

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**OF**

**KAL ALI ESTATES**

**TABLE OF CONTENTS**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**KAL ALI ESTATES**

		<u>Page</u>
ARTICLE I	Definitions .....	2
	Section 1. Articles .....	2
	Section 2. Assessment, Annual .....	2
	Section 3. Assessment, Compliance .....	2
	Section 4. Assessment, Special .....	2
	Section 5. Association .....	2
	Section 6. Beneficiary .....	2
	Section 7. Board of Directors .....	3
	Section 8. Budget .....	3
	Section 9. Bylaws .....	3
	Section 10. City .....	3
	Section 11. Common Area Lots or Common Area .....	3
	Section 12. Common Expenses .....	3
	Section 13. Declarant .....	3
	Section 14. Declaration .....	3
	Section 15. Deed of Trust .....	3
	Section 16. Development .....	3
	Section 17. Dwelling or Dwelling Unit .....	3
	Section 18. Eligible Insurer or Guarantor .....	3
	Section 19. Eligible Mortgage Holder .....	4
	Section 20. Lots .....	4
	Section 21. Manager .....	4
	Section 22. Member .....	4
	Section 23. Mortgage .....	4
	Section 24. Mortgage-Mortgagee-Mortgagor and Institutional Holder .....	4
	Section 25. Owner or Lots Owner .....	4
	Section 26. Project and Property .....	4
	Section 27. Property or Properties .....	5
	Section 28. Rules and Regulations .....	5
ARTICLE II	Description of Land and Improvements .....	5
ARTICLE III	Property Rights .....	5
	Section 1. Owners' Easements of Enjoyment .....	5
ARTICLE IV	Membership and Voting Rights .....	6
	Section 1. Membership in Association .....	6
	Section 2. Transfer .....	7
	Section 3. Classes of Voting Memberships .....	7



**BUYER'S COPY**

**INVESTORS TITLE COMPANY**

**PURCHASER DOCUMENTS**

**"KAL ALI ESTATES"**

**TRACT NO. 53063**

- **DECLARATION OF RESTRICTIONS**
- **NOTICE REGARDING SENATE BILL 800**
- **ARTICLES OF INCORPORATION**
- **BYLAWS**
- **BUDGET**

Recording Requested by:

INVESTORS TITLE COMPANY

When Recorded Mail to:

Name: Mr. Mohamad Pournamdari  
Mailing Moe & Johnny Associates, Inc..  
Address: 3950 W. Imperial Highway  
City: Inglewood  
State: California  
Zip Code: 90303

This is to certify that this is a true and correct copy  
of the original recorded 10-27-04

Instrument No. 04-2769653

By Ana Regalado  
INVESTORS TITLE COMPANY

---

Space above this line reserved for Recorder's Use

TITLE(S)

---

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
KAL ALI ESTATES

---

**TABLE OF CONTENTS**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**KAL ALI ESTATES**

		<u>Page</u>
	Section 4. Commencement of Voting Rights .....	7
	Section 5. Joint Owner Disputes .....	7
ARTICLE V	Covenant for Maintenance Assessments .....	8
	Section 1. Creation of Lien and Personal Obligation of Owners .....	8
	Section 2. Purpose of Assessments .....	8
	Section 3. Annual Assessments .....	9
	Section 4. Change of Regular Monthly Assessments and Special Assessments .....	9
	Section 5. Special Assessments .....	9
	Section 6. Rate of Assessments .....	9
	Section 7. Notice of Change in Assessments .....	9
	Section 8. Deposit of Assessments .....	9
	Section 9. Uniform Rate of Assessment .....	10
	Section 10. No Offsets .....	10
	Section 11. Exemption from Assessments .....	10
	Section 12. Maintenance and/or Subsidy Agreement .....	11
	Section 13. Declarant's Obligation to Pay Assessments - Record Maintenance .....	11
ARTICLE VI	Effect of Non-Payment of Assessments	
	Remedies of the Association .....	11
	Section 1. Creation of Lien .....	11
	Section 2. Enforcement of Lien .....	12
	Section 3. Priority of Lien and Subordination .....	13
	Section 4. Curing of Default .....	13
	Section 5. Additional Remedies .....	13
	Section 6. Certificate re Amounts Due .....	13
	Section 7. Homestead and Exemption Waiver .....	14
ARTICLE VII	Destruction of Improvements .....	14
ARTICLE VIII	Management and Operation .....	14
	Section 1. Meetings of Owners .....	14
	Section 2. Rights and Duties of Board of Directors .....	14
	Section 3. Association Rules and Regulations .....	19
	Section 4. Title to the Common Area .....	19
	A. Transfer of Title to Common Area .....	19
	B. Commencement of Association Responsibilities .....	19

**TABLE OF CONTENTS**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**KAL ALI ESTATES**

		<u>Page</u>
	C. Disputes .....	19
	D. Maintenance of Common Area .....	20
ARTICLE IX	Board of Directors .....	20
	Section 1. Number and Term of Directors .....	20
	Section 2. Cumulative Voting .....	20
	Section 3. Removal of Directors .....	20
	Section 4. Majority of Voting Power in Declarant .....	21
	Section 5. Personal Liability .....	21
	Section 6. Indemnification for Performance of Duties .....	21
	Section 7. Certificate of Board of Directors .....	21
ARTICLE X	Rights of Declarant .....	22
ARTICLE XI	Insurance .....	23
	Section 1. Insurance to be Maintained by Association .....	23
	Section 2. Proceeds Payable to Trustee .....	24
	Section 3. Board as Attorney in Fact .....	24
	Section 4. Annual Review of Insurance .....	24
	Section 5. Owners Liability Insurance .....	25
	Section 6. Owners Casualty Insurance .....	25
	Section 7. Notice of Cancellation .....	25
ARTICLE XII	Maintenance of Lots .....	25
	Section 1. Owner's Maintenance .....	25
	Section 2. Consent of Architectural Committee for Changes .....	26
ARTICLE XIII	Use Restrictions .....	26
	Section 1. Single Family Use .....	26
	Section 2. Rental .....	26
	Section 3. Common Area .....	26
	Section 4. Signs .....	27
	Section 5. External Items .....	27
	Section 6. Pets .....	27
	Section 7. Offensive Activities .....	27
	Section 8. Exterior Clothes Drying Facilities .....	27
	Section 9. Rubbish, Refuse Containers and Disposal .....	27
	Section 10. Exterior Lighting .....	28
	Section 11. Structural Changes .....	28
	Section 12. Mineral Exploration .....	28

**TABLE OF CONTENTS**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**KAL ALI ESTATES**

		<u>Page</u>
	Section 13. Development of Air Space .....	28
	Section 14. Violation of Rules and Laws .....	28
	Section 15. Owner Liability .....	29
	Section 16. Exemption From Payment of Maintenance Fee ..	29
	Section 17. Parking .....	29
	Section 18. No Temporary Structures .....	30
	Section 19. Payment of Real and Personal Property Taxes ..	30
	Section 20. Repair of Improvements After Casualty .....	30
	Section 21. Window Coverings .....	31
	Section 22. Liens .....	31
	Section 23. Electronic Equipment .....	31
	Section 24. No Easements for View Purposes; Disclaimer ..	31
	Section 25. Fences or Enclosures; Maintenance by Owner ..	31
	Section 26. Quiet Enjoyment .....	32
ARTICLE XIV	Architectural Control .....	32
	Section 1. Appointment of Architectural Committee .....	32
	Section 2. Consent of Architectural Committee Required ..	32
	Section 3. Plans and Specifications .....	33
	Section 4. Approval or Disapproval by Architectural Committee .....	33
	Section 5. Diligent Prosecution of Work .....	33
	Section 6. Failure to Complete .....	34
	Section 7. Inspection of Work .....	34
	Section 8. Unauthorized Improvements .....	35
	Section 9. Architectural Control Committee Certificate .....	35
	Section 10. Access to Premises .....	36
	Section 11. Non-Liability .....	36
	Section 12. Declarant's Exemption .....	36
	Section 13. Fees .....	36
	Section 14. Architectural Guidelines .....	37
	Section 15. Failure to Establish Architectural Committee ...	37
ARTICLE XV	Party Walls .....	37
	Section 1. General Rules of Law to Apply .....	37
	Section 2. Sharing of Repair and Maintenance .....	37
	Section 3. Destruction by Fire or Other Casualty .....	38
	Section 4. Right of Contribution Runs With Land .....	38
ARTICLE XVI	Easements .....	38
	Section 1. Encroachment Easement .....	38

**TABLE OF CONTENTS**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**KAL ALI ESTATES**

	<u>Page</u>
Section 2. Association Easement .....	38
Section 3. Entry for Repairs .....	38
Section 4. Access Easements .....	38
Section 5. Maintenance Easement .....	38
Section 6. Easements For Drainage .....	39
 ARTICLE XVII	
Utilities .....	39
 ARTICLE XVIII	
Protection of Mortgagees .....	40
Section 1. Subordination of Liens .....	40
Section 2. Material Amendments .....	40
Section 3. Required Consent of Mortgagees .....	42
Section 4. Examination of Books and Records by Mortgagees .....	42
Section 5. Priority of First Mortgagees-Insurance Proceeds and Condemnation Awards .....	42
Section 6. Notice to Mortgagees .....	43
Section 7. Effect of Foreclosure by First Mortgagee .....	43
Section 8. Mortgagee's Attendance at Meetings .....	44
Section 9. Providing Information to Board .....	44
Section 10. Restriction on Right of First Refusal .....	44
Section 11. Termination of Certain Contracts .....	44
Section 12. Tax Liens .....	44
Section 13. Reserves for Maintenance .....	45
Section 14. Termination of the Project .....	45
Section 15. Reallocation of Interests .....	45
Section 16. Payment of Taxes and Premiums .....	45
Section 17. Conflicts .....	45
 ARTICLE XIX	
Destruction of Improvements .....	45
Section 1. Partial Damage .....	45
Section 2. Total Destruction .....	46
 ARTICLE XX	
Amendments .....	46
Section 1. Prior to First Sale .....	46
Section 2. After Close of First Sale .....	46
Section 3. Amendment to Meet Requirements of Mortgagees and Governmental Agencies .....	47
Section 4. Presumption of Validity .....	47
Section 5. Compliance with Law .....	47
Section 6. Petition to Superior Court .....	47

**TABLE OF CONTENTS**  
**DECLARATION OF COVENANTS,**  
**CONDITIONS AND RESTRICTIONS OF**  
**KAL ALI ESTATES**

		<u>Page</u>
ARTICLE XXI	Enforcement of Bonded Obligations .....	48
ARTICLE XXII	Right of Owner of Unit To Make Improvements or Modifications .....	49
ARTICLE XXIII	Documents to be Provided to Prospective Purchaser .....	50
ARTICLE XXIV	Enforcement .....	51
ARTICLE XXV	Term of Declaration .....	51
ARTICLE XXVI	Resolution of Disputes .....	51
	Section 1. Disputes .....	51
	Section 2. Construction Defects .....	52
	Section 3. Non Construction Disputes .....	52
	Section 4. Binding Arbitration .....	52
	Section 5. Injunctive Relief .....	54
	Section 6. No Amendment Without Consent .....	54
	Section 7. Disputes Relating To Governing Documents ...	54
ARTICLE XXVII	Condemnation .....	54
	Section 1. Action for Condemnation .....	54
	Section 2. Distribution of Proceeds .....	54
ARTICLE XXVIII	Mold .....	54
ARTICLE XXIX	Provisions Regarding City of Hawthorne .....	55
ARTICLE XXX	General Provisions .....	56
	Section 1. Purchasers .....	56
	Section 2. Construction and Conflicts .....	56
	Section 3. Captions and Gender .....	56
	Section 4. Binding on Heirs .....	56
	Section 5. Payment of Municipal Charges .....	56
	Section 6. Interpretation and Severability .....	56
	Section 7. Notice of Sale or Lease of Dwelling Units .....	56
	Section 8. Notices .....	57
	Section 9. No Restrictions for Race, Color or Creed .....	57
ARTICLE XXXI	Lot 13 .....	57

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**OF**

**KAL ALI ESTATES**

This Declaration is made this 12<sup>th</sup> day of June, 2004, by MOE AND JOHNNY ASSOCIATES, INC., a California Corporation (hereinafter "Declarant").

A. Declarant is the owner of certain real property in the City of Hawthorne, County of Los Angeles, State of California, which is more particularly described as follows:

Lots 1 through 12, inclusive, and Lot 14 in Tract 53063 as per map recorded in Book 1282, Page 92 of Maps in the Office of the County Recorder of the County of Los Angeles, State of California (the "Property").

B. Declarant intends to construct twelve (12) single family residences on the real property described in Recital A, and one (1) common area lot.

C. It is the desire and intent of Declarant to subdivide and sell the Property and to impose on it mutual beneficial restrictions under a general plan or scheme of improvement for the benefit of all Lots in the Project and the common area, and the owners thereof and to create a type of ownership known as a planned development and to subject the Property to the laws of the State of California pertaining to common interest developments.

D. Declarant hereby declares that the Property and all improvements thereon is and shall be held, transferred, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, maintained, altered and improved subject to the following protective limitations, restrictions, covenants, conditions, reservations, liens and charges and equitable servitudes, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property, and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, and every part thereof. All of said limitations, covenants, conditions, restrictions, reservations, liens and charges and equitable servitudes shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof, whether as sole owners, joint owners, lessees, tenants, occupants, or otherwise, and they shall inure to the benefit of every portion of the Property and shall be for the benefit of each owner of any portion of the Property, or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of Declarant and each owner, and may be enforced by Declarant, by any owner, by any successor in interest to Declarant, or any owner, or by the Board of Directors hereinafter described.

## ARTICLE I

### Definitions

Section 1. Articles. The Association Articles of Incorporation and amendments.

Section 2. Assessment, Annual. "Annual Assessment" shall mean a charge against a particular Owner and his Lot representing a portion of the costs of maintaining, improving, repairing and managing the Project and all other Common Expenses, which are to be paid by each Owner to the Association for Common Expenses in the manner and proportions provided herein. Each Annual Assessment shall be paid in equal monthly assessments ("Regular Monthly Assessments") on the first day of each month.

Section 3. Assessment, Compliance. "Compliance Assessment" shall mean a charge against a particular Owner and his Lot directly attributable to, or reimbursable by, the Owner or Owners if the same be required to secure or satisfy any breach of the Declaration, the Articles, Bylaws, or Rules and Regulations of the Association, by said Owner or Owners, which breach shall require or has required an expenditure by the Association for repair or remedy. Such assessment shall be equal to the cost incurred by the Association for corrective action performed plus costs, interest, and attorney's fees incurred in connection therewith. Compliance Assessments shall not include any late payment penalties, interest charges, or costs incurred by the Association (including attorneys' fees) in the collection of Annual and Special Assessments.

Section 4. Assessment, Special. "Special Assessment" shall mean a charge against each Owner and his Lot representing a portion of the cost to the Association for installation or construction or reconstruction of any capital Improvement or other addition on any part of the Project, which the Association may from time to time authorize. Such charge shall be levied amongst all of the Owners in the Project as herein provided.

Section 5. Association. KAL ALI ESTATES HOMEOWNERS ASSOCIATION, a California Non-Profit Mutual Benefit Corporation, its successors and assigns, the Members of which shall be all of the several Lot Owners. Each Lot Owner shall automatically become and shall be required to be a Member of the Association, whose membership shall include and be limited to each of the Lot Owners of the Project. All memberships in the Association are hereby specifically made appurtenant to the Lots, and memberships shall be effective immediately upon the recording of the grant deed transferring the Lot. Membership may not be separated from the ownership of any Lot. Until such time as Declarant sells all of said Lots owned by it, Declarant shall remain a Lot Owner as to the Lots owned by it, and shall be a member of said Association.

Section 6. Beneficiary. "Beneficiary" shall mean a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee, or Beneficiary.

Section 7. Board of Directors. Shall mean and refer to the Board of Directors of the Association.

Section 8. 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 of the Association.

Section 9. Bylaws. The duly adopted Bylaws of the Association as the same may be amended, changed, or modified from time to time.

Section 10. City. The "City" shall mean the City of Hawthorne, a body corporation and politic.

Section 11. Common Area Lot or Common Area. The term "Common Area Lot or Common Area" shall mean the Lots in the Project which has been conveyed to the Association (Lot 14).

The Association shall be responsible for the management and maintenance of the Common Area Lot.

Section 12. Common Expenses. The actual and estimated costs and expenses incurred or to be incurred by the Association in performing its duties hereunder.

Section 13. Declarant. MOE AND JOHNNY ASSOCIATES, INC. a California Corporation, and its successors and assigns, if the rights of Declarant have been expressly assigned in writing.

Section 14. Declaration. This Declaration as the same may be amended, changed, or modified from time to time and recorded in the office of the County Recorder of the State of California where the Project is located.

Section 15. Deed of Trust. "Deed of Trust" shall mean a mortgage as further defined herein.

Section 16. Development. "Development" shall mean the Common Interest Development which consists of separately owned Lots and additional Lots which shall be owned by the Association.

Section 17. Dwelling or Dwelling Unit. The building located on a Lots designed and intended for use and occupancy as a residence by a single family.

Section 18. Eligible Insurer or Guarantor. A guarantor or insurer of any first mortgage or deed of trust on a Lots, who has provided a written request to the Association, to be notified of any proposed amendment or action described in Article XVIII hereof.

Section 19. Eligible Mortgage Holder. The holder of a first mortgage or deed of trust on a Lots who has provided a written request to the Association to be notified of any proposed amendment or action described in Article XVIII hereof.

Section 20. Lots. Each individual Lots or Lots of land as designated by number or letter on any recorded subdivision map of the Property including the Dwelling thereon.

Section 21. Manager. The managing agent, if any, whether individual or corporate, retained by Declarant or the Board, on contract, and charged with maintenance and upkeep of the Project.

Section 22. Member. Every person and entity who holds membership in the Association. Ownership of a Lots in the Project shall be the sole qualification for membership in the Association. All memberships in the Association are hereby specifically made appurtenant to the Lots, and memberships shall be effective immediately upon the recording of the grant deed transferring the Lots ownership. Membership may not be separated from the ownership of any Lots. Until such time as Declarant sells all of said Lots owned by it, Declarant shall remain a Lots owner as to the Lots owned by it, and shall be a Member of said Association.

Section 23. Mortgage. "Mortgage" shall mean any recorded mortgage or Deed of Trust or other conveyance of one (1) or more Lots or other portion of the Property to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed", when used herein, shall be synonymous with the term "Mortgage".

Section 24. Mortgage-Mortgagee-Mortgagor and Institutional Holder. "Mortgagee" shall mean an Institutional Holder to whom a Mortgage has been made by a Mortgagor and which is a bank or a savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

"Mortgagor" shall mean a person who mortgages his or its property to another (i.e., the maker of a Mortgage). Reference to a Mortgagee shall be deemed to include the beneficiary of a Deed of Trust; reference to a Mortgagor shall be deemed to include a trustor of a Deed of Trust.

Section 25. Owner or Lots Owner. The record Owner, whether one or more persons or entities, of a fee simple title to any Lots which is a part of the property, including contract vendees, but excluding those having such interest merely as security for the performance of an obligation.

Section 26. Project and Property. The entire parcel of real property hereinabove described, including all structures thereon, divided or to be divided into Lots, said Project being known as KAL ALI ESTATES.

Section 27. Property or Properties. The Property described in Recital A above.

Section 28. Rules and Regulations. "Rules and Regulations" shall mean the Rules and Regulations of the Association adopted by the Board as the same may be amended from time to time.

## ARTICLE II

### Description of Land and Improvements

The property initially subject to the covenants, conditions and restrictions herein contained is located in the City of Hawthorne, County of Los Angeles, State of California according to the Tract Map for Tract 53063 recorded in the Office of the County Recorder of said county as the same may be amended or superseded from time to time (and is hereinafter referred to as said Tract Map). Any grant deeds conveying any interest in the Project to individual purchasers of Lots shall expressly refer to and incorporate this Declaration therein by reference. Whether or not a reference to this Declaration is made in any individual deed, each purchaser of a Lots, part or portion thereof, shall by acceptance of a deed or other conveyance for such Lots, part or portion thereof, thereby be conclusively deemed to have consented to and agreed to all of the covenants, conditions and restrictions contained herein for himself and his heirs, executors, administrators and assigns and does by said acceptance covenant for himself and his heirs, executors, administrators and assigns to observe, perform and be bound by the same.

## ARTICLE III

### Property Rights

Section 1. Owners' Easements of Enjoyment. Subject to the easements granted to Declarant over certain portions of the Common Area Lots as provided in Article X hereof, every Owner of a Lots shall have a nonexclusive easement of use and enjoyment in, to and throughout the Common Area Lots of the Project and for ingress, egress and support over and through the Common Area Lots. Each such easement shall be appurtenant to and pass with the title to every Lots, subject to the following rights and restrictions:

A. The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area Lots and any recreational facilities thereon.

B. The right of the Association, in accordance herewith and with its Articles and/or Bylaws, to borrow money for the purpose of improving the Common Area Lots and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in the Common Area Lots shall be subordinate to the rights of the Owners hereunder. The right of the Association to mortgage the Common Area Lots shall be subject, however, to first obtaining the written assent of sixty-six and two-thirds percent

(66-2/3%) of each class of membership and sixty-six and two-thirds percent (66-2/3%) of the holders of first mortgages or trust deed liens.

C. The right of the Association, acting through the Board, to grant and convey to any third party, permits, licenses, easements and rights of way in, on, over, or under the Common Area Lots for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, roads and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Project or for purposes which the Board deems to be in the best interest of the Association and its members, which purposes are not inconsistent with the intended use of the Project as residential. Each purchaser, in accepting a deed to a Lots, expressly consents to the grant of any such easement, license or right of way. However, no such easements may be granted if it would interfere with the use, occupancy, or enjoyment by any Owner of his Lots and Dwelling Unit, or the recreational facilities of the Project, if any.

D. The right of the Declarant or its designees to enter on the Project to construct the Project and to make repairs and remedy construction defects if such entry shall not unreasonably interfere with the use of any occupied Dwelling Unit unless authorized by the Owner.

E. There is hereby granted to the Association such easements over each of the Lots in the Project as are necessary to perform the duties and obligations of the Association.

