrictions.**

Without in any way limiting the generality of the foregoing, if the Board of Directors determines that there is a violation of any provision of this Declaration, or the Architectural Committee determines that an Improvement which is the maintenance responsibility of an Owner is in need of installation, repair, restoration or painting, then the Board shall give written notice to the responsible Owner of the condition or violation complained of. Unless the Architectural Committee has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such period of time as may be determined reasonable by the Board after it has given said written notice, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Board, after Notice and Hearing, shall undertake to remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner and his Condominium whose Residence is the subject matter of the corrective work. Such cost shall be deemed to be a Special Assessment to such Owner and shall be subject to enforcement and collection by the Board in accordance with the procedures provided for in this Declaration. The Board may also adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Unit, to comply with any provision of the Restrictions. Such fines or penalties may only be assessed by the Board after Notice and Hearing.

**15.3. 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.

**15.4. 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 residential

condominium development and for the maintenance of Common Property, 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.

**15.5. 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 as 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.

**15.6. Use of Recreational Facilities.**

The Board of Directors shall have the right to limit the number of guests that an Owner or such Owner's tenant may permit to use the open parking and recreational facilities on the Common Property, and the Board shall have the right to set further reasonable restrictions on the time and manner of use of said parking areas and recreational facilities, in accordance with the Rules and Regulations, including, without limitation, Rules and Regulations restricting or prohibiting the use of all or designated portions of the Property recreational facilities by minors, guests of an Owner or his tenants.

**15.7. No Public Right or Dedication.**

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Property to the public, or for any public use.

**15.8. No Representations or Warranties.**

No representations or warranties of any kind, express or implied, have been given or made by Declarant, or its agents 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 Condominium Project, 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.

**15.9. Nonliability and Indemnification.**

(a) General Limitation. 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 of 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 within what such Person reasonably believed to be 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.

(b) Bodily Injury Damages Limitation. No person who suffers bodily injury (including without limitation emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer Board member or volunteer Association officer shall recover damages from such Board member or officer if all of the following conditions are satisfied:

(1) At the time the act or omission occurred, the Board member or officer resided in the Project as either a tenant or an Owner of two (2) or fewer Condominiums;

(2) The act or omission was performed within the scope of the Board member's or officer's Association duties;

(3) The act or omission was performed in good faith;

(4) The act or omission was not willful, wanton or grossly negligent; and

(5) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00) if the Project then consisted of one hundred (100) or fewer Condominiums, and at least one million dollars (\$1,000,000.00) if the Project then consisted of more than one hundred (100) Condominiums.

A Board member or Association officer who at the time of the act or omission received direct or indirect compensation as an employee from Declarant or from a financial institution which purchased a Condominium at a judicial or nonjudicial foreclosure of a Mortgage is not a volunteer for purposes of this Section 15.9(b). The payment of actual expenses incurred by a Board member or Association officer does not affect the member's or officer's status as a volunteer for purposes of this Section 15.9(b).

(c) Indemnification. 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:

(1) 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;

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

(3) 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 such 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 15.9(c) 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 15.9(c) shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law. The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

**15.10. Notices.**

Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one (1) or more co-owners of a Condominium or to any general partner of a partnership owning a Condominium shall be deemed delivery 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, such 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 Unit. Such notice shall be deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors in which case 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.

**15.11. Priorities and Inconsistencies.**

If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

**15.12. NOISE COMPATIBILITY.**

DUE TO THE FACT THAT THE PROPERTY IS LOCATED IN THE VICINITY OF THE EL TORO MARINE BASE AIR STATION, THE RECORDED TRACT MAP FOR THE PROPERTY DESIGNATES CERTAIN PORTIONS OF THE PROPERTY AS BEING LOCATED OUTSIDE A 65 DECIBEL COMMUNITY NOISE EQUIVALENT LEVEL ("CNEL") CONTOUR. IN ACCORDANCE WITH THE REQUIREMENTS OF THE COUNTY, AN OWNER MAY BE PRECLUDED FROM CONSTRUCTING CERTAIN IMPROVEMENTS IN THE PORTION OF HIS YARD OR PATIO WHICH IS LOCATED OUTSIDE THIS CNEL CONTOUR. THE TYPES OF IMPROVEMENTS WHICH MAY BE PRECLUDED INCLUDE, BUT ARE NOT LIMITED TO, PATIO IMPROVEMENTS, BARBECUE AREAS AND JACUZZIS. BEFORE PURCHASING A CONDOMINIUM, EACH OWNER SHOULD THOROUGHLY INVESTIGATE WITH THE COUNTY AND ALL OTHER APPROPRIATE ENTITIES THE EXTENT TO WHICH THIS LIMITATION MAY PRECLUDE SUCH OWNER FROM CONSTRUCTING ANY IMPROVEMENTS SUCH OWNER MAY WISH TO CONSTRUCT. DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE EXTENT TO WHICH ANY OWNER MAY BE ABLE TO CONSTRUCT IMPROVEMENTS OUTSIDE OF THE CNEL CONTOUR.

**15.13. Removal of Watercourse.**

If within one (1) year from the date of the Close of Escrow for the sale of the final Condominium in the Property not less than a majority of the voting power of the Association votes to eliminate the watercourse in the Property, then Declarant shall remove the watercourse at Declarant's expense and replace the watercourse with such improvements as Declarant may select in Declarant's reasonable discretion. Declarant shall have no obligation whatsoever to remove the watercourse if the Association does not so vote to remove the watercourse within such one (1) year period.

**ARTICLE XVI**

**16. Annexation of Additional Property.**

Additional real property may be annexed to Phase 1 and such additional real property may become subject to this Declaration by any of the methods set forth hereinafter:



**16.1. Additions by Declarant.**

Declarant or its successors or assigns shall have the right from time to time to add the Annexable Territory, or any portion or portions thereof (including any recreation facilities located thereon), to the Property and to bring such added territory within the general plan and scheme of this Declaration without the approval of the Association, its Board of Directors, or Members; provided that such a right of Declarant and its successors and assigns shall terminate on the earlier to occur of the third anniversary of the original issuance of the most recently issued Final Subdivision Public Report for the most recent Phase of Development, or the seventh anniversary of the date of Recordation of this Declaration. As each Phase of Development is developed, Declarant may, with respect thereto, record a supplemental declaration ("Supplemental Declaration") which may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as Declarant may deem appropriate for that Phase of Development.

**16.2. Other Additions.**

In addition to the provision for annexation specified in Section 16.1 above, additional real property may be annexed to the Property and brought within the general plan and scheme of this Declaration upon the approval by vote or written consent of Members entitled to exercise no less than two-thirds (2/3rds) of the voting power of the Association. Notwithstanding the foregoing, any additional real property annexed to the Property after the seventh (7th) anniversary of the Recordation of this Declaration shall not effect a change in the percentage interests of Owners in the Common Area which existed prior to the date of annexation.

**16.3. Rights and Obligations-Added Territory.**

Subject to the provisions of Section 16.4, upon the Recording of a Notice of Addition of Territory containing the provisions as set forth in this Section, all provisions contained in this Declaration shall apply to the real property described in such Notice of Addition of Territory (the "added territory") in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the added territory shall be the same as with respect to the property originally covered hereby, and the rights, powers and responsibilities of the Owners, lessees and occupants of Units within the added territory, as well as within the property originally subject to this Declaration, shall be the same as if the added territory were originally covered by this Declaration. Voting rights attributable to the Condominiums in the added territory shall not vest until Annual Assessments have commenced as to such Condominiums.

