

ENDORSED COPY

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
OF
PALACIO
A PLANNED DEVELOPMENT PROJECT

ARTICLES

PAGES

I. INTENTION OF DECLARATION

1.1

Facts

1.2 Applicability of

Restrictions

II. DEFINITIONS

III. OWNERSHIP AND EASEMENTS

3.1 Non-Severability

3.2 Ownership of Lots

3.3 Ownership of Common Area

3.4 Ownership of Party Fences

3.5 Easements

IV. USES AND RESTRICTIONS

4.1 Use and Occupancy of Lots and

Residences

4.2 Rental of Residences

4.3 Animals

4.4 Use of Common

Area

4.5 Parking

	4.6	Signs
Materials	4.7	Storage of Waste
	4.8	Antennas
	4.9	Invitees
	4.10	Restriction on Business
Coverings	4.11	Window
Exploration	4.12	Mineral
Equipment	4.13	Machinery and

V. IMPROVEMENTS

	5.1	Maintenance of Common Area
	5.2	Alterations to Common Area
	5.3	Maintenance of Residences
	5.4	Alterations to Residences
	5.5	Maintenance and Repair of Party Fences
	5.6	Landscaping
	5.7	Right of Entry
Area	5.8	Damage and Destruction of Common
Area	5.9	Condemnation of Common
Lots	5.10	Damage or Destruction to Residences and/or

VI. FUNDS AND ASSESSMENTS

- 6.1 Covenants to Pay
- 6.2 Regular Assessments
- 6.3 Special Assessments
- 6.4 Limitation on Assessments
- 6.5 Reimbursement Assessments
- 6.6 Accounts
- 6.7 Enforcement of Assessments
- 6.8 Statement of Assessment Lien
- 6.9 Subordination of Lien

VII. ASSOCIATION

MEMBERSHIP IN THE

- 7.1 The Organization
- 7.2 Membership
- 7.3 Classes of Membership
- 7.4 Powers, Duties and Authority of the
- 7.5 Insurance
- 7.6 Enforcement of Bonded
- 7.7 Dedication of Easements
- 7.8 Notice and Hearing
- 7.9 Tax-Exempt Status

Association

Obligation

VIII RIGHTS

DEVELOPMENT

- 8.1 Limitations of Restrictions
- 8.2 Rights of Access and Completion of

Construction

8.3 Size and Appearance of Project

8.4 Marketing Rights

8.5 Title Rights

8.6 Amendment

IX. MORTGAGEES RIGHTS OF

9.1 Conflict

Assessments

9.2 Liability for Unpaid

9.3 Payment of Taxes and Insurance

9.4 Termination of Contracts and Agreements

Holdings

9.5 Notice to Eligible

9.6 Reserve Fund

Records

9.7 Inspection of Books and

9.8 Financial Statements

Mortgagees

9.9 Voting Rights of

Protection

9.10 Mortgage

X. AMENDMENT AND ENFORCEMENT

10.1 Amendments

10.2 Enforcement

XI. ANNEXATION

11.1 Restriction on Annexation

11.2 Property, which May Be Annexed

Approval of Members

11.3 Procedure for Annexation

11.4 Effect of Annexation

11.5 De-annexation

11.6 Amendment

XII.
REVIEW

ARCHITECTURAL

12.1 Applicability

12.2 Duties

12.3 Application for Approval of
Improvements

Improvements

12.4 Basis for Approval of

Denials

12.5 Form of Approvals and

12.6 Proceeding with Work

12.7 Failure to Complete Work

Compliance

12.8 Determination of

Non-Compliance

12.9 Failure to Remedy the

12.10 Waiver

12.11 Estoppel Certificate

12.12 Liability

Declarant

12.13 Non-Applicability to

XIII.
PROVISIONS

MISCELLANEOUS

- 13.1 Term of Declaration
- 13.2 Construction of Provisions
- 13.3 Declaration is Binding
- 13.4 Severability of Provisions
- 13.5 Gender, Number and Captions
- 13.6 Redistribution of Management
- Documents
- 13.7 Exhibits
- 13.8 Conflict

Exhibits

DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS
 OF
 PALACIO

A Planned Development Project

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF PALACIO ("Declaration") is made this 5th day of MARCH 1990, by A-M HOMES/PALACIO, L.P., a California limited partnership ("Declarant")

ARTICLE I

INTENTION OF DECLARATION

1.1 FACTS: This Declaration is made with reference to the following facts:

1.1.1 Property Owned by Declarant: Declarant is the owner of all of the real property and Improvements thereon located in the City of San Jose, County of Santa Clara, State of California, more particularly described in Exhibit A hereto.

1.1.2 Nature of Project: Declarant intends to develop the Subject Property and the Additional Property as a common interest development and hereby declares that the Project is a planned development project within the meaning of California Civil Code Section 1351(k) and in conformity with the provisions of the California Subdivided Lands Law (California Business & Professions Code, Section 11000 et seq.) and the California Common Interest Development Act (California Civil Code Sections 1350-1374, inclusive). To establish the planned development project, Declarant desires to impose on the

Subject Property, and any property annexed thereto, these mutually beneficial restrictions, easements, assessments and liens under a comprehensive general plan of improvement and development for the benefit of all of the Owners, the Lots and Common Area within the Subject Property and any property annexed thereto.

1.1.3 Phases of Project: The Subject Property and the Additional Property are intended to be developed in two (2) or more Phases. The first Phase consists of the Subject Property. Declarant may but shall have no obligation to annex all or any portion of the Additional Property to the Subject Property. After annexation, the property annexed shall constitute a part of the Project and shall be subject to this Declaration.

1.2 APPLICABILITY OF RESTRICTIONS: Pursuant to California Civil Code Section 1353, Declarant hereby declares that the Subject Property and all Improvements thereon are subject to the provisions of this Declaration. The Subject Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions and restrictions stated in this Declaration. All such covenants, conditions and restrictions are declared to be in furtherance of the plan for the subdivision, improvement and sale of the Subject Property as a planned development project. Pursuant to California Civil Code Section 1354, all of the limitations, easements, uses, obligations, covenants, conditions, and restrictions stated in this Declaration shall be enforceable as equitable servitudes, shall run with the Subject Property and shall inure to be benefit of and be binding on all Owners and all other parties having or acquiring any right, title or interest in any part of the Subject Property. Upon the recordation of a Declaration of Annexation, the property described therein shall be a part of the Project and shall be subject to this Declaration.

ARTICLE II

DEFINITIONS

Unless the context clearly indicates a different meaning, the terms used in this Declaration. the Map and any grant deed to a Lot shall have the meanings 5pecified in this Article.

2.1 ADDITIONAL CHARGES: The term "Additional Charges" shall scan costs, fees, charges, and expenditures. Including without limitation, attorneys' fees. Late charges, interest and recording and filing fees actually incurred by the Association in collecting and/or enforcing payment of assessments, fines and/or penalties.

2.2 Additional Property: The term "Additional Property" shall mean the real property described on Exhibit B and all Improvements situated on such real property.

2.3 ARTICL£S: The tern "Articles" shall mean the Articles of Incorporation of the Association which are or shall be filed in the Office of the Secretary of State of the State of California.

2.4 ASSOCIATION: The term "Association" shall mean PAIACIO PLANNED DEVELOPMENT HOMEOWNERS ASSOCIATION, its successors and assigns. a nonprofit mutual benefit corporation incorporated under the lava of the State of California.

2.5 BOARD: The term "Board" shall mean the Board of Directors of the Association.

2.6 BYLAWS: The tern "Bylaws" shall mean the Bylaws of the Association and any amendments thereto.

- 2.7 **CITY:** The term "city" shall mean the City of San Jose, County of Santa Clara, State of California.
- 2.8 **COMMON AREA:** The term "Common Area" shall mean Lots 80 and 81 as shown on the Map. The private streets designated on the Map as Paseo del Oro, Pasco del sol and Via del Mar and all Improvements thereon. The term "Common Area" shall also mean those portions of the Additional Property described as Common Area in the Declaration of Annexation for a particular Phase.
- 2.9 **COUNTY:** The term "County" shall mean the County of Santa Clara, State of California.
- 2.10 **DECLARANT:** The term "declarant" shall mean A-M Homes/Palacio L.P., a California limited partnership. The term "Declarant" shall also mean successors in interest or Declarant if (i) such successor(s) in interest acquires all or any portion of Declarant's interest in the Subject Property and/or the Additional Property for the purpose of development and/or sale and (ii) a certificate has been recorded in the County in which the successor(s) in interest assume the rights and duties of Declarant to the portion of the Subject Property and/or the Additional Property so acquired. There may be more than one Declarant.
- 2.11 **DECLARATION:** The term "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of Palacio, and any amendments hereto.
- 2.12 **DECLARATION OF ANNEXATION:** The term "Declaration of Annexation" shall mean any instrument recorded in the County which annexes all or a portion of the Additional Property or any other property to the Project by imposing the provisions of this Declaration upon such property.
- 2.13 **ELIGIBLE HOLDER:** The term "Eligible Holder" shall mean any Institutional Mortgagee who has delivered a written notice to the Association containing its name, address and the number or address of the Lot encumbered by the Mortgage and requesting that the Association deliver written notice to it of any or all of the events specified in Section 9.5.
- 2.14 **FIRST MORTGAGE:** The term "First Mortgage" shall mean a Mortgage which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Lot.
- 2.15 **FIRST MORTGAGEE:** The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.
- 2.16 **IMPROVEMENTS:** The term "Improvements" shall mean buildings, facilities, streets, driveways, fences, walls and other structures and all landscaping constructed or to be constructed upon property subject to this Declaration.
- 2.17 **INSTITUTIONAL MORTGAGEE:** The term "Institutional Mortgagee" shall mean a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under or regulated by any federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage, including, without limitation, the Federal Housing Authority and the Veterans Administration; (iii) the State of California; or (iv) Declarant.
- 2.18 **INVITEE:** The term "Invitee" shall mean any person whose presence within the Project is

approved by or is at the request of a particular Owner, including, but not limited to, lessees, tenants and the family, guests, employees, licensees or invitees of Owners, tenants or lessees.

2.19 LOT: The term "Lot" shall mean Lots 1 through 8, 33 through 39, 41 through 43, and 45 through 51 as shown on the Map and all Improvements thereon. The term "Lot" shall also mean those portions of the Additional Property described as Lots in a Declaration of Annexation for a particular Phase.

2.20 MANAGER: The term "Manager" shall mean the person or entity appointed or hired to manage and operate the Project.

2.21 MAP: The term "Map" shall mean the subdivision map recorded on October 4, 1989, in Book 606 of Maps at Page 23, et seq., in the Official Records of the County. The term "Map" shall also mean any recorded subdivision map described in a Declaration of Annexation.