F. Notwithstanding anything contained herein to the contrary, each Lots within the Property perpetually shall have access to dedicated and/or private streets or driveways and each Owner of said Lots shall perpetually have the right of ingress and egress from his Lots to a dedicated public street and/or private street or driveways.

## ARTICLE IV

### Membership and Voting Rights

Section 1. Membership in Association. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lots which is subject by covenants of record to assessment by the Association, shall be a member of the Association. Membership in the Association shall include an appurtenant nonexclusive easement of enjoyment in and to all Common Areas of the Project, subject to the rights of Declarant as provided in Article X hereof. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lots which is subject to assessment by the Association. Ownership of such Lots shall be the sole qualification for membership.

Section 2. Transfer. Any attempt to make a prohibited transfer of a membership is void and will not be reflected upon the books and records of the Association.

Section 3. Classes of Voting Memberships. The Association shall have two classes of voting membership according to the following provisions:

Class A. Each Owner of a Lots other than Declarant shall be a Class A member and shall be entitled to one vote for each Lots owned.

Class B. Declarant shall be a Class B member. Class B membership entitles the holder to three (3) votes for each Lots owned. Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

A. The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member; or

B. Two (2) years from the date of the first conveyance a Lots in the Project.

Section 4. Commencement of Voting Rights. Voting rights shall commence for each Lots at such time as a Lots has been conveyed to a purchaser; provided, however, that assessments have been levied against that Lots by the Association in accordance with the provisions hereof. Notwithstanding the foregoing, if assessments are deferred pursuant to a subsidy agreement or a maintenance agreement to be entered into between the Declarant and the Association, the same shall not prevent the commencement of voting rights for each Lots in the Project. All voting rights shall be subject to the restrictions and limitations provided herein and in the Articles and Bylaws and any rules and regulations governing the Project.

Any provision in the governing instruments calling for membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two outstanding classes of membership. Except with respect to the action to enforce the obligations of Declarant under any completion bond, any requirements in the governing instruments that the vote of Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of Class B members to Class A members, and the same shall be read as requiring the prescribed percentage of the Class A members and the prescribed percentage of the Class A members other than Declarant.

Section 5. Joint Owner Disputes. Each Lots Owner shall designate one Voting Owner. There shall be only one Voting Owner for each Lots. The Voting Owner shall be designated by the record Owner or Owners of each Lots, by written notice to the Association, or the Manager. Said designation of a Voting Owner of a Lots shall be revocable at any time by actual notice to the Association or the Manager, of the death or

judicially declared incompetence of any record Lots Owner, or by written instrument delivered to the Manager by any record Owner. Where no designation is made or where a designation has been made but is revoked and no new designation made, the Voting Owner of each Lots shall be the group composed of its record Owners. If the joint Owners are unable to agree as to how their vote shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Lots, it will be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lots. If more than one (1) person exercises the voting rights for a particular Lots, their votes shall not be counted and shall be deemed void. Declarant shall be the Voting Owner with respect to any Lots owned by it from time to time.

## ARTICLE V

### Covenant for Maintenance Assessments

Section 1. Creation of Lien and Personal Obligation of Owners. Declarant, for each Lots owned by it within the Project, hereby covenants, and each Owner of any Lots within the Project, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) Regular Monthly Assessments or charges to pay the Common Expenses of the Association which shall include an amount necessary to establish an adequate reserve fund for maintenance, repairs and replacement of the Common Area Lots improvements; (2) Special Assessments which are for capital improvements, emergencies and to cover any costs of the Association not covered by Regular Monthly Assessments; such assessments to be fixed, established and collected from time to time, as hereinafter provided; and (3) Compliance Assessments which are levied against an Owner, or group of Owners, for monetary obligations of an Owner levied as a fine or penalty or a disciplinary measure or some other specified reason in accordance with this Declaration, the Articles, Bylaws, or Rules and Regulations of the Association; such assessments to be fixed, established and collected from time to time, as hereinafter provided. Each such assessment (and all other assessments levied in accordance with this Declaration), together with late charges, interest, costs, penalties and reasonable attorneys fees, as provided for by this Declaration, shall be the joint and several personal obligation of each person who was an Owner of such Lots at the time the assessment fell due. The personal obligations for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the members of the Association and, in particular, for the improvement, repair and maintenance of the Common Area Lots and the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area Lots, as well as the payment of all taxes and insurance thereon. Payment of taxes and insurance shall be made only as the same relate to the Common Area Lots. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

Section 3. Annual Assessments. The initial Annual Assessments shall be as set forth in the Final Subdivision Public Report issued by the California Department of Real Estate. Subject to any maintenance or subsidy agreement, Regular Monthly Assessments shall commence for all Lots in the Project, including those owned by Declarant, on the date of the first conveyance of a Lots pursuant to authority of a Public Report issued by the California Department of Real Estate and, thereafter, shall be due and payable in advance on the first day of each month, without notice.

Section 4. Change of Regular Monthly Assessments and Special Assessments. Changes in regular monthly assessments and special assessments may be made only as provided by the Bylaws and the Regulations of the California Department of Real Estate.

Section 5. Special Assessments. Special Assessments shall be due and payable in full thirty (30) days after appropriate notice thereof has been given to the Owners unless otherwise provided by the Board.

Section 6. Rate of Assessments.

A. Regular Monthly Assessments shall be paid by the Owners equally.

B. Special Assessments shall be assessed to Owners equally.

C. Compliance Assessments shall be assessed in full only against the Owner(s) liable therefore. The Board shall have the right after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code as provided in the Bylaws, to establish a Compliance Assessment on a single Owner or group of Owners, if the same be required to secure or satisfy any breach of this Declaration, the Articles, Bylaws or rules and regulations of the Association, by said Owner or Owners, which breach shall require or has required an expenditure by the Board for repair or remedy, including but not limited to, the violation of, or failure of such Owner(s) to comply with any applicable laws or directives of any lawful authority.

Section 7. Notice of Change in Assessments. The Board of Directors shall provide notice by first class mail to the Owners of a Lots of any increase in the regular or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

Section 8. Deposit of Assessments. Assessment charges so collected shall be promptly deposited in a bank or savings account, in a bank or savings and loan association to be selected by the Board, which account or accounts shall be under the name of the Association. The Board, and any officer of the Association or other person or firm designated by the Board, shall have exclusive control of said account or accounts, and shall be responsible to the Owners for the maintenance of accurate records thereof at all times. No withdrawal shall be made from any of said accounts except to pay for the charges and expenses or otherwise provide for the common benefit of all Owners.

The Board shall establish two (2) separate 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. Each of the accounts shall be established as a separate trust savings or checking account at a bank or savings institution. The accounts shall include: (i) an operating fund for current common expenses of the Association, and (ii) a fund for reserves for capital improvements, replacements, painting and repair of the Common Area Lots (which cannot normally be expected to occur on an annual basis). The Board shall not commingle any amounts deposited into either of the above accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional maintenance funds by the Association, so long as the amounts addressed to, deposited into, and disbursed from any such fund are earmarked for specified purposes authorized by this Declaration.

Section 9. Uniform Rate of Assessment. Except as otherwise provided herein, both annual and special assessments (except assessments against one Owner or a group of Owners for breach of this Declaration, the Bylaws or any Rules and Regulations of the Association) must be fixed at a uniform rate for all Lots and shall be collected on a monthly basis.

Section 10. No Offsets. All assessments shall be payable in the amount specified in the notice of assessment and no offsets against such amount shall be permitted for any reason.

Section 11. Exemption from Assessments. Declarant, and its successor in interest, if any, is an Owner subject to the payment of regular and special assessments against subdivision interests which it owns provided, however, that Declarant and any other Owner of a subdivision interest which does not include a structural improvement for human occupancy shall be exempted from the payment of that portion of any assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of the structural improvements. The exemption may include, but shall not necessarily be limited to, roof replacement, exterior maintenance, walkway and carport lighting, refuse disposal, cable television, and domestic water supplied to living units.

A. Any exemption from the payment of assessments attributed to a Lots Owner shall be in effect only until the earliest of the following events:

- (1) A notice of completion of the structural improvements has been recorded.
- (2) Occupation or use of the Dwelling Unit.
- (3) Completion of all elements of the residential structures which the Association is obligated to maintain.

B. Developer and any other Owner of a subdivision interest may be exempted by the governing instruments from the payment of that portion of any

assessment which is for the purpose of defraying expenses and reserves attributable to the existence and use of a common facility that is not complete at assessments commence. Any exemption from the payment of assessments at common facilities shall be in effect only until the earliest of the following events:

- (1) A notice of completion of the common facility has been recorded.
- (2) The common facility has been placed into use.

Section 12. Maintenance and/or Subsidy Agreement. In the event that Declarant has entered into a subsidy agreement or a maintenance agreement with the Association, which has been approved by the California Department of Real Estate, monthly assessments may be reduced and/or abated in accordance with such agreements.

Section 13. Declarant's Obligation to Pay Assessments - Record Maintenance. The Declarant shall maintain or cause to be maintained in accordance with generally accepted accounting practices, records of:

- A. All assessments paid by Declarant to the Association as an owner of subdivision interests in the Project.
- B. All expenditures claimed by Declarant as offsets or credits against assessments owed.
- C. Association receipts, expenditures and disbursements if Declarant has not turned over such records to the Association.

Such records shall be made available for examination, inspection and copying by the California Commissioner of Real Estate or his or her designated representative upon request during regular business hours. The Declarant's obligation to maintain or cause to be maintained, the records described in A, B or C shall terminate upon the earlier of (i) the conveyance of the last subdivision interest in the Project covered by a Subdivision Public Report; or (ii) three (3) years after the expiration of the most recent Public Report on the subdivision.

## ARTICLE VI

### Effect of Non-Payment of Assessments Remedies of the Association

Section 1. Creation of Lien. There is hereby created a lien against and on each Owner's Lots to secure payment of the amount of the maintenance fund, or of any assessment, regular or special, assessed to the Lots Owners as provided herein; provided, however, the lien shall not be deemed effective for any purpose unless and until a notice of claim of lien is recorded with the County Recorder of the County in which the Project is located. Before the Association may place a lien upon the interest of an Owner to collect

a debt which is past due, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the rights of the Association to the reasonable costs of collection. In addition, any payments toward such a debt shall first be applied to the principal owed, and only after the principal owed as paid in full shall such payments be applied to interest or collection expenses. The notice of claim of lien shall state the amount of the assessment and other sums imposed in accordance with the provisions of this Article VI, a description of the Owner's interest in the Project against which the assessment and other sums are levied, the name of the record owner of the Owner's interest in the Project against which the lien is imposed, and, in order for the lien to be enforced by non-judicial foreclosure as provided in Section 2, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the president of the Association and said notice shall be mailed in the manner provided in Section 2924(b) of the Civil Code to all record owners of such Lots no later than ten (10) calendar days after recordation. No lien shall be created by way of an assessment for a monetary penalty imposed by the Association as a disciplinary measure for failure of an Owner to comply with the governing instruments of the Project or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to Common Area and facilities for which the Owner is allegedly responsible or in bringing the Owner and his interest into compliance with the governing instruments unless the lien is as a result of enforcing a judgment of a court or a decision arising out of arbitration. The limitations imposed by the preceding sentence on the Association's ability to create a lien for a monetary assessment, shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and/or costs reasonably incurred (including attorneys fees) in its efforts to collect delinquent assessments.

Section 2. Enforcement of Lien. If a Lots Owner fails to pay any assessment within fifteen (15) days of the due date, a late charge shall be imposed on each delinquent assessment in an amount equal to the greater of (i) Ten Dollars (\$10.00), or (ii) ten percent (10%) of the delinquent assessment. The amount of the late charge may be increased by the Board from time to time if not in excess of that permitted by law. Assessments not paid within thirty (30) days after the due date shall bear interest at the highest rate permitted by law (but in no event to exceed twelve percent (12%) per annum) from the due date. If any assessment and other charges remain unpaid for thirty (30) days, the Board or any Lots Owner shall mail a notice of claim of lien to the Lots Owner and record a copy thereof in the office of the County Recorder of the county in which the Project is located. If, after thirty (30) days after such recording, the said sums remain unpaid, such lien may be enforced by sale by the Board, its attorney, or by any Owner, as trustee, in either case, for all Owners, such sale to be conducted in accordance with the provisions of Section 2924 et seq. of the California Civil Code applicable to the exercise of powers of sale in mortgages or deeds of trust or in any other manner permitted by law. The Board shall have the power to bid in at the foreclosure sale and to hold, lease, mortgage and convey

the same. Reasonable attorneys fees, title fees and expenses in connection with such foreclosure and/or the collection of the debt secured by such lien shall be paid by the Lots Owner against whom such foreclosure or other action is taken in connection with such lien. Unless sooner satisfied and released or the enforcement thereof initiated, as herein provided, such lien shall expire and be of no further force and effect one (1) year from the date of recordation of said notice, provided said one (1) year period may be extended by the Board for not to exceed one (1) additional year, by recording a written extension thereof. Such lien and right to foreclosure shall be in addition to and not in substitution for all other rights and remedies which the Lots Owners and the Board may have hereunder, including appropriate legal or equitable action.

Section 3. Priority of Lien and Subordination. The lien provided for herein shall be prior and superior to all other liens and encumbrances except for taxes, bonds, and assessments which by law are superior. Any lien provided for herein shall at all times also be subject and subordinate to and shall not affect or defeat nor render invalid the lien of any first mortgage or first deed of trust made in good faith and for value that is of record as an encumbrance against such Lots prior to the recordation of a notice of assessment against such Lots. The sale or transfer of any Lots pursuant to a judicial foreclosure or foreclosure by power of sale of a first deed of trust shall extinguish any assessment lien and any "right of first refusal" created against the Lots which is the subject of such sale or transfer pursuant to a judicial foreclosure or foreclosure by power of sale of a first deed of trust by the filing of a notice of assessment prior to the date of such sale or transfer, and shall prohibit the creation of any assessment lien against such Lots on account of payments which became due prior to the date of such sale or transfer; provided, however, that the purchaser at such sale shall be subject to all of the obligations of an Owner with respect to all assessments which become due after the date of such sale.

Section 4. Curing of Default. Upon payment of the delinquent assessment, all assessments becoming due thereafter, together with all interest, late charges, attorneys fees, and all additional charges incurred by the Association in connection with said notice of claim of lien and payment of a fee in the amount determined by the Board, the Board shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. Any Lots Owner may free his own Lots from the lien of any joint assessment on more than one Lots by payment of his share thereof, whereupon a similar further notice of satisfaction and release shall be recorded by the Board as to said Lots.

Section 5. Additional Remedies. Such lien and the right to foreclose the same shall be in addition to and not in substitution for all other rights and remedies which the Lots Owners and the Board may have to enforce the provisions hereof.

Section 6. Certificate re Amounts Due. Upon written request of any Lots Owner and payment of a reasonable fee, the Board or the Manager will furnish, for the benefit of any prospective purchaser or present or prospective encumbrancer of such Lots, a statement showing all amounts then due which are secured by any lien hereunder.

Section 7. Homestead and Exemption Waiver. Each Lots Owner does hereby waive, to the extent of any liens created pursuant hereto, the benefit of any homestead or exemption laws of the State of California in effect at the time the claim of lien is recorded.

## ARTICLE VII

### Destruction of Improvements

In the event of partial destruction of any portion of the improvements on the Common Area Lots, it shall be the duty of the Board of Directors to restore and repair the same to its former condition, as promptly as practicable and in a lawful and workmanlike manner subject to the provisions of Article XIX hereof. The proceeds of any insurance written pursuant to Article XI hereof shall be made available for such purpose and any deficiency in funds shall be the subject of a special assessment uniformly assessed against all Lots except as otherwise provided herein.

## ARTICLE VIII

### Management and Operation

Section 1. Meetings of Owners. The Properties and the Project shall be organized and operated as a planned residential development. The Owners shall be members of a non-profit corporation and an organizational meeting of such Owners shall be held within forty-five (45) days after the sale of the Lots in the Project which represents the fifty-first (51st) percentile of all of the Lots under the first public report for the Project, provided that the first public report authorized the sale of fifty Lots or more in the Project. However, regardless of the number of Lots in no event shall the first meeting be held later than six (6) months from the date of the sale of the first Lots in the Project. Thereafter, annual meetings of such Owners shall be held at a time as provided in the Bylaws. Provision also may be made in the Bylaws for the calling of special meetings of the Owners. At any such meetings of the Owners, whether annual or special, the Owner or Owners of each Lots (excluding Declarant) shall be entitled to cast only one (1) vote for each Lots. At any such meetings, Declarant shall be deemed to be the Owner of any and all Lots then unsold, and shall be entitled to vote as a Class B member until such membership terminates by the provisions hereof and, thereafter, shall be entitled to one (1) vote for each such individual Lots then owned by Declarant.

Section 2. Rights and Duties of Board of Directors. After the sale of the first Lots in the Project and prior to the first meeting of members, and thereafter, until their successors are elected, the initial Board elected by Declarant, or their duly appointed successors, shall manage the affairs of the Association and the obligations and debts incurred in connection therewith shall be those of the Association. The Project shall be operated and maintained so as not to create a public nuisance. The Board of Directors as constituted from time to time, shall at all times be responsible for the day to day operation and management of the affairs of the Association and management of the Common Area and all facilities and equipment located thereon and shall have the sole power and duty to perform and carry out the powers and duties of the Association as set forth in this

Declaration and the Bylaws, together with the powers and duties otherwise expressly delegated to the Board by this Declaration or the Bylaws, except for action or activity expressly set forth herein or in the Bylaws, the Articles or the California Corporations Code as requiring the vote or assent of the members of the Association or a given percentage thereof. Without limiting the generality of the foregoing, the Board shall have the following powers and duties:

- A. Employ the services of personnel necessary to operate and maintain the Project, fix and pay their compensation, and oversee and control such management and otherwise delegate its powers to committees, officers and/or employees.
- B. Contract and pay for the Common Expenses and such labor and materials as may be reasonably required to maintain the Common Area Lots and improvements thereon.
- C. Enforce the applicable provisions of the Declaration, Articles, Bylaws, Rules and Regulations and other instruments for the management and control of the Project.
- D. Pay all taxes, charges and assessments levied or which could become a lien against the Common Area Lots (except for charges levied solely against an Owner which charges shall be paid by such Owner).
- E. Use, in the discretion of the Board, the funds paid by Owners as maintenance charges, as hereinafter more fully provided.
- F. Provide financial statements of the Association to Owners as provided in the Bylaws of the Association.
- G. Enter any Lots, Dwelling Unit or any portion of the Common Area Lots, when necessary, in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made only upon reasonable notice (except in the event of an emergency) with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the party responsible for said damage.
- H. Hire and pay for legal and accounting services necessary or proper in the operation of the Project and enforcement of these restrictions, the Bylaws, Articles and any rules and regulations governing the Project.
- I. Keep in good condition the Common Area Lots and all facilities, improvements and landscaping within the Common Area Lots. The Board shall exercise such authority and perform such duties on behalf of the Owners with a view toward preserving the attractiveness of the Project as a whole, and maintaining, insofar as may be practicable, the structural style and the color scheme established by Declarant.
- J. Provide, acquire and pay for any other materials, supplies, furniture, labor, services, or assessments which the Board may be required to secure or

pay for pursuant to the terms of these restrictions, or the Articles, or the Bylaws, or which the Board, in its opinion, shall deem necessary, proper, or convenient for the operation of the Project; provided, however, that if any such materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments are provided for a single Lots or only several but not all Lots, the cost thereof shall be specifically assessed to the Owner or Owners of such Lots.

K. Pay any amount necessary to discharge any lien or encumbrance levied against the Project, or any part thereof, which may, in the opinion of the Board, constitute a lien against the Project or against the Common Area Lots, rather than merely against the interests therein of particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it.

L. Until such time as property taxes are separately assessed to each individual Owner, the Board may pay such property taxes singly assessed against the Project as a whole and collect the same from each Owner equally.

M. Comply with all applicable laws and orders and directives of any lawful authority.

N. The Board and Declarant are hereby precluded from taking any of the following actions except with assent, by vote at a meeting of the Association or by written ballots without a meeting pursuant to Corporations Code Section 7513, of a simple majority of the Members other than Declarant, constituting a quorum consisting of more than fifty percent (50%) of the voting power of the Association residing in Members other than Declarant:

(1) Entering into a contract with a third person where the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year, with the following exceptions:

(a) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

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

(c) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits for short rate cancellation by the insured.

(d) Lease agreements for laundry room fixtures and equipment of not to exceed six (6) years duration provided that the lessor under the

agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(e) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed six (6) years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(f) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed six (6) years duration provided that the supplier or suppliers are not entities in which Declarant has a direct or indirect ownership interest of ten percent (10%), or more.

(g) A contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty or other obligation upon ninety (90) days written notice of termination to the other party.

(h) Such other contracts which may from time to time be permitted by the regulations of the Real Estate Commissioner of the State of California.

Notwithstanding the foregoing, any agreement for professional management of the Project, or any other contract providing for services by the Declarant, Sponsor or Builder, may not exceed one (1) year and must provide for termination by either party, without cause, and without payment of a termination fee on thirty (30) days, or less, written notice.

(i) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(ii) Selling, during any fiscal year, 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.

(iii) Paying compensation to members of the Board of Directors or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board of Directors may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

O. The Board shall have the right to and shall receive complaints and hold hearings concerning violations of this Declaration, the Bylaws and/or other rules and regulations governing the management and control of the Association and the Project. The Board shall have the right to suspend the voting rights and right to use of the recreational facilities, if any, of a Lots Owner for any period during which any assessment against his interest in the Project remains unpaid and delinquent and may also impose

monetary penalties and/or suspend the voting rights and right to use of the recreational facilities, if any, for any other infraction of this Declaration or the Bylaws or the rules and regulations of the Association. All procedures for notice and hearing to the accused Owner pursuant to this Paragraph P shall be as set forth in the Bylaws of the Association. A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the Declaration, or Bylaws, or Rules and Regulations of the Association or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage of Common Areas and facilities for which the member was allegedly responsible, or in bringing the member and his interest in the Project into compliance with the aforescribed governing instruments, may not be characterized nor treated as an assessment which may become a lien against the member's interest in the Project enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

P. The Association shall have the power to grant and convey to any third party permits, licenses, easements and rights of way in, on, over or under the Common Area Lots for utility purposes, cable television, and any other purpose reasonably necessary or useful for the proper maintenance, operation or aesthetics of the Project.