**16.4. Notice of Addition of Territory.**

The additions authorized under Sections 16.1 and 16.2 shall be made by Recording a Notice of Addition of Territory, or other similar instrument (which Notice or Instrument may contain the Supplemental Declaration, if any, affecting each such Phase of Development), with respect to the added territory which shall be executed by Declarant and shall extend the general plan and scheme of this Declaration to such added territory ("Notice of Addition"). The Recordation of said Notice of Addition shall constitute and effectuate the annexation of the added territory described therein, and thereupon said added territory shall become and constitute a part of the Project, become subject to this Declaration and encompassed within the general plan and scheme of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein, and become subject to the functions, powers and jurisdiction of the Association; and the Owners of Condominiums in said added territory shall automatically become Members of the Association. Such Notice of Addition may contain a Supplemental Declaration with such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the added territory, or as Declarant may deem appropriate in the development of the added territory, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such Notice of Addition or Supplemental Declaration revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Declaration as the same shall pertain to the real property originally covered by this Declaration.

**16.5. Deannexation and Amendment.**

Declarant may amend a Notice of Addition or delete all or a portion of a Phase of Development from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the owner of all of such Phase of Development, and provided that (1) an amending instrument or a Notice of Deletion of Territory, as applicable, is Recorded in the same manner as the applicable Notice of Addition was Recorded, (2) Declarant has not exercised any Association vote with respect to any portion of such Phase of Development, (3) assessments have not yet commenced with respect to any portion of such Phase of Development, (4) Close of Escrow has not occurred for the sale of any Condominium in such Phase of Development, and (5) the Association has not made any expenditures or incurred any obligations with respect to any portion of such Phase of Development.

This Declaration is dated for identification purposes  
9/17, 1992.

TAHSIN INVESTMENT GROUP, L.P.,  
a California limited partner-  
ship

By: LA MIRAGE DEVELOPMENT  
INC., a California  
corporation

Its: General Partner

By: Scott Gayner  
Scott Gayner

Its: President

Declarant"

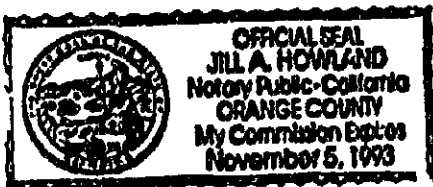
STATE OF CALIFORNIA

COUNTY OF ORANGE

} ss.

on September 17, 1992, before me, the undersigned, a  
Notary Public in and for said State, personally appeared  
SCOTT GAYNER, personally known to me (or proved to me on the  
basis of satisfactory evidence) to be the person whose name  
is subscribed to the within instrument and acknowledged to me  
that he executed the same in his authorized capacity, and  
that by his signature on the instrument the person, or the  
entity upon behalf of which the person acted, executed the  
instrument.

WITNESS my hand and official seal.



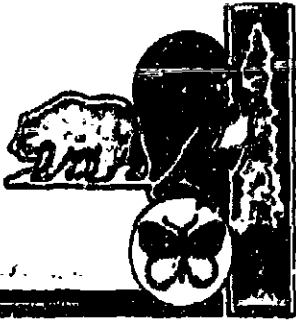
Jill A. Howland  
Notary Public in and for said State

**EXHIBIT "A"**

**ARTICLES OF INCORPORATION OF THE ASSOCIATION**

**jlx082/23210/000/0090/la.mirage  
12-04-91**

1710561



**State  
of  
California**  
OFFICE OF THE SECRETARY OF STATE

**CORPORATION DIVISION**

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

**IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this**

**'AUG -4 1992**



*March Fong Eu*

Secretary of State

1710561

ENCLOSED

FILED  
In the Office of the Secretary of State  
of the State of California

**ARTICLES OF INCORPORATION  
OF  
LA MIRAGE AT ALISO VIEJO HOMEOWNERS ASSOCIATION**

JUL 30 1992

MARCH FONG LU, Secretary of State

**ONE:** The name of this corporation ("Association" herein) is LA MIRAGE AT ALISO VIEJO HOMEOWNERS ASSOCIATION.

**TWO:** This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law.

**THREE:** The Association's initial agent for service of process is Ward Kao, whose business address is 4407 Manchester Avenue, Suite 208, Encinitas, California 92024.

**FOUR:** The Association shall have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Mutual Benefit Corporation Law may now or hereafter have or exercise, provided that the Association shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes described in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for La Mirage recorded or to be recorded with the Orange County Recorder, in the Bylaws of the Association, in Section 23701t of the California Revenue and Taxation Code, and in Section 528 of the Internal Revenue Code, all as amended from time to time.

**FIVE:** The classes of Membership and the voting and other rights and privileges of Members shall be as set forth in the Bylaws. So long as there are two classes of Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Association, and (ii) Members representing seventy-five percent (75%) or more of the voting power of each class of Members. After conversion of the Class B Membership to Class A Membership, amendment of these Articles of Incorporation shall require the assent (by vote or written consent) of (i) a bare majority of the Board of Directors of the Association, (ii) seventy-five percent (75%) or more of the total voting power of the Members, and (iii) Members representing seventy-five percent (75%) or more of the voting power of the Members other than the Subdivider of the Project ("Declarant").

The undersigned, who is the incorporator of the  
Association, has executed these Articles of Incorporation on  
JULY 27, 1992.

W J Rao  
Ward Rao

-2-

jlr082/23210/000/0070/1a.mirage  
07-17-92

**EXHIBIT "B"**

**BYLAWS OF THE ASSOCIATION**

jlr082/23210/000/0090/la.mirage  
12-04-91



**BYLAWS**

**OF**

**LA MIRAGE AT ALISO VIEJO HOMEOWNERS ASSOCIATION**

**jlr082/23210/000/0080/la.mirage  
01-29-92**

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**BYLAWS**  
**OF**  
**LA MIRAGE AT ALISO VIEJO HOMEOWNERS ASSOCIATION**

**ARTICLE I**

**1. Plan of Condominium Ownership.**

**1.1. Name.**

The name of the corporation is LA MIRAGE AT ALISO VIEJO HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Association." The principal office of the Association shall be located in Orange County, California.

**1.2. Application.**

The provisions of these Bylaws are applicable to the residential condominium project known as La Mirage, located in the County of Orange, State of California. All present and future Owners and their tenants, future tenants, employees, and any other person who might use the facilities of the Project in any manner, are subject to the regulations set forth in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservation of Basements for La Mirage (the "Declaration" herein) Recorded or to be Recorded in the Official Records of Orange County and applicable to the Project. The mere acquisition or rental of any Condominium in the Project or the mere act of occupancy of any Condominium will signify that these Bylaws are accepted, ratified, and will be complied with.

**1.3. Meaning of Terms.**

Unless otherwise specifically provided herein, the capitalized terms in these Bylaws shall have the same meanings as are given to such terms in the Declaration.

**ARTICLE II**

**2. Voting by Association Membership.**

**2.1. Voting Rights.**

The Association shall have two (2) classes of voting Membership, as further provided in the Declaration.

**Class A.** Class A Members shall be those Owners with the exception of Declarant for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each

Condominium owned which is subject to assessment, as further provided in the Declaration.

**Class B.** The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Condominium owned by Declarant, provided that the Class B Membership shall cease and be converted to Class A Membership immediately upon the first to occur of the following events:

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

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

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

Except as provided in Section 14.2 of the Declaration and Section 4.8 of these Bylaws, as long as there exists a Class B Membership, any provision of these Bylaws which expressly requires a 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 approval of such specified percentage of the voting power of each class of Membership. Except as provided in Section 14.2 of the Declaration and Section 4.8 of these Bylaws, upon termination of the Class B Membership, any provision of these Bylaws which expressly requires a vote or written consent of Owners representing a specified percentage of the voting power of the Association before action may be undertaken shall 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.