2.22 MEMBER: The term "Member" shall mean an Owner.

2.23 MORTGAGE: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Lot.

2.24 MORTGAGEE: The term "Mortgagee" shall mean a Mortgagee under a Mortgage as well as beneficiary under a deed of trust.

2.25 NOTICE AND HEARING: The term "Notice and Hearing" shall mean the procedure which gives an Owner notice of an alleged violation of the Project Documents and the opportunity for a hearing before the Board.

2.26 OWNER: The term "Owner" shall mean the holder of record fee title to a Lot, including Declarant as to each Lot owned by Declarant. If more than one person owns a single Lot, the term "Owner" shall mean all owners of that Lot. The term "Owner" shall also mean a contract purchaser (vendee) under an installment land contract but shall exclude any person having an interest in a lot merely as security for performance of an obligation.

2.27 PARKING AREA: The term "Parking Area" shall mean only areas specifically marked for parking purposes, wherever located within the Project, including driveways on Lots, specifically designated parking spaces, and streets as marked for parking.

2.28 PHASE: The term "phase" shall mean two or more lots and/or Common Area which will Simultaneously be made subject to the provisions of this Declaration either by recording this Declaration or by recording a Declaration of Annexation.

2.29 PROJECT: The term "Project" shall mean the Subject Property and any property described in a Declaration of Annexation.

2.30 PROJECT DOCUMENTS: The term "Project Documents" shall mean the Articles, Bylaws, this Declaration and the Rules.

- 2.31 **PUBLIC REPORT**: The term "Public Report" shall mean a Final Subdivision Public Report issued by the Department of Real Estate of the State of California for a Phase of the Project.
- 2.32 **RESIDENCE**: The term "Residence" shall mean a dwelling unit designed for human occupancy.
- 2.33 **RULES**: The term "Rules" shall mean the rules adopted by the Association, including architectural guidelines, restrictions and procedures.
- 2.34 **SUBJECT PROPERTY**: The term "Subject Property" shall mean the real property described in Section 1.1.1 and all Improvements thereon.

ARTICLE III

OWNERSHIP AND EASEMENTS

3.1 NON-SEVERABILITY:

3.1.1 **No Separate Conveyance**: The interest of each Owner in the use and benefit of the Common Area shall be appurtenant to the Lot owned by the Owner. No Lot shall be conveyed by the Owner separately from the interest in the Common Area. Any conveyance of any Lot shall automatically transfer the right to use the Common Area without the necessity of express reference in the instrument of conveyance.

3.1.2 **No Judicial Partition**: There shall be no judicial partition of the Common Area. Each Owner, whether by deed, gift, devise or operation of law, for his own benefit and for the benefit of all other Owners, specifically waives and abandons all rights, interests and causes of action for judicial partition of any interest in the Common Area and does further agree that no action for judicial partition shall be instituted, prosecuted or reduced to judgment.

3.2 **OWNERSHIP OF LOTS**: Title to each Lot in the Project shall be conveyed in fee to an Owner. If the Association owns a Lot, the Association shall not be considered an Owner for the purposes of this Declaration. If more than one person and/or entity (other than the Association) owns an undivided interest the same Lot, such persons and/or entities shall constitute one Owner.

in

3.3 **OWNERSHIP OF COMMON AREA**: Title to the Common Area in each Phase of the Project shall be conveyed to the Association prior to or concurrently with the conveyance of the first Lot in that particular Phase to an Owner.

3.4 **OWNERSHIP OF PARTY FENCES**: Any fence or boundary wall (other than the wall of a Residence) originally constructed and placed upon a common lot boundary line shall be a "party fence". The owner of a Lot upon which a party fence is situated shall own to the center of the party fence.

3.5 **EASEMENTS**: The ownership interests in the Common Area and Lots described in this Article are subject to the easements granted and reserved in this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and

their Lots superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Lots may, but shall not be required to, set forth the easements specified in this Article.

3.5.1 Easements On Man: The Common Area and Lots are subject to the easements and rights of way shown on the Map.

3.5.2 Easements For Common Area: Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Board, after Notice and Hearing, to suspend an Owner's right to use any recreational facilities.

(b) The right of the Association to dedicate and/or grant easements over all or any portion of the Common Area.

3.5.3 Utilities: There are reserved and granted for the benefit of each Lot, as dominant tenement, over, under, across and through the Project (including the Common Area and each other Lot), as the servient tenement, non-exclusive easements for utility services.

3.5.4 Encroachment: There are reserved and granted for the benefit of each Lot, as dominant tenement, over, under and across each other Lot and Common Area, as servient tenements, and for the benefit of the Common Area, as dominant tenement, over, under and across each Lot, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of Lots and/or Common Area as are encroached upon, used and occupied by the dominant tenement as a result of any original construction design, accretion, erosion, addition, deterioration, decay, errors in original construction, movement, settlement, shifting or subsidence of any building or structure or any portion thereof, or any other cause. In the event any portion of the Project is partially or totally destroyed, the encroachment easement shall exist for any replacement structure, which is rebuilt pursuant to the original construction design. The easement for the maintenance of the encroaching Improvement shall exist for as long as the encroachment exists; provided, however, that no valid easement of encroachment shall be created due to the willful misconduct of the Association or any Owner. Any easement of encroachment may but need not be cured by repair and restoration of the structure.

3.5.5 Support, Maintenance and Repair: There is hereby reserved and granted a non-exclusive easement appurtenant to the Common Area and to all other Lots, as dominant tenements, through each Lot and the Common Area, as servient tenements, for the support, maintenance and repair of the Common Area and all Lots.

3.5.6 Easement To Declarant For Adjoining Property:

Declarant shall have, and hereby expressly reserves, an easement over and across the Common Area, as servient tenement, for the purposes of reasonable ingress to and egress from, and movement over and across the Project, including private roads and pathways, to the Additional Property until all of the Additional Property is annexed to the Project.

3.5.7 Annexation Of Additional Property: Upon the recordation of a Declaration of Annexation, the Lots and the Owners of Lots in the annexed Phase shall have all of the easements specified in this Article and the Lots and the Owners of Lots in the Project prior to the annexation shall have all of the easements

specified in this Article as though the annexed Phase were initially a part of the Project.

3.5.8 Additional Easements: Notwithstanding anything expressly or impliedly to the contrary, this Declaration shall be subject to all easements granted by Declarant for the installation and maintenance of utilities and drainage facilities necessary for the development of the Project.

3.5.9 Association's Easements: There are hereby reserved to the Association and its duly authorized agents and representatives such easements as are necessary to perform the duties and obligations of the Association set forth in the Project Documents, including without limitation and subject to Section 5.7 the right to enter upon Lots.

3.5.10 Party Fences: Each Owner of a Lot containing a party fence and the Lot upon which such party fence is located shall have a reciprocal non-exclusive easement over and across such portions of the contiguous Lot as is necessary to maintain such fence.

ARTICLE IV

USES AND RESTRICTIONS

4.1 USE AND OCCUPANCY OF LOTS AND RESIDENCES: Each

Residence shall be used solely for residential purposes. No other use shall be allowed except as specifically permitted by local ordinance. No Residence shall be permanently occupied by more than two (2) persons per bedroom. No Owner may permit or cause anything to be done or kept upon, in or about his Lot which might obstruct or interfere with the rights of other Owners or which would be noxious, harmful or unreasonably offensive to other Owners. Each Owner shall comply with all the requirements of all governmental authorities, federal, state or local, and all laws, ordinances, rules and regulations applicable to his Lot and Residence.

4.2 RENTAL OF RESIDENCES: An Owner shall be entitled to rent or lease his Residence if:

4.2.1 Written Agreement: There is a written rental or lease agreement specifying that (i) the tenant shall be subject to all provisions of the Project Documents and (ii) a failure to comply with any provision of the Project Documents shall constitute a default under the agreement;

4.2.2 Period of Rental: The period of the rental or lease is not less than thirty (30) days;

4.2.3 Notice: The Owner gives notice of the tenancy to the Board and has otherwise complied with the terms of the Project Documents; and

4.2.4 Project Documents: The Owner gives each tenant a copy of the Project Documents.

4.3 ANIMALS: An Owner may keep two (2) dogs, cats or other customarily uncaged household pets within his Lot. Each Owner may also maintain a reasonable number of small caged animals, birds or fish. The Rules may increase the number and type of animals, which may be kept. The Board shall specifically have the right to prohibit the maintenance of any pet, which, after Notice and Hearing, is found to be a nuisance to other Owners.

4.4 USE OF COMMON AREA: All use of the Common Area is subject to the Rules. There shall be no use of the Common Area except by Owners and their Invitees. All persons residing within the

Project may enjoy the use of all facilities in the Common Area as long as they abide by the terms of the Project Documents. There shall be no obstruction of any part of the Common Area. Nothing shall be stored or kept in the Common Area without the prior consent of the Board. No alterations or additions to the Common Area shall be permitted without the approval of the Board. Nothing shall be done or kept in the Common Area, which will increase the rate of insurance on the Common Area without the prior consent of the Board. No Owner shall permit anything to be done or kept in the Common Area which might result in the cancellation of insurance on any part of the Common Area, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Common Area.

4.5 PARKING: Vehicles shall not be parked anywhere in the Project except wholly within garages and Parking Areas (see Section 2.27 for definition). Parking on the street requires a validly issued Association permit. Unpermitted vehicles will be subject to penalty or tow, as will vehicles parked in non-designated areas of the streets. One side of the street will be treated as a fire lane and no parking will be allowed. Vehicles may be parked in the 4(driveways as long as the vehicle fits and is parked entirely within said driveway, and in no event shall vehicles be parked in such a manner as to inhibit or block access to Residences, garages or Parking Areas, or in such a manner as they extend onto the sidewalk. If the vehicle extends onto or over the sidewalk it subjects the owner of the Lot to discipline and the vehicle to tow.

All Parking Areas shall be used solely for the parking and storage of vehicles used for personal transportation. No boat, trailer; camper, motorcycle, golf cart, commercial vehicle, mobile home, other recreational vehicles or dilapidated vehicles shall be parked or stored in any Parking Area. Garage doors shall remain closed except when the garage is in use. No part of the Common Area shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing. There are no exceptions to this. As long as applicable ordinances and laws are observed, the Board may cause the removal of any vehicle, which is in violation of this Declaration.

4.6 SIGNS: All signs displayed in the Project shall be attractive and compatible with the design of the Project and shall comply with all applicable local ordinances. The only signs of any kind which may be displayed to the public view on or from any Lot or the Common Area in the Project shall be as follows:

4.6.1 One (1) sign of reasonable dimensions may be placed on a Lot advertising the Lot for sale or rent;

4.6.2 Signs may be displayed by Declarant on Common Area or unsold Lots, as Declarant deems appropriate, advertising Lots owned by Declarant for sale or rent;

4.6.3 Appropriate signs may be displayed by the Association to identify the Project;

4.6.4 Other signs, posters and notices approved by the Board or specified in the Rules or in this Declaration may be posted in locations designated by the Board; and

4.6.5 Signs required by legal proceedings may be displayed.

4.7 STORAGE OF WASTE MATERIALS: All garbage, trash and accumulated waste material shall be placed in individual trash containers or receptacles. The containers may be placed where visible only on the day of the week that trash pick-up is to occur.