Q. The Board shall, within ten (10) days of the mailing or delivery of a written request by an Owner, prospective purchaser of a Lots, any first mortgagee or the Eligible Mortgage Holders, insurers or guarantors of a first mortgage on any Lots provide such requesting party with a copy of this Declaration and the Association's Bylaws, Articles, rules and regulations and all other books, records and financial statements of the Association. The Board shall also make available to a requesting party a true statement in writing as to the amount of any delinquent assessments, penalties, attorneys fees and other charges due and owing from the Owner in connection with his Lots as of the date of the request. The Board may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

R. The right to borrow and to incur indebtedness for the benefit of the Association and to cause execution and delivery, in the Association' name, of promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, or other evidence of indebtedness or security therefor.

S. Permit utility suppliers to use portions of the Common Area Lots reasonably necessary for the ongoing development and operation of the Project.

T. To institute, defend, settle or intervene on behalf of the Association in litigation, arbitration, mediation or administrative proceedings in matters pertaining to: (a) enforcement of the governing instruments; (b) damage to the common areas; (c) damage to the separate interests which the Association is obligated to maintain or repair; or (d) damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the Association is obligated to maintain or repair.

U. Contract and pay for fire, casualty, liability, and other insurance on behalf of the Association as hereinafter provided.

Section 3. Association Rules and Regulations. The Board shall also have the power to adopt, amend and repeal Rules and Regulations, as it deems reasonable, which shall govern matters in furtherance of the purposes of the Association, including without limitation, the use of the Common Area, signs, parking restrictions and enforcement, trash collection, minimum standards for maintenance of Lots consistent with such standards as may be set forth in this Declaration or adopted by the Architectural Committee, and any other matter which is within the jurisdiction of the Association; provided, however, that the Rules and Regulations may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules and Regulations as they may, from time to time, be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Rules and Regulations, shall be delivered to each Owner. The Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and their successors in interest, whether or not actually received thereby. The Rules and Regulations, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Rules and Regulations and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the Rules and Regulations shall be deemed to be superseded.

Section 4. Title to the Common Area.

A. Transfer of Title to Common Area. Declarant hereby covenants, for itself, its successors and assigns, that it will convey to the Association fee simple title to the Common Area Lots, free and clear of all liens and encumbrances, subject to the Covenants set forth in this Declaration or which are of record at the time of the conveyance.

B. Commencement of Association Responsibilities. The Association's responsibility to maintain the Common Area Lots conveyed by Declarant to the Association shall commence concurrently with the commencement of Regular Monthly Assessments subject to the terms and provisions of any subsidy or maintenance agreement which may have been entered into by and between Declarant and the Association. Notwithstanding the foregoing, if the contractors or subcontractors of Declarant are contractually obligated to maintain the landscaping or other improvements on the Common Area Lots for a specified period of time. The Association shall not interfere with the performance of such warranty or other contractual maintenance obligations. Maintenance performed by such contractors or subcontractors of Declarant shall not serve to postpone the commencement of Regular Monthly Assessments pursuant to this Declaration, nor entitle an Owner to claim any offset or reduction in the amount of such Regular Monthly Assessments.

C. Disputes. In the event that a dispute arises between Declarant and the Association with respect to the nature, design, quality or quantity of any of the

improvements in the Common Area Lots of the Project, or the acceptance of maintenance responsibilities therefor, the Association shall be obligated to accept title to the Common Area Lots and undertake maintenance responsibilities pending resolution of the dispute as hereafter provided.

D. Maintenance of Common Area. The Association shall be obligated to undertake all maintenance responsibilities for the Common Area Lots when maintenance responsibilities are tendered by Declarant.

## ARTICLE IX

### Board of Directors

Section 1. Number and Term of Directors. The management of the Project and the Association shall be governed by a Board of Directors consisting of three (3) persons, who need not be Owners of Dwelling Units in the Project until conversion of the Class B membership to Class A membership after which time all Directors must be Owners of Dwelling Units in the Project or the nominee of any corporate, partnership or other entity Owner.

The number of members of the Board and their term of office may be changed solely by an amendment to the Bylaws of the Association.

The Board may call, hold and conduct meetings in accordance with such reasonable rules and regulations as the Board may adopt. A majority of the Board shall constitute a quorum. Until election of the Board, its rights, duties and functions shall be exercised by Declarant.

Section 2. Cumulative Voting. The Owners shall vote for the election of the Board. Each Owner shall be entitled to cumulate his votes for one or more candidates to the Board of Directors if the candidate's name or candidates' names have been placed in nomination prior to the voting and if the Owner has given notice at the meeting prior to the voting of his intention to cumulate his votes. If any one Owner has given such notice all members may cumulate their votes for the candidates in nomination. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be deemed elected. All voting at elections shall be by secret ballots.

Section 3. Removal of Directors. The entire Board of Directors or any individual Director may be removed by a vote of the Owners holding a majority of the voting power entitled to vote at any election of Directors. Unless the entire Board of Directors is removed from office, no individual Director shall be removed prior to the expiration of his term of office if the votes cast against removal, or not consenting in writing to such 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 most recent election of the Board of Directors were then being elected. If any Director is removed in the manner authorized above, a new Director may be elected at the same meeting.

Section 4. Majority of Voting Power in Declarant. Notwithstanding anything to the contrary contained herein or in the Bylaws or in the Articles of Incorporation: (a) from the first election of the Board of Directors and thereafter for so long as a majority of the voting power of the Association resides in Declarant, or so long as there are two classes of membership in the Association, twenty percent (20%) but not less than one (1) of the incumbents on the Board of Directors shall be elected solely by the votes of Owners other than Declarant; and (b) a Director who has been elected to office solely by the votes of Owners other than Declarant may be removed from office prior to the expiration of his term solely by the vote of a majority of the voting power residing in Owners other than Declarant.

Section 5. Personal Liability. No Member of the Board or of any committee of the Association, or any officer of the Association, or Declarant, or the Manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager or any other representative or employee of the Association, the Declarant, or the Architectural Committee, if any, or any other committee, or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, and without willful or intentional misconduct.

Section 6. Indemnification for Performance of Duties. Every member of the Board of Directors, officer and member of the Association shall be indemnified by the Association against all reasonable costs, expenses and liabilities (including attorneys fees) actually or necessarily incurred by, or imposed upon him, in connection with any claim, action, suit, proceeding, investigation or inquiry, of whatever nature, in which he may be involved as a party, or otherwise, by reason of his having been an officer or member of the Association, or the Board of Directors, whether or not he continues to be such Director, officer, or member of the Association at the time of the incurring or imposition of such costs, expenses, or liabilities, except in relation to matters as to which he shall be finally adjudged in such action, suit, proceeding, investigation, or inquiry to be liable for willful misconduct or gross negligence toward the Association in the performance of his duties, or in the absence of such final adjudication, any determination of such liability by the opinion of legal counsel selected by the Association. The foregoing right of indemnification shall be in addition to and not in limitation of, all rights to which such persons may be entitled as a matter of law and shall inure to the benefit of the legal representatives of such persons.

In the event the Association is required to pay any such costs, expenses, or liabilities, the Association shall be entitled to assess all Lots Owners for the amount so expended in the manner provided for special assessments in Article V hereof and such assessments need not be first approved by the vote of the Owners.

Section 7. Certificate of Board of Directors. Any certificate executed by any two (2) Members of the Board shall be conclusive proof of all matters contained in the certificate as to any act or non-act of the Association and/or the Board, or any of their respective committees or agents, or as to the performance or nonperformance of any act

of any Owner or nonpayment of any dues, fees, charges, assessments, interest, costs, or penalties, or as to any matters contained in the records of the Association or said Board.

## ARTICLE X

### Rights of Declarant

Nothing contained herein shall in any manner restrict or prohibit Declarant from the right to use the Common Area Lots in connection with the construction and sale of the Lots improved with Dwellings and in connection therewith to: use vehicles and equipment on the Common Area Lots; operate and maintain upon the Project a model complex, together with parking areas and/or real estate sales and development businesses; and place, erect and maintain thereon such customary sales and advertising signs, offices and parking areas as is usual and reasonable for such real estate sales and development operations.

Declarant, on behalf of itself, its agents, employees, contractors, subcontractors, invitees, successors, assigns and other authorized personnel, reserves a non-exclusive easement, during the hours of 7:00 A.M. to 8:00 P.M., Monday through Saturday, and 9:00 A.M. to 6:00 P.M. on Sunday and Federal Holiday's, extending until the date on which one hundred percent (100%) of all Lots on the Property are sold (but not to exceed six (6) years after the conveyance of the first Lots in the Project), in, over, under and through each and every part of the Project together with the right to transfer and grant the same without the consent of any other person or entity for the purpose set forth above and for the following purposes:

- A. Completion of original development of all portions of the Property including, without limitation, the Lots.
- B. Marketing and selling Lots and improvements.
- C. Customer relations and providing post-sale customer service to Owners.
- D. Leasing and reselling of Lots and improvements.
- E. Redesigning any portion of the Project, provided, that the Declarant's exercise of its redesign right shall be aesthetically consistent with the then existing theme of the Project and shall be in conformance with the tract map for the Project as the same may be amended.
- F. Performing any and all work which may be required by any governmental agency in order to obtain certificates of occupancy for the Dwellings, acceptance of the Project by governmental agencies and release of bonds posted by Declarant or others to assure performance.

In connection with each of the foregoing purposes the Declarant shall have the right: (i) to perform any and all architectural, engineering, construction, excavation, landscaping or related work and activities; (ii) to store and use materials, equipment, vehicles, tools and

machines which may be necessary or desirable in connection with such construction; (iii) to display signs and erect, maintain and operate, for sales, resales and administrative purposes, models and a fully staffed customer relations, services and sales and/or resales office complex within the Property; (iv) to perform maintenance, repair and replacement work on, and to make custom improvements, alterations and additions to uncompleted improvements; (v) to grant easements for utilities and other purposes related to the development of the Project provided that no such easement shall materially impair the ability of any Owner to use his Lots or the Project; and (vi) to take such other action consistent with such easements.

Neither the Association nor any Owner (other than Declarant) shall enter any construction area within the Property or cross any fence or other barricade constructed to prevent such entry or otherwise impede or interfere with such development and construction nor shall the Association or any Owner do anything to interfere with the right of Declarant to develop the Project. If any damage is occasioned to the Common Area Lots by Declarant or its agents or employees, Declarant shall be obligated to repair the same.

For a period of three (3) years after the initial sales of all Lots in the Project to individual Owners have closed, this Declaration cannot be amended to modify or eliminate this Article or any of the rights reserved to Declarant hereunder without the prior written approval of Declarant and any attempt to do so shall have no effect whatsoever.

## ARTICLE XI

### Insurance

Section 1. Insurance to be Maintained by Association. The Association shall obtain and maintain in effect the following types of insurance:

A. Comprehensive public liability insurance shall be purchased by the Board and shall be maintained in effect at all times, insuring the Association, any Manager, the Declarant and the Owners and occupants of Lots and their respective family members, guests, invitees, and the agents and employees of each and all holders of first deeds of trust encumbering the Lots within the Project, against any liability incident to the ownership or use of the Common Area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of each of such insurance policies shall not be less than \$2,000,000 covering all claims arising out of a single occurrence if the Project consists of one hundred (100) or less separate interests and not less than \$3,000,000 if the Project consists of more than one hundred (100) separate interests.

The Association shall also obtain insurance coverage for negligent acts or omissions of those persons acting in their capacity as officers and directors. The limits of such insurance shall be not less than Five Hundred Thousand Dollars (\$500,000) if the Project consists of one hundred (100) separate interests or less and \$1,000,000 if the Project consists of more than one hundred (100) separate interests.

Comprehensive public liability insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

The Board shall, upon issuance or renewal of the insurance specified in this Section 1 but no less than annually, notify the Owners as to the amount and type of insurance carried by the Association, and it shall accompany this notification with statements to the effect that the Association is, or is not, insured to the levels specified by this Section, and that if not so insured, Owners may be individually liable for the entire amount of a judgment, and if the Association is insured to the levels specified in this Section, then Owners may be individually liable only for their proportionate share of assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance.

B. Fidelity bond coverage on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the professional managing agent of the Association, whether or not such persons are compensated for their services.

C. Worker's compensation insurance, to the extent that it is required by law, for all employees of the Association; errors and omissions insurance for officers and directors of the Association; and any other insurance as the Board deems necessary or that is required by any mortgagee or by law.

Section 2. Proceeds Payable to Trustee. All insurance proceeds payable under subparagraph B of Section 1 of this Article XI shall be paid to a Trustee, to be held and expended for the benefit of the Association. The Trustee shall be appointed by the Board and shall be a commercial bank and/or trust company in the county in which the Project is located, which agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

Notwithstanding the foregoing, if the proceeds from a single claim do not exceed \$25,000 such proceeds shall be paid to the Association to be used for repair and reconstruction. If the Board fails to appoint a Trustee, the proceeds shall be payable to the Association.

Section 3. Board as Attorney in Fact. The Board is appointed attorney in fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried by the Association. The Board is granted full right and authority to compromise and settle any claim or endorse any claim by legal action or otherwise and to execute releases in favor of any insurer.

Section 4. Annual Review of Insurance. The Board shall determine annually whether the amounts and types of insurance it has obtained provide adequate coverage

for the Project, Owners, mortgagees and Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 5. Owners Liability Insurance. Any personal liability and property damage liability insurance policy carried by an Owner with respect to his Dwelling Unit shall include a waiver of subrogation clause acceptable to the Board and to any mortgagee insofar as the same may be applicable.

Section 6. Owners Casualty Insurance. Each Owner shall be required to obtain and maintain in full force and effect, a policy of fire insurance for one hundred percent (100%) of current replacement cost of all of the improvements situated on his Lots. The form, content and term of the policy and its endorsements and the issuing company must be satisfactory to his institutional mortgagee. The policy shall contain an agreed amount endorsement or its equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement, a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild.

The Association shall neither maintain nor be responsible for (and each Owner shall provide, at his sole cost and expense) insurance on an Owner's Lots including his Dwelling and all other improvements thereon and on his personal property.

Section 7. Notice of Cancellation. Any policy obtained by the Board must provide that it may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Eligible Mortgage Holder listed as a scheduled holder of a first mortgage in the policy.

## ARTICLE XII

### Maintenance of Lots

Section 1. Owner's Maintenance. Except as herein otherwise provided, regarding the obligation of the Association, each Owner of a Lots shall cause the interior and exterior of his Dwelling Unit, and the landscaping and sprinklers and all other improvements upon said Lots and the Lots to be maintained in a safe, sightly and first class condition subject to the restrictions and provisions set forth herein. It shall be the obligation of each Owner to keep his Lots free of trash, weeds and other unsightly materials.

In the event an Owner of any Lots in the Project shall fail to maintain his Lots, the improvements situated thereon and the landscaping in a manner satisfactory to the Board of Directors, the Board shall be required to enter upon said Lots and repair, maintain, and restore the Lots and the exterior of the buildings, the landscaping and any other improvements erected thereon to a good first class condition. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lots is subject, subject, however, to the provisions of Section I of Article VI hereof restricting the right of the Association to create a lien by way of an assessment for a monetary penalty imposed by the Association as disciplinary measure.

Section 2. Consent of Architectural Committee for Changes. Except as hereinafter provided, no Lots Owner shall, at his expense or otherwise, make any structural changes, repairs, or alterations to his Lots or Dwelling Unit visible from the exterior of the Dwelling, or the Common Area or any facilities or structures thereon, without the prior written consent of the Architectural Committee provided for in this Declaration.

## ARTICLE XIII

### Use Restrictions

In addition to all other covenants and restrictions contained herein, the Lots and Common Area Lots shall be further restricted to the following use and occupancy:

Section 1. Single Family Use. Each Lots shall be used as a residence for a single family and for no other purposes whatsoever. Individual Lots may not be subdivided nor may parts thereof be sold or rented as a separate dwelling. Except for occupations and businesses which do not involve any visible signs or regular conspicuous business activity or which do not involve regular deliveries to or pickups from the Project and which do not regularly involve customers, clients or patients who come to the Project or which do not otherwise interfere with the residential nature or character of the Project or the quiet enjoyment of other Owners and which comply with all laws and other governmental regulations, no part of any Lots shall ever be used or allowed to be used directly or indirectly for any business, commercial, manufacturing or mercantile or other non-residential use except Lots owned by Declarant may be used by Declarant or its designees, as models, sales offices, construction offices and general offices for the purposes of developing, improving and selling Lots in the Project. The rights of Declarant pursuant to this Section shall be subject to the time limitations set forth herein.

Section 2. Rental. Owners may lease or rent their Lots upon appropriate written notice to the Board of such intent; provided, however, that no Owner shall be permitted to lease or rent less than the entire of his Lots, nor may an Owner lease or rent his Lots for transient or hotel purposes and no such lease or rental shall be for a period of less than thirty (30) days. Any such lease or rental shall be in writing and shall require the tenant thereof to comply in all respects with the Declaration, the Articles, the Bylaws and all rules and regulations adopted by the Association, and any failure by the tenant to so comply shall be a default under said lease or rental.

Section 3. Common Area. Except as otherwise provided herein, there shall be no use or occupancy of any part of the Common Area Lots, except by the Owner, his family, tenants and guests and there shall be no construction of any Dwelling on, nor any obstruction of any portion of the Common Area Lots nor shall any improvement be constructed on the Common Area Lots.

Nothing shall be done or kept in or upon any Lots or in the Common Area Lots, which will increase the rate of insurance, without the prior written consent of the Board. No Owner shall permit anything to be done or kept on or within his Lots or in the

Common Area Lots, which will result in the cancellation of insurance on any improvements or which would be in violation of any governmental statute, ordinance, rule or regulation.

Section 4. Signs. No sign of any kind shall be displayed on the Common Area Lots without the prior written consent of the Board. One sign of reasonable dimensions and design advertising a Lots for sale, lease, or exchange, may be placed on the Owner's Lots, which sign is in compliance with all governmental regulations. Such sign may also contain directions to the Owner's Lots, the Owner's or his agent's name and the Owner's or his agent's address and telephone number. The foregoing restriction shall not apply to signs or other displays used by Declarant, or its agents, in connection with the original sale or resale of Lots in the Project so long as Declarant shall own a Lots in the Project.

Section 5. External Items: No antennae (television, radio, or of any sort), poles, wires (excluding telephone wiring), dishes, solar panels, or other external items shall be located on or outside of any Lots, or in the Common Area Lots, except with the express written consent of the Architectural Committee, or except as installed by Declarant. Notwithstanding the foregoing, an Owner shall be permitted to install a television satellite dish on or in his Lots, provided that the same is less than one (1) meter in diameter and provided further, that the installation complies with reasonable restrictions adopted by the Board or the Architectural Committee. For purposes hereof, "reasonable restrictions" means restrictions which do not significantly increase the cost of the system or significantly decrease its efficiency or performance.

Section 6. Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept in or upon any Lots or Dwelling Unit or in the Common Area Lots except upon specific approval of the Board, except that an Owner shall be allowed to maintain a reasonable number of household family pets, so long as a pet does not annoy, molest or inconvenience any other Owner, and provided that such pet or pets shall, if and when declared to be a nuisance by the Board, forthwith be removed from the Project. Dogs must be "curbed" and kept on leash while on the Common Area Lots. Each Owner of a pet shall have the responsibility of removing the pet's waste matter from the Common Area Lots. Any inconvenience, damage, or injury caused by such household pet or pets shall be the sole responsibility of the respective Owner thereof and said Owner does hereby indemnify the Association, its Board of Directors, officers and agrees to hold each of them harmless from and against any and all loss, cost, liability and expense of any kind or nature arising out of having pets within the Project.

Section 7. Offensive Activities. No noxious or offensive activity shall be carried on or in any Lots or in the Common Area Lots, nor shall anything be done therein which may be or become an annoyance or nuisance.

Section 8. Exterior Clothes Drying Facilities. Outside clothes lines or other outside clothes drying or airing facilities shall not be maintained unless hidden from view from the street and from any other Lots in the Project.

Section 9. Rubbish, Refuse Containers and Disposal. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lots, and no

odors shall be permitted to arise therefrom so as to render any Lots or portion thereof unsanitary, unsightly, offensive, or detrimental to any Lots or to the occupants thereof. Rubbish, garbage, trash, and all other refuse shall be stored in sanitary, non-metallic containers, or such other containers as may be approved by the Board. Such containers shall be maintained within the enclosed portion of an Owner's Lots (but not within an Owner's garage) so as not to be visible from the street. Containers shall be placed in the places designated as the trash pick up areas; provided, however, that such containers shall not be placed in the designated areas earlier than 6:00 P.M. the day before collection and such containers must be retrieved not later than 8:00 P.M. the day of collection. Such containers shall be situated as to be readily accessible for collection.

Section 10. Exterior Lighting. No exterior lighting shall be placed upon any Lots so as to cause unreasonable glare or illumination upon any other Lots. Notwithstanding the foregoing (a) lighting installed in connection with the original construction of the Project, and any replacements thereof and lighting installed with the approval of the Architectural Committee, and any replacements thereof, shall be permitted; (b) lighting installed by the Association within the Common Area Lots which does not create an unreasonable glare or illumination upon any Dwelling Unit (as determined by the Architectural Committee) shall be permitted; and (c) nothing contained herein shall be construed as preventing Declarant and its agents, employees and assigns from engaging in all forms of construction and sales activity within the Project.

Section 11. Structural Changes. Nothing shall be done in any Lots or in or on or to the Common Area Lots which will impair the structural or esthetic integrity of the buildings or other improvements in the Common Area Lots or which would structurally alter the same, except as is otherwise provided herein.

Nothing shall be altered, installed, or constructed on the Common Area Lots except upon the written consent of the Board.

Section 12. Mineral Exploration. No drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lots or the Common Area Lots or within 500 feet below the surface of the Property.

Section 13. Development of Air Space. No development shall be made of the air space above the exterior of any structure in any Lots or in the Common Area Lots except upon the written consent of the Architectural Committee and obtaining necessary permits or other approvals from appropriate governmental agencies.