**2.2. Majority of Quorum.**

Unless otherwise expressly provided in these Bylaws or the Declaration, any action which may be taken by the Association may be taken by a majority of a quorum of the Members of the Association.

**2.3. Quorum.**

Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least a majority of the voting power

of the Membership of the Association shall constitute a quorum of the Membership. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a majority of the Members required to constitute a quorum.

**2.4. Proxies.**

Votes may be cast in person or by proxy and all proxies must be in writing. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed. Any form of proxy or written ballot distributed by any Person to the Members of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the proxy or written ballot. The proxy or written ballot shall provide that, when the Member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid. No proxy shall be valid with respect to a vote on any matter described in Section 7613(g) of the California Corporations Code unless the general nature of the proposal was set forth in the proxy.

**ARTICLE III**

**3. Administration.**

**3.1. Association Responsibilities.**

In accordance with the provisions of the Declaration, the Association shall have the responsibility of administering the Property, approving the Budget, establishing and collecting all assessments applicable to the Property, and arranging for overall architectural control of the Property.

**3.2. Place of Meetings of Members.**

Meetings of the Members shall be held on the Property, or such other suitable place as proximate thereto as practicable, in Orange County, convenient to the Owners, as may be designated by the Board of Directors.

**3.3. Annual Meetings of Members.**

The first annual meeting of Members shall be held within forty-five (45) days after Close of Escrow for the sale of fifty-one percent (51%) of the Condominiums in Phase 1 or within six (6) months after the Close of Escrow for the sale

of the first Condominium in Phase 1, whichever occurs first. Thereafter, the annual meetings of the Members shall be held on or about the anniversary date of the first annual meeting. At each annual meeting there shall be elected by ballot of the Members a Board of Directors of the Association, in accordance with the requirements of Article IV, Section 4.5 of these Bylaws. The Members may also transact such other business of the Association as may properly come before them. Each first Mortgagee of a Condominium in the Project may designate a representative to attend all annual meetings of the Members.

**3.4. Special Meetings of Members.**

It shall be the duty of the Board to call a special meeting of the Members, as directed by resolution of a majority of a quorum of the Board of Directors, by request of the President of the Association or upon receipt by the Secretary of a petition signed by Members representing at least five percent (5%) of the total voting power of the Association. The notice of any special meeting shall be given within twenty (20) days after adoption of such resolution or receipt of such request or petition and shall state the date, time and place of such meeting and the general nature of the business to be transacted. The special meeting shall be held not less than thirty-five (35) days nor more than ninety (90) days after adoption of such resolution or receipt of such request or petition. No business shall be transacted at a special meeting except as stated in the notice. Each first Mortgagee of a Condominium in the Project may designate a representative to attend all special meetings of the Members.

**3.5. Notice; Record Dates.**

It shall be the duty of the Secretary to send a notice of each annual or special meeting by first-class mail, at least ten (10) but not more than thirty (30) days prior to such meeting, stating the purpose thereof as well as the day, hour and place where it is to be held, to each Member of record, and to each first Mortgagee of a Condominium, which Mortgagee has filed a written request for notice with the Secretary. The notice may set forth time limits for speakers and nominating procedures for the meeting. The notice shall specify those matters the Board intends to present for action by the Members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. The notice of any meeting at which Directors are to be elected shall include the names of all those who are nominees at the time the notice is given to the Members. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, forty-eight (48) hours after said notice has been deposited in a regular depository of the United States mail. Such notice shall be

posted in a conspicuous place on the Common Property, and such notice shall be deemed served upon a Member upon posting if no address for such Member has been then furnished the Secretary. The Board of Directors may fix a date in the future as a record date for the determination of the Members entitled to notice of any meeting of Members. The record date so fixed shall be not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting. If the Board does not fix a record date for notice to Members, the record date for notice shall be the close of business on the business day preceding the day on which notice is given. In addition, the Board of Directors may fix a date in the future as a record date for the determination of the Members entitled to vote at any meeting of Members. The record date so fixed shall be not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting. If the Board does not fix a record date for determining Members entitled to vote, Members on the day of the meeting who are otherwise eligible to vote are entitled to vote at the meeting. Notwithstanding any other provision of these Bylaws, approval by the Members of any of the following proposals, other than by unanimous approval of those Members entitled to vote, shall not be valid unless the general nature of the proposal was stated in the notice or in any written waiver of the notice: (a) removing a Director without cause; (b) filling vacancies on the Board; (c) approving a contract or transaction between the Association and one or more Directors, or between the Association and any entity in which a Director has a material financial interest; (d) amendment of the Association's Articles of Incorporation; or (e) electing to wind up and dissolve the Association.

### 3.6. Adjourned Meetings.

If any meeting of Members cannot be organized because a quorum is not present, a majority of the Members who are present, either in person or by proxy, may adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the presence in person or by proxy of the Members holding at least twenty-five percent (25%) of the voting power of the Association. Such an adjourned meeting may be held without notice thereof as provided in this Article III, provided that notice is given by announcement at the meeting at which such adjournment is taken. If, however, such an adjourned meeting is actually attended, in person or by proxy, by Members having less than one-third (1/3rd) of the voting power of the Association, notwithstanding the presence of a quorum, no matter may be voted upon except such matters notice of the general nature of which was given pursuant to Section 3.5 hereof. No action by the Members on any such matters shall



be effective if the votes cast in favor are fewer than the minimum number of votes required by the Restrictions to approve such an action.

**3.7. Order of Business.**

The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting power represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of Minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of elections (at annual meetings or special meetings held for such purpose); (g) election of Directors (at annual meetings or special meetings held for such purpose); (h) election of Delegate to Community Association, (i) unfinished business; and (j) new business.

**3.8. Action Without Meeting.**

Any action, which may be taken at a meeting of the Members (except for the election of Directors) may be taken without a meeting by written ballot of the Members. Ballots shall be solicited in the same manner as provided in Section 3.5 for the giving of notice of meetings of Members. Such solicitations shall specify (a) the number of responses needed to meet the quorum requirements, (b) the percentage of approvals necessary to approve the action, and (c) the time by which ballots must be received in order to be counted. The form of written ballot shall afford an opportunity to specify a choice between approval and disapproval of each matter and shall provide that, where the Member specifies a choice, the vote shall be cast in accordance therewith. Receipt within the time period specified in the solicitation of a number of ballots which equals or exceeds the quorum which would be required if the action were taken at a meeting and a number of approvals which equals or exceeds the number of votes which would be required for approval if the action were taken at a meeting at which the total number of votes cast was the same as the total number of ballots cast shall constitute approval by written ballot.

**3.9. Consent of Absentees.**

The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the Members not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the Minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the Minutes of the Meeting.