4.8 ANTENNAS: Except for those erected or constructed by Declarant or installed by a licensed

public or quasi-public utility or cable franchise or whose erection or construction is approved by the Board, no outside television antenna, aerial or radio tower shall be erected, constructed or placed on any Lot.

4.9 INVITEES: Each Owner shall be responsible for compliance with the provisions of the Project Documents by his Invitees. An Owner shall promptly pay any Reimbursement Assessment levied and/or any fine or penalty imposed against such Owner for violations committed by his Invitee.

4.10 RESTRICTION ON BUSINESS: No business of any kind shall be established, maintained, operated, permitted or conducted in any portion of the Project except the business of Declarant in completing the development and sale of the Lots in the Project and except as may be permitted by local ordinance and approved by the Board.

4.11 WINDOW COVERINGS: All drapes, window shades or other window coverings installed in the windows of Residences which are visible from the exterior of the Residence shall comply with the Rules, if applicable. Any drapes or other window coverings installed in compliance with the Rules may remain for the useful life thereof. All window coverings shall be installed within ninety (90) days after close of escrow for the Lot.

4.12 MINERAL EXPLORATION: No Lot shall be used to explore for or to remove any water, oil, hydrocarbons or minerals of any kind without the approval of the Board and only if permitted by local ordinances.

4.13 MACHINERY AND EQUIPMENT: Without the approval of the Board, no machinery or equipment of any kind shall be maintained or operated upon any Lot except as is customary and necessary in connection with approved construction.

ARTICLE V

IMPROVEMENTS

5.1 MAINTENANCE OF COMMON AREA:

5.1.1 GENERAL: The Association shall be responsible for

maintenance, repair, replacement, Painting and upkeep of Common Area, exterior painting (only) of the

residence units, and shall also maintain any private streets within the Project. The Association shall keep

the Common Area and Improvements thereon in good condition and repair, provide for all necessary

services and cause all acts to be done which' may be necessary or proper to assure the maintenance of the

Common Area in first class condition.

5.1.2 COMMON AREA FENCES: The Association shall be responsible for the maintenance, repair and replacement of all fences, which either border Common Area or surround the Project.

5.2 ALTERATIONS TO COMMON AREA:

5.2.1 Approval: Except for actions taken by Declarant pursuant to Article VIII hereof, only the Board shall construct, reconstruct, refinish or alter any Improvement situated upon the Common Area. A proposal for any construction of or alteration, maintenance or repair to an Improvement may be made at any meeting and may be adopted by the Board, subject to the limitations contained in the Bylaws.

5.2.2 Funding: Expenditures for alterations, maintenance or repairs to an existing capital Improvement for which a reserve has been collected shall be made from the Reserve Account. The Board may levy a Special Assessment to fund any construction, alteration, repair or maintenance of an Improvement for which no reserve has been collected or if the Reserve Account contains insufficient funds to cover the cost of the proposed Improvement.

5.3 MAINTENANCE OF RESIDENCES: 4'

5.3.1 IN GENERAL: Each Owner shall maintain and care for his Lot and all Improvements located on his Lot in a

manner consistent with the standards established by the Project Documents and other first class residential

subdivisions in the County. The Association shall paint the exteriors of the residence Units, but all dry rot and/or

other damages are the responsibility of the Owner to repair. Each Owner shall be responsible for maintenance,

repair and replacement of driveways and walkways located on his Lot, except for sidewalks adjacent to private

streets, maintenance of which shall be the Association's responsibility. Special architectural design standards may

be established in the Rules. Each Owner shall be responsible for the repair and maintenance of all fences within or

bordering such Owner's Lot.

5.3.2 Wood Destroying Pests: Upon approval of a majority of the Owners, the responsibility for repair of Residences occasioned by the presence of wood-destroying pests or organisms may be delegated to the Association, in which case the Association shall be entitled to recover the costs thereof by means of a Special Assessment, subject to the limitations set forth in Section 6.4 hereof. In the event of such delegation, the Association may cause the temporary removal of any occupant for such periods and at such times as are necessary for prompt, effective treatment of the wood-destroying pests or organisms. The cost of the temporary relocation shall be borne by the Owner(s) being relocated. The Association shall give notice of the need to temporarily vacate a Unit to the occupant and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupant will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

- (i) Personal delivery of a copy of the notice to the occupant, and sending a copy of the notice to the Owner, if different than the occupant, by first-class mail, postage prepaid at the most current address shown on the books of the Association.
- (ii) By sending a copy of the notice to the occupant at the Lot address and a copy of the notice to the Owner, if different than the occupant, by first-class mail, postage prepaid, at the most current address shown on the books of the Association.

5.4 ALTERATIONS TO RESIDENCES: Owners may alter or remodel the interiors of their Residences if the Owner complies with all laws and ordinances regarding alterations and remodeling. Any proposals for alterations, additions or other Improvements to exteriors of Residences and/or Lots shall be made in accordance with the provisions of Article XII. The costs of any alteration or addition shall be paid by the Owner who has obtained the approval.

5.5 MAINTENANCE AND REPAIR OF PARTY FENCES: The Owners of a Lot containing a party fence shall be responsible for maintaining, repairing and replacing it. The costs of such maintenance, repair and/or replacement shall be shared equally by the Owners; provided, however, that all costs of any maintenance, repair or replacement necessitated by the negligent or willful action of an Owner shall be borne by that Owner. In the absence of negligent or willful conduct any necessary maintenance, repair or replacement performed by an Owner shall entitle that Owner to a right of contribution from the other Owners of the party fence. The right of contribution shall be appurtenant to the Lot and shall pass to the successor(s) in interest of the Owner entitled to contribution.

5.6 LANDSCAPING: All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in a condition comparable to that of other first class residential subdivisions in the County. Specific restrictions on landscaping may be established in the Rules. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees and shrubs shall be neatly trimmed.

5.6.1 Common Area: The Association shall be responsible for all landscaping located on Common Area and all landscaping located on the unenclosed, frontyard portion of each Lot, including any trees required by the City to be planted.

5.6.2 Lots: Each Owner shall be responsible for all landscaping located within the enclosed backyard and sideyard portions of his Lot. If landscaping within Lots is not installed by Declarant, each Owner shall install, plant and complete permanent landscaping within his Lot within six (6) months after the close of escrow for the sale of the Lot to the Owner. Each Owner shall also maintain and care for all trees planted within the enclosed backyard or sideyard portions of his Lot by Declarant.

5.7 RIGHT OF ENTRY: In order to effectuate the provisions of Sections 5.3 through 5.6, inclusive, the Board may enter any Lot whenever entry is necessary in connection with the performance of any maintenance or construction which the Board is authorized to undertake. Entry shall be made with as little inconvenience to an Owner as practicable and only after reasonable advance written notice of not less than twenty-four (24) hours, except in an emergency.

5.8 DAMAGE AND DESTRUCTION OF COMMON AREA: The term "restore" shall mean repairing, rebuilding or reconstructing damaged Common Area to substantially the same condition in which it existed prior to fire or other casualty damage, with each Improvement, to the extent possible, having the same vertical and horizontal boundaries, appearance and location as before.

5.8.1 Contracting to Restore: If fire or other casualty damage extends to any Common Area which is insured, the Association shall proceed with the filing and adjustment of all claims arising under the existing insurance policies. The insurance proceeds shall be paid to and held by the Association.

The Board shall obtain such bids from responsible licensed contractors to restore the Common Area as the Board deems reasonable and if the total funds available without a vote of Members, as described in Section 5.8.2, are sufficient to restore the damaged Common Area, the Board shall, on behalf of the Association, contract with the contractor whose bid the Board deems to be the most reasonable. The contractor shall provide a completion bond naming the Association and each Owner as beneficiaries. If the insurance proceeds exceed the costs of restoration, the excess proceeds shall be paid to the Reserve Account and held for the benefit of the Association.

5.8.2 priority in Use of Funds: The costs of restoration of Common Area shall be funded first by any insurance proceeds paid to the Association under existing insurance policies and then by any Reserve Account funds designated for the repair or replacement of the capital Improvement which has been damaged. If the aggregate amount of funds is still insufficient to pay the total costs of restoration, a Special Assessment against all Owners shall be levied by the Board up to the maximum permitted without a vote of the Members in accordance with the limitations set forth in Section 6.4 hereof.

5.8.3 Insufficient Funds: If the total funds available to restore the Common Area pursuant to Section 5.8.2 are insufficient to restore the Common Area, then a special meeting of the Members shall be called for the purpose of voting whether to impose an additional Special Assessment and deciding upon the amount thereof. The Board shall then contract for the restoration of the Common Area as described above, making use of whatever funds are then available to it.

5.9 CONDEMNATION OF COMMON AREA: If all or any portion of the Common Area is taken for any public or quasi-public use under any statute, by right of eminent domain or by purchase in lieu of eminent domain, the entire award shall be deposited into the

Current Operation Account until distributed. The Association shall distribute such funds proportionately to all Owners as their interests appear according to the respective fair market values of their Lots immediately prior to the time of condemnation, as determined by an independent appraisal made by a qualified Real Estate Appraiser with a Member of the Appraisal Institute Certificate or the equivalent, as selected by the Board. The Association shall represent the interests of all Owners.

5.10 DAMAGE OR DESTRUCTION

TO RESIDENCES AND/OR UNITS: If

all or any portion of a Lot or Residence is damaged by fire or other casualty, the Owner shall either (i) restore the damaged Improvements or (ii) remove all damaged Improvements, including foundations, and leave the Lot in a clean and safe condition. Any restoration under (i) preceding must be performed so that the improvements are in substantially the same condition in which they existed prior to the damage, unless the provisions of Article XII are complied with by the Owner. The Owner must commence; such work within sixty (60) days after the damage occurs and must complete the work within one (1) year thereafter.

ARTICLE VI

FUNDS AND ASSESSMENTS

6.1 COVENANTS TO PAY: Declarant and each Owner covenants and agree to pay to the Association the assessments and any Additional Charges levied pursuant to this Article VI.