Section 14. Violation of Rules and Laws. There shall be no violation of the rules or regulations for the use of Lots or the Common Area as set forth herein or as may be adopted by the Board.

There shall be no violation or failure to comply with applicable laws, orders, or directives of any lawful authority.

Section 15. Owner Liability. Each Owner shall be liable to the Board for any damage to any portion of the Common Area Lots or the equipment, facilities, or structures thereon which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, relatives, guests, invitees, or tenants, both minor and adult. In the case of joint ownership, the liability of such Owners shall be joint and several. In the event of personal injury or property damage sustained by any person while physically on the Lots of any Owner, and in the further event that any other Owner shall be sued, or a claim made against him or her for said injury or damage, the Owner or Owners of the Lots in which said injury or damage occurs, shall fully indemnify and hold harmless any such other Owners against whom such claim will be made, and shall further defend any such other Owners at his or her own expense in the event of litigation of such claim; provided, however, that such protection shall not extend to any other Owner whose own negligence may have caused or contributed to the cause of any such injury or damage.

Section 16. Exemption From Payment of Maintenance Fee. No Owner may exempt himself from liability for his contribution to the maintenance fund by any waiver of the use or enjoyment of the Common Area, or by the abandonment of his Lots.

Section 17. Parking. All parking shall be subject to the following restrictions:

A. No parking space may be sold or assigned to, or retained in the ownership of, any person not a Lots Owner and no parking space may be rented or leased to a non-Lots Owner except in connection with a lease of a Lots.

B. No vehicle other than standard passenger automobiles, sports utility vehicles, vans holding no more than eight (8) passengers, three-quarter (3/4) ton pickup trucks and motorcycles ("Permitted Vehicles") shall be permitted to be parked upon any area within the Project, except commercial vehicles making deliveries or providing services, to the Association or to an Owner or his Lots may temporarily park their vehicles in the Project. Lots Owners and their tenants may park Permitted Vehicles in their enclosed garage in the Project. No parking shall be permitted on the private driveway.

C. Busses, trailers, trailer coaches, house-cars, campers, boats, recreational vehicles, mobile homes, watercraft, inoperable vehicles and the like shall not be permitted upon any area within the Project.

D. No repairs shall be made to any vehicle while parked in any area in the Project, except in the case of strict emergency.

E. The Board may establish rules and regulations regarding parking, including the establishment of "parking", "no parking" and "guest parking" areas.

F. Garage doors must be kept closed at all times except when entering or exiting or except as may be temporarily necessary.

G. An Owner shall keep the driveway apron to his garage clean and free of debris, oil and grease.

H. All applicable provisions of the California Vehicle Code will be enforced on any private streets within the Project.

I. Space sufficient for the parking of two vehicles shall be maintained within an Owner's garage at all times.

J. There shall be no business activities, day care or garage sales conducted within or from any garage.

K. The Board shall have the authority to tow away and store any vehicle or similar equipment parked in violation of the above restrictions or in violation of the California Vehicle Code, whether the same shall belong to any Owner or a member of his family or to any relative, guest, or invitee of any Owner. Charges for such towing and storing shall be assessed against any Owner who shall violate such restrictions and also against any Owner whose family members, relatives, guests, or invitees may violate the same. Neither the members of the Board nor the Association shall be liable for any damages incurred by the owner of the vehicle or for any damage to the vehicle because of its removal in compliance with this Section unless such damage resulted from the negligence of the Board.

Section 18. No Temporary Structures. No structure of a temporary character, trailer, tent, shack, barn, or other out-building shall be used on any Lots at any time as a residence, either temporarily or permanently.

Section 19. Payment of Real and Personal Property Taxes. Each Owner of a Lots shall pay any real and personal property taxes or charges assessed against his respective Lots and the utility charges for said Lots and all costs of maintaining said Lots and Dwelling Unit.

Section 20. Repair of Improvements After Casualty. Should the improvements on any Lots or Lots be damaged or destroyed by fire or other casualty, the Owner or Owners thereof shall cause the same to be repaired and restored substantially in accordance with the original plans and specifications therefor, subject to approval of the Architectural Committee. The repairs and restoration work shall be commenced on the earlier of ninety (90) days after receipt of insurance proceeds covering said Lots or within one hundred eighty (180) days after the happening of the destruction or damage and once commenced, shall be pursued diligently to completion and should the same not be timely commenced or carried toward completion with diligence, the Association may elect to repair or restore the same, or to complete work or repair and restoration on behalf of and at the cost of such Owner or Owners. Any amounts expended by the Association for such repair or restoration and not reimbursed to the Association by the Owner shall be added to the assessments against said Lots or Lots proportionately based upon the nature and extent of the same as it affects the Lots of each Owner. Each Owner shall carry fire insurance with extended coverage endorsement or other form of coverage providing equal or greater protection in the amount of the full insurable replacement value of the residential improvements located on the Owner's Lots. If an Owner fails to commence repair of the destruction or damage within one hundred eighty (180) days after the casualty he shall be

required to raze the damaged Dwelling and leave his Lot in a neat, clean condition free and clear of any debris. The Board shall have the right to extend the time periods set forth herein.

Section 21. Window Coverings. Windows can only be covered by drapes, shades, curtains, or shutters and cannot be painted or covered by foil, cardboard, newspaper, paint, or other similar materials.

Section 22. Liens. No labor performed or services or materials furnished with consent of or at the request of an Owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the Project or against any other Lots, or against the Common Area Lots, unless such other Owner or the Board, as the case may be, has expressly consented to or requested the performance of such labor or furnishing of such materials or services. Such express consent shall be deemed to have been given by an Owner in the case of emergency repairs thereto, or in the case of an Owner failing to maintain those areas of the Project which he has the primary obligation to maintain hereunder. Labor performed or services or materials furnished for the Common Area, if duly authorized by the Board, shall be deemed to be performed or furnished with the express consent of each Owner. An Owner may remove his Lots from a lien against two or more Lots, or any part thereof, by payment to the holder of the lien of the fraction of the total sum secured by such lien which is attributable to his Lots.

Section 23. Electronic Equipment. No electronic transmitting equipment other than electronic garage door opening devices, if any, and other than electronic transmitting equipment and devices approved by the Board or the Architectural Committee shall be installed, maintained or used within the Project.

Section 24. No Easements for View Purposes; Disclaimer. The Article herein entitled "Architectural Control" sets forth procedures for the approval of Improvements which may be constructed upon Lots in the Project which are consistent with the architectural standards adopted, from time to time, pursuant to said Article. The architectural standards may have some effect on preserving views from and insuring the passage of light and air to individual Lots. However, by promulgation and enforcement of the architectural standards, or otherwise, neither Declarant, the Board nor the Architectural Committee, or the members, employees or consultants of any of the foregoing, have made any representations whatsoever concerning the view, if any, that a particular Lots or other Improvement thereon will enjoy. There are no express or implied easements whatsoever appurtenant to any Lots for view purposes, or for the passage of light and air across any other Lots or any property not within the Project, regardless of whether such Lots is owned by Declarant. Each Owner, by accepting a deed to a Lots, hereby expressly acknowledges and agrees that further construction within the Project may impair the view from such Owner's Lots, and each Owner hereby expressly consents to any such impairment.

Section 25. Fences or Enclosures; Maintenance by Owner. No fences, awnings, ornamental screens, screen doors, sunshades, glass or screen enclosures or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within an Owner's Lots, except those that are installed in accordance with the

original construction of the Project, and their replacements or those authorized and approved by the Architectural Committee. All fences or walls, including party walls, installed in accordance with the original construction of the Project shall be replaced with fences or walls of like design and materials and no such fence or wall shall be removed without the approval of the Architectural Committee. The Owner of each Lots whose Lots abuts or adjoins a portion of the wall originally constructed by Declarant around the perimeter of the Project shall paint and generally maintain the interior surfaces of that portion of said perimeter wall which abuts such Owner's Lots in accordance with standards established by the Architectural Committee. Repair of such wall shall be the obligation of the Association unless damage to the same shall have been caused by the Owner or his family, guests or invitees in which event the Owner shall be obligated to repair the same at his sole cost and expense. In the event any Owner required to maintain any portion of a wall pursuant to this Section fails or refuses to do so after written notice from the Architectural Committee, the Association can perform such maintenance and may recover the expense thereof and any incidental expense or consequential damages from the neglecting or refusing Owner. No Owner shall alter the shape, size, color, or construction or use any materials different from those used in the initial construction of any such wall without the written consent of the Architectural Committee.

6

Section 26. Quiet Enjoyment. No owner shall permit or suffer anything to be done or kept upon such Owner's Lots which will obstruct or interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises or otherwise.

## ARTICLE XIV

### Architectural Control

Section 1. Appointment of Architectural Committee. Declarant shall initially appoint the original Architectural Committee, which shall consist of not less than three (3) nor more than six (6) members. Said members shall remain until the first anniversary of the issuance of the Public Report for the Project. Declarant reserves to itself the power to appoint a majority of members of the Committee until ninety percent (90%) of all the Lots in the Project have been sold or until the fifth anniversary of the issuance of the Final Public Report, whichever first occurs. Until the earlier of the events specified in the preceding sentence, the provisions of this Section 1 may not be amended or deleted without the written consent of Declarant. Thereafter the Board shall have the power to appoint all of the members of the Committee. After one (1) year from the date of the issuance of the original public report, at least one (1) member shall be appointed to the Committee by the Board. Action taken by the Committee shall not be subject to review, revision or revocation by the Board.

Section 2. Consent of Architectural Committee Required. No Lots Owner shall, at his expense or otherwise, make any structural changes, repairs, or alterations to his Lots or the Common Area or any facilities or structures thereon, nor shall he make any alterations, additions, improvements, repairs, or modifications or changes in paint or finish or color of any facilities or structures thereon, or on his Lots, or install awnings or sunshades or perform any landscaping of any kind or character in or on his Lots, or make

any change, alteration, improvement or repair visible from the exterior of his Lots, without the prior written approval of the Architectural Committee. Such approval may be withheld if in the view of the Committee, the Improvement would affect the uniformity and the attractiveness or the value of the Project as a whole. The Committee, on behalf of the Association, shall have the right to enjoin a breach, or threatened breach, of any of the provisions of this Article, which shall be in addition to any other rights and remedies available to the Board or any Lots Owner.

Section 3. Plans and Specifications. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Architectural Committee for approval of the quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures and topography. Approval may be withheld if in the view of the Architectural Committee the Improvements would affect the uniformity and the attractiveness or the value of the Project as a whole.

Section 4. Approval or Disapproval by Architectural Committee. The Committee or the Association shall approve or disapprove a proposed improvement by sending a written notice thereof to the Owner who so requested said proposed improvement. The approval thereof may be recorded in the office of the County Recorder, but such approval shall not have the effect of, or be construed as, in any manner modifying, altering or waiving any of the provisions, covenants, conditions or restrictions set forth herein. The Committee shall make its determination as to approval or disapproval of the proposed improvements within thirty (30) days of the submission of said proposed improvement to the Committee. Failure on the part of the Committee or the Association to record such disapproval or to render a decision within the thirty (30) day period mentioned above, shall be deemed to be a waiver of any and all jurisdiction of said Committee or Association as to said plans and specifications, or either of them, and of said location and/or construction, but nothing contained herein, shall be construed as a waiver on the part of the Association or its successors or assigns or any other Owner in the Project, of their right to enforce the conditions recited herein or their right to enforce compliance of any other conditions, restrictions and covenants set forth herein. In the event of any disapproval by the Committee of either a preliminary or final submission of plans, a resubmission of revised plans will follow the same procedure as the original submission.

Section 5. Diligent Prosecution of Work. The approval of any improvement, erection, construction, refinishing, installation, placement, or alteration of a building, or other structure, shall be deemed conditional upon the commencement of said work within ninety (90) days after the approval of the Committee for the same shall have been obtained, or within such other period as shall have been specified by the Committee at the time of its approval. Work thereon must thereafter be prosecuted diligently to completion within a reasonable time and in any event before the expiration of such period as may be specified by the Committee. The Committee may for good cause, as determined by it, in writing, extend the period for completion of any such erection, construction, refinishing, installation placement or alteration. During said construction period, the area shall be kept clear of debris and refuse to the greatest extent possible. In the event the work is not commenced within said ninety (90) days, the approval of the Committee shall lapse and

become void unless the Committee, in its discretion, shall give written notice of waiver of the time condition. Said written notice of waiver may contain such terms and conditions as the Committee may deem proper, and shall not be deemed a waiver of any rights or authority of the Committee except as expressly stated in said written notice. Upon such lapse of approval, all proceedings shall terminate, and approval shall be conditional on the filing of new plans and architectural review fee as provided herein.

Section 6. Failure to Complete. The Owner shall complete any approved work within the approved time schedule, except for such time as completion would result in great hardship to the Owner or is rendered impossible due to fire, natural calamities, strikes, national emergencies, or other forces beyond the control of the Owner.

Section 7. Inspection of Work. Upon the completion of any construction, reconstruction, or the alteration or refinishing of the exterior of any Improvement, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Committee. Within thirty (30) days thereafter, the Committee, or its duly authorized representative, may inspect such Improvement to determine whether it was constructed, reconstructed, altered, or refinished in substantial compliance with the approved plans. If the Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such thirty (30) day period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance. If the Owner fails to give written notice as provided herein, the period within which the Committee may inspect the Improvement and give notice of non-compliance shall be extended to one hundred eighty (180) days after actual completion.

If upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Committee shall then set a date on which a hearing shall be held regarding the alleged non-compliance. Said date shall not be more than sixty (60) nor less than thirty (30) days after said notice of non-compliance was given to the Owner. Written notice of the hearing date shall be given at least ten (10) days in advance thereof by the Committee to the Owner.

At the hearing, the Owner, the Committee, and any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Committee shall determine whether there is a non-compliance, and if so, shall determine the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Committee shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Committee ruling. If the Owner does not comply with the Committee ruling within such period or within any extension thereof as the Committee may grant in its discretion, the Committee, at its option, may enter the Lots after three (3) days' written notice to the Owner of such Lots and perform, or cause to be performed, such work or other acts as may be required to remove the non-complying Improvement or remedy the

non-compliance, and the Owner of said Lots shall forthwith pay all costs and expenses incurred in connection therewith upon presentation to Owner of invoices therefor.

If, for any reason, the Committee fails to notify the Owner of any non-compliance within thirty (30) days after receipt of said notice of completion from the Owner, or within one hundred eighty (180) days of the date of completion in the event the Owner fails to give written notice, the Improvement shall be deemed to be in accordance with said approved plans.

Section 8. Unauthorized Improvements. If any Improvement is made without first obtaining approval of the Committee, the Committee shall give written notice to the Owner of violation of this Declaration within one hundred eighty (180) days after actual completion. If the Committee fails to give such notice, the Improvement shall be deemed to be in compliance with this Declaration. Within thirty (30) days of said notice, the Owner shall either (a) remove said Improvement at his own expense and restore the Lots to its condition prior to commencement of said Improvement, or (b) submit plans and all other items required by the Committee, together with an additional late application fee in an amount determined by the Committee. If the Owner has failed to take such action within said thirty (30) day period, the Committee, at its sole option, may enter the Lots after three (3) days' written notice to such Owner and perform or cause to be performed, such work or other acts as may be required to remove the non-complying Improvement or remedy the non-compliance, and the Owner of said Lots shall forthwith pay all costs and expenses incurred in connection therewith upon presentation to Owner of invoices therefor. If the Owner elects option (b) described in this Section, the Committee shall determine within thirty (30) days from the date of filing the late application if the plans are acceptable and if the Improvement is in compliance with said plans. If the Committee notifies the Owner of disapproval of the plans or of non-compliance of the Improvement within said thirty (30) day period, the Improvement shall be removed by Owner unless an extension of time is granted in writing by the Committee in its sole discretion to permit modification of said plans and/or to permit the Owner to remedy the non-compliance. If the Committee fails to notify the Owner of disapproval or non-compliance within said thirty (30) day period, the plans shall be deemed approved and the Improvement shall be deemed in compliance with said plans. The Committee shall also have the right to obtain injunctive relief to prevent a breach, or threatened breach, of the provisions hereof in addition to any other rights and remedies the Committee shall have in law or in equity.

Section 9. Architectural Control Committee Certificate. The Committee shall, upon approval by a majority of its members or within thirty (30) days after written demand is delivered to the Committee by any Owner, and upon payment of a reasonable fee (as fixed from time to time by the Committee), record a Certificate, executed by any two of its members, certifying (with respect to any Lots of said Owner) that as of the date thereof, either (a) all Improvements made and other work done upon or within said Lots comply with this Declaration, or (b) such Improvements or work do not comply, in which event the Certificate shall also identify the non-complying Improvements or work and set forth with particularity the cause or causes for such non-compliance. Any purchaser from the Owner, or from anyone deriving interest in said Lots through him, shall be entitled to rely on said Certificate with respect to the matters therein set forth, such matters being conclusive as

between the Committee, Declarant, and all Owners and such persons deriving any interest through them.

Section 10. Access to Premises. Each member of the Committee, Declarant, and any agent or employee of said Committee or Declarant, after the Committee has given written notice shall at all reasonable hours have access to any building site, premises, residence, building, or structure constructed, placed or maintained upon any portion of the Project for the purpose of inspection of the same relative to compliance with this Declaration or for repairing or remedying any non-compliance as provided in this Declaration, and shall not be deemed guilty of trespass by reason of such entry.

Section 11. Non-Liability. Neither Declarant, the Committee, nor any member, agent, or employee of Declarant or the Committee, shall be liable to any Owner for any loss, damage, or prejudice suffered or claimed on account of (a) any defects in any building or other structure erected, constructed, installed, placed, altered, or maintained in accordance with or pursuant to any plans and specifications, exterior materials, color scheme, Lots plan, grading plan, or other material approved by the Committee or any conditions or requirements that the Committee may have imposed with respect thereto, (b) approval or disapproval of any item submitted to the Committee by an Owner, or (c) the execution and filing of a Committee Certificate. Approval by the Committee shall not be deemed a representation or warranty that the Owner's plans and/or specifications or the actual construction of a Dwelling Unit or any other Improvement comply with applicable governmental ordinances or regulations, including but not limited to zoning ordinances and building codes.

Section 12. Declarant's Exemption. Declarant shall not be subject to the requirements of this Article XIV hereof until the expiration of four (4) years from the date of the original issuance of the most recently issued Final Subdivision Report for the Project.

Section 13. Fees. Members of the Architectural Committee who are members of the Association shall act without compensation but shall be permitted to charge a reasonable fee, to be paid to the Association for any set of plans which may be submitted to it for approval. In the event the Committee shall be reasonably required to engage a professional consultant to assist it in its determination, the Committee shall first obtain an estimate of the fees to be paid to such consultant and shall notify the Lots Owner of such fees. The Lots Owner shall be required, as a condition to proceeding further, to agree to pay such fees. If the Lots Owner shall not agree to pay such fees, the matter submitted before the Committee shall be deemed to be disapproved unless some alternative method of providing the necessary assistance to the Committee (which is in a form satisfactory to the Committee) shall be provided.

At the time plans are submitted to the Committee for approval, the Owner shall also be required to submit a deposit, in an amount determined by the Architectural Committee, to insure that the Owner's Lots and the street in front of the Owner's Lots will be left in a clean and neat condition after completion of the work of Improvement and damage, if any, to the street and adjacent Lots will be repaired to the standards of the Architectural Committee and applicable governmental regulations and

ordinances. If the Owner shall not leave his Lots in a neat and clean condition, the Board shall give written notice to the Owner to clean his Lots. If the Owner shall not clean his Lots within thirty (30) days after such notice, the Board shall have the right to do so and the expense thereof shall be paid out of the deposit. Any sums remaining after payment therefor shall be returned to the Owner. If the cost is in excess of the deposit, the Owner shall forthwith pay the deficiency to the Association.

The Board shall have the right at any time and from time to time to increase or decrease the amount of the clean up deposit.

Section 14. Architectural Guidelines. The Architectural Committee shall have the right from time to time, to adopt architectural guidelines relating to any landscaping, improvement, alteration, or construction on any Lots or improvement thereon in order to provide for the uniformity and the attractiveness of the Project as a whole. Said guidelines may be enforced in accordance with the provisions of this Declaration.

Section 15. Failure to Establish Architectural Committee. In the event that for any reason the Architectural Committee shall not be established, or if established, shall thereafter cease to exist, all of the rights, powers, duties and obligations of the Architectural Committee shall be performed by the Board.

## ARTICLE XV

### Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Project and placed on the dividing line between the Lots shall constitute a party wall and in the event that such a wall not be placed exactly on the dividing line between Lots, the same may encroach on one of such Lots and shall be maintained in the location originally constructed, and, to the extent not inconsistent with the provisions of this Article XV, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The Owner of each residential Lots upon which there is located a common wall shall have a joint obligation to maintain such common wall (except perimeter block walls, the maintenance of which shall be the obligation of the Association) and each such Owner shall have a reciprocal non-exclusive easement to each contiguous Lots for the purpose of maintaining said common wall. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. Provided, however, if any such party wall is damaged or destroyed through the negligent or willful act of one adjoining Owner or any of his agents or guests or members of his family so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly, without cost to the adjoining Owner.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by casualty, any Owner who has used the wall may restore it and the other Owners shall contribute to the cost of the restoration thereof without prejudice, however, to the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Right of Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE XVI

### Easements

Section 1. Encroachment Easement. Each Lots and its Owner within the Project is hereby granted an easement over all adjoining Lots for the purpose of accommodating any encroachment due to original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement, or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure on any Lots is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lots agree that minor encroachments over adjoining Lots shall be permitted and that there shall be easements for maintenance of said encroachments so long as they shall exist.

Section 2. Association Easement. The Association is hereby granted an easement and right of entry in, across, and over every Lots in the Project for the purpose of performing its duties hereunder.

Section 3. Entry for Repairs. The Board or its designated agents may enter upon any Lots when necessary in connection with any maintenance or construction for which the Board is responsible, or for any maintenance required by reason of the failure of the Lots Owner to maintain as provided herein. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund. There is hereby reserved to Declarant and the Board, for the benefit of each Owner, easements over each Lots and the Common Area Lots, for the purpose of maintenance and repairs and such further purposes as are necessary to perform the duties and obligations of the Board and the Association.