**3.10. Minutes. Presumption of Notice.**

Minutes or a similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the Minutes executed by the Secretary that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

**ARTICLE IV**

**4. Board of Directors.**

**4.1. Number and Qualification.**

The affairs of the Association shall be governed and managed by a Board of Directors, each of whom, except for those appointed and serving as first Directors, must either be an Owner or an agent of Declarant for so long as Declarant owns a Condominium in the Project or is entitled to add any of the Annexable Territory to the Property without the vote of the Members pursuant to the Declaration. Prior to the first annual meeting of the Members, the Board shall be composed of three (3) persons. At the first annual meeting of the Members, five (5) persons shall be elected to the Board, and the Board shall thereafter be composed of five (5) persons. The authorized number of Directors may be changed by a duly adopted amendment to the Bylaws. Directors shall not receive any salary or compensation for their services as Directors unless such compensation is approved by the vote or written consent of Members representing at least a majority of both the Class A and Class B voting power; provided, however, that (1) nothing herein contained shall be construed to preclude any Director from serving the Association in some other capacity and receiving compensation therefor, and (2) any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

**4.2. Powers and Duties.**

The Board of Directors has the powers and duties necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by these Bylaws directed to be exercised and done by the Members. The Board of Directors shall not enter into any contract for a term in excess of one (1) year, without the vote or written consent of the Members representing at least a majority of the voting power of the Association, except for (1) a contract with a public utility company if the rates charged for the materials or services are regulated by the California Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the public utility company will contract at the regulated rate, (2) a management contract the terms of which conform to

the requirements of Section 4.4 hereof, (3) prepaid casualty or liability insurance policies of not to exceed three (3) years' duration, provided that the policies permit short term cancellation by the Association, (4) lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under any such agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more, (5) agreements for cable television services and equipment or satellite dish television services and equipment with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%), and (6) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services with terms not in excess of five (5) years, provided that Declarant does not have a direct or indirect ownership interest in the supplier of such services or equipment equal to or greater than ten percent (10%).

**4.3. Special Powers and Duties.**

Without prejudice to such foregoing general powers and duties and such powers and duties as are set forth in the Declaration, the Board of Directors is vested with, and responsible for, the following powers and duties:

(a) The power and duty to select, appoint, and remove all officers, agents and employees of the Association, to prescribe such powers and duties for them as may be consistent with law, the Articles of Incorporation, the Declaration and these Bylaws; to fix their compensation and to require from them security for faithful service when deemed advisable by the Board.

(b) The power and duty to conduct, manage and control the affairs and business of the Association, and to make and enforce such rules and regulations therefor consistent with law, the Articles of Incorporation, the Declaration and these Bylaws, as the Board may deem necessary or advisable.

(c) The power but not the duty to change the principal office for the transaction of the business of the Association from one location to another within the County of Orange, as provided in Article I hereof; to designate any place within said County for the holding of any annual or special meeting or meetings of Members consistent with the provisions of Article III, Section 3.2 hereof; and to adopt and

use a corporate seal and to alter the form of such seal from time to time, as the Board, in its sole judgment, may deem best, provided that such seal shall at all times comply with the provisions of law.

(d) With the approval of Members representing at least two-thirds (2/3rds) of the voting power of the Association, the power but not the duty to borrow money and to incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor.

(e) The power and duty to fix and levy from time to time Annual Assessments, Special Assessments, and Reconstruction Assessments upon Members, as provided in the Declaration; to fix and levy from time to time in any Fiscal Year Capital Improvement Assessments applicable to that year only for capital improvements; to determine and fix the due date for the payment of such assessments, and the date upon which the same shall become delinquent; provided, however, that such assessments shall be fixed and levied only to provide for the payment of the Common Expenses of the Association and of taxes and assessments upon real or personal property owned, leased, controlled or occupied by the Association, or for the payment of expenses for labor rendered or materials or supplies used and consumed, or equipment and appliances furnished for the maintenance, improvement or development of such property or for the payment of any and all obligations in relation thereto, or in performing or causing to be performed any of the purposes of the Association for the general benefit and welfare of its Members, in accordance with the provisions of the Declaration. The Board of Directors is hereby authorized to incur any and all such expenditures for any of the foregoing purposes and to provide, or cause to be provided, adequate reserves for replacements as it shall deem to be necessary or advisable in the interest of the Association or welfare of its Members. The funds collected by the Board of Directors from the Members, attributable to replacement reserves, for maintenance costs which cannot normally be expected to occur on an annual basis and for capital improvements, shall at all times be held in trust for the Members. Disbursements from such

trust reserve fund shall be made only in accordance with the provisions of the Declaration. Such Annual Assessments, Reconstruction Assessments, Special Assessments and Capital Improvement Assessments shall be fixed in accordance with the provisions of the Declaration. Should any Member fail to pay such assessments before delinquency, the Board of Directors in its discretion is authorized to enforce the payment of such delinquent assessments as provided in the Declaration.

(f) The power and duty to enforce the provisions of the Declaration, these Bylaws or other agreements of the Association.

(g) The power and duty to contract for and pay for, as reasonably necessary, fire, casualty, blanket liability, malicious mischief, vandalism, errors and omissions, liquor liability and other insurance, insuring the Members, the Association, the Board of Directors and other interested parties, in accordance with the provisions of the Declaration, covering and protecting against such damages or injuries as the Board deems advisable (which may include without limitation, medical expenses of persons injured on the Common Property).

(h) The power and duty to contract for and pay for maintenance, legal, accounting, gardening, and common utilities services, and for materials and supplies and other Common Expenses relating to the Common Property, and relating to the Units only to the extent not separately metered or charged, and to employ personnel necessary for the operation of the Property, including legal and accounting services, and to contract for and pay for Improvements on the Common Property.

(i) The power but not the duty to delegate its powers according to law, and subject to the approval of the Members, to adopt these Bylaws.

(j) The power but not the duty to grant or quitclaim easements, licenses or rights of way in, on, or over the Common Property for purposes not inconsistent with the intended use of the Property as a residential condominium project.

(k) The power and duty to adopt such Rules and Regulations as the Board may deem necessary for the management of the Project, which Rules and

Regulations shall become effective and binding after (1) they are adopted by a majority of the Board at a meeting called for that purpose, or by the written consent of the Board in accordance with Section 4.13, and (2) they are posted in a conspicuous place in the Common Property. Such Rules and Regulations may concern, without limitation, use of the Common Property; signs; collection and disposal of refuse; minimum standards of property maintenance consistent with the Declaration and the procedures of the Architectural Committee; and any other matter within the jurisdiction of the Association as provided in the Declaration; provided, however, that such Rules and Regulations shall be enforceable only to the extent that they are consistent with the Declaration, the Articles of Incorporation and these Bylaws, and the Rules and Regulations may not be used to amend any of said documents.

(l) The power and duty to keep, or cause to be kept, a complete record of all acts and corporate affairs of the Association and to present a statement thereof to the Members at the annual meeting of the Members and at any other time that such statement is requested by at least ten percent (10%) of the Members who are entitled to vote.

(m) The power but not the duty to appoint a Membership Committee composed of at least one (1) Director and at least one (1) Association Member at large. The Membership Committee shall be responsible for contacting all purchasers of Condominiums in the Project as soon as any transfer of title to a Condominium is discovered. The Membership Committee shall further attempt to establish initial contact with all Members who are delinquent in the payment of any assessments or other charges due the Association.

(n) The power but not the duty to sell property of the Association; provided, however, that the prior vote or written approval of the Members representing at least a majority of the voting power of the Association must be obtained to sell during any Fiscal Year any property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that Fiscal Year.

#### **4.4. Management Agent.**

The Board of Directors may engage a professional Manager for the Association at a compensation established by the Board to perform such duties and services as the Board shall authorize. The maximum term of any such contract ("Management Contract") shall be one (1) year, unless a longer term is approved either by vote or written assent of a majority of the voting power of the Association (excluding the voting power of Declarant), in which case the maximum term of the Management Contract shall be three (3) years. The maximum term of any contract providing for Declarant's services to the Association or the Project shall also be three (3) years. Each such contract for Declarant's services and each Management Contract shall provide for its termination by either party thereto with cause upon no more than thirty (30) days' written notice to the other party, and without cause and without payment of a termination fee upon no more than ninety (90) days' written notice to the other party.