6.1.1 Liability for Payment: The obligation to pay assessments shall run with the land so that each successive record Owner of a Lot shall in turn become liable to pay all such assessments. No Owner may waive or otherwise escape personal liability for assessments or release the Lot owned by him from the liens and charges hereof by non-use of the Common Area, abandonment of the Lot or any other attempt to renounce rights in the Common Area or the facilities or services within the Project. Each assessment shall constitute a separate assessment and shall also be a separate, distinct and personal obligation of the Owner of the Lot at the time when the assessment was levied and shall bind his heirs, devisees, personal representatives and assigns. Any assessment not paid within fifteen (15) days after it becomes due is delinquent. The personal obligation of an Owner for delinquent assessments shall not pass to a successive Owner unless the personal obligation is expressly assumed by the successive Owner. No such assumption of personal liability by a successor Owner (including a contract purchaser under an installment land contract) shall relieve any Owner from personal liability for delinquent assessments. After an Owner transfers fee title of record to his Lot, he shall not be liable for any charge thereafter levied against the Lot.

6.1.2 Funds Held in Trust: The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. Upon the sale or transfer of any Lot, the Owner's interest in the funds shall be deemed automatically transferred to the successor in interest of such Owner.

6.1.3 Offsets: No offsets against any assessment shall be

permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

6.2 REGULAR ASSESSMENTS

6.2.1 Payment of Regular Assessments: Subject to the limitations set forth in Section 6.4 hereof, regular Assessments for each fiscal year shall be established when the Board approves the budget for that fiscal year. Regular Assessments shall be levied on a fiscal year basis. Unless otherwise specified by the Board, Regular Assessments shall be due and payable in monthly installments on the first day of each month during the term of this Declaration. Regular Assessments shall commence for all Lots in a particular Phase on the date, which is the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner and may commence prior to that date at the option of Declarant.

6.2.2 Budgeting: Regardless of the number of Members or the amount of assets of the Association, each year the Board shall prepare, approve and make available to each Member a pro forma operating statement (budget) containing:

- (i) estimated revenue and expenses on an accrual basis;
- (ii) the amount of the total cash reserves of the

Association currently available for replacement or major repair of the Common Area and for contingencies;

an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Common Area; and

a general statement setting forth the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Area.

The total amount shall be charged equally against all Lots in the Project as Regular Assessments, subject to the limitations set forth in Section 6.4 hereof. For the first fiscal year, the budget shall be based upon the budget accepted by the Department of Real Estate of the State of California and shall be approved by the Board no later than the date on which Regular Assessments are scheduled to commence. Thereafter, the Board shall annually prepare and approve the budget and distribute a copy thereof to each Member, together with written notice of the amount of the Regular Assessment to be levied against the Owner's Lot, not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year.

6.2.3 Restrictions for Tax Exemption: As long as the Association seeks to qualify and be considered as an organization exempt from federal and state income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t and any amendments thereto, then, notwithstanding any other provision in the Project Documents, the Board shall prepare its annual budget and otherwise conduct the business of the Association in such a manner consistent with federal and state requirements to qualify for such status. As long as either federal or state regulations may so require for the Association to receive tax exempt status, the following budgeting limitations shall be observed:

(a) On Gross
Income: sixty percent (60%) or more of the gross income of the Association for each taxable year shall consist solely of amounts received as membership dues fees and assessments from Members;

(b) On Nature of
Expenditures: Ninety percent (90%) or more of the expenditures of the Association for the taxable year shall be expenditures solely for providing management, maintenance and care of the property of the Association or for the general welfare of the Members;

(c) On Benefit to
Individuals: No part of the net earnings of the Association shall inure to the benefit of any Member or individual (other than those benefits provided by the Association's management, maintenance and care of property within the Project or by a rebate of excess assessments);

(d) On
Expenditures for Utilities: The Association shall not provide or maintain facilities to provide utilities for its Members (provided, however, that the Association may charge for commonly metered services provided to the Project by utility companies); and

(e) On Funds for
Capital Improvements:

Amounts received as assessments which are not expended for Association purposes during the taxable year (funds collected for contingencies and deferred maintenance, repair and replacement of capital Improvements), not including excess funds in the Current Operation Account, shall be transferred or deposited to and held in a separate trust account(s) to provide for management, maintenance and care of the property within the Project and to promote the general welfare of the Members.

6.2.4 Assessments after Annexation:

(a) Reallocation
of Assessments: After annexation of each Phase, the allocation and assessment of the charges in the budget shall be reallocated among all Lots in the Project, including those in the annexed Additional Property, in the same manner as described above.

(b) Revision of
Budget: After a new Phase has been annexed, the Board shall approve a new budget for the remainder of the current fiscal year for use upon the commencement of Regular Assessments against Lots in the new Phase. Declarant shall give notice to the Association of the recordation of a Declaration of Annexation for a Phase and shall give the Association a copy of the budget submitted to the Department of Real Estate in connection with the Public Report for that Phase. The Board shall then determine whether to accept the budget provided by Declarant or revise such budget as the Board determines. Notice of the new Regular Assessment to be levied against each Lot in the Project shall be delivered to the Owners and Declarant within five (5) days after the close of escrow for the first Lot sold in the new Phase.

6.2.5 Non-Waiver of Assessments: If before the expiration of any fiscal year the Association fails to fix Regular Assessments for the next fiscal year, the Regular Assessment established for the preceding year shall continue until a new Regular Assessment is fixed.

6.2.6 Exemption from Regular Assessment:

(a)

Notwithstanding the provisions of Section

6.2, Declarant and any other Owner of a Lot which does not include structural Improvements suitable for human occupancy shall be exempt from the payment of those portions of the Regular Assessment which are allocated for defraying operating expenses and reserves directly attributable to the existence and use of the structural Improvements, including, if and to the extent set forth in the Association budget, (i) roof replacement;

(ii) exterior maintenance; (iii) walkway and Parking Area lighting; (iv) refuse disposal; (v) cable television; and (vi) water supplied to Residences. The exemption from payment of those portions of the Regular Assessment shall be effective only until a notice of completion of construction of the structural Improvements has been recorded or until one hundred twenty (120) days after the issuance of a building permit for the structural Improvements, whichever first occurs.

(b) Declarant and

any other Owner shall be exempted from the payment of that portion of any Assessment which is for the purpose of defraying operating expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time of the Assessment. This exemption from the payment of Assessments attributed to common facilities shall be in effect only until the earliest of the following events:

(i) A notice of completion of the common facility has been recorded.

(ii) The common facility has been placed into use.

6.3 SPECIAL ASSESSMENTS: Subject to the limitations set forth in Section 6.4 hereof, Special Assessments may be levied in addition to Regular Assessments for (i) constructing capital Improvements; (ii) correcting an inadequacy in the Current Operation Account; (iii) defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of Improvements in the Lot(s) or Common Area; or (iv) paying for such other matters as the Board may deem appropriate for the Project. Special Assessments shall be levied in the same manner as Regular Assessments.

6.4 LIMITATION ON ASSESSMENTS:

6.4.1 General Limitations: The Board may not impose, except as provided in this Section 6.4, a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the immediately preceding fiscal year or impose Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners, constituting a quorum, casting a majority of votes at a meeting or election of the Association. For the purpose of this section, a quorum means fifty percent (50%) of the owners.

6.4.2 Exceptions: The provisions of Section 6.4.1, above shall not apply to Regular Assessment increases or Special Assessments necessary for the following purposes:

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

(b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible, where a threat to personal safety in the Project is discovered; and

(c) An extraordinary expense necessary to repair or maintain that portion of the Project for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under Section 3.3 of the Bylaws; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and such resolution shall be distributed to the Members with the notice of Assessment.

6.5 REIMBURSEMENT ASSESSMENTS: The Association shall levy a Reimbursement Assessment against any Owner and his Lot if a failure to comply with the Project Documents has

(i) necessitated an expenditure of monies by the Association to bring the Owner or his Lot into compliance or (ii) resulted in the imposition of a fine or penalty. A Reimbursement Assessment shall be due and payable to the Association when levied. A Reimbursement Assessment shall not be levied by the Association until Notice and Hearing has been given. Notwithstanding any other provision in the Project Documents expressly or impliedly to the contrary, Reimbursement Assessments are assessments but they may not be enforced by any lien rights provided in this Declaration.

6.6 ACCOUNTS:

Types of Accounts: Assessments collected by the Association shall be deposited into at least two (2) separate accounts with a bank and/or savings and loan association, which accounts shall be clearly designated as (i) the Current Operation Account and (ii) the Reserve Account. The Board shall deposit those portions of the assessments collected for current maintenance and operation into the Current Operation Account and shall deposit those portions of the assessments collected as reserves for contingencies and for replacement and deferred maintenance of capital Improvements into the Reserve Account.

Current Operation Account: All of the following may be paid from the Current Operation Account:

- (a) All costs of enforcing the provisions of the Project Documents;
- (b) Taxes and assessments, if any, levied or assessed separately against the Common Area;
- (c) Sums necessary to discharge any lien or encumbrance, including taxes, levied against any Lot, which constitutes a lien against any portion of the Common Area;
- (d) Insurance premiums and costs for policies purchased for the benefit of the Association;
- (e) Water, sewer, garbage, electrical, gas, telephone and other necessary utility services for the Common Area, the Lots and Residences to the extent such services are not separately metered or individually charged;

(f) Costs of routine maintenance, repair and upkeep of Improvements in the Common Area; and

(g) All other goods, materials, supplies, furniture, labor, services, maintenance, repairs or alterations which the Association is authorized to secure and pay for pursuant to the terms of this Declaration or by law, other than those items to be paid for with funds from the Reserve Account.

Reserve Account: The Association shall pay out of the Reserve Account only those costs that are attributable to the maintenance, repair or replacement of capital Improvements for which reserves have been collected and held. No portion of a reserve designated for a particular capital Improvement may be expended for any purpose other than the maintenance or replacement of that capital Improvement. Except for funds collected for contingencies, no funds collected for the Reserve Account may be used for ordinary current maintenance and operation purposes.

Account Reconciliation: The Board shall do the following not less frequently than quarterly:

(a) Cause a current reconciliation of the Association's Current Operating Account(s) to be made and review the same;

(b) Cause a current reconciliation of the Association's Reserve Account(s) to be made and review the same;

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

(d) Review the most current account statements prepared by the financial institution where the Association has its Current Operating and Reserve Accounts;

(e) Review an income and expense statement for the Association's Current Operating and Reserve Accounts.

Withdrawals from Reserve Account: Withdrawal of funds from the Reserve Account(s) shall require the signatures of either:

(a) Two Directors of the Board; or

(b) One Director of

the Board and an officer who is not also a Director.