Section 4. Access Easements. Each Owner of a Lots in the Project is hereby granted an easement for ingress and egress over the private street within the Project.

Section 5. Maintenance Easement. Each Owner of a Lots in the Project shall have an easement over a portion of a Contiguous Lots (the "Contiguous Lots") for the right

of ingress and egress in, to, over, under, and across an area of the Contiguous Lots which is required for the purpose of maintaining, repairing, altering, modifying and/or painting (hereafter "Maintenance") the Dwelling and all other improvements on the Lots adjoining the Contiguous Lots. Except in the event of an emergency, an Owner shall be required to give the Contiguous Lots Owner seventy-two (72) hours prior written notice of the necessity to enter the Contiguous Owner's Lots for the purpose of performing necessary Maintenance. The notice shall state the nature of Maintenance, the time the Maintenance will commence and the estimated time to complete the Maintenance. Any damage caused the landscaping, the Dwelling or other structures of the Lots of the adjoining Owner shall be repaired and/or replaced by the Owner causing the damage.

#### Section 6. Easements For Drainage.

A. There are hereby created and reserved over each Lots in the Project easements for drainage according to the patterns for drainage created by the grading plans for the Project as well as according to the actual, natural and existing patterns for drainage.

B. Each Owner covenants and agrees that he shall not obstruct or otherwise interfere with said drainage patterns of waters from adjacent Lots in the Project over his Lots, or in the alternative, that in the event it is necessary and essential to alter said drainage pattern for the protection and use of his Lots, he will make adequate provisions for proper drainage, and submit alternative plans and specifications therefor to the Board for review and approval.

### ARTICLE XVII

#### Utilities

The rights and duties of the Owners with respect to lines for sanitary sewer, water, gas, electricity, telephone cables and heating and air conditioning, shall be governed by the following:

A. Wherever sanitary sewer connections and lines or electricity, gas, telephone lines, heating and air conditioning lines or television cables are installed within the Project, which connections or any portion thereof, lie in or upon portions of the Project owned by others than the Owner of a Lots served by said connections, the Owners of any Lots served by said connection, shall have the right and are hereby granted an easement, to the full extent necessary therefor, to enter upon the Lots or to have the utility companies enter thereupon to repair, replace and generally maintain said connection as and when the same may be necessary as set forth below.

B. Wherever sanitary sewer connections and lines, facilities and/or water connections and lines of electricity, gas, telephone lines, air conditioning and heating lines, or television cables are installed within the Project, which connections serve more than one Lots, the Owners of each Lots served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as services their Lots.

C. In the event any portion of said connection or line is damaged or destroyed through the negligent act or acts of failure to act, or willful misconduct of one Owner or any of his employees, agents, invitees, tenants or guests, so as to deprive other Owners of the full use and enjoyment of said connection or line, then such connection or line shall be repaired or restored at the expense of the Owner who commits or whose guests, agents, or employees commit, such act or acts.

D. In the event any portion of a connection or line is damaged or destroyed by some other cause than the negligence or willful misconduct of one of the Owners, his employees, agents, guests, tenants or invitees (including ordinary wear and tear and deterioration from lapse of time) then in such event, such connection or line shall be repaired and restored at the joint expense of all Owners served by such connection or line.

E. In the event of a dispute between Owners with respect to the repair or rebuilding of said connection or line, or with respect to the sharing of the costs thereof the provisions hereof pertaining to "Alternative Dispute Resolution" shall apply.

Easements over the Properties for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities and television cable service and for drainage facilities are as shown on the recorded map of the properties.

## ARTICLE XVIII

### Protection of Mortgagees

Section 1. Subordination of Liens. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first mortgage that encumbers all or a portion of the Project, or any Lots, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the Mortgagee expressly subordinates his interest, in writing, to such lien.

Section 2. Material Amendments. If an Eligible Mortgage Holder informs the Association in writing of its appropriate address and requests in writing to be notified, the Association shall not make any material change to the Declaration, the Bylaws or the Articles unless agreed to by Owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of subdivision interests that are subject to mortgages held by Eligible Mortgage Holders. The term "material amendment" is defined to mean amendments to provisions of any such documents governing the following subjects:

A. Reallocation of interests of the Owners, if any, in the general or limited common elements of the Project or rights to their use.

B. The fundamental purpose for which the Project was created (such as a change from residential use to a different use).

- C. Voting rights.
- D. Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens and the priority of assessment liens.
- E. Reductions in reserves for maintenance, repair and replacement of the Common Area.
- F. Responsibility for repair and maintenance obligations.
- G. Hazard or fidelity insurance requirements.
- H. Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration.
- I. Rights to use the Common Area Lots.
- J. Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project.
- K. Redefinition of the boundaries of any Lots.
- L. Convertibility of Lots into Common Area or of Common Area into Lots.
- M. Imposition of any restrictions on leasing of Lots.
- N. Imposition of any right of first refusal or similar restriction on the right of a Lots Owner to sell, transfer, or convey his Lots.
- O. If the Project consists of fifty (50) or more Lots, to terminate professional management (but only if such professional management is required by this Declaration or by any Eligible Mortgage Holder and assume self control of the Project.
- P. Any provision, which by its terms, is specifically for the benefit of first Mortgagees, Insurers, or Guarantors, or specifically confers rights on first Mortgagees, Insurers, or Guarantors.

An addition or amendment to the Declaration, the Articles or to the Bylaws shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder or Eligible Guarantor or Insurer who receives a written request to approve additions or amendments, who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Section 3. Required Consent of Mortgagees. Unless at least two-thirds (66-2/3%) of the first Mortgagees (based upon one vote for each mortgage owned) of the individual Lots or two-thirds (66-2/3%) of the Lots Owners (other than the sponsor, developer, builder or Declarant) have given their prior written approval, neither the Association nor the Owners shall be entitled:

A. By act or omission to seek to abandon or terminate the Project, except in the case of a taking by condemnation or eminent domain or substantial loss or damage to the Common Area Lots.

B. To change the pro rata interest or obligations of any Lots for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership, if any, in the Common Area Lots.

C. By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed a transfer within the meaning of this clause.

D. To use hazard insurance proceeds for losses to the Common Area in the Project or to use proceeds received from third party litigation for losses to, or claimed defects in, the Common Area for other than the repair, replacement, or reconstruction of improvements.

E. By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of the Common Area walks or fences and driveways, or the upkeep of landscaping in the Common Area.

F. Fail to maintain fire and extended coverage on insurable Association Common Area improvements on a current replacement cost basis in any amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs).

G. To partition or subdivide any Lots.

Section 4. Examination of Books and Records by Mortgagees. First Mortgagees can examine and copy the books and records of the Association and can require the submission of financial data concerning the Association or the Project, free of charge, including annual audited financial statements for the immediately preceding fiscal year. Such financial statements shall be furnished within a reasonable time following such request.

Section 5. Priority of First Mortgagees-Insurance Proceeds and Condemnation Awards. No Lots Owner, or any other party, shall have priority over any right of first



Mortgagees of Lots pursuant to their mortgages in case of a distribution to Lots Owners of insurance proceeds or condemnation awards for losses to or a taking of Dwelling Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees naming the Mortgagees, as their interests may appear.

Section 6. Notice to Mortgagees. Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or Guarantor, and the Lots number or address, such Eligible Mortgage Holder or insurer or guarantor will be entitled to timely written notice of:

A. Any loss casualty to any Dwelling Unit covered by a mortgage, if such loss exceeds One Thousand Dollars (\$1,000.00), or any loss to the Common Area if such loss exceeds Ten Thousand Dollars (\$10,000.00) or on any taking of the Common Area.

B. Any default in performance of obligations under the Declaration, the Articles, or the Bylaws or rules and regulations adopted by the Association, which default is not cured within sixty (60) days after written notice to such Owner.

C. Any lapse, Cancellation or material modification of any fidelity bond required to be maintained by the Association or of any insurance policy required to be maintained by the Association.

D. Any proposed action which would require the consent of mortgagees as specified in Sections 2 and 3 of this Article.

Section 7. Effect of Foreclosure by First Mortgagee.

A. No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any first mortgage in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

B. If any Lots is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments shall not operate to affect or impair the lien of the mortgage. On exercise of power of sale or judicial foreclosure of the first mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the mortgage, with the foreclosure-purchaser taking title to the Lots free of the lien for assessments, or installments that have accrued up to the time of the foreclosure sale. On taking title to the Lots, the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the Lots. The subsequently levied assessments or other charges may include previously unpaid assessments provided

all Owners, including the foreclosure- purchaser, and his successors and assigns, are required to pay their proportionate share as provided in this Article.

C. Any Mortgagee who acquires title to a Lots by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

D. Any mortgage given to secure a loan to facilitate the resale of a Lots after acquisition by foreclosure or by a deed in lieu of foreclosure or by assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

Section 8. Mortgagee's Attendance at Meetings. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments or for any other purpose. Written notice of any or all meetings of the Members and the Board will be provided to any Mortgagee upon its written request.

Section 9. Providing Information to Board. Any Mortgagee may furnish information to the Board concerning the status of any mortgage.

Section 10. Restriction on Right of First Refusal. No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Lots shall be granted to the Association without the consent of any Mortgagee, of the Lots. Any right of first refusal or option to purchase a Lots that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Lots, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the Lots pursuant to the remedies provided in its mortgage or by reason of foreclosure of the mortgage or deed (or assignment) in lieu of foreclosure.

Any right of first refusal shall not impair the rights of a first Mortgagee to: (a) foreclosure or take title to a Lots pursuant to the remedies provided in the mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor; or (c) sell or lease a Lots acquired by the first Mortgagee.

Section 11. Termination of Certain Contracts. Any contract for professional management of the Project, or any other contract providing for services by Declarant shall provide for termination by either party with or without cause and without payment of a termination fee upon no more than thirty (30) days written notice. Such agreement shall be renewable with the consent of the Board and the management agent. No contract with the Association negotiated by Declarant shall exceed a term of one (1) year.

Section 12. Tax Liens. All taxes, assessments and charges which may become liens prior to the first mortgage under the local law, shall relate only to the individual Lots and not to the Project as a whole.

Section 13. Reserves for Maintenance. Assessments on Lots shall include adequate reserve for maintenance, repairs and replacement of the Common Area facilities that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments.

Section 14. Termination of the Project. Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project must require the approval of Eligible Mortgage Holders holding mortgages on Lots which have at least fifty-one percent (51%) of the votes of Lots subject to Eligible Mortgage Holders and sixty-seven percent (67%) of the Lots Owners.

Section 15. Reallocation of Interests. No reallocation of interests in the Common Area resulting from a partial condemnation or partial destruction of the Project may be affected without the prior approval of Eligible Mortgage Holders holding mortgages on all remaining Lots, whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Lots subject to Eligible Mortgage Holders and the vote of sixty-seven percent (67%) of the Lots Owners.

Section 16. Payment of Taxes and Premiums. First mortgagees may, jointly or singly, pay taxes or other charges which may or have become a charge against the Common Area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of policy, for such Common Area property and first mortgagees making such payment shall be owed immediate reimbursement therefor from the Association, provided that said first mortgagees have given notice to the Association prior to the making of such payments and the Association has failed to pay the same.

Entitlement to such reimbursement shall be reflected in an agreement in favor of all first mortgagees of Lots to be executed by the Association. An original copy of such agreement shall be possessed by the Declarant.

Section 17. Conflicts. If there is any conflict between any Section of this Article and any other provision of this Declaration, or the Bylaws of the Association, the language contained in this Article shall control.

## ARTICLE XIX

### Destruction of Improvements

Section 1. Partial Damage. In the event any improvements or any fixtures or personal property in the Common Area of the Project are partially destroyed by fire or other casualty, or by partial condemnation, it shall be the duty of the Board to restore and repair the same to its former condition, as promptly as practicable and in a lawful and workmanlike manner. The proceeds of any insurance shall be made available for such purpose, subject to the prior rights of beneficiaries of deeds of trust whose interest may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such partial reconstruction shall be less than eighty-five percent

(85%) of the cost of the repair or construction and/or in the event such destruction is in an amount equal to fifty percent (50%) or more of the total value of the entire improvements in the Common Area of the Project, the Owners of Lots, by vote of the Owners holding seventy-five percent (75%) of the voting power of each class of membership, in person or by proxy, at a duly constituted meeting, shall determine whether the Board shall be authorized to proceed with such partial reconstruction or not, and in the event of an affirmative vote, a Special Assessment of the Owners may be levied to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purposes. In the event of a determination by the Owners that the cost of such reconstruction would be so substantial that it would not be in their best interests to proceed with the same, the Owners may, in their discretion, proceed as provided hereinafter.

Section 2. Total Destruction. In the event of the total destruction of the improvements in the Common Area of the Project, the Owners, by the requisite vote as set forth in Section 1 above, shall likewise have the authority to determine whether said improvements shall be rebuilt. In the event of the determination to rebuild and if the insurance proceeds shall be insufficient for the same, the necessary funds shall be raised by Special Assessment of the Owners as provided in Section 1 above.

## ARTICLE XX

### Amendments

Section 1. Prior to First Sale. Before the close of the first sale in the Project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect, or revoked by the execution by Declarant of an instrument amending or revoking this Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the County Recorder where the Project is located.

Section 2. After Close of First Sale. After the close of the first sale of a Lots in the Project to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect as follows: (1) If a two class voting structure is still in effect in the Association, this Declaration may be amended only with the vote or written consent of members entitled to cast at least sixty-six and two thirds percent (66 2/3%) of the voting power of each class of members in the Association; (2) if a two class voting structure is no longer in effect in the Association because of the conversion of Class B membership to Class A membership as provided herein, this Declaration may be amended only with the vote or written assent of: (i) members holding sixty-six and two thirds percent (66-2/3%) of the voting power of the Association; and (ii) members holding sixty-six and two-thirds percent (66-2/3%) of the voting power held by members other than Declarant.

Notwithstanding the foregoing, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of any class of members in order to take affirmative or negative action under such provision the same percentage of such class or classes of members shall be required to amend or revoke such provision.

Also, if the consent or approval of any governmental authority, mortgagee or other person, firm, agency, or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale need only be evidenced by an instrument certified by the secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the county recorder where the Project is located.

Section 3. Amendment to Meet Requirements of Mortgagees and Governmental Agencies. It is the intent of Declarant that this Declaration and the Articles and Bylaws of the Association, and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Lots in the Project by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Veteran's Administration. In furtherance of that intent, Declarant expressly reserves the right and shall be entitled by unilateral amendment of the Declaration so long as Declarant owns more than twenty-five percent (25%) of the Lots in the Project to amend this Declaration in order to incorporate any provisions or to enter into any agreement on behalf of and in the name of the Association that are, in the opinion of any of the cited entities or governmental agencies, required to conform to the Declaration, the Articles, the Bylaws or the Project to the requirements of any of the entities or governmental agencies, including without limitation, the execution on behalf of and in the name of the Association of a regulatory agreement between the Association and the Federal Housing Commissioner and any other agreement sufficient to satisfy the requirements for mortgage purchase, guarantee or insurance by any of said entities or agencies. Declarant is hereby granted an irrevocable power of attorney to execute any such amendment or agreement by and in the name of the Association. Any such provision shall first be approved by the California Department of Real Estate in connection with its issuance of a final subdivision public report or amendment to it with respect to the Project. Each Owner of a Lots and each Mortgagee of a Lots by acceptance of a deed or encumbrance of a Lots, consents to the incorporation in this Declaration of any such provisions as if they were incorporated in this Declaration. The Board and each Owner shall take any action or shall adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration of the Project to the requirements of any of said entities or agencies.

Section 4. Presumption of Validity. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

Section 5. Compliance with Law. All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7 to the extent said Section is applicable.

Section 6. Petition to Superior Court. If in order to amend the Declaration, the Declaration requires Owners having more than fifty percent (50%) of the votes in the

Association, in a single class voting structure, or Owners having more than fifty percent (50%) of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the Association, or any Owner of a separate interest, may petition the Superior Court of the county in which the Project is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the Association Members in the manner provided in the Declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing Declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- A. The governing documents.
- B. The complete text of the amendment.
- C. Copies of any notice and solicitation materials utilized in the solicitation of Owner approvals.
- D. A short explanation of the reason for the amendment.
- E. Any other documentation relevant to the Court's determination.

## ARTICLE XXI

### Enforcement of Bonded Obligations

If Common Area Lots improvements which are included in a subdivision offering covering this Project have not been completed prior to the issuance of a Final Subdivision Public Report and the Association is an obligee under a bond or other arrangement (hereinafter referred to as the "Bond") to secure performance of the commitment of Declarant pursuant to such subdivision offering to complete the improvements, then the following substantive and procedural provisions relative to the initiation of action to enforce the obligations of such Declarant and the surety under the Bond shall govern:

A. 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 improvements 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 to the Common Area Lots, the Board shall 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.

B. A special meeting of members of the Association 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 may be held. Said special meeting shall be held not less 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.

C. At any special meeting called for the purpose set forth in subparagraph B above, the vote shall be by members of the Association other than Declarant.

D. A vote of a majority of the members of the Association who reside in the Project, other than the Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## ARTICLE XXII

### Right of Owner of Unit To Make Improvements or Modifications

Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the Owner of the separate interest may do the following:

A. Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the Common Interest Development.

B. Modify his Dwelling, at the Owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the Dwelling for the purposes of this paragraph if the Dwelling is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this Paragraph is subject to the following conditions:

(1) The modifications shall be consistent with applicable building code requirements.

(2) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

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

(4) Any Owner who intends to modify a Dwelling pursuant to this Paragraph shall submit his or her plans and specifications to the Association of the Project

for review to determine whether the modifications will comply with the provisions of this Paragraph. The Association shall not deny approval of the proposed modifications under this Paragraph without good cause.

Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

### ARTICLE XXIII

#### Documents to be Provided to Prospective Purchaser

The Owner of a Lots shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following to the prospective purchaser:

- A. A copy of the governing documents of the Project.
- B. If there is a restriction in the governing documents limiting the occupancy, residency or use of a separate interest on the basis of age in a manner different from that provided in California Civil Code Section 51.3, a statement that the restriction is only enforceable to the extent permitted by said Section and a statement specifying the applicable provisions of said Section.
- C. A copy of the Association's most recent financial statement distributed in accordance with Section 1365 of the California Civil Code.
- D. A true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees as well as any assessments levied upon the Owner's interest in his Lots and the Project which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's interest in the Project pursuant to Section 1367 of the California Civil Code.
- E. Any change in the Association's current regular and special assessments and fees which have been approved by the Association's Board of Directors, that have not become due and payable as of the date disclosure is provided pursuant to this Article.

Upon written request the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Lots with a copy of the requested items specified in Subparagraphs A, B, C, D and E of this Article. The Association may charge a fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items.

## ARTICLE XXIV

### Enforcement

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all obligations, restrictions, conditions, covenants, reservations, liens and charges nor or hereafter imposed by the provisions of this Declaration or any amendment thereto or by the Articles or Bylaws or rules and regulations. The result of every act or omission whereby any of the covenants contained in this Declaration, the Articles, the Bylaws and the rules and regulations are violated in whole or in part are hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance either public or private shall be applicable against every such result and may be exercised by any Owner, by the Association, or its successor in interest. The remedies herein provided for breach of the covenants contained in this Declaration shall be cumulative, and none of such remedies shall be deemed exclusive. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, nor shall any such failure to enforce the same or any other violation of such covenants or restrictions impair or invalidate the lien of any first mortgage or first deed of trust. Each remedy provided for herein shall be cumulative and not exclusive.

## ARTICLE XXV

### Term of Declaration

The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and be enforceable by Declarant, the Association or any Owner of land subject to this Declaration, their respective heirs, representatives, successors and assigns, for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by a majority of the Owners has been recorded within six (6) months prior to the termination of the forty (40) year initial term or within six (6) months prior to the termination of any successive ten (10) year period, agreeing to terminate said covenants, conditions and restrictions in whole or in part.

## ARTICLE XXVI

### Resolution of Disputes

Section 1. Disputes. If any dispute should arise between the Association and/or an Owner or Owners on the one part and the Declarant, or any officer, director, manager, shareholder, partner, member, employer, contractor, subcontractor, material supplier, design professionals, property manager, employee, or agent of the Declarant on the other part (hereafter collectively the "Declarant Group") whether the dispute arises under the Declaration of any other management document, or relating to any claim of defects in

construction of the Project or any individual, or group of individual Dwellings, or otherwise, the dispute shall be resolved in the manner provided in this Article XXVI.

Section 2. Construction Defects. Before the Association, or an Owner or Owners commence an arbitration proceeding claiming damages against Declarant or any member of the Declarant Group based on a claim for defects in the Project (as specified in Civil Code Section 896), or any individual or group of individual Dwellings in the Project, the Association or Owner or Owners must first comply with all of the requirements of the Prelitigation Procedure set forth in California Civil Code Sections 910 through 938 as amended from time to time, as Declarant has elected to use the non adversarial procedure set forth in said sections. The Prelitigation Procedure impacts the legal rights of a purchaser of a Dwelling including successors to the initial purchaser. Attached hereto marked Exhibit "A" and by this reference made a part hereof is a copy of the Prelitigation Procedure.

In the event that after complying with the Prelitigation Procedure, the parties are unable to resolve the dispute, the matter shall be referred to binding arbitration in accordance with Section 4 below.

Section 3. Non Construction Disputes. Any other dispute arising between the Association and/or an Owner or Owners on the one part and any member of the Declarant Group on the other part shall, except for failure of Declarant to pay assessments, and except for an action for declaratory relief or injunctive relief related to the enforcement of this Declaration or Bylaws or the Articles or the Rules and Regulations, be resolved in accordance with Section 4 below. Resolution of a dispute arising under this section by binding arbitration shall be in lieu of and in satisfaction of the requirements of Civil Code Section 1354 relating to Alternative Dispute Resolution.

Section 4. Binding Arbitration. Any unresolved disputes under Sections 2 and 3 above, for any reason whatsoever, shall be submitted to binding arbitration pursuant to Code of Civil Procedure Sections 638(1) through 645.1 or any successor statutes thereto. The parties shall use the procedure adopted by Judicial Arbitration and Mediation Services ("JAMS") for binding arbitration or other alternative dispute resolution procedure selected by Seller. In no event shall any reference or any appeal therefrom result in an award of punitive or consequential damages and all such damages are waived by the parties.