#### **4.5. Election and Term of Office.**

(a) Directors shall be elected by secret written ballot of the Members. At the first annual meeting of the Members, new Directors shall be elected by the Members as provided in these Bylaws, and all positions on the Board of Directors shall be filled at that election. In the event that an annual meeting is not held, or the Board is not elected thereat, the Board may be elected at any special meeting of the Members held for that purpose. Each Director shall hold office until his successor has been elected or until his death, resignation, removal or judicial adjudication of mental incompetence. The term of office of the three (3) Directors receiving the highest number of votes at the first annual meeting shall be three (3) years and the term of office of the two (2) Directors receiving the next highest number of votes at the first annual meeting shall be two (2) years. At each annual meeting thereafter, new Directors shall be elected to fill vacancies created by the death, resignation, removal, judicial adjudication of mental incompetence or expiration of the terms of past Directors. The term of office of each Director elected to fill a vacancy created by the expiration of the term of office of the respective past Director shall be two (2) years. The term of office of each Director elected or appointed to fill a vacancy created by the resignation, death or removal of his predecessor shall be the balance of the unserved term of his predecessor. Any person serving as a

Director may be reelected, and there shall be no limitation on the number of terms during which he may serve. Cumulative voting shall be used in the election of Directors for any election in which more than two (2) Directors are to be selected, subject only to the procedural prerequisites to cumulative voting in the following sentence. A member may cumulate his votes for any candidate for the Board if the candidate's name has been placed in nomination prior to the voting and if such Member, or any other Member, has given notice at the meeting prior to the voting of such Member's intention to cumulate votes. If a Member cumulates his votes, such Member may cast a number of votes equal to the Member's share of the voting power as set forth in the Declaration, multiplied by the number of Directors to be elected.

(b) Notwithstanding the foregoing, whenever (1) notice is given for an election of Directors of the Board and (2) upon such date the Members other than Declarant do not have a sufficient percentage of the voting power of the Association to elect at least one (1) Director through the foregoing cumulative voting procedure, such notice shall also provide for the following special election procedure. Election of one (1) Director shall be apportioned entirely to the Members other than Declarant. Any person shall be an eligible candidate for the special election upon receipt by the Secretary of a Declaration of Candidacy, signed by the candidate, at any time prior to the election. Such election shall be by secret written ballot. The person receiving a majority of the votes cast by the Members other than Declarant shall be elected a Member of the Board in a coequal capacity with all other Directors. The remaining Directors of the Board shall be elected through the customary cumulative voting procedure outlined above.

#### **4.6. Books, Audit.**

The following financial information shall be prepared and distributed by the Board to all Members (and any Beneficiary, insurer and guarantor of a first Mortgage upon request), regardless of the number of Members or the amount of assets of the Association:

(a) A pro forma operating budget for each Fiscal Year consisting of at least the following information shall be distributed not less than



forty-five (45) nor more than sixty (60) days prior to the beginning of the Fiscal Year.

(1) The estimated revenue and Common Expenses of the Association computed on an accrual basis.

(2) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5 of the California Civil Code, which shall be printed in bold type and include all of the following:

(i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component for which the Association is responsible.

(ii) As of the end of the Fiscal Year for which the study is prepared:

(A) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components for which the Association is responsible.

(B) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the major components for which the Association is responsible.

(iii) The percentage that the amount determined for purposes of Section 4.6(a)(2)(ii)(B) is of the amount determined for purposes of Section 4.6(a)(2)(ii)(A).

(3) A statement as to whether the Board has determined or anticipated that the levy of one or more Capital Improvement or Reconstruction Assessments will be required to repair, replace, or restore any major component for which the Association is responsible or to provide adequate reserves therefor.

(4) A general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair and replacement of, or additions to, major components of the Common Property and facilities for which the Association is responsible.

(b) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of the first Close of Escrow for the sale of a Condominium in the Project and an operating statement for the period from the date of the first Close of Escrow to the said accounting date, shall be distributed within sixty (60) days after the accounting date. Such operating statement shall include a schedule of assessments received and receivable identified by the number of the Unit and the name of the Owner assessed.

(c) A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the Fiscal Year.

(1) A balance sheet as of the end of the Fiscal Year.

(2) An operating (income) statement for the Fiscal Year.

(3) A statement of changes in financial position for the Fiscal Year.

(4) Any information required to be reported under Section 8322 of the California Corporations Code.

(5) For any Fiscal Year in which the gross income to the Association

exceeds \$75,000, a copy of a review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(6) A statement of the place where the names and addresses of the current Members is located.

If the report referred to in Section 4.6(c) above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the statement was prepared from the books and records of the Association without independent audit or review. The Board also may distribute a summary of the Budget in lieu of the Budget itself, so long as the Board complies with the provisions of Section 1365(c) of the California Civil Code as it may be amended.

In addition to financial statements, the Board shall annually distribute within sixty (60) days prior to the beginning of the Fiscal Year a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Annual, Capital Improvement, Reconstruction and Special Assessments, including the recording and foreclosing of liens against Members' Condominiums.

The Board shall perform the following on at least a quarterly basis: (1) cause to be completed and review a current reconciliation of the Association's operating accounts and reserve accounts, (2) review the current Fiscal Year's actual reserve revenues and expenses compared to the Budget for the then current Fiscal Year, (3) review the income and expense statement for the Association's operating and reserve accounts, and (4) review the most current account statements prepared by the financial institutions where the Association maintains its operating and reserve accounts. The signatures of either (i) two (2) Directors of the Association, or (ii) one (1) Director and one (1) Officer of the Association (who is not also a Director) shall be required for the withdrawal of money from the Association's reserve accounts. As used in this paragraph, the term "reserve accounts" means monies that the Board has identified from its Budget for use to defray the future repair and replacement of, or additions to, those major components which the Association is obligated to maintain.

**4.7. Vacancies.**

Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members of the Association shall be filled by vote of the majority of the remaining Directors, even though they may constitute less than a quorum. Any vacancy caused by the removal of a Director may be filled by the vote of the majority of the remaining Directors but only with the approval, by vote or written consent, of a majority of the voting power of the Association residing in Members other than Declarant. A director may resign at any time by giving notice to the President, the Secretary or the Board. Any Director who ceases to be an Owner or an agent of Declarant shall be deemed to have resigned from the Board. A vacancy or vacancies shall be deemed to exist in case of death, resignation, removal or judicial adjudication of mental incompetence of any Director, or in case the Members fail to elect the full number of authorized Directors at any meeting at which such election is to take place. Any vacancy not filled by the Directors may be filled by vote of the Members at the next annual meeting of the Members or at a special meeting of the Members called for such purpose.

**4.8. Removal of Directors.**

At any regular or special meeting of the Members duly called, any one individual Director or the entire Board may be removed prior to the expiration of their terms of office with or without cause as follows: (i) for so long as fewer than fifty (50) Condominiums are included within the Project, by the vote of Members representing a majority of the total voting power of the Association (including votes attributable to Declarant), and (ii) once fifty (50) or more Condominiums are included within the Project, by the vote of Members representing a majority of a quorum of Members. Notwithstanding the foregoing, if the entire Board of Directors is not removed as a group pursuant to a single vote, no individual Director shall be removed if the number of votes cast against his removal would be sufficient to elect such Director if voted cumulatively at an election at which the same total number of votes were cast and the entire number of Directors authorized at the time of the Director's most recent election were then being elected. Any Director whose removal has been proposed by the Members shall be given an opportunity to be heard at the meeting. If any or all of the Directors are so removed at a meeting, new Directors may be elected at the same meeting. Notwithstanding the foregoing, any Director who has been elected to office solely by the votes of Members other than Declarant pursuant to Section 4.5 of this Article IV may be removed from office prior to the expiration of his

term of office only by the vote of at least a simple majority of the voting power residing in Members other than Declarant.