6.7 ENFORCEMENT OF ASSESSMENTS:

6.7.1 Establishment

of Lien: There shall exist a lien, with power of sale, against each Lot to secure payment of all assessments (except Reimbursement Assessments) levied against the Lot pursuant to this Declaration from and after the date of recordation of a notice of delinquent assessment under Section 6.7.2(b), below. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot shall not affect such a lien. The priority of all assessment liens shall be in inverse order so that, upon foreclosure of the lien for a particular assessment, any foreclosure sale will be subject to all assessment liens previously levied on such Lot. Any lien recorded shall be in favor of the Association. Each Owner, including Declarant, hereby authorizes the Association to appoint and designate in the notice of delinquent assessment a person or entity to act as "Trustee," with power of sale, for and on behalf of such Owner, pursuant to California Civil Code Section 1367(d), and to appoint, at the Association's discretion, a substitute trustee pursuant to California Civil Code Section 2934(a). The designation of a substitute trustee may be effected by any authorized officer of the Association. Each Owner empowers such trustee to enforce the lien and to foreclose the lien by the private power of sale provided in Section 1367(d) of the California Civil Code, as it may be revised, amended or altered from time to time, or by judicial foreclosure. Each Owner further grants to the Association, as trustee, the power and authority to sell the Lot of any defaulting Owner to the highest bidder to satisfy such lien. Each Owner hereby waives the benefit of any homestead or exemption laws of this State of California now or then in effect regarding any lien created pursuant to this Declaration.

6.7.2 Enforcement:

In accordance with California Civil Code Section 1367(d) and in addition to all other remedies provided by law, the Association, or its authorized representative, may enforce the obligations of the Owners to pay each assessment provided for in this Declaration in any manner provided by law or by either or both of the following procedures:

(a)By Suit: The Association may commence and maintain a suit at law against any Owner personally obligated to pay a delinquent assessment. The suit shall be maintained in the name of the Association. Any judgment rendered in any action shall include the amount of the delinquency, Additional Charges and any other amounts as the court may award. A proceeding to recover a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the lien established herein.

(b)By Lien: The Association may commence and maintain proceedings to foreclose the lien established herein. No action shall be brought to foreclose a lien until a notice of delinquent assessment ("Notice") authorized by the Board and signed by an authorized agent thereof, or by any Owner if the Board fails or refuses to act, has been recorded in the Official Records of the County and a copy of the recorded Notice has been delivered to the Owner(s) named in the Notice. The Notice shall state the amount of the delinquent assessment(s), the Additional Charges incurred to date, a description of the Owner's interest in the Lot against which the assessment and other sums are levied, the name(s) of the record Owner(s) thereof and the name and address of the trustee authorized by the Association to enforce the lien. Once (i) thirty (30) days have elapsed since the recordation of the Notice and (ii) ten (10) days have elapsed since the mailing or delivery of a copy of the recorded Notice to the Owner(s), an action in the name of the Association may then be commenced to foreclose the lien for the delinquent assessments. When a Notice has been recorded, such assessment shall constitute a lien on each respective Lot prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage.

Additional Charges: In addition to any other amounts due or any other relief or remedy obtained against

an Owner who is delinquent in the payment of any assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur or levy in the process of collecting from that Owner monies due and delinquent. All Additional Charges shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments or may be levied against a Lot as a Reimbursement Assessment. Additional Charges shall include, but not be limited to, the following:

(a) Attorneys'

Fees: Reasonable attorneys' fees and costs incurred in the event an attorney(s) is employed to collect any assessment or sum due, whether by suit or otherwise;

(b) Late Charges:

A late charge in an amount to be fixed by the Board in accordance with California Civil Code Section 1366(c) (2) to compensate the Association for additional collection costs incurred in the event any assessment or other sum is not paid when due or within any "grace" period established by law; provided, however, that such late charge shall not exceed ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, or such greater amount as may from time to time be allowed by law;

(c) Costs of Suit:

Costs of suit and court costs incurred as are allowed by the court;

(d) Interest:

Interest on all sums imposed in accordance with this Article VI, including the delinquent assessment, reasonable costs of collection, reasonable attorneys' fees, and late charges, at an annual percentage rate to be established by the Board, but in no event to exceed twelve percent (12%) interest or such greater amount as may, from time to time, be allowed by law, commencing thirty (30) days after the assessment becomes due; and

(e) Other: Any

such other additional costs that the Association may incur in the process of collecting delinquent assessments or sums.

Certificate of Satisfaction of Lien: Upon payment of a delinquent assessment or other satisfaction thereof, the Association shall record a certificate stating the satisfaction and release of the assessment lien.

6.8

STATEMENT OF ASSESSMENT LIEN: Within ten (10) days of a request from an Owner liable for assessments, the Association shall furnish to that Owner a written certificate signed by an officer or authorized agent of the Association stating the amount of any assessment and any Additional Charges secured by the lien upon his Lot. A charge, not to exceed the reasonable costs of preparation and reproduction of the certificate, may be levied by the Board for the issuance of such certificate.

6.9

SUBORDINATION OF LIEN: Notwithstanding any provision to the contrary, the liens for assessments created by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of a First Mortgage made in good faith and for value. Upon the foreclosure of any First Mortgage on a

Lot, any lien for assessments which became due prior to such foreclosure shall be extinguished; provided, however, that after such foreclosure there shall be a lien on the interest of the purchaser at the foreclosure sale to secure all assessments, whether Regular or Special, charged to such Lot after the date of such foreclosure sale, which lien shall arise, have the same effect, and be enforced in the same manner as provided herein. For purposes of this Section, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

ARTICLE VII

MEMBERSHIP IN THE ASSOCIATION

7.1 **THE ORGANIZATION:** The Association is a nonprofit mutual benefit corporation. Its affairs shall be governed by and it shall have such powers as are set forth in the Project Documents.

7.2 **MEMBERSHIP:** Each Owner (including Declarant for so long as Declarant is an Owner) , by virtue of being an Owner, shall be a Member of the Association. No other person shall be accepted as a Member.

7.2.1 **Appurtenant**

to Ownership: Association membership is appurtenant to and may not be separated from the ownership of a Lot. Membership shall terminate upon termination of Lot ownership. Ownership of a Lot shall be the sole qualification for Association membership. Membership shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Lot (and then only to the transferee of title to such Lot). Any attempt to make a prohibited transfer is void. The rights, duties, privileges and obligations of all Members shall be provided in the Project Documents.

7.2.2 **Annexation:**

Upon close of escrow for the sale of a Lot in any Phase, Owners of those Lots within that Phase shall become Members.

7.2.3 **Voting**

Rights: Voting rights shall accrue to an Owner once the Regular Assessment has been levied against the Owner's Lot, but in no event before that time.

7.3 **CLASSES OF MEMBERSHIP:** The Association shall initially have two (2) classes of Members.

7.3.1 **Class "A"**

Members: Each Owner, except Declarant, shall be a Class A Member. Only one (1) vote for each Lot owned by a Class A Member(s) may be cast. The vote for each Lot shall be cast as a majority of co-Owners of the Lot shall determine. Any vote cast by a single Member shall be deemed the authorized vote for that Lot. If the majority of co-Owners present in person or by proxy at a meeting cannot agree as to how to cast the vote for their Lot, no vote shall be cast for that Lot. The power to cast a particular Member's vote may be exercised by (i) the Member's conservator; (ii) the guardian of his estate; (iii) the parent(s) entitled to custody of a Member if the Member is a minor; or (iv) the executor or administrator of a deceased Member's estate if the Member's interest in the Lot is subject to administration in his estate.

7.3.2 Class "B" Member: Declarant shall be the sole Class B Member. Three (3) votes for each Lot owned by a Class B Member(s) may be cast. Class B membership shall expire and shall be converted to Class A membership on the first to occur of the following events:

(a) The date which is the second anniversary of the original issuance of the Public Report for the most recent Phase of the Project; or

(b) The date, which is the fourth (4th) anniversary of the original issuance of the Public Report for the first Phase of the Project.

7.3.3 Conversion of Class B Membership: Upon the conversion of Class B membership to Class A membership, but while Declarant still owns one or more Lots in the Project, each provision of the Project Documents which requires approval by each class of Members shall instead require: (i) the approval of a majority of all Members; and (ii) the approval of a majority of all Members other than Declarant. After Declarant no longer owns a Lot in the Project, each provision of the Project Documents which requires the approval of a majority of each class of Members shall instead require the approval of a majority of all Members.

7.4 POWERS, DUTIES AND AUTHORITY OF THE ASSOCIATION: The

Association shall have the powers set forth in the Articles, Bylaws and this Declaration. In addition to the duties and powers enumerated in the Articles and Bylaws or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following duties and obligations:

7.4.1 Common Area and Lot Maintenance: The Association shall replace, maintain and repair the Common Area, including the Improvements, utilities and facilities located thereon, as well as specific portions of Lots and Residences as specifically enumerated in Article V hereof. The Association shall replace, maintain and repair the storm drain and sanitary sewer, which run through the Adjacent Commercial Site.

7.4.2 Easements: The Association shall have the power to grant easements where necessary for utilities and sewer facilities over the Common Area to serve the Common Areas and the Lots.

7.4.3 Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member or Members responsible for the existence of said lien. Prior to any Board decision to discharge a lien, the Owner shall be given written notice and an opportunity for Notice and Hearing.

7.4.4 Assessments: The Association shall fix, levy, collect and enforce assessments as set forth in Article VI hereof.

7.4.5 Payment of Expenses: The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or

imposed against the property of the Association.

7.4.6 Acquisition of

Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build up, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association. However, except with the vote or written assent of a majority of the voting power of the Association, including a majority of the voting power residing in members other than Declarant, the Board is prohibited from 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. Any sale of property or improvements owned, directly or indirectly, by the Association for the benefit of Lots and Owners shall be subject to the requirements of Article IX.

7.4.7 Limitation of

Liability: The purpose of the Association is for the management and maintenance of the Project, and the Association shall not be responsible for the safety of Owners within the Project, except in the event of active gross negligence or willful misconduct of its Directors or officers.

7.5 INSURANCE: The Board shall obtain and maintain insurance as provided in this Section.

7.5.1 General

Provisions and Limitations: All insurance policies shall be subject to and, where applicable, shall contain the following provisions and limitations:

(a) Underwriter: All policies shall be written with a company legally qualified to do business in the State of California and holding a rating of A-XII or better in the financial category as established by Best's Insurance Reports, if such a company is available, or, if not available, the best rating possible or its equivalent.

(b) Named Insured: Unless otherwise provided in this Section, the named insured shall be the Association or its authorized representative, as a trustee for the Members. However, all policies shall be for the benefit of Owners and their Mortgagees, as their interests may appear.

(c) Certificate of Insurance: If reasonably available, provision shall be made for the issuance of a certificate of insurance to each Owner and his Mortgagee which shall specify the amount of such insurance attributable to the particular Owner's Lot.

(d) Authority to Negotiate: Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, that no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations related thereto.

(e) Contribution: In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by Owners or their Mortgagees.