The following rules and procedures shall apply in all cases unless the parties agree otherwise:

(1) Any and all communications by and between the parties, whether written or oral, which are delivered by the parties or their attorneys or other representatives in an effort to settle the dispute shall be considered communications undertaken in the course of effecting a settlement and compromise and, as such, shall not be admissible as the admission on the part of any party or any representative or agent of that party to be utilized for any purpose in any proceeding.

- (2) The arbitration shall not be deemed a waiver of the attorney/client or attorney/work product privilege.
- (3) The proceeding shall be held in the County where the Project is located.
- (4) The arbitration proceeding shall commence on a date agreed to by the parties and, if the parties cannot agree, then at a date determined by the arbitrator.
- (5) The parties shall promptly and diligently cooperate with one another and the arbitrator, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute.
- (6) The arbitrator shall have the power to decide all discovery disputes and all issues of fact and law and report his/her decision thereon, and to issue all legal and equitable relief appropriate under the circumstances of the controversy before him/her. The arbitrator shall conduct neutral and impartial proceedings in accordance with the alternative dispute resolution provider selected by Declarant.
- (7) The parties shall agree upon a single arbitrator who shall then try all issues, whether of fact or law, and report a finding and judgment thereon. If the parties are unable to agree upon an arbitrator within ten (10) days of a written request to do so by any party, then any party may seek to have an arbitrator appointed pursuant to the California Code of Civil Procedure §§638 and 640. In selecting the arbitrator, the provisions of §§1297.121 and 1297.124 of the Code of Civil Procedure shall apply.
- (8) Declarant shall advance all fees necessary to initiate the arbitration with subsequent costs to be paid as agreed by the parties or if necessary as determined by the arbitrator. The overall costs shall be borne by the Parties as determined by the arbitrator.
- (9) The arbitrator to be appointed must be a retired judge or an attorney with experience in relevant real estate matters and must be a neutral and impartial person.
- (10) The parties shall be entitled to discovery and the arbitrator shall oversee discovery and may make and enforce all discovery orders in the same manner as any trial judge. The parties may pursue all forms of discovery available in the Superior Courts of California, including without limitation, site inspections, interrogatories, depositions, admissions requests and document requests.
- (11) The arbitrator shall not have the power to award punitive or consequential damages.
- (12) A stenographic record of the trial shall be made if requested by the parties.

(13) The decision of the arbitrator upon all of the issues shall be binding upon the parties.

Section 5. Injunctive Relief. If the Association or any Owner shall breach the provisions of this Article, Declarant shall be entitled to injunctive relief (without the necessity of proving any damages) to compel the Association and/or Owner to comply with the procedures set forth in this Article.

Section 6. No Amendment Without Consent. Notwithstanding any other provision or this Declaration neither this Article nor any provision hereof shall be amended, altered, rescinded, or deleted without the written consent of Declarant.

Section 7. Disputes Relating To Governing Documents. In the event of a dispute between the Association and an Owner, or between an Owner and another Owner, relating to the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, the Rules and Regulations, or other governing documents of the Association, the issue or issues, at the request of any party, shall be submitted to arbitration in accordance with the Commercial Arbitration rules of the American Arbitration Association (AAA) before an arbitrator selected from the panels of the arbitrators of AAA. Where a vote or written assent is required, either for or against an action, the arbitrator shall be considered a provisional director and/or member of the Association who is authorized to attend any regular, special or adjourned meeting of the Association. In the event of referral to arbitration, the Owner requesting arbitration shall remit the fee to initiate the arbitration. However, the final cost of said arbitration shall ultimately be borne as determined by the arbitrator.

## ARTICLE XXVII

### Condemnation

Section 1. Action for Condemnation. In the event that an action for condemnation of all or a portion of the Common Area of the Project is proposed or threatened by any governmental agency having the right of eminent domain, written notice thereof shall be given by the Association to each Owner of record within ten (10) days after the same becomes known to the Association.

Section 2. Distribution of Proceeds. The proceeds resulting from the condemnation shall be distributed to the Association or any trustee appointed by the Board, for the use and benefit of the Association.

## ARTICLE XXVIII

### Mold

Each Owner, by acceptance of a deed to a Dwelling, acknowledges, recognizes and understands that there is, and will always be, the presence of certain biological organisms within the Dwelling. Most typically, this will include the common occurrence of mold. In

recent years, mold has received significant attention, as significantly increased levels of mold have accumulated and spread through residential dwellings. It is important to note that mold tends to proliferate in warm, wet areas. High levels of mold in an enclosed setting can lead to mild to significant detrimental health effects. As such, it is each Owner's responsibility to maintain his or her Dwelling so as to avoid the accumulation of moisture and/or mold within the Dwelling. Such mitigation matters should include, without limitation, the frequent ventilation of the Dwelling, removal of standing water on balcony, patio or deck areas, prompt repair of any leaks which permit water intrusion into the Dwelling, and prompt repair of plumbing leaks within the Dwelling (irrespective of who or what may have caused any such leaks). Each Owner also understands that the presence of indoor plants may also increase mold levels within the Dwelling. Also, the propping of large pieces of furniture against wall surfaces may lead to mold spore accumulation. It is the responsibility of each Owner to monitor and maintain his or her Dwelling so as to mitigate and avoid the conditions which are likely to lead to the presence and/or spreading of mold. In the event that mold does appear within the Dwelling, it is also the Owner's responsibility to promptly and properly treat such mold to minimize the spreading thereof and/or unhealthy conditions likely to arise as a result thereof. Such measures frequently include, but are not limited to, cleaning mold-affected surfaces with chlorine bleach. Each Owner is responsible to learn how to clean any affected Improvements.

## ARTICLE XXIX

### Provisions Regarding City of Hawthorne

The City of Hawthorne, California (the "City") may act as the agent of the Association and in the name of the Association do any of the following, in the event of abandonment of individual Units of the Project:

- A. Do or perform any act that the Association may do or perform;
- B. In the event of default by the Association according to the Bylaws and Declaration, the City may, without otherwise complying with the provisions of the Declaration, fix the annual assessment against each Unit;
- C. If the City, in its discretion, determines that the Association is not diligently attempting to collect the amounts owing the Association, the City may, in the name of the Association, take any legal steps to collect such amounts, by actions-of-law as the City may determine to be necessary.
- D. In the event the City should exercise any of the above-specified remedies, any sums recovered from such suit or suits shall be applied first to cover the City's costs. The balance shall be applied against any amount which is then lawfully owing to other public or private entities. All remaining sums belong to the Association.

## ARTICLE XXX

### General Provisions

Section 1. Purchasers. Each purchaser, by accepting a deed or a valid contract of sale to any Lots accepts the same, subject to all of the covenants, conditions and restrictions herein contained and agrees to be bound by each and all thereof.

Section 2. Construction and Conflicts. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the operation of a planned unit development project. In the event of any conflict between this Declaration and the Bylaws of the Association, this Declaration shall control.

Section 3. Captions and Gender. The titles or headings of the Articles or Paragraphs of this Declaration are not a part hereof and shall have no effect upon the construction or interpretation of any part hereof. The singular shall include the plural and the plural the singular unless the context requires the contrary and the masculine, feminine and neuter shall include the masculine, feminine or neuter as the context requires.

Section 4. Binding on Heirs. This Declaration shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns, grantees and lessees of the Declarant and each Owner.

Section 5. Payment of Municipal Charges. The Board of Directors of the Association shall include in the assessments provided for in Article V hereof provisions for adequate sums for the payment of municipal charges to insure payment of any invoice by the city, for water, landscape and lighting maintenance, sewer service charge, garbage, trash, or rubbish charge, in such manner that either the Board of Directors, Owners of Lots, or management agent shall continually guarantee payment to the appropriate governmental authority.

Section 6. Interpretation and Severability. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Project. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

Section 7. Notice of Sale or Lease of Dwelling Units. Within six (6) business days after the consummation of the sale, transfer or lease of any Lots under circumstances whereby the transferee becomes an Owner or lessee thereof, the transferee, or the Owner in the case of a lease, shall notify the Board in writing of such sale or lease. Such notification shall set forth (i) the names of the transferee or lessee and his transferor or lessor, (ii) the street address of the Lots purchased or Dwelling Unit leased by the transferee, (iii) the number and names of all persons and the ages of all minors who intend to occupy said Lots, (iv) the transferee's mailing address, and (v) the date of sale or lease. Prior to receipt of such notification, any and all communications required or permitted to be given by Declarant, the Board or the Architectural Committee or any agent or

representative thereof shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor or lessor.

Section 8. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, the same shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each such person at the address given by such person to the Board for the purpose of service, or to such person's Dwelling Unit, if no address has been given to the Board. An address may for any reason be changed from time to time by notice in writing to the Board.

Section 9. No Restrictions for Race, Color or Creed. No Owner shall execute or file for record any instrument which imposes a restriction upon the sale, leasing or occupancy of his Lots on the basis of race, color or creed.

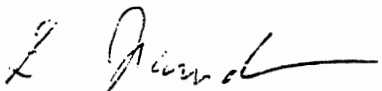
### ARTICLE XXXI

#### Lot 13

Lot 13 of Tract 53063 is owned by Declarant and is contiguous to Lot 12 (which is a part of the Project). Lot 13, which is not part of the Project, is a nonbuildable lot upon which Declarant intends to have a billboard constructed which will be used for advertising purposes and which may block or interfere with the view of an Owner or Owners. Declarant shall be fully responsible for the maintenance of Lot 13 and any Improvements thereon and the Association shall have no obligation or liability for the same.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first set forth above.

MOE AND JOHNNY ASSOCIATES, INC.  
a California Corporation

By   
\_\_\_\_\_  
Zara Namdar, President

ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On 6/24, 2004, before me Francisco J. Higuera,  
appeared ZARA NAMDAR, 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.



[SEAL]

[Signature]  
Notary Public in and for said County and State

# EXHIBIT "A"

## Prelitigation Procedure

#### CHAPTER 4. PRELITIGATION PROCEDURE

910. Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures:

(a) The claimant or his or her legal representative shall provide written notice via certified mail, overnight mail, or personal delivery to the builder, in the manner prescribed in this section, of the claimant's claim that the construction of his or her residence violates any of the standards set forth in Chapter 2 (commencing with Section 896). That notice shall provide the claimant's name, address, and preferred method of contact, and shall state that the claimant alleges a violation pursuant to this part against the builder, and shall describe the claim in reasonable detail sufficient to determine the nature and location, to the extent known, of the claimed violation. In the case of a group of homeowners or an association, the notice may identify the claimants solely by address or other description sufficient to apprise the builder of the locations of the subject residences. That document shall have the same force and effect as a notice of commencement of a legal proceeding.

(b) The notice requirements of this section do not preclude a homeowner from seeking redress through any applicable normal customer service procedure as set forth in any contractual, warranty, or other builder-generated document; and, if a homeowner seeks to do so, that request shall not satisfy the notice requirements of this section.

911. For purposes of this title, "builder" means a builder, developer, or original seller and applies to the sale of new residential units on and after January 1, 2003.

912. A builder shall do all of the following:

(a) Within 30 days of a written request by a homeowner or his or her legal representative, the builder shall provide copies of all relevant plans, specifications, mass or rough grading plans, final soils reports, Department of Real Estate public reports, and available engineering calculations, that pertain to a homeowner's residence specifically or as part of a larger development tract. The request shall be honored if it states that it is made relative to structural, fire safety, or soils provisions of this title. However, a builder is not obligated to provide a copying service, and reasonable copying costs shall be borne by the requesting party. A builder may require that the documents be copied onsite by the requesting party, except that the homeowner may, at his or her option, use his or her own copying service, which may include an offsite copy facility that is bonded and insured. If a builder can show that the builder maintained the documents, but that they later became unavailable due to loss or destruction that was not the fault of the builder, the builder may be excused from the requirements of this subdivision, in which case the builder shall act with reasonable diligence to assist the homeowner in obtaining those documents from any applicable government authority or from the source that generated the document. However, in that case, the time limits specified by this section do not apply.

(b) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, the builder shall provide to the homeowner or his or her legal representative copies of all maintenance and preventative maintenance recommendations that pertain to his or her residence within 30 days of service of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(c) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all manufactured products maintenance, preventive maintenance, and limited warranty information within 30 days of a written request for those documents. These documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(d) At the expense of the homeowner, who may opt to use an offsite copy facility that is bonded and insured, a builder shall provide to the homeowner or his or her legal representative copies of all of the builder's limited contractual warranties in accordance with this part in effect at the

time of the original sale of the residence within 30 days of a written request for those documents. Those documents shall also be provided to the homeowner in conjunction with the initial sale of the residence.

(e) A builder shall maintain the name and address of an agent for notice pursuant to this chapter with the Secretary of State or, alternatively, elect to use a third party for that notice if the builder has notified the homeowner in writing of the third party's name and address, to whom claims and requests for information under this section may be mailed. The name and address of the agent for notice or third party shall be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative. This subdivision applies to instances in which a builder contracts with a third party to accept claims and act on the builder's behalf. A builder shall give actual notice to the homeowner that the builder has made such an election, and shall include the name and address of the third party.

(f) A builder shall record on title a notice of the existence of these procedures and a notice that these procedures impact the legal rights of the homeowner. This information shall also be included with the original sales documentation and shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(g) A builder shall provide with the original sales documentation, a written copy of this part which shall be initialed and acknowledged by the purchaser and the builder's sales representative.

(h) As to any documents provided in conjunction with the original sale, the builder shall instruct the original purchaser to provide those documents to any subsequent purchaser.

(i) Any builder who fails to comply with any of these requirements within the time specified is not entitled to the protection of this chapter, and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action, in which case the remaining chapters of this part shall continue to apply to the action.

913. A builder or his or her representative shall acknowledge, in writing, receipt of the notice of the claim within 14 days after receipt of the notice of the claim. If the notice of the claim is served by the claimant's legal representative, or if the builder receives a written representation letter from a homeowner's attorney, the builder shall include the attorney in all subsequent substantive communications, including, without limitation, all written communications occurring pursuant to this chapter, and all substantive and procedural communications, including all written communications, following the commencement of any subsequent complaint or other legal action, except that if the builder has retained or involved legal counsel to assist the builder in this process, all communications by the builder's counsel shall only be with the claimant's legal representative, if any.

914. (a) This chapter establishes a nonadversarial procedure, including the remedies available under this chapter which, if the procedure does not resolve the dispute between the parties, may result in a subsequent action to enforce the other chapters of this title. A builder may attempt to commence nonadversarial contractual provisions other than the nonadversarial procedures and remedies set forth in this chapter, but may not, in addition to its own nonadversarial contractual provisions, require adherence to the nonadversarial procedures and remedies set forth in this chapter, regardless of whether the builder's own alternative nonadversarial contractual provisions are successful in resolving the dispute or ultimately deemed enforceable. At the time the sales agreement is executed, the builder shall notify the homeowner whether the builder intends to engage in the nonadversarial procedure of this section or attempt to enforce alternative nonadversarial contractual provisions. If the builder elects to use alternative nonadversarial contractual provisions in lieu of this chapter, the election is binding, regardless of whether the builder's alternative nonadversarial contractual provisions are successful in resolving the ultimate dispute or are ultimately deemed enforceable.

(b) Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, or contractual arbitration, judicial reference, or similar procedures requiring a binding

resolution to enforce the other chapters of this title or any other disputes between homeowners and builders. Nothing in this title is intended to affect the applicability, viability, or enforceability, if any, of contractual arbitration or judicial reference after a nonadversarial procedure or provision has been completed.

915. If a builder fails to acknowledge receipt of the notice of a claim within the time specified, elects not to go through the process set forth in this chapter, or fails to request an inspection within the time specified, or at the conclusion or cessation of an alternative nonadversarial proceeding, this chapter does not apply and the homeowner is released from the requirements of this chapter and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

916. (a) If a builder elects to inspect the claimed unmet standards, the builder shall complete the initial inspection and testing within 14 days after acknowledgment of receipt of the notice of the claim, at a mutually convenient date and time. If the homeowner has retained legal representation, the inspection shall be scheduled with the legal representative's office at a mutually convenient date and time, unless the legal representative is unavailable during the relevant time periods. All costs of builder inspection and testing, including any damage caused by the builder inspection, shall be borne by the builder. The builder shall also provide written proof that the builder has liability insurance to cover any damages or injuries occurring during inspection and testing. The builder shall restore the property to its pretesting condition within 48 hours of the testing. The builder shall, upon request, allow the inspections to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative.

(b) Nothing that occurs during a builder's or claimant's inspection or testing may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

(c) If a builder deems a second inspection or testing reasonably necessary, and specifies the reasons therefor in writing within three days following the initial inspection, the builder may conduct a second inspection or testing. A second inspection or testing shall be completed within 40 days of the initial inspection or testing. All requirements concerning the initial inspection or testing shall also apply to the second inspection or testing.

(d) If the builder fails to inspect or test the property within the time specified, the claimant is released from the requirements of this section and may proceed with the filing of an action. However, the standards set forth in the other chapters of this title shall continue to apply to the action.

(e) If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision shall not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

917. Within 30 days of the initial or, if requested, second inspection or testing, the builder may offer in writing to repair the violation. The offer to repair shall also compensate the homeowner for all applicable damages recoverable under Section 944, within the timeframe for the repair set forth in this chapter. Any such offer shall be accompanied by a detailed, specific, step-by-step statement identifying the particular violation that is being repaired, explaining the nature, scope, and location of the repair, and setting a reasonable completion date for the repair. The

offer shall also include the names, addresses, telephone numbers, and license numbers of the contractors whom the builder intends to have perform the repair. Those contractors shall be fully insured for, and shall be responsible for, all damages or injuries that they may cause to occur during the repair, and evidence of that insurance shall be provided to the homeowner upon request. Upon written request by the homeowner or his or her legal representative, and within the timeframes set forth in this chapter, the builder shall also provide any available technical documentation, including, without limitation, plans and specifications, pertaining to the claimed violation within the particular home or development tract. The offer shall also advise the homeowner in writing of his or her right to request up to three additional contractors from which to select to do the repair pursuant to this chapter.

918. Upon receipt of the offer to repair, the homeowner shall have 30 days to authorize the builder to proceed with the repair. The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. If the homeowner so elects, the builder is entitled to an additional noninvasive inspection, to occur at a mutually convenient date and time within 20 days of the election, so as to permit the other proposed contractors to review the proposed site of the repair. Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors. Within 20 days after that presentation, the homeowner shall authorize the builder or one of the alternative contractors to perform the repair.

919. The offer to repair shall also be accompanied by an offer to mediate the dispute if the homeowner so chooses. The mediation shall be limited to a four-hour mediation, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator, and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation occurs within 15 days after the request to mediate is received and occurs at a mutually convenient location within the county where the action is pending. If a builder has made an offer to repair a violation, and the mediation has failed to resolve the dispute, the homeowner shall allow the repair to be performed either by the builder, its contractor, or the selected contractor.

920. If the builder fails to make an offer to repair or otherwise strictly comply with this chapter within the times specified, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If the contractor performing the repair does not complete the repair in the time or manner specified, the claimant may file an action. If this occurs, the standards set forth in the other chapters of this part shall continue to apply to the action.

921. (a) In the event that a resolution under this chapter involves a repair by the builder, the builder shall make an appointment with the claimant, make all appropriate arrangements to effectuate a repair of the claimed unmet standards, and compensate the homeowner for all damages resulting therefrom free of charge to the claimant. The repair shall be scheduled through the claimant's legal representative, if any, unless he or she is unavailable during the relevant time periods. The repair shall be commenced on a mutually convenient date within 14 days of acceptance or, if an alternative contractor is selected by the homeowner, within 14 days of the selection, or, if a mediation occurs, within seven days of the mediation, or within five days after a permit is obtained if one is required. The builder shall act with reasonable diligence in obtaining any such permit.

(b) The builder shall ensure that work done on the repairs is done with the utmost diligence, and that the repairs are completed as soon as reasonably possible, subject to the nature of the repair or some unforeseen event not caused by the builder or the contractor performing the repair. Every effort shall be made to complete the repair within 120 days.

922. The builder shall, upon request, allow the repair to be observed and electronically recorded, videotaped, or photographed by the claimant or his or her legal representative. Nothing that occurs during the repair process may be used or introduced as evidence to support a spoliation defense by any potential party in any subsequent litigation.

923. The builder shall provide the homeowner or his or her legal representative, upon request, with copies of all correspondence, photographs, and other materials pertaining or relating in any manner to the repairs.

924. If the builder elects to repair some, but not all of, the claimed unmet standards, the builder shall, at the same time it makes its offer, set forth with particularity in writing the reasons, and the support for those reasons, for not repairing all claimed unmet standards.

925. If the builder fails to complete the repair within the time specified in the repair plan, the claimant is released from the requirements of this chapter and may proceed with the filing of an action. If this occurs, the standards set forth in the other chapters of this title shall continue to apply to the action.

926. The builder may not obtain a release or waiver of any kind in exchange for the repair work mandated by this chapter. At the conclusion of the repair, the claimant may proceed with filing an action for violation of the applicable standard or for a claim of inadequate repair, or both, including all applicable damages available under Section 944.

927. If the applicable statute of limitations has otherwise run during this process, the time period for filing a complaint or other legal remedies for violation of any provision of this title, or for a claim of inadequate repair, is extended from the time of the original claim by the claimant to 100 days after the repair is completed, whether or not the particular violation is the one being repaired. If the builder fails to acknowledge the claim within the time specified, elects not to go through this statutory process, or fails to request an inspection within the time specified, the time period for filing a complaint or other legal remedies for violation of any provision of this title is extended from the time of the original claim by the claimant to 45 days after the time for responding to the notice of claim has expired. If the builder elects to attempt to enforce its own nonadversarial procedure in lieu of the procedure set forth in this chapter, the time period for filing a complaint or other legal remedies for violation of any provision of this part is extended from the time of the original claim by the claimant to 100 days after either the completion of the builder's alternative nonadversarial procedure, or 100 days after the builder's alternative nonadversarial procedure is deemed unenforceable, whichever is later.