**4.9. Organization Meeting of Board.**

The first regular ("organization") meeting of a newly elected Board of Directors shall be held within ten (10) days of election of the Board, at such place as shall be fixed and announced by the Directors at the meeting at which such Directors were elected, for the purpose of organization, election of officers and the transaction of other business. No notice shall be necessary to the newly elected Directors in order legally to constitute such meeting; provided that (1) a majority of the whole Board shall be present when the time and place are announced at the membership meeting and (2) the meeting is held on the same day and at the same place as the meeting of the Members at which the newly constituted Board was elected.

**4.10. Regular Meetings of Board.**

Regular meetings of the Board of Directors shall be open to all Members, provided that Members who are not Directors may not participate in any deliberation or discussion at such regular meetings unless expressly so authorized by a vote of a majority of a quorum of the Board of Directors. Regular meetings may be held at such time and place within the Project as shall be determined, from time to time, by a resolution adopted by a majority of a quorum of the Directors; provided, however, that such meetings shall be held no less frequently than quarterly. Notice of the time and place of regular meetings of the Board of Directors shall be given to each Director, personally or by mail, telephone or telegraph, and posted at a prominent place or places within the Common Property at least four (4) days prior to the date named for such meeting.

**4.11. Special Meetings of Board.**

Special meetings of the Board of Directors shall be open to all Members, provided that Members who are not Directors may not participate in any deliberation or discussion at such special meetings, unless expressly so authorized by a vote of a majority of a quorum of the Board of Directors. Special meetings may be called by the President or by any two (2) Directors upon four (4) days' notice by first-class mail or seventy-two (72) hours' notice delivered personally or by telephone or telegraph. The notice shall state the time, place (as hereinabove provided) and the purpose of the meeting, and shall be posted at a prominent place or places within the Common Property in the same manner as prescribed for regular meetings.

**4.12. Waiver of Notice.**

Before or at any meeting of the Board of Directors, any Director may, in writing, waive personal notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice to such Director. Attendance by a Director at any meeting of the Board shall be a waiver by him of personal notice of the time and place thereof. If all the Directors are present at any meeting of the Board, no notice to Directors shall be required and any business may be transacted at such meeting. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if (1) a quorum be present, (2) notice to the Members of such meeting was posted as provided in Sections 4.10 and 4.11 of this Article IV, and (3) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding such meeting, or an approval of the Minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association or made a part of the Minutes of the meeting.

**4.13. Action Without Meeting.**

Any action required or permitted to be taken by the Board may be taken without a meeting, if all Directors individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the Minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as a unanimous vote of such Directors. An explanation of any action taken by unanimous written consent without a meeting shall be posted by the Board in a prominent place or places in the Common Property within three (3) days after the written consents of all Directors have been obtained.

**4.14. Quorum and Adjournment.**

Except as otherwise expressly provided herein, at all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors, there is less than a quorum present, the majority of those present may adjourn the meeting to another time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

The Board of Directors may, with the approval of a majority of the Directors present at a meeting at which a quorum has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters,

litigation in which the Association is or may become involved, matters that relate to the formation of contracts with third parties, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session, and shall be generally noted in the minutes of the Board. In any matter relating to the discipline of a Member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

**4.15. Committees.**

The Board of Directors, by resolution, may from time to time designate such committees as it shall desire, and may establish the purposes and powers of each such committee created. The resolution designating and establishing the committee shall provide for the appointment of its members, as well as a chairman, shall state the purposes of the committee, and shall provide for reports, termination, and other administrative matters as deemed appropriate by the Board.

**ARTICLE V**

**5. Officers.**

**5.1. Designation.**

The principal officers of the Association shall be a President, a Vice President, a Secretary, and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer, and an Assistant Secretary, and such other officers as in their judgment may be necessary. Officers other than the President need not be Directors. Any Person may hold more than one office.

**5.2. Election of Officers.**

The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board of Directors, and each officer shall hold his office at the pleasure of the Board of Directors, until he shall resign or be removed or otherwise disqualified to serve or his successor shall be elected and qualified to serve.

**5.3. Removal of Officers.**

Upon an affirmative vote of a majority of the entire Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Association. Any such

resignation shall take effect at the date of receipt of such notice or at any later time specified therein; and unless otherwise specified in said notice, acceptance of such resignation by the Board shall not be necessary to make it effective.

**5.4. Compensation.**

Officers, agents, and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board; provided, however, that no officer shall receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of Members representing at least a majority of the voting power of the Association; and provided further, that (1) nothing herein contained shall be construed to preclude any officer from serving the Association in some other capacity and receiving compensation therefor, and (2) any officer may be reimbursed for his actual expenses incurred in the performance of his duties. Appointment of any officer, agent, or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent, or employee. Notwithstanding the foregoing, no officer, employee or director of Declarant or any affiliate of Declarant may receive any compensation.

**5.5. President.**

The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of the President of an Association, including but not limited to the power, subject to the provisions of Article IV, Section 4.15, to appoint committees from among the Members from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business of the Association. The President shall be ex officio a member of all standing committees, and he shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws of the Association.

**5.6. Vice President.**

The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or disabled or whenever the President refuses or is unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice



President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors or these Bylaws of the Association.

**5.7. Secretary.**

The Secretary shall keep the Minutes of all meetings of the Board of Directors and the Minutes of all meetings of the Association at the principal office of the Association or at such other place as the Board of Directors may order. The Secretary shall keep the seal of the Association in safe custody and shall have charge of such books and papers as the Board of Directors may direct; and the Secretary shall, in general, perform all of the duties incident to the office of Secretary. The Secretary shall give, or cause to be given, notices of meetings of the Members of the Association and of the Board of Directors required by these Bylaws or by law to be given. The Secretary shall maintain a record book of Owners, listing the names, mailing addresses and telephone numbers of Owners, as furnished to the Association, ("Membership Register"). Termination or transfer of ownership by any Member shall be recorded in the Membership Register by the Secretary, together with the date of the transfer, in accordance with the provisions of the Declaration. The Secretary shall perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

**5.8. Treasurer.**

The Treasurer shall be the chief financial officer of the Association and shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and business transactions of the Association, including accounts of all assets, liabilities, receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall disburse the funds of the Association as may be ordered by the Board of Directors, in accordance with the Declaration, shall render to the President and Directors, upon request, an account of all of his transactions as Treasurer and of the financial conditions of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

## ARTICLE VI

### 6. Obligations of the Members.

#### 6.1. ASSESSMENTS.

(a) All Members are obligated to pay, in accordance with the provisions of the Declaration, all assessments imposed by the Association, to meet all expenses of the Association.

(b) All delinquent assessments shall be enforced, collected or foreclosed in the manner provided in the Declaration.

#### 6.2. Maintenance and Repair.

(a) Every Member must perform promptly, at his sole cost and expense, such maintenance and repair work within his own Residence, as required under the provisions of the Declaration. As further provided in the Declaration, all plans for alterations and repair of structural or utility bearing portions of the buildings housing the Units must receive the prior written consent of the Architectural Committee. The Architectural Committee shall establish reasonable procedures for the granting of such approval, in accordance with the Declaration.