(f) General Provisions: To the extent possible, the Board

shall make every reasonable effort to secure insurance policies providing for the following:

- (i) A waiver of subrogation by the insurer as to any claims against the Board, the Manager, the Owners and their respective servants, agents and guests;
- (ii) A waiver by the insurer of its right to repair and reconstruct instead of paying cash;
- (iii) That no policy may be cancelled, invalidated or suspended on account of the acts of any one or more individual Owners;
- (iv) That no policy may be cancelled, invalidated or suspended on account of the conduct of any Manager, Director, officer or employee of the Association without prior demand in writing delivered to the Association requiring remedying of the defect and allowing a reasonable time within which the defect may be cured by the Association, its Manager, any Owner or Mortgagees;
- (v) That any "other insurance" clause in any policy excludes individual Owners' policies from consideration;
- (vi) That no policy may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee listed as a scheduled holder;
- (vii) An agreed amount endorsement; and
- (viii) An inflation guard endorsement.

Term: The period of each policy shall not exceed three (3) years, provided the policy permits short rate cancellation by the insured.

Annual Review: The Board shall review the adequacy of all insurance at least once every year. At least once every three years, the review shall include a replacement cost appraisal of all insurable Common Area Improvements and Residences without respect to depreciation. The Board shall adjust the policies to provide coverage and protection that is customarily carried by prudent owners of similar property in the area in which the Project is situated.

Deductible: The policy may contain a reasonable deductible and the amount of the deductible shall be added to the face amount of the policy in determining whether the insurance equals replacement cost.

Additional Insurance by Member: Any Member may obtain additional insurance coverage which the Member considers necessary or desirable to protect himself or his Residence at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in a manner so as to decrease the amount which the Association, on behalf of all Owners and their Mortgagees, may realize under any insurance policy which the Association may have in effect at any time. Each Member is also responsible for obtaining liability insurance for his Lot and insurance for his own personal property at his own expense.

7.5.2 Types of

Coverage: At least the following kinds and amounts of insurance shall be obtained:

Property Insurance: A policy or policies of all risk property insurance for all insurable Common Area Improvements, including fixtures and building service equipment, against loss or damage by fire or other casualty, in an amount equal to at least ninety percent (90%) of the current full replacement cost (without respect to depreciation) of the Common Area, and exclusive of land, foundations, excavation and other items normally excluded from coverage. A replacement cost endorsement shall be part of the policy.

(b) Liability Insurance: A combined single limit policy of public liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) covering the Common Area and all damage or injury caused by the negligence of the Association, the Board or any of its agents or the Members against any liability to the public or to any Member incident to the use of or resulting from any accident or intentional or unintentional act occurring in or about the Common Area. If available, each policy shall contain a cross liability endorsement in which the rights of the named insured shall not be prejudiced with respect to any action by one named insured against another named insured.

(c) Worker's Compensation: Worker's compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.

(d) Fidelity Bond: A fidelity bond naming the Board, the Members, the Association and such other persons as a majority of the Members may designate as obligees, in an amount equal to at least one-fourth (1/4) of the total sum budgeted for the Current Operation Account and Reserve Account for the current fiscal year. The fidelity bond shall contain a waiver of any defense based upon the exclusion of persons serving without compensation.

(e) Directors and Officers: Errors and omissions insurance covering Directors and officers, if reasonably available, in types and amounts as the Board determines to be appropriate.

(f) Other Insurance: Other types of insurance as the Board determines to be necessary to fully protect the interests of the Members.

7.6 ENFORCEMENT OF BONDED OBLIGATIONS: When Common Area Improvements have not been completed prior to the issuance of the original Public Report to which the Common Area is subject and the Association is the obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete the Improvements, the following provisions shall apply to initiating action to enforce the obligations of Declarant and the surety under the Bond:

7.6.1 Action by Board: The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any 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 a written extension for the completion of any Common Area Improvements, the Board shall consider and vote whether to take action if a notice of completion has not been filed within thirty (30) days after the expiration of the most recent extension.

7.6.2 Action by Members: If the Board decides not to act or fails to initiate action to enforce bonded obligations, then upon receipt by the Board of a petition for a special meeting signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members. If the Board has failed to initiate action, the Members shall determine whether they wish to initiate action. If the Board has decided not to initiate action, the Members shall determine whether to override the Board's decision. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition by the Board. At the meeting, the vote of fifty-one percent (51%) of the total voting power of the Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association. The Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

7.7 DEDICATION AND EASEMENTS: With the consent of seventy-five percent (75%) of the total voting power of the Association and subject to Section 3.2.3 of the Bylaws, the Association shall have the power to (i) dedicate any of the Common Area to an appropriate public authority for public use or (ii) grant and convey to any third party easements and licenses for use and rights of way in, on, over and under any Common Area.

7.8 NOTICE AND HEARING:

7.8.1 Procedure: If a Member appears to be in violation of any provision of the Project Documents and the provisions of any of the Project Documents require that Notice and Hearing be provided, the Board shall give written notice to the Member specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board. If the Member's failure to correct a violation results in the expenditure of funds by the Association to correct the violation, the notice shall also state that the Board may vote to levy a Reimbursement Assessment if the Board finds that a violation has occurred. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board for the purpose of service of notice or to the address of the Member's Lot if no other address has been provided. Any address may be changed from time to time by giving written notice to the Board.

7.8.2 Determination: After the hearing has taken place, the Board shall (i) determine whether a violation has occurred and, if so, may impose a Reimbursement Assessment which shall become effective not less than five (5) days after the date of the hearing; or (ii) take such other action as may be appropriate. The determination of the Board shall be final. However, nothing herein shall be construed to prevent the Board from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

7.9 TAX-EXEMPT STATUS: The Board shall cause any annual election for tax-exempt status required under federal or state law to be filed timely and shall cause the Association to comply with the statutes, rules and regulations adopted by federal and state agencies

pertaining to such exemptions.

ARTICLE VIII

DEVELOPMENT RIGHTS

8.1 LIMITATIONS OF RESTRICTIONS: Declarant is undertaking the work of developing Residences, Lots and other Improvements within the Project. The completion of the development work and the marketing and sale, rental and other disposition of the Lots is essential to the establishment and welfare of the Subject Property and the Additional Property as a residential community. In order that the work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be interpreted to deny Declarant the rights set forth in this Article.

8.2 RIGHTS OF ACCESS AND COMPLETION OF CONSTRUCTION:

the third (3rd) anniversary of the original issuance of a Public Report for the most recent Phase, Declarant, its contractors and subcontractors shall have the right to:

8.2.1 Access: Obtain reasonable access over and across the Common Area of the Project or do within any Lot owned by it whatever is reasonably necessary or advisable in connection with the completion of the Project; and

8.2.2 Construction: Erect, construct and maintain on the Common Area of the Project or within any Lot owned by it such structures as may be reasonably necessary for the conduct of its business to complete the work, establish the Project as a residential community and dispose of the Project in parcels by sale, lease or otherwise.

8.3 SIZE AND APPEARANCE OF PROJECT: Declarant shall not be prevented from increasing or decreasing the number of Lots that may be annexed to the Project or from changing the exterior appearance of Common Area structures, the landscaping or any other matter directly or indirectly connected with the Project in any manner deemed desirable by Declarant, if Declarant obtains governmental consents required by law.

8.4 MARKETING RIGHTS:

8.4.1 Generally: Subject to the limitations of this Section, Declarant shall have the right to: (i) maintain model homes, sales offices, storage areas and related facilities in any unsold Lots or Common Area within the Project as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Lots; (ii) make reasonable use of the Common Area and facilities for the sale of Lots; and (iii) conduct its business of disposing of Lots by sale, lease or otherwise.

8.4.2 Agreement After One Year: If one year following the first conveyance of a Lot in a Phase to an Owner, Declarant requires exclusive use of any portion of

the Common Area in that Phase for marketing purposes, Declarant may use the Common Area only if an agreement is entered into between Declarant and the Association. The agreement must specifically provide for a limited duration for such use and must provide for a specific reasonable rate of compensation to the Association by Declarant. Compensation shall be commensurate with the nature, extent and duration of the use proposed by Declarant. In no event, however, shall Declarant be denied the rights to use the Common Area and any Lots owned by Declarant as an Owner.

8.5 TITLE RIGHTS: This Declaration shall not be construed to constitute a limitation on Declarant's title rights to the Additional Property prior to its annexation, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any portion of the Additional Property. The rights of Declarant under this Declaration may be assigned to any successor(s) by an express assignment in a recorded instrument, including without limitation, a deed, option or lease. This Declaration shall not be construed to limit the right of Declarant at any time prior to such an assignment to establish additional licenses, reservations and rights-of-way to itself to utility companies or to others as may be reasonably necessary to the proper development and disposal of property owned by Declarant.

8.6 AMENDMENT: After the expiration of Class B membership, the provisions of this Article may not be amended without the consent of Declarant until either (i) all of the Additional Property has been annexed to the Project and all of the Lots in the Project owned by Declarant have been sold or (ii) three (3) years after the original issuance of the most recent Public Report for the Project, whichever occurs first.

ARTICLE IX

RIGHTS OF MORTGAGEES

9.1 CONFLICT: Notwithstanding any contrary provision contained elsewhere in the Project Documents, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

9.2 LIABILITY FOR UNPAID ASSESSMENTS: Any Institutional Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage (except upon a voluntary conveyance to the Institutional Mortgagee) or by foreclosure of the First Mortgage shall take the property free of any claims for unpaid assessments or charges against the Lot which accrue prior to the acquisition of title to the Lot by the Institutional Mortgagee.

9.3 PAYMENT OF TAXES AND INSURANCE: Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common Area or Improvements thereon and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such Common Area. Institutional Mortgagees making such payments shall be owed immediate reimbursement for such expenditures from the Association and, on demand, the Association shall execute an agreement in favor of all Institutional Mortgagees reflecting entitlement to reimbursement.

9.4 TERMINATION OF CONTRACT AND AGREEMENTS:

9.4.1 Any contract or lease, including any contract providing for the services of Declarant, entered into by the Association while Declarant controls the Association shall provide that the Association has the right to terminate such

contract or lease without cause and without penalty or the payment of a termination fee at any time after the transfer of control of the Association from Declarant upon not more than ninety (90) days notice to the other party. For purposes of this Subsection, the term "control" shall mean the right of Declarant to exercise unilateral control over the Association, the Board, the Project or the Owners in any manner other than by Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.

9.4.2 Any agreement for professional management of the Project or any agreement providing for services of the Declarant shall be for a term not to exceed one (1) year without the consent of fifty-one percent (51%) of each class of Members; provided, however, that in no event shall such an agreement exceed a term of three (3) years. Any such agreement shall provide that the agreement may be terminated by either party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

9.5 NOTICE TO ELIGIBLE HOLDERS: An Eligible Holder is entitled to timely written notice of:

9.5.1 Any condemnation loss or casualty loss which affects either a material portion of the Project or the Lot on which the Eligible Holder holds a First Mortgage;

9.5.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Lot which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date;

9.5.3 Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

9.5.4 Any proposal to take any action specified in this Article or in Section 10.1.2, below;

9.5.5 Any default by an Owner-mortgagor of a Lot in the performance of his obligations under this Declaration or the Bylaws which is not cured within sixty (60) days.