928. If the builder has invoked this chapter and completed a repair, prior to filing an action, if there has been no previous mediation between the parties, the homeowner or his or her legal representative shall request mediation in writing. The mediation shall be limited to four hours, except as otherwise mutually agreed before a nonaffiliated mediator selected and paid for by the builder. At the homeowner's sole option, the homeowner may agree to split the cost of the mediator and if he or she does so, the mediator shall be selected jointly. The mediator shall have sufficient availability such that the mediation will occur within 15 days after the request for mediation is received and shall occur at a mutually convenient location within the county where the action is pending. In the event that a mediation is used at this point, any applicable statutes of limitations shall be tolled from the date of the request to mediate until the next court day after the mediation is completed, or the 100-day period, whichever is later.

929. (a) Nothing in this chapter prohibits the builder from making only a cash offer and no repair. In this situation, the homeowner is free to accept the offer, or he or she may reject the offer and proceed with the filing of an action. If the latter occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) The builder may obtain a reasonable release in exchange for the cash payment. The builder may negotiate the terms and conditions of any reasonable release in terms of scope and consideration in conjunction with a cash payment under this chapter.

930. (a) The time periods and all other requirements in this chapter are to be strictly construed, and, unless extended by the mutual agreement of the parties in accordance with this chapter, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties as evidenced by a postclaim written confirmation by the affected homeowner demonstrating that he or she has knowingly and voluntarily extended the statutory timeframe, the claimant may proceed with filing an action. If this occurs, the standards of the other chapters of this title shall continue to apply to the action.

(b) If the claimant does not conform with the requirements of this chapter, the builder may bring a motion to stay any subsequent court action or other proceeding until the requirements of this chapter have been satisfied. The court, in its discretion, may award the prevailing party on such a motion, his or her attorney's fees and costs in bringing or opposing the motion.

931. If a claim combines causes of action or damages not covered by this part, including, without limitation, personal injuries, class actions, other statutory remedies, or fraud-based claims, the claimed unmet standards shall be administered according to this part, although evidence of the property in its unrepaired condition may be introduced to support the respective elements of any such cause of action. As to any fraud-based claim, if the fact that the property has been repaired under this chapter is deemed admissible, the trier of fact shall be informed that the repair was not voluntarily accepted by the homeowner. As to any class action claims that address solely the incorporation of a defective component into a residence, the named and unnamed class members need not comply with this chapter.

932. Subsequently discovered claims of unmet standards shall be administered separately under this chapter, unless otherwise agreed to by the parties. However, in the case of a detached single family residence, in the same home, if the subsequently discovered claim is for a violation of the same standard as that which has already been initiated by the same claimant and the subject of a currently pending action, the claimant need not reinitiate the process as to the same standard. In the case of an attached project, if the subsequently discovered claim is for a violation of the same standard for a connected component system in the same building as has already been initiated by the same claimant, and the subject of a currently pending action, the claimant need not reinitiate this process as to that standard.

933. If any enforcement of these standards is commenced, the fact that a repair effort was made may be introduced to the trier of fact. However, the claimant may use the condition of the property prior to the repair as the basis for contending that the repair work was inappropriate, inadequate, or incomplete, or that the violation still exists. The claimant need not show that the repair work resulted in further damage nor that damage has continued to occur as a result of the violation.

934. Evidence of both parties' conduct during this process may be introduced during a subsequent enforcement action, if any, with the exception of any mediation. Any repair efforts undertaken by the builder, shall not be considered settlement communications or offers of settlement and are not inadmissible in evidence on such a basis.

935. To the extent that provisions of this chapter are enforced and those provisions are substantially similar to provisions in Section 1375 of the Civil Code, but an action is subsequently commenced under Section 1375 of the Civil Code, the parties are excused from performing the substantially similar requirements under Section 1375 of the Civil Code.

936. Each and every provision of the other chapters of this title apply to subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract. In addition to the affirmative defenses set forth in Section 945.5, a subcontractor, material supplier, design professional, individual product manufacturer,

or other entity may also offer common law and contractual defenses as applicable to any claimed violation of a standard. All actions by a claimant or builder to enforce an express contract, or any provision thereof, against a subcontractor, material supplier, individual product manufacturer, or design professional is preserved. Nothing in this title modifies the law pertaining to joint and several liability for subcontractors, material suppliers, individual product manufacturer, and design professionals that contribute to any specific violation of this title. However, this section does not apply to any subcontractor, material supplier, individual product manufacturer, or design professional to which strict liability would apply.

937. Nothing in this title shall be interpreted to eliminate or abrogate the requirement to comply with Section 411.35 of the Code of Civil Procedure or to affect the liability of design professionals, including architects and architectural firms, for claims and damages not covered by this title.

938. This title applies only to residences originally sold on or after January 1, 2003.

Recording Requested by:

INVESTORS TITLE COMPANY

When Recorded Mail to:

This is to certify that this is a true and correct copy  
of the original recorded 10-27-04

Instrument No. 04-27001654

By INVESTORS TITLE COMPANY  
Ana Regalado

Name: Mr. Mohamad Pournamdari  
Mailing Moe & Johnny Associates, Inc..  
Address: 3950 W. Imperial Highway  
City: Inglewood  
State: California  
Zip Code: 90303

---

Space above this line reserved for Recorder's Use

TITLE(S)

---

NOTICE REGARDING SENATE BILL 800  
HOMEBUILDER  
"RIGHT TO REPAIR"  
LAW

---

NOTICE REGARDING SENATE BILL 800

HOMEBUILDER "RIGHT TO REPAIR" LAW

The undersigned, MOE AND JOHNNY ASSOCIATES, INC., a California Corporation ("Declarant"), is the Owner of the real property described as:

Lots 1-12, inclusive and Lot 14 of Tract 53063 as per map recorded in Book 1282 Page 92 of Maps in the Office of the Los Angeles County Recorder (the "Property").

Declarant is constructing a twelve (12) unit planned development project on the Property with one (1) common area lot (the "Project").

Declarant records this Notice to impart certain information to purchasers of condominiums in the Project as required by California Civil Code, Sections 912(e) and (f). The information is as follows:

1. Declarant has elected to use the non-adversarial Prelitigation Procedure set forth in California Civil Code, Sections 910 through 938, for claims made by a purchaser of a condominium in the Project. This procedure must be followed prior to initiating binding arbitration which Declarant has elected to use in lieu of litigation in the event a claim by a purchaser is not resolve by the Prelitigation Procedure. The Prelitigation Procedure impacts the legal rights of the purchaser of a condominium.

2. The name and address of the person to whom claims and requests for information pursuant to the Prelitigation Procedure of the California Civil Code referenced above may be mailed is:

Name: Zara Namdar  
Address: 3950 W. Imperial Highway  
Inglewood, CA 90303

Dated this 25<sup>th</sup> day of October, 2004.

DECLARANT

AND  
MOE / JOHNNY ASSOCIATES, INC.,  
a California Corporation

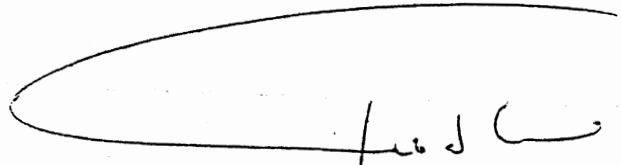
By Z. Namdar  
Zara Namdar, President

ACKNOWLEDGMENT

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF LOS ANGELES )

On 10/25, 2004, before me, Francisco J. Higuera a Notary Public appeared ZARA NAMDAR, 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.



Notary Public in and for said County and State



[SEAL]

**BYLAWS**

**OF**

**KAL ALI ESTATES  
HOMEOWNERS ASSOCIATION**

**TABLE OF CONTENTS**  
**BYLAWS OF**  
**KAL ALI ESTATES HOMEOWNERS ASSOCIATION**

		Page
ARTICLE I	General Provisions .....	1
	Section 1. Name .....	1
	Section 2. Purpose .....	1
	Section 3. Personal Application .....	1
ARTICLE II	Lot Owners .....	1
	Section 1. Annual Meetings .....	1
	Section 2. Regular Meetings .....	2
	Section 3. Special Meetings .....	2
	Section 4. Notice of Meetings .....	2
	Section 5. Adjourned Meetings .....	2
	Section 6. Place of Meetings .....	2
	Section 7. Voting Owners .....	2
	Section 8. Voting Rights .....	3
	Section 9. Majority of Owners .....	3
	Section 10. Quorum .....	3
	Section 11. Action Without a Meeting .....	4
	Section 12. Consent of Absentees .....	4
	Section 13. Proxies .....	4
	Section 14. Parliamentary Procedure .....	4
ARTICLE III	Board of Directors .....	4
	Section 1. Number and Qualification .....	4
	Section 2. Powers and Duties .....	5
	Section 3. Election and Term of Office .....	5
	Section 4. Vacancies .....	5
	Section 5. Removal of Directors .....	5
	Section 6. Organization Meeting .....	5
	Section 7. Regular Meetings .....	6
	Section 8. Special Meetings .....	6
	Section 9. Notice .....	6
	Section 10. Emergency Meetings .....	6
	Section 11. Owners Attendance at Meetings .....	6
	Section 12. Minutes of Meetings .....	7
	Section 13. Board of Directors' Quorum .....	7
	Section 14. Fidelity Bonds .....	8
	Section 15. Action Without a Meeting .....	8
ARTICLE IV	Financial Statements .....	8

**TABLE OF CONTENTS**  
**BYLAWS OF**  
**KAL ALI ESTATES HOMEOWNERS ASSOCIATION**

		<b>Page</b>
ARTICLE V	Increase in Regular and Special Assessments .....	8
ARTICLE VI	Reserve Funds .....	9
ARTICLE VII	Cumulative Voting .....	9
ARTICLE VIII	Officers .....	10
	Section 1. Designation .....	10
	Section 2. Election of Officers .....	10
	Section 3. Resignation and Removal of Officers .....	10
	Section 4. President .....	10
	Section 5. Vice-President .....	10
	Section 6. Secretary .....	10
	Section 7. Chief Financial Officer .....	10
ARTICLE IX	Maintenance of Documents and Inspection of Books and Records .....	11
	Section 1. Maintenance of Documents .....	11
	Section 2. Rights of Members .....	12
	Section 3. Adoption of Rules .....	13
	Section 4. Rights of Directors .....	13
	Section 5. Copies of Project Documents .....	13
ARTICLE X	Amendments To Bylaws and Articles of Incorporation .....	13
	Section 1. Two Class Voting Structure in Effect .....	13
	Section 2. One Class Voting Structure in Effect .....	13
	Section 3. Percentage .....	13
ARTICLE XI	Disciplinary Proceedings .....	14
	Section 1. Notice and Hearing .....	14
	Section 2. Remedies of the Association .....	15
	Section 3. Policy Regarding Monetary Penalty .....	15
ARTICLE XII	Exculpation and Indemnification .....	16
ARTICLE XIII	Conflicts .....	16
ARTICLE XIV	Evidence of Membership, Seal .....	17
	Section 1. Evidence of Membership .....	17
	Section 2. Seal .....	17

**TABLE OF CONTENTS**  
**BYLAWS OF**  
**KAL ALI ESTATES HOMEOWNERS ASSOCIATION**

	<b>Page</b>
ARTICLE XV Insurance .....	17
ARTICLE XVI Miscellaneous .....	18
Section 1. Checks, Drafts, Etc .....	18
Section 2. Contracts, Etc., How Executed .....	18
Section 3. Invalidity .....	18
Section 4. Captions .....	18
Section 5. Waiver .....	18
Section 6. Definitions .....	19
Section 7. Fiscal Year .....	19

**BYLAWS**  
**OF**  
**KAL ALI ESTATES HOMEOWNERS ASSOCIATION**

**ARTICLE I**

General Provisions

Section 1. Name. The name of the Association is KAL ALI ESTATES HOMEOWNERS ASSOCIATION ("Association"). The principal office of the Association shall be at such place in the County of Los Angeles as the Board of Directors may designate from time to time.

Section 2. Purpose. The Association has been formed for the purpose of performing the powers and duties of the Association as set forth in these Bylaws, the Articles of Incorporation of the Association as amended from time to time ("Articles") and that certain Declaration of Covenants, Conditions and Restrictions establishing a plan for Lot ownership, as amended from time to time ("Declaration") recorded in the office of the Los Angeles County Recorder, established in connection with that certain planned development project ("Project") in the City of Hawthorne, County of Los Angeles, State of California (Tract 53063).

Section 3. Personal Application. All present or future owners, tenants, future tenants, or their employees, guests or any other persons who own or use the facilities of the Project in any manner, are subject to the regulations set forth in these Bylaws, the Articles and the Declaration. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Lot shall constitute an acceptance of the provisions of the Articles, these Bylaws, and the Declaration and an agreement to comply therewith.

**ARTICLE II**

Lot Owners

Section 1. Annual Meetings. The first organization meeting of the Lot Owners shall be held within forty-five (45) days after the consummation of the sale of the Lot in the Project which represents the 51st percentile of all Lots under the first public report for the Project, provided that the first public report authorizes the sale of fifty Lots or more in the Project. However, in no event shall the first meeting be held later than six (6) months from the transfer and conveyance of the first Lot in the Project without regard to the number of Lots authorized for sale in the first public report. Thereafter, annual meetings of such Owners shall be held on or near the same day of each year as determined by the Board of Directors. At the annual meetings there shall be elected by ballot of the Owners a Board

of Directors consisting of three (3) persons. The Owners may also transact such other business of the Association as may properly come before the meeting.

Section 2. Regular Meetings. Regular meetings of the Owners shall be held at such time and place within the Project, or at a meeting place as close thereto as possible, as may be fixed from time to time by resolution of the Board, provided that regular meetings shall be held not less frequently than every twelve (12) months.

Section 3. Special Meetings. It shall be the duty of the president to call a special meeting of the Owners if so directed by a majority of the Board of Directors, or upon written request by Owners holding at least five percent (5%) of the total voting power of the Association. The notice of the special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of Owners holding at least fifty-one percent (51%) of the voting power of each class of members present at such meeting.

Section 4. Notice of Meetings. Written notice of each annual, special, or adjourned meeting of the Owners shall be given by or at the direction of, the secretary by mailing a copy of such notice, postage prepaid, to each of said Owners. Said notice shall be given not less than ten (10) days, nor more than ninety (90) days prior to the fixed date for said meeting. The notice shall specify the place, day and hour of the meeting and the matters the Board intends to present for action by the members. Except as otherwise provided by law, any proper matter may be presented at the meeting for action. The mailing of a notice in the manner provided in this Section shall be considered service of notice.

Section 5. Adjourned Meetings. If any meeting of Owners cannot be held because a quorum is not present, a majority of the Owners who are present, either in person or by proxy, may adjourn the meeting but may not transact any other business. The meeting may be adjourned to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called. The presence in person or by proxy of Owners of at least twenty-five percent (25%) of the total voting power of the Association shall constitute a quorum at such adjourned meeting.

If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Owners in the manner prescribed for regular meetings.

Section 6. Place of Meetings. Meetings of the Association shall be held within the Project or at a meeting place as close thereto as possible. Unless unusual conditions exist, meetings shall not be held outside the County in which the Project is situated.

Section 7. Voting Owners. Each Lot Owner shall designate one (1) voting Owner. There shall be only one voting Owner for each Lot. The voting Owner shall be designated by the record owner or owners of each Lot by written notice to the Board of Directors or the manager. Said designation of a voting Owner shall be revocable at any time by actual

notice to the Board of Directors or the manager of the death or judicially declared incompetence of any record Owner or by written instrument delivered to the Board of Directors or the manager by any record owner. Where no designation is made or where a designation has been made but is revoked and no new designation made, the voting Owner of each Lot shall be the group composed of its record Owners. If the joint Owners are unable to agree as to how their vote shall be cast, they shall forfeit the vote on the matter in question. If any Owner exercises the voting rights of a particular Lot, it will be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. If more than one (1) person exercises the voting rights for a particular Lot, their votes shall not be counted and shall be deemed void.

Section 8. Voting Rights. The Association shall have two classes of voting membership according to the following provisions:

Class A. Each Owner of a Lot other than Declarant shall be a Class A member and shall be entitled to one vote for each Lot owned.

Class B. Declarant shall be a Class B member. Class B membership entitles the holder to three (3) votes for each Lot owned. Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

A. The total outstanding votes held by Class A members equal the total outstanding votes held by the Class B member; or

B. Two (2) years from the date of the first conveyance of a Lot in the Project.

Any provision in the governing instruments calling for membership approval of action taken by the Association, except provisions with respect to the action to enforce the obligations of Declarant under any completion bond, shall expressly require the vote or written assent of the prescribed percentage of each class of membership during the time that there are two (2) outstanding classes of membership. Except with respect to the action to enforce the obligations of Declarant under any completion bond, any requirement in the governing instruments that the vote of Declarant shall be excluded in any such determination, shall be applicable only if there has been a conversion of Class B members to Class A members, and the same shall be read as requiring the prescribed percentage of Class A members and the prescribed percentage of Class A members other than Declarant.

Section 9. Majority of Owners. As used in these Bylaws, the term "majority of owners" shall mean those Lot Owners holding more than fifty percent (50%) of the voting power of the Project.

Section 10. Quorum. Except as otherwise provided in these Bylaws, or in the Declaration, the presence in person or by proxy of Owners holding more than fifty percent (50%) of the voting power of the Lots shall constitute a quorum at all meetings of Lot

Owners. Unless otherwise expressly provided herein, or in the Declaration, any action may be taken at any regular or special meeting of the Owners upon the affirmative vote of Owners holding at least fifty-one percent (51%) of the voting power of Members present at such meeting.

Section 11. Action Without a Meeting. Any action which may be taken by the vote of Owners at a regular or special meeting, except the election of Directors where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the California Corporations Code.

Section 12. Consent of Absentees. The transaction of any business at any meeting of the Association, whether an annual or special meeting, shall be valid whether or not such meeting is held after regular call and notice thereof if: (i) a quorum is present either in person or by proxy and (ii) if before or after such meeting, each Owner entitled to vote if he had been present in person or by proxy at such meeting signs a written waiver of notice or a consent to the holding of such meeting or approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the records of the Association and made a part of the minutes of the meeting.

Section 13. Proxies. At all meetings each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner of his Lot.

Any form of proxy or written ballot distributed by any person to the Owners 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 governing body be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the Owner 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.

Section 14. Parliamentary Procedure. Meetings of the Association members shall be conducted in accordance with the provisions of Section 1363 of the Civil Code.

### ARTICLE III

#### Board of Directors

Section 1. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors composed of three (3) persons, who need not be Owners of Lots in the Project until conversion of Class B membership to Class A, after which time all Directors must be Owners of Lots in the Project or the nominee of any corporate or partnership Lot Owner. The number of Directors may be increased or decreased from time to time (but in no event shall be less than three) by an amendment to these Bylaws.

Nomination for election to the Board of Directors shall be made by a Nomination Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a chairman who shall be a member of the Board and two or more members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Owners and such Committee shall make as many nominations for election to the Board as it shall determine, but not less than the number of vacancies that are to be filled.

Section 2. Powers and Duties. Subject to the limitations of the Articles, these Bylaws and the Declaration as to action required to be taken, authorized, or approved by the members of the Association, or a portion or percentage thereof, all Association powers and duties including those set forth in the Declaration shall be exercised by, or under the authority of, the Board of Directors and the business and affairs of the Association shall be controlled by the Board.

Section 3. Election and Term of Office. At the first meeting of the Owners, three (3) persons shall be elected to the Board to serve until the first annual meeting of the Owners and at each annual meeting thereafter, Lot Owners shall elect Directors for a term of one (1) year. Directors shall hold office until their successors have been elected by the Lot Owners.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by a vote of the Owners shall be filled by vote of a majority of the remaining Directors, even though they may constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next annual meeting of the Association.

Section 5. Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors may be removed from office by a vote of a majority of the Owners, subject to the provisions of cumulative voting as hereinafter provided.

Any Director who has been absent from three (3) consecutive regular meetings of the Board may be removed as a Director by the majority vote of the other Board members and if so removed, the vacancy may be filled by the remaining members of the Board for the balance of the term of such Director.

The term of any Director who becomes more than thirty (30) days delinquent in the payment of any assessments due to the Association shall automatically be terminated and the remaining Directors shall appoint his successor for the balance of his term.

Section 6. Organization Meeting. The first meeting of the newly elected Board of Directors shall be held within three (3) days, or sooner, of their election at the organization meeting of the Owners at such place as shall be fixed by the Directors. Notice shall be given to the newly elected Directors in order legally to constitute such meeting.

Section 7. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least one such meeting shall be held every three (3) months. The meeting place shall ordinarily be within the Project unless, in the judgment of the Board of Directors, a larger meeting room is required than exists within the Project, in which case the meeting room selected shall be as close as possible to the Project. Notice of the time and place of the regular meetings of the Board of Directors, shall be posted at a prominent place or places within the common area and shall be given to each Director personally or by mail, telephone, or telegraph at least four (4) days prior to the date named for such meeting unless the time and place of meetings is fixed by these Bylaws; provided, however, that notice of a meeting need not be given to any governing body member who has signed a waiver of notice or a written consent to holding of the meeting. If the common area of the Project consists only of an easement or is otherwise unsuitable for posting of such notice, the Board shall communicate the notice of the time and place of such meeting by any means it deems appropriate.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by written notice signed by the President or by any two (2) Directors other than the president by three (3) days notice to each Director, given personally or by mail, telephone, or telegraph, which notice shall state the time, place (as hereinabove provided), and the purpose of the meeting; provided, however, notice of the meeting need not be given to any Director who signed a waiver of notice or a written consent to the holding of the meeting. Notice of the meeting shall be posted or communicated in the manner prescribed for notice of regular meetings.

Section 9. Notice. Unless the time and place of meetings is otherwise provided in these Bylaws, or unless the Bylaws provide for a longer period of notice, Members shall be given notice of the time and place of a meeting (as hereinafter defined), except for an emergency meeting, at least four (4) days prior to the meeting. Notice may be given by posting the notice in a prominent place or places within the common area, by mail or delivery of the notice to each Lot in the Project, or by newsletter or other similar means of communication.

Section 10. Emergency Meetings. An emergency meeting of the Board may be called by the President, or by any two (2) members of the Board other than the President, if there are circumstances that could not have been reasonably foreseen, which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide notice as required by this Article III.