(b) As further provided in the Declaration, each Member shall reimburse the Association for any expenditures incurred in repairing or replacing any portion of the Common Property, which is damaged through the fault of such Member or his family, guests, tenants or invitees. Such expenditures shall include all court costs and reasonable attorneys' fees incurred in enforcing any provision of these Bylaws or the Declaration.

## ARTICLE VII

### 7. Amendments to Bylaws.

These Bylaws may be amended by the Association by the vote or written consent of Members, representing at least (1) a majority of the voting power of each class of the Members, and (2) a majority of the voting power of the Association residing in members other than Declarant; provided that the specified percentage of each class of the Members necessary to amend a specific Section or provision of these Bylaws shall not be less than the percentage of affirmative votes

prescribed for action to be taken under that Section or provision. In addition to the foregoing, any amendment to these Bylaws which materially affects matters delineated in Article XII or Section 13.2 of the Declaration must be approved by the Beneficiaries of that percentage of first Mortgages on the Condominiums which is specified in the affected provision of Article XII or Section 13.2 of the Declaration, respectively; provided that, if an amendment to these Bylaws materially affects matters delineated in both Article XII and Section 13.2 of the Declaration or purports to amend this sentence, the amendment must be approved pursuant to the requirements of both said Article XII and Section 13.2.

#### ARTICLE VIII

##### 8. Mortgages.

###### 8.1. Notice to Association.

Upon request by the Association, every Member who mortgages his Condominium shall notify the Association through the Manager, or through the Secretary in the event there is no Manager, of the name and address of his Mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Condominiums." Upon request, any such Member shall likewise notify the Association as to the release or discharge of any such Mortgage.

###### 8.2. Notice of Unpaid Assessments.

The Board of Directors of the Association shall at the request of a Mortgagee of a Condominium, report any unpaid assessments due from the Unit Owner of such Condominium, in accordance with the provisions of the Declaration.

#### ARTICLE IX

##### 9. Conflicting Provisions.

In case any of these Bylaws conflict with any provisions of the laws of the State of California, such conflicting Bylaws shall be null and void upon final court determination to such effect, but all other Bylaws shall remain in full force and effect. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

#### ARTICLE X

##### 10. Indemnification of Directors and Officers.

The Board may authorize the Association to pay expenses incurred by, or to satisfy a judgment or fine levied against,

any present or former Director, officer, employee, or agent of the Association to the extent and under the circumstances provided in the Declaration.

## ARTICLE XI

### 11. Miscellaneous.

#### 11.1. Checks, Drafts and Documents.

All checks, drafts, orders for payment of money, notes and other evidences of indebtedness issued in the name of or payable to the Association shall be signed or endorsed in the manner and by the person or persons as the Board shall determine by resolution, subject to the requirements of Section 4.6 hereof for withdrawing money from the Association's reserve accounts.

#### 11.2. Execution of Documents.

The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

#### 11.3. Availability of Association Documents.

In addition to the rights afforded by the Declaration to Beneficiaries, insurers and guarantors of first Mortgages with regard to inspection of the Association's management documents, the Association shall maintain at its principal office (or at such other place within the Property as the Board may prescribe) the Articles, Bylaws, Declaration, Rules and Regulations and the Association's books of account; minutes of meetings of Members, the Board and Board committees; and the Membership Register (collectively, the "Association Documents"), each of which shall be made available for inspection and copying by any Member or the Member's duly appointed representative for a purpose reasonably related to the Member's interest as a Member. The Board shall establish reasonable rules regarding (1) notice to be given to the custodian of the Association Documents by the Member 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 copying any of the Association Documents requested by a Member; provided that every Director shall have the absolute right at any reasonable time to inspect all Association Documents and the physical properties owned or controlled by the Association, which right shall include the right to make

extracts and copies of documents. The minutes, minutes that are proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board (other than an executive session) shall be available to Members within thirty (30) days of the meeting. The minutes, proposed minutes or summary minutes shall be distributed to any Member upon request and upon reimbursement of the Association's cost in making that distribution. Members shall be notified in writing at the time that the budget required in Section 4.6(a) hereof is distributed or at the time of any general mailing to the entire Membership of the Association of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained. Notwithstanding any contrary Board rules, no later than ten (10) days after the Association receives written request from any Member, the Association shall provide to that Member a copy of any one or more of the following documents requested by the Member for purposes of providing the documents to a prospective purchaser of the Member's subdivision interest: Articles; Bylaws; Declaration; Rules and Regulations; a copy of the most recent financial statement described in Section 4.6 hereof; a true written statement from an authorized Association representative showing the amount of the Association's current assessments and fees, as well as any assessment upon that Member's subdivision interest which is due and unpaid as of the statement date, as well as any late charges, interest or costs of collection which have been or may be enforced by a lien upon the Member's subdivision interest as of the statement date; and any change in the Association's current assessments and fees which have been approved by the Board but have not become due and payable as of the date disclosure is provided pursuant to this Section. The Association may charge a fee for this service not exceeding the Association's reasonable cost to prepare and reproduce the requested documents.

**11.4. Fiscal Year.**

The Fiscal Year of the Association shall be determined by the Board of Directors, and having been so determined, is subject to change from time to time as the Board of Directors shall determine.

**ARTICLE XII**

**12. Notice and Hearing Procedure.**

**12.1. Suspension of Privileges.**

In the event of an alleged violation of the Declaration, these Bylaws or the Rules and Regulations of the Association, and after written notice of such alleged failure is delivered personally or mailed to the Member or any agent of the Member

("respondent") alleged to be in default in the manner herein provided, by first-class mail or by certified mail return receipt requested, or both, the Board of Directors shall have the right, after affording the respondent an opportunity for an appropriate hearing as hereinafter provided, and upon an affirmative vote of a majority of all Directors on the Board, to take any one (1) or more of the following actions: (1) levy a Special Assessment as provided in the Declaration; (2) suspend or condition the right of said Member to use any recreational facilities owned, operated or maintained by the Association; (3) suspend said Member's voting privileges as a Member, as further provided in the Declaration; (4) enter upon a Residence to make necessary repairs, or to perform maintenance which, according to the Declaration, is the responsibility of the Owner of such Residence; or (5) record a notice of noncompliance encumbering the Condominium of the respondent. Any such suspension shall be for a period of not more than thirty (30) days for any noncontinuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. The failure of the Board to enforce the Rules and Regulations of the Association, these Bylaws or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws shall be cumulative and none shall be exclusive. However, any individual Member must exhaust all available internal remedies of the Association prescribed by these Bylaws, or by the Rules and Regulations of the Association, before that Member may resort to a court of law for relief with respect to any alleged violation of the Declaration, these Bylaws or the Rules and Regulations of the Association by another Member, provided that the foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to any Member where the complaint alleges nonpayment of Annual Assessments, Special Assessments, Capital Improvement Assessments or Reconstruction Assessments.