9.6 RESERVE FUND: The Association shall maintain as a reserve fund the Reserve Account which shall be sufficient to pay for maintenance, repair and periodic replacement of Common Area Improvements which the Association is obligated to maintain. This reserve fund shall be funded by Regular Assessments of Owners which are payable in installments rather than by Special Assessment; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

9.7 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or First Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, the Project Documents and any amendments thereto during normal business hours or under other reasonable circumstances.

9.8 FINANCIAL STATEMENTS: If the Project contains more than fifty (50) Lots, the Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request from any Institutional Mortgagee. If the Project contains fifty (50) or fewer Lots, if fifty-one percent (51%) of the Institutional Mortgagees desire to have an audited financial statement of the Association for the immediately preceding fiscal year, the Institutional Mortgagees, at their expense, may cause an audited financial statement to be prepared, if one is not otherwise available.

9.9 VOTING RIGHTS OF MORTGAGEES: For purposes of this Section a Mortgagee shall be entitled to one (1) vote for each First Mortgage owned.

9.9.1 Unless at least sixty-seven percent (67%) of the Institutional Mortgagees or sixty-seven percent (67%) of the Owners other than Declarant have given their prior written approval, the Association shall not be entitled to:

(a) By act or omission abandon, partition, subdivide, encumber, sell or transfer any property or Improvements owned, directly or indirectly, by the Association for the benefit of the Lots and the Owners. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Project by the Association and Owners shall not be deemed a transfer within the meaning of this Subsection);

(b) Change the method of determining the obligations, assessments, dues or other charges that may be levied against an Owner;

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or exterior appearance of Lots, the exterior maintenance of Lots, the maintenance of party walls, party fences or party driveways, or the upkeep of lawns, plantings or other landscaping in the Project;

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

(e) Use hazard insurance proceeds for losses to any property or Improvements owned by the Association other than for the repair, replacement or reconstruction of the property and Improvements.

9.9.2 Any election to terminate the legal status of the Project as a Planned Development Project shall require:

(a) The approval of at least fifty-one percent (51%) of the Eligible Holders if the election to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation of the property within the Project; or

(b) The approval of sixty-seven percent (67%) of the total voting power of the Association and sixty-seven percent (67%)

of the Eligible Holders.

9.9.3 In the event a portion of the Project is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the Project unless fifty-one percent (51%) of the Eligible Holders approve the taking of other action by the Association.

9.9.4 The vote or written consent of sixty-seven percent (67%) of the total voting power of the Association and fifty-one percent (51%) of the Eligible Holders shall be required to assume self-management of the Project if professional management of the Project has been required by an Eligible Holder at any time.

9.10 MORTGAGE PROTECTION: A breach of any of the conditions contained in this Declaration shall not defeat nor render invalid the lien of any First Mortgage made in good faith and for value as to any Lot in the Project; provided, however, that the conditions contained in this Declaration shall be binding upon and effective against any Owner of a Lot if the Lot is acquired by foreclosure, trustee's sale or otherwise.

ARTICLE X

AMENDMENT AND ENFORCEMENT

AMENDMENTS: Prior to the conveyance of the first Lot, the Bylaws and this Declaration may be amended by Declarant alone. After the conveyance of the first Lot, the Bylaws and this Declaration may be amended in accordance with the following provisions:

10.1.1 Precedence of Article IX: With respect to any action to be taken under this Section 10.1 which is also governed

by provisions of Article IX that require a specified vote of Owners and/or Mortgagee S, the requirements of Article IX must be satisfied before action may be taken under this Section 10.1. After the requirements of Article IX have been satisfied, a vote to amend this Declaration in compliance with this Section 10.1 may then be taken.

10.1.2 Amendment of Provisions: The vote or written consent of sixty-seven percent (67%) of each class of Members and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to add to, amend or modify, whether by formal amendment or otherwise, any material provision of this Declaration or the Bylaws which establishes, provides for, governs or regulates any of the following subjects:

- (a) Voting;
- (b) Assessments, assessment liens or subordination of assessment
liens;
- (c) Reserves for maintenance, repair and replacement of Common
Area;

- (d) Insurance policies or fidelity bonds;
- (e) Rights to use the Common Area;
- (f) Responsibilities for maintenance and repair of any portion of
the Project;
- (g) The boundaries of a Lot;
- (h) The interest of an Owner in Common Area;
- (i) Convertibility of Lots into Common Area or of
Common Area into Lots;

(j) Leasing of Lots;

(k) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Lot; or

(1) The provisions of Section 6.9, Article IX and this Section 10.1.2.

Any amendment or addition to the Declaration or Bylaws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting technical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment and who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when

(i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, in either case (i) or (ii) to the parties at their last known address.

10.1.3 Other Provisions of Declaration: Any other provisions of this Declaration may be amended by the vote or written consent of the record Owners constituting not less than fifty-one percent (51%) of each class of Members.

10.1.4 Consent of Real Estate Commissioner:

Notwithstanding the foregoing, after the first conveyance of a Lot in the Project, no amendment or modification of provisions in this Declaration, the Bylaws, the Articles or other instruments controlling or otherwise affecting rights to ownership, possession or use of interests in the Project, which would materially change such rights of an Owner, either directly or as a Member of the Association, is valid without the prior written consent of the Real Estate Commissioner of the State of California during the period of time when Declarant holds or directly controls as many as one-fourth (1/4) of the votes that may be cast to effect such a change.

10.1.5 Recordation of Amendment: Any amendment shall be effective upon the recordation in the Official Records of the County of an instrument setting forth the terms of the amendment, duly certified and executed by the President and Secretary of the Association.

10.2 ENFORCEMENT:

10.2.1 Rights to Enforce: The Association and/or any Owner shall have the power to enforce the provisions of the Project Documents in any manner provided by law or in equity and in any manner provided in this Declaration. The Association may institute appropriate legal action, suspend an Owner's use of the recreation facilities or his voting rights for a period not to exceed thirty (30) days and/or levy a fine against an Owner in an amount not to exceed Fifty Dollars (\$50.00) or such other standard maximum amount as may be approved by fifty-one percent (51%) of each class of Members; provided, however, that Reimbursement Assessments are not enforceable by any lien provisions of this Declaration. No determination of whether a violation has occurred shall be made until Notice and Hearing has been provided to the Owner. In the event legal action is instituted by the Association, any judgment rendered shall include all appropriate Additional Charges. Notwithstanding anything to the contrary contained in this Declaration, the Association shall not have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot, including access thereto over and across the Common Area, due to the Owner's failure to comply with the provisions of the Project Documents, unless the loss or forfeiture is the result of the judgment of a court, an arbitration decision or a foreclosure proceeding or a sale conducted pursuant to this Declaration. The provisions of this Declaration shall be equitable servitudes, enforceable by any Owner and/or the Association against the Association and/or any other Owner, tenant or occupant of the Project. Except as otherwise provided, Declarant, the Association or any Owner(s) shall have the right to enforce, in any manner permitted by law or in equity, any and all of the provisions of the Project Documents, including any decision made by the Association, upon the Owners, the Association or upon any property in the Project.

10.2.2 Violation of Law: The Association may treat any Owner's violation of any state, municipal or local law, ordinance or regulation, which violation creates a nuisance to the other Owners in the Project or to the Association, in the same manner as a violation by an Owner of the Project Documents by making such violation subject to any or all of the enforcement procedures set forth in this Declaration, provided that the Association complies with the Notice and Hearing requirements herein.

10.2.3 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

10.2.4 Nonwaiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.

ARTICLE XI

ANNEXATION

11.1 RESTRICTION ON ANNEXATION: Property may be added to the Project by annexation only in accordance with the provisions of this Article.

11.2 PROPERTY WHICH MAY BE ANNEXED:
APPROVAL OF MEMBERS:

All or any portion of the Additional Property may be added to the Project as subsequent Phases without the approval of any other Owner or the Association, if annexed prior to the third (3rd) anniversary of the original issuance of the most recent Public Report issued for a Phase of the Project ("Annexation Period"). Property other than the Additional Property and any portion of the Additional Property not annexed within the Annexation Period may be annexed to the Project only with the vote or written consent of not less than two-thirds (2/3rds) of each class of Members.

11.3 PROCEDURE FOR ANNEXATION: In addition to any required approval by Members, a final subdivision map(s) or final parcel map(s) and a Declaration of Annexation for the property to be annexed must be recorded. The Declaration of Annexation shall: (i) describe the portion of the Additional Property to be annexed; (ii) set forth the ownership of the Common Area; (iii) set forth the allocation of Regular Assessments to be paid; and (iv) specify that all of the covenants, conditions and restrictions of this Declaration shall apply to the annexed Additional Property in the same manner as if it were originally covered by this Declaration. The Declaration of Annexation shall also provide that Declarant shall pay to the Association an amount equal to that portion of the Regular Assessment which would have been attributable to each Lot in that Phase and which would have been allocable to reserves for replacement and deferred maintenance of Common Area Improvements if and only if Declarant has rented or leased Lots in that Phase for a period of at least one (1) year prior to the conveyance of title to an Owner of a Lot in that Phase. Declarant shall be required to make such payment to the Association only for those Lots, which Declarant has actually rented or leased. The Declaration of Annexation may also (i) impose any additional covenants, conditions and restrictions on the Additional Property that are necessary to include the property in the Project and to reflect differences in nature, if any, of the Improvements to be constructed on the Additional Property and (ii) provide for a specified date on which assessments shall commence for Lots in that Phase, provided that the date specified may not be later than the first day of the first month following the month in which the first Lot in that Phase is conveyed to an Owner. Upon the recording of the Declaration of Annexation, notice of the recording shall be given to the Association. No Declaration of Annexation shall diminish the covenants, conditions or restrictions established by this Declaration nor shall it discriminate between different Owners in the Project. No Declaration of Annexation shall alter or change the general common plan or scheme created by this Declaration nor shall it affect the provisions hereof as covenants running with the land or as equitable servitudes.

11.4 EFFECT OF ANNEXATION: After complying with the procedures for annexation and upon the conveyance of the first Lot in the annexed Phase to an Owner, Owners of Lots in the annexed Phase shall be Members, shall be subject to this Declaration and shall be entitled to use all Common Area in the Project. The Association shall reallocate the Regular Assessments so as to assess each Owner of a Lot in the Project for an equal share of the total expenses of the Project.

11.5 DEANNEXATION: Declarant has the right, at its sole option, to remove from the Project any property described in a recorded Declaration of Annexation for a

Phase by recording a rescission of the Declaration of Annexation at any time if no Lot in that Phase has been conveyed to an Owner and if no Common Area in that Phase has been conveyed to the Association.