Section 11. Owners Attendance at Meetings.

A. Regular and special meetings of the Board of Directors shall be open to all Members of the Association; provided, however, that the Association Members who are not on the governing body may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board of Directors.

B. The Board of Directors may, with the approval of a majority of its members present at a meeting at which a quorum for the transaction of business 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 generally noted in the minutes of the Board. Any matter discussed in executive session shall be generally noted in the minutes of the Board.

C. In any matter relating to the discipline of an Association member, the Board shall meet in executive session if requested by that Member, and the Member shall be entitled to attend the executive session.

D. Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be entitled to attend all meetings of the joint association other than executive sessions, shall be given reasonable opportunity for participation in those meetings and shall be entitled to the same access to the joint association's records as they are to the participating association's records.

E. As used in this Section 11, "meeting" includes any congregation of a majority of the members of the Board at the same time and place to hear, discuss or deliberate upon any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session.

Section 12. Minutes of Meetings. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board of the Association, 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 of the Association upon request and upon reimbursement of the Association's costs in making that distribution.

Members of the Association shall be notified in writing at the time that the proforma budget required in Section 1365 of the California Civil Code 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.

Section 13. Board of Directors' Quorum. 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 be less than a quorum present, the majority of those present may adjourn the meeting from time to 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.

Section 14. Fidelity Bonds. The Board shall obtain fidelity bond coverage on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees, employees and agents of the Association and employees of the professional managing agent of the Association, whether or not such persons are compensated for their services, in an amount equal to the maximum of funds including reserves in the custody of the Association or a management agent at any given time during the term of the fidelity bond but in no event less than an amount equal to three (3) months of assessments for the entire Project, including reserves.

Section 15. Action Without a Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board shall consent in writing to the action to be taken. Such written consent or consents shall be filed with the minutes of the proceedings of the Board of Directors and such action by written consent shall have the same force and effect as the unanimous vote of such Directors.

If the Board of Directors resolves by unanimous written consent to take action without a meeting, an explanation of the action taken shall be posted at a prominent place or places within the common area of the Project within three (3) days after the written consent of all members of the Board of Directors have been obtained. If the common area consists only of an easement or is otherwise unsuitable for posting the explanation of the action taken, the Board of Directors shall communicate such explanation by any means it deems appropriate.

#### ARTICLE IV

##### Financial Statements

In all cases where the Project consists of fifty (50) or more Lots, the Association must provide an audited financial statement for the preceding fiscal year if the holder, insurer or guarantor, of any first mortgage that is secured by a Lot in the Project submits a written request for the same. If the Project consists of fewer than fifty (50) Lots, and there is no audited financial statement available, any mortgage holder shall have the right to have an audited financial statement prepared provided that the same shall be at its sole cost and expense.

#### ARTICLE V

##### Increase in Regular and Special Assessments

A. The Board of Directors must, prior to any increase in assessments, comply with the provisions of Section 1366 of the Civil Code.

B. The Board of Directors may not, levy special assessments without complying with the provisions of Section 1366 of the Civil Code.

C. For the purposes of complying with Section 1366 of the Civil Code, a quorum means more than fifty percent (50%) of the Members of the Association.

D. Any meeting or election of the Association for purposes of complying with paragraphs A and B of this Article V shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

E. Notwithstanding any other provision contained in this Section, the Board of Directors may increase assessments necessary for emergency situations pursuant to Section 1366 of the Civil Code.

## ARTICLE VI

### Reserve Funds

The Board of Directors shall not expend funds designated as reserve funds for any purpose other than those purposes set forth in Section 1365.5 of the Civil Code.

## ARTICLE VII

### Cumulative Voting

An Owner shall be entitled to cumulate his or her votes for one or more candidates for the Board of Directors if the candidate's name or candidates' names have been placed in nomination prior to the voting and if an Owner has given notice at the meeting prior to the voting of his or her intention to cumulate votes. If any one Owner has given such notice, all Members may cumulate their votes for candidates in nomination. The candidates receiving the highest number of votes up to the number of Directors to be elected, shall be deemed elected.

The entire Board of Directors or any individual Director may be removed by a vote of the voting owners holding a majority of the voting power in the Project. Unless the entire Board of Directors is removed from office, no individual Director shall be removed prior to the expiration of the term of his office if the votes cast against removal, or not consenting in writing to such 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 most recent election of Directors were then being elected. If any Director is removed in the manner authorized above, a new Director may be elected at the same meeting.

All voting shall be by secret written ballot.

Notwithstanding anything to the contrary contained herein or in the Declaration or in the Articles of Incorporation: (a) from the first election of the Board of Directors and thereafter for so long as a majority of the voting power of the Association resides in Declarant, or so long as there are two (2) classes of membership in the Association, twenty

percent (20%) but not less than one (1) of the incumbents on the Board of Directors shall be elected solely by the votes of Owners other than Declarant; and (b) except as herein otherwise provided in Section 5, Article III, a Director who has been elected to office solely by the votes of Owners other than Declarant may be removed from office prior to the expiration of his term only by the vote of a majority of the voting power residing in Owners other than Declarant.

## ARTICLE VIII

### Officers

Section 1. Designation. The principal officers of the Association shall be a president and a vice-president (both of whom shall at all times be members of the Board), a secretary and a chief financial officer and such other officers as the Board may create from time to time by resolution.

Section 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 and each officer shall hold office for one (1) year unless he shall sooner resign or shall be removed or otherwise disqualified to serve.

Section 3. Resignation and Removal of Officers. Upon the affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor may be elected at any regular or special meeting of the Board of Directors.

Section 4. 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 to appoint committees from among the owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5. Vice-President. The vice-president shall take the place of the president and perform his duties whenever the president shall be absent or 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 so do 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.

Section 6. Secretary. The secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all of the duties incident to the office of secretary.

Section 7. Chief Financial Officer. The chief financial officer shall have responsibility for Association funds and shall be responsible for keeping full and accurate

accounts of all receipts and disbursements in books belonging to the Association. He 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.

## ARTICLE IX

### Maintenance of Documents and Inspection of Books and Records

Section 1. Maintenance of Documents. Commencing not later than ninety (90) days after the close of escrow of the first interest in the Project, copies of the documents listed below, as soon as readily obtainable, shall be delivered by Declarant to the Board of Directors of the Association at the office of the Association, or at such other place as the Board of Directors of the Association shall prescribe. The obligation to deliver the documents listed below shall apply to any documents obtained by Declarant no matter when obtained; provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last interest in the Project covered by a Subdivision Public Report, or (ii) three (3) years after the expiration of the most recent public report on the Project:

- A. The recorded subdivision map or maps for the Project.
- B. The deeds and easements executed by Declarant conveying the common area or other interest to the Association, to the extent applicable.
- C. The recorded covenants, conditions and restrictions for the Project, including all amendments and annexations thereto.
- D. The Association's filed Articles of Incorporation and all amendments thereto.
- E. The Association's Bylaws and all amendments thereto.
- F. All architectural guidelines and all other rules regulating the use of an Owner's interest in the Project or the use of the common area which have been promulgated by the Association.
- G. The plans approved by the local agency or county where the Project is located for the construction or improvement of facilities that the Association is obligated to maintain or repair; provided, however, that the plans need not be as built plans and that the plans may bear appropriate restrictions on their commercial exploitation or use and may contain appropriate disclaimers regarding their accuracy.
- H. All notice of completion certificates issued for common area improvements (other than residential structures).
- I. Any bond or other security device in which the Association is the beneficiary.

J. Any written warranty being transferred to the Association for common area equipment, fixtures or improvements.

K. Any insurance policy procured for the benefit of the Association, its Board of Directors or the common area.

L. Any lease or contract to which the Association is a party.

M. The membership register, including mailing addresses and telephone numbers, books of account and minutes of meetings of the members of the Board of Directors and of committees of the Board of Directors of the Association.

N. Any instrument referred to in Business and Professions Code Section 11018.6(d) but not described above which establishes or defines the common, mutual or reciprocal rights or responsibilities of members of the Association.

Commencing not later than ninety (90) days after the annexation of additional phases to the Project, copies of those documents listed above which are applicable to that phase, shall, as soon as readily obtainable, be delivered by the Declarant to the Board of Directors of the Association at the office of the Association, or at such other place as the Board of Directors of the Association shall prescribe. The obligation to deliver the documents listed above shall apply to any documents obtained by Declarant no matter when obtained; provided, however, such obligation shall terminate upon the earlier of (i) the conveyance of the last interest in the Project covered by a Subdivision Public Report or (ii) three (3) years after the expiration of the most recent Public Report on the Project.

## Section 2. Rights of Members.

A. The membership register including mailing addresses and telephone numbers, books of account and minutes of meetings of the Members of the Association, of the Board of Directors and of committees of the Board of Directors of the Association shall be made available for inspection and copying by any Member of the Association or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Project as the Board of Directors shall prescribe.

B. (1) In the case of the minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Association, other than an executive session, shall be available to Members within thirty (30) days of the meeting and shall be distributed to only Members upon request and payment of the fee prescribed in Section 2(iii) below.

(2) At the time of any general mailing, Members of the Association shall be notified in writing of their right to have copies of the minutes of meetings of the Association and as to how and where those minutes may be obtained and the cost of obtaining such copies.

Section 3. Adoption of Rules. The Board of Directors shall establish reasonable rules with respect to: (i) Notice to be given to the custodian of the records by a Member desiring to make the inspection; (ii) hours and days of the week when such an inspection may be made; and (iii) payment of the cost of reproducing copies of documents requested by a Member.

Section 4. Rights of Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts or copies of documents.

Section 5. Copies of Project Documents. The Association shall make available to Owners, eligible insurers, or guarantors and eligible mortgage holders, current copies of the Declaration, Bylaws, Articles or other rules concerning the Project and the books, records and financial statements of the Association. The term "available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. Financial statements shall be provided to Owners, eligible insurers or guarantors and eligible mortgage holders free of charge.

## ARTICLE X

### Amendments To Bylaws and Articles of Incorporation

Section 1. Two Class Voting Structure in Effect. If a two class voting structure is still in effect in the Association: (I) the Bylaws may be amended only with the vote or written consent of Members entitled to cast at least sixty-six and two-thirds percent (66-2/3%) of the voting power of each class of Membership in the Association; and (ii) the Articles may be amended only with (a) the vote or written consent of Members entitled to cast at least sixty-six and two-thirds percent (66-2/3%) of the voting power of each class of Membership in the Association and (b) the vote or written consent of a majority of the Board of Directors.

Section 2. One Class Voting Structure in Effect. If a two (2) class voting structure is no longer in effect in the Association because of the conversion of Class B Membership to Class A Membership as provided herein and in the Declaration: (I) the Articles of Incorporation may be amended only with the vote or written consent of (a) Members holding sixty-six and two-thirds (66-2/3%) of the voting power of the Association; and (b) Members holding sixty-six and two-thirds percent (66-2/3%) of the voting power held by Members other than Declarant; and (c) the vote or written consent of a majority of the Board of Directors; and (ii) the Bylaws may be amended only with the vote or written consent of (a) Members holding fifty-one percent (51%) of the voting power of the Association; and (b) Members holding fifty-one percent (51%) of the voting power held by Members other than Declarant.

Section 3. Percentage. Notwithstanding Sections 1 and 2 of this Article X, the percentage of the voting power of the Association or of Members other than Declarant necessary to amend a specific Article, clause, or provision of these Bylaws and/or the

Articles of Incorporation shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that Article, clause, or provision.

## ARTICLE XI

### Disciplinary Proceedings

#### Section 1. Notice and Hearing.

A. No discipline shall be imposed upon an Owner for failure to comply with any terms and provisions of the management documents of the Association until a hearing has been held by the Board. Written notice of the hearing shall be served on the Owner not less than fifteen (15) days and not more than thirty (30) days prior to the date of such hearing. The notice shall specify the grounds of complaint against the Owner, the action proposed to be taken against the Owner and the time, date and place the hearing will be held. The notice shall further inform the Owner that he will have the right to be heard in his own defense and that after the hearing, the Board will determine whether any discipline should be imposed and, if so, the extent of the discipline.

B. Notice of the hearing may be given personally or by first class or registered mail, sent to the Owner at the last address of the Owner shown on the books of the Association.

C. Any action challenging the expulsion, suspension or termination of Membership, including any claim alleging defective notice, must be commenced within one (1) year after the date of the expulsion, suspension or termination. In the event such an action is successful, the court may order any relief, including reinstatement, if it finds equitable under the circumstances, but no vote of the Members or of the Board may be set aside solely because the Owner was at the time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension or termination, unless the court finds further that the wrongful expulsion, suspension or termination was in bad faith and for the purpose, and with the effect, of wrongfully excluding the Owner from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

D. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons ordinarily rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Irrelevant and unduly repetitious evidence shall be excluded.

E. The Owner shall have the right to testify in his own behalf, to call and examine witnesses, to introduce exhibits, and to rebut the evidence against him.

Section 2. Remedies of the Association. If, after a hearing held in accordance with the provisions of Section 1 of this Article XI, the Board finds that the Owner has failed to comply with the Management Documents, the Board may, but need not, impose the following discipline:

A. For an Owner's first infraction, the Board may suspend the Owner's voting rights for a period of not more than one (1) month.

B. For each succeeding infraction, the Board may suspend the Owner's voting rights for up to a total period of time equal to one (1) month plus one (1) month for each prior infraction that the Owner has committed.

C. If the Board finds that the Owner has engaged in flagrant and/or repeated violation of the Management Documents, the Board may permanently suspend the Owner's voting rights.

D. The Board may, in addition to or in lieu of the suspensions provided for above, impose a fine for an Owner's first or any subsequent violation of the Management Documents. The maximum amount of fine that may be imposed shall be fixed from time to time by the Board and included in the Association's Rules. Such fine may vary depending on the number of prior infractions by an Owner and/or the severity of the infraction for which the fine is imposed.

The Board shall inform the Owner by written notice of its decision and the discipline imposed, if any, within ten (10) days after the date of the hearing.

E. The foregoing shall not prevent the Association from pursuing any and all additional rights and remedies available to it to enforce a breach of the Articles of Incorporation, Bylaws, Declaration, Rules and Regulations or a violation of any law or ordinance.

Section 3. Policy Regarding Monetary Penalty. If the Association adopts or has adopted a policy imposing any monetary penalty, including any fee, on any Association Member for a violation of the governing documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board shall adopt and distribute to each Member, by personal delivery or first class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Member discipline contained in the governing documents. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Members pursuant to this subdivision. The Board shall meet in executive session if requested by the Member being disciplined and the Member shall be entitled to attend the executive session.

## ARTICLE XII

### Exculpation and Indemnification

In addition to any limitations on liability otherwise applicable under law, including specifically California Civil Code Section 1365.7, no Member of the Board, nor any officer (including the Declarant and its agents, employees, officers and directors) shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, any Member of the Board any officer, Declarant, or any other representative or employee of the Association, provided that the Board Member, officer, or the Declarant has, upon the basis of such information as may be possessed by him, acted in good faith. The Association shall, and hereby agrees to, indemnify and hold harmless the Board (and each Member thereof), and the officers of the Association (and each of them) and any Members of a committee created by the Board, from all claims, actions, obligations, expenses and liabilities of any kind or nature including attorneys fees, incurred in connection with any proceeding to which he or she is a party by reason of his or her being a Member of the Board or of a committee, or an officer of the Association, except in such cases where he or she has committed a willful misfeasance or malfeasance in the performance of his or her duties.

Neither Declarant, its agents or employees, nor the Association, any Member of the Board, or any officer, nor any of them, shall be liable for any failure to provide any service or perform any duty, function or responsibility designated or provided in the Declaration or these Bylaws, unless caused by his, her or its willful misconduct.

The Association shall have the power to indemnify any "agent" to the fullest extent provided by the statutes pertaining to non-profit mutual benefit corporations as set forth in the California Corporations Code.

## ARTICLE XIII

### Conflicts

These Bylaws are intended to comply with the requirements of the Civil Code of the State of California commencing at Section 1350. In case any of these Bylaws, the Articles, or the Declaration conflict with the provisions of said statutes, the provisions of such statutes shall control. In the event of any conflict between these Bylaws and the Articles, the Articles shall control and in the event of any conflict between these Bylaws or the Articles and the Declaration, the Declaration shall control.

## ARTICLE XIV

### Evidence of Membership, Seal

Section 1. Evidence of Membership. The Board shall have the power, but not the obligation, to cause the issuance of evidence of the Membership in the Association to the Members thereof in such form as the Board shall determine.

Section 2. Seal. The Association shall have a seal in circular form having within its circumference the name of the Association, its date of incorporation and such other matters as may be required by the laws of the State of California.

## ARTICLE XV

### Insurance

A. The Board shall prepare and distribute to all Members a summary of the Association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy:

1. The name of the insurer.
2. The type of insurance.
3. The policy limits of the insurance.
4. The amount of deductibles, if any.

B. The Association shall, as soon as reasonably practicable, notify its Members by first class mail if any of the policies described in paragraph (a) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the Association receives any notice of nonrenewal of a policy described in paragraph (a), the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

C. To the extent that any of the information required to be disclosed pursuant to paragraph (a) is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its Members.

D. The summary distributed pursuant to paragraph (a) shall contain, in at least 10-point boldface type, the following statement: "This summary of the Association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete

policy terms and conditions contained in the actual policies of insurance. Any Association Member may, upon request and provision of reasonable notice, review the Association's insurance policies and, upon request, and payment of reasonable duplication charges, obtain copies of those policies. Although the Association maintains the policies of insurance specified in this summary, the Association's policies of insurance may not cover your property, including personal property or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association Members should consult with their individual insurance broker or agent for appropriate additional coverage."

## ARTICLE XVI

### Miscellaneous

Section 1. Checks, Drafts, Etc. Except for reserve funds which require the signatures of two (2) members of the Board or one (1) officer who is not a member of the Board and one (1) member of the Board, unless the Board authorizes more stringent requirements, any check or other negotiable instrument issued by the Association may be signed by any one (1) of the following officers: the President, the Vice-President, the Chief Financial Officer or the Secretary. Any authorized officer or employee of a professional management company selected by the Association may also sign on checks issued by the Association subject to such restrictions as the Board may impose.

Section 2. Contracts, Etc., How Executed. The Board, except as in the Bylaws otherwise provided, 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 contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

Section 3. Invalidity. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the remainder of these Bylaws.

Section 4. Captions. The captions herein are inserted as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 5. Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may have occurred.

Section 6. Definitions. Unless separately defined herein or the context otherwise requires, the names, words and phrases used herein shall have the same meaning as set forth in the Declaration and the definitions therein contained are incorporated herein by this reference.

Section 7. Fiscal Year. Unless otherwise determined by the Board of Directors, the fiscal year of the Association shall begin on the first (1st) day of January and end on the thirty-first (31st) day of December of each year, except that the first fiscal year shall begin on the date of incorporation.

DATED: \_\_\_\_\_, \_\_\_\_\_

JUL 01 2004

## ARTICLES OF INCORPORATION

OF

KEVIN SHELLEY  
Secretary of State

## KAL ALI ESTATES HOMEOWNERS ASSOCIATION

I

The name of this corporation shall be KAL ALI ESTATES HOMEOWNERS ASSOCIATION.

II

A. 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, other than credit union business, for which a corporation may be organized under such law.

B. The specific purpose of this corporation is to provide for the maintenance, preservation, protection, management and architectural control of the planned development residential project (Tract 53063) located in the City of Hawthorne, County of Los Angeles, State of California, and to promote the health, safety and welfare of the residents within the above-described property.

III

This corporation is an association formed to manage a common interest development under the Davis-Sterling Common Interest Development Act.

IV

Notwithstanding any other provision of these Articles, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purpose of this corporation.

V

The corporation has no managing agent.

VI

The corporation has no business office.

VII

The authorized number and qualifications of members of the corporation, the different classes of membership, if any, the property, voting and other rights and privileges of members and their liability for dues and assessments and the method of collection thereof, shall be as set forth in the Bylaws.

VIII

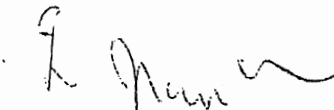
The name and address in the State of California of the corporation's initial agent for service of process is:

Zara Namdar  
3950 W. Imperial Highway  
Inglewood, California 90303

IX

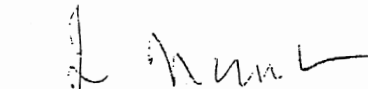
The common interest development is located on West 115<sup>th</sup> Street and its nearest cross street is Inglewood Boulevard and the zip code for the location of the development is 90250-2002.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation this 7<sup>th</sup> day of June, 2004.



ZARA NAMDAR

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.



ZARA NAMDAR



**CERTIFICATE**

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of KAL ALI ESTATES HOMEOWNERS ASSOCIATION and that the foregoing Bylaws constitute the original Bylaws of said Association as duly adopted at a meeting of the Board of Directors held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

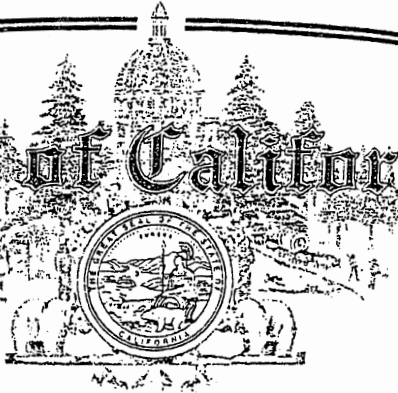
IN WITNESS WHEREOF, I have subscribed my name this \_\_\_\_ day of \_\_\_\_\_,

---

Secretary

2617121

# State of California



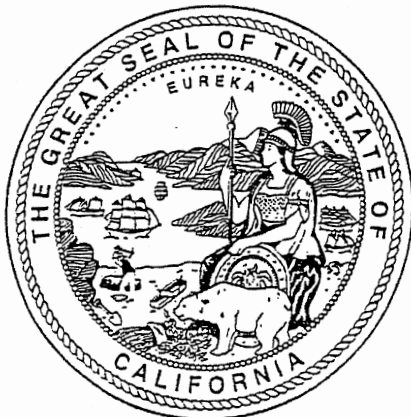
## SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 2 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.

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

JUL 06 2004



*Kevin Shelley*  
Secretary of State