#### 12.2. Written Complaint.

A hearing to determine whether a right or privilege of the respondent under the Declaration or these Bylaws should be suspended or conditioned, or whether a Special Assessment should be levied, shall be initiated by the filing of a written Complaint by any Member or by any officer or member of the Board of Directors with the President of the Association or other presiding member of the Board. The Complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, and a reference to the specific provisions of the Declaration, these Bylaws or the

Rules and Regulations of the Association which the respondent is alleged to have violated. A copy of the Complaint shall be delivered to the respondent in accordance with the notice procedures set forth in the Declaration, together with a statement which shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying Complaint is delivered or mailed to the Board of Directors within fifteen (15) days after the Complaint, the Board of Directors may proceed upon the Complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled 'Notice of Defense' to the Board of Directors at the following address: \_\_\_\_\_

You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board of Directors, you may contact \_\_\_\_\_

The respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely filed with the Board of Directors. The respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

**12.3. Notice of Hearing.**

The Board shall serve a notice of hearing, as provided herein, on all parties at least ten (10) days prior to the hearing, if such hearing is requested by the respondent. The hearing shall be held no sooner than thirty (30) days after the Complaint is mailed or delivered to the respondent as provided in Section 12.2 of this Article XII. The notice to the respondent shall be substantially in the following form but may include other information:

"You are hereby notified that a hearing will be held before the Board of

**Directors of the La Mirage at Aliso Viejo  
Homeowners Association at \_\_\_\_\_**

on the \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_, at the hour of \_\_\_\_\_, upon  
the charges made in the Complaint served  
upon you. You may be present at the  
hearing, may but need not be represented  
by counsel, may present any relevant evi-  
dence, and will be given full opportunity  
to cross-examine all witnesses testifying  
against you. You are entitled to request  
the attendance of witnesses and the pro-  
duction of books, documents or other  
items by applying to the Board of Direc-  
tors of the Association."

**12.4. Hearing.**

The hearing shall be held before the Board in executive ses-  
sion pursuant to this notice affording the Member a reason-  
able opportunity to be heard. Prior to the effectiveness of  
any sanction hereunder, proof of notice, and the invitation  
to be heard shall be placed in the minutes of the meeting.  
Such proof shall be deemed adequate if a copy of the notice  
together with a statement of the date and manner of delivery  
is entered by the officer or Director who mailed or delivered  
such notice. The notice requirement shall be deemed satis-  
fied if a violator appears at the meeting. The minutes of  
the meeting shall contain a written statement of the results  
of the hearing and the sanction, if any, imposed. No action  
against the Member arising from the alleged violation shall  
take effect prior to the expiration of (a) fifteen (15) days  
after the Member's receipt of the notice of hearing, and (b)  
five (5) days after the hearing required herein.



**CERTIFICATE OF SECRETARY**

I, the undersigned, do hereby certify that:

1. I am the duly elected and acting Secretary of LA MIRAGE AT ALISO VIEJO HOMEOWNERS ASSOCIATION, a California nonprofit corporation ("Association"); and
2. The foregoing Bylaws comprising 29 pages including this page constitute the Bylaws of the Association duly adopted by Consent of Directors in Lieu of First Meeting dated \_\_\_\_\_, 199\_.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of the Association this \_\_\_\_\_ day of \_\_\_\_\_, 199\_.

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Secretary

(SEAL)

**EXHIBIT "C"**

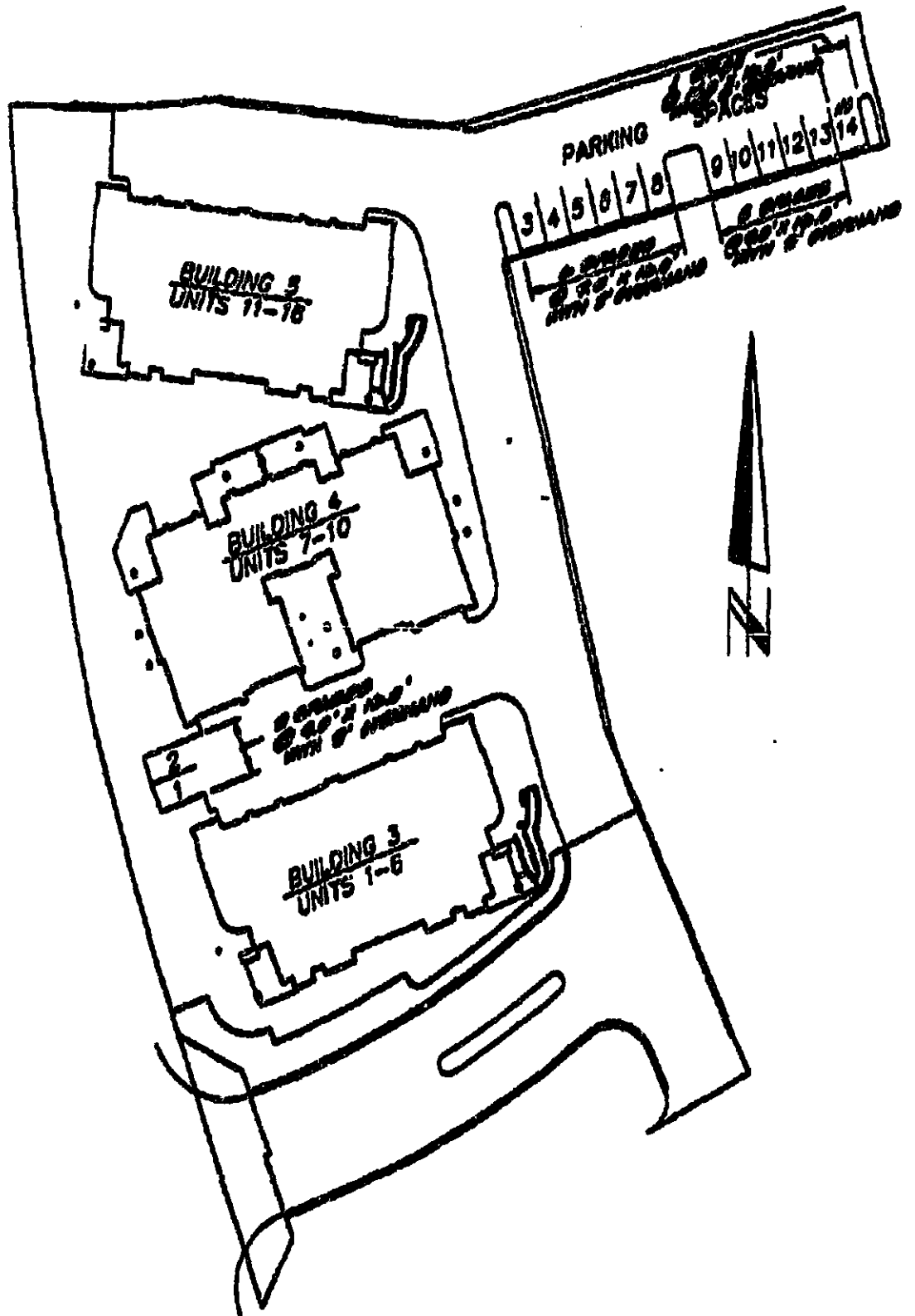
**DRAWINGS DEPICTING EXCLUSIVE USE  
COMMON AREA PARKING SPACES IN PHASE 1**

jlr082/23210/000/0090/1a.mirage  
04-01-92

PARKING PLAN  
PHASE I

SCALE 1"=40'

EXHIBIT "C"



**EXHIBIT "D"**

**LEGAL DESCRIPTION OF ANNEALABLE TERRITORY**

**That certain real property located in the unincorporated area of the County of Orange, State of California, described as follows:**

**All of Tract No. 14591, as shown on a Subdivision Map recorded on September 11, 1992, in Book 692, at Pages 17 to 24, inclusive, of Miscellaneous Maps, in the Office of the Orange County Recorder; excepting therefrom, all of Phase 1.**

**jlr082/23210/000/0090/1a.mirage  
09-14-92**