11.6 AMENDMENT: After the conversion of Class B membership to Class A membership and until the third (3rd) anniversary of the original issuance of the most recent Public Report issued for a Phase of the Project, this Article may not be amended without the consent of Declarant unless all of the Additional Property has been annexed to the Project.

ARTICLE XII

ARCHITECTURAL REVIEW

12.1 APPLICABILITY: All architectural review shall be performed by the Board, or a committee appointed by the Board, in accordance with the provisions of this Article. If the Board appoints a committee to perform the architectural review functions, there shall be no less than three (3) members and no more than five (5) members, all of whom must be Owners. The terms of office shall be as designated by the Board. Any Owner who wishes to make any alteration or addition which will affect the exterior of his Residence or Lot is required to obtain the approval of the Board pursuant to this Article prior to making any such alteration or addition. Any Owner who makes an alteration or addition without the prior approval of the Board shall be deemed to be in violation of this Declaration; and the Board, upon its own motion, shall proceed as though the Owner gave the notice of completion as specified in Section 12.8.1. Nothing in this Article shall be deemed to relieve any Owner from obtaining all consents and permits and otherwise complying with all applicable State and local laws and ordinances.

12.2 DUTIES: The Board shall consider and act upon proposals and/or plans submitted pursuant to this Article. The Board, from time to time and in its sole discretion, may propose architectural rules, regulations and guidelines ("Architectural Standards"). The Architectural Standards shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for architectural review and guidelines for architectural design, placement of buildings, color schemes, exterior finishes and materials and similar features which may be used in the Project; provided, however, that the Architectural Standards shall not be in derogation of the minimum standards established by this Declaration. The Architectural Standards shall be accepted as Rules when adopted in accordance with the provisions of the Bylaws.

12.3 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Any Owner, except Declarant and its designated agents, who wants to perform any alteration or addition for which approval is required shall notify the Board in writing of the nature of the proposed work and shall furnish such information as may be required by the Architectural Standards or reasonably requested by the Board.

12.4 BASIS FOR APPROVAL OF IMPROVEMENTS: The Board may approve the proposal only if the Board finds that (i) the plans and specifications conform to this Declaration and to the Architectural Standards in effect at the time the proposal was submitted and (ii) the proposed alteration or addition will be consistent with the standards of the Project and the provisions of this Declaration as to quality of workmanship and materials, harmony of exterior design and visibility with respect to existing structures, environment, location with respect to topography and finished grade elevations.

12.5 FORM OF APPROVALS AND DENIALS: All approvals and denials shall be in writing. Any denial of a proposal must state the reasons for the decision to be valid. Any proposal which has not been rejected in writing within forty-five (45) days from the date of submission shall be deemed approved.

12.6 PROCEEDING WITH WORK: Upon approval of the Board the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within one (1) year from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Board finds that there has been no change in the circumstances under which the original approval was granted.

12.7 FAILURE TO COMPLETE WORK: Completion of the work approved must occur in the twelve (12) month period following the approval of the work unless the Board determines that completion is impossible or would result in great hardship to the Owner due to strike, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If Owner fails to complete the work within the one (1) year period, the Board shall proceed in accordance with the provisions of Section 12.8.2 below.

12.8 DETERMINATION OF COMPLIANCE: Any work performed, whether or not the Owner obtained proper approvals, shall be inspected and a determination of compliance shall be made as follows:

12.8.1 Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion to the Board. If the Owner fails to give the notice of completion of work performed for which approval was required, the Board may proceed upon its own motion.

12.8.2 Within sixty (60) days of the completion of the work, the Board shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board finds that the work was not performed in substantial compliance with the approval granted or if the Board finds that the approval required was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of the non-compliance and shall require the Owner to remedy the non-compliance.

12.9 FAILURE TO REMEDY THE NON-COMPLIANCE: If the Board has determined that an Owner has not constructed an Improvement consistent with the specifications of the approval granted and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of non-compliance, then after the expiration of thirty (30) days from the date of such notification, the Board shall provide Notice and Hearing to consider the Owner's continuing non-compliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance; the Board shall determine the estimated cost of correcting it. The Board shall then 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 Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the non-complying Improvement or remedy the non-compliance. The costs of such action shall be assessed against the Owner as a Reimbursement

Assessment.

12.10 WAIVER: Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval, shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

12.11 ESTOPPEL CERTIFICATE: Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) Directors, certifying that as of the date thereof, either: (a) the work completed complies with this Declaration or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through any of them.

12.12 LIABILITY: If Directors, officers and/or architectural committee members, if any, have acted in good faith on the basis of such information possessed by them, neither the Board nor any Director, officer or architectural committee member shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

12.13 NON-APPLICABILITY TO DECLARANT: The provisions of this Article shall not apply to any Lot owned by Declarant or prior to his first conveyance of a Lot to an Owner.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1 TERN OF DECLARATION: This Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty percent (50%) of the Owners determines that this Declaration shall terminate.

13.2 CONSTRUCTION OF PROVISIONS: The provisions of this Declaration shall be liberally construed to affect its purpose of creating a uniform plan for the development and operation of a planned development project.

13.3 DECLARATION IS BINDING: This Declaration shall be for the benefit of and be binding upon all Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, tenants, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

13.4 SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one

provision shall not affect the validity or enforceability of any other provision hereof.

13.5 GENDER, NUMBER AND CAPTIONS: As used herein, the singular shall include the plural and masculine pronouns shall include feminine pronouns, where appropriate. The title and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part hereof.

13.6 RESALE OF LOT: Upon the resale of any Lot by any Owner, the Owner shall supply to the buyer of the Lot a copy of each of the Project Documents. The Association may charge the buyer of the Lot a fee in connection with the transfer of the Lot, which fee shall not exceed the actual cost to the Association of changing its records.

13.7 EXHIBITS: All exhibits attached to this Declaration are incorporated by this reference as though fully set forth herein.

13.8 CONFLICT: In the event of a conflict, the provisions of this Declaration shall prevail over the Bylaws and the Rules.

WITNESS WHEREOF, the undersigned has executed this Declaration on the date first above written.

DECLARANT: AM HOMES/PALACIO, L.P., a California Limited Partnership

By: A-M HOMES, a California Limited Partnership

Its: General Partner

By: A-M HOMES, a Delaware corporation

Its: Managing General Partner

Signature of Kenneth Riding

By: Kenneth Riding

Vice President

STATE OF CALIFORNIA)

of Santa Clara)ss

this 5th day of March 1990, before me, Linda R. Vajretti, a Notary Public of the State of California, duly commissioned and sworn, personally appeared Kenneth L. Riding, personally known to me To be the person who executed the within instrument as Executive Vice President on behalf of A-M Homes Inc., the Corporation that executed the within instrument as Managing General Partner of A-M Homes, the

Partnership that executed the within instrument as Partner of A-H Homes/Palacio. L.P the Partnership that executed the within instrument, and acknowledged to me that said partnership executed the within instrument and that said Corporation, pursuant to its by-laws or a resolution of its Board of Directors, as a Partner of said Partnership executed the same on behalf of said Partnership.

WITNESS by my hand and official seal

Signature of Linda R. Vajretti

Linda R. Vajretti

NOTARY PUBLIC in and for said State

EXHIBITS

A - Description of Subject Property.

B - Description of Additional Property (2.2)

EXHIBIT A

TO

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

OF PALACIO, a Planned Development Project

City of San Jose, County of Santa Clara, State of California, described as follows:

All that certain real property situate in the

Parcel 1:

thru 511 80 and 81, as shown on the subdivision map entitled "Tract No. 8270," filed October 4, 1989 in Book 606 of Maps, at page(s) 23-25, Santa Clara County Records.

Parcel 2:

drain, private storm drain release and private sanitary sewer along the North line of Parcel 3 of Parcel Map recorded in Book 554 of Maps at page 12, Santa Clara County Records.

Parcel 3:

over the following described property:

An exclusive easement for a private street

Commencing at the most southwesterly corner of Parcel 2 as said parcel is shown on that certain Parcel Map recorded in Book 554 of maps at Page 12, Santa Clara County Records; thence along the southerly line thereof North 89 42'13" East 367.00 feet; thence South 1 11' 45" West 105.32 feet to a point on a curve and the True Point of Beginning; thence southerly along a curve to the right the radial point of which bears South 59. 29' 20" West, through a central angle of 31' 42' 25" having a radius of 67.00 feet, an arc distance of 37.08 feet;

thence South 1 11' 45" West 122.00 feet; thence along a curve to the right through a central angle of 31 42' 25" having a radius of 67.00 feet, an arc distance of 37.08 feet; thence North 1 11' 45" East 192.43 feet to the True Point of Beginning.

EXHIBIT B

TO

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS

OF PALACIO, a Planned Development Project

Parcel 1:

Lot(s) 9 thru 32 inclusive, 40, 44, and 52 thru 79 inclusive, as shown on the subdivision map entitled 'Tract No. 82701W filed October 4, 1989 in Book 606 of Maps, at page(s) 23-25, Santa Clara County Records.

Parcel 2:

A 10 foot easement for private storm drain, private storm drain release and private sanitary sewer along the North line of Parcel 3 of Parcel Map recorded in Book 554 of Maps at page 12, Santa Clara County Records.

Parcel 3:

An exclusive easement for a private street over the following described property:

Commencing at the most southwesterly corner of Parcel 2 as said parcel is shown on that certain Parcel Map recorded in Book 554 of Maps at Page 12, Santa Clara County Records; thence along the southerly line thereof North 89 42' 13" East 367.00 feet; thence South 1' 11' 45" West 105.32 feet to a point on a curve and the True Point of Beginning; thence southerly along a curve to the right, the radial point of which bears South 59. 29' 20" West through a central angle of 31' 42' 25" having a radius of 67.00 feet, an arc distance of 37.08 feet; thence South 1' 11' 45" West 122.00 feet; thence along a curve to the right through a central angle of 31' 42' 25" having a radius of 67.00 feet, an arc distance of 37.08 feet; thence North 1 11' 45" East 192.43 feet to the True Point of Beginning.

CONSENT AND SUBORDINATION

The undersigned, as beneficiary under that certain deed of trust recorded on December 22, 1989, as Instrument No. 10367827, Official Records of Santa Clara County, California, hereby consents to the execution and recordation of the Declaration of Covenants, Conditions and Restrictions of Palacio, a planned development project, dated as of

MARCH, 1990, executed by A-M Homes, to which this Consent and Subordination is attached, and hereby agrees that the lien of such deed of trust shall be subject and subordinate to such declaration to the same extent as if such declaration had been recorded prior to such deed of trust.

Dated as of March, 1990.

SECURITY PACIFIC NATIONAL BANK,

a national banking association

By: Signature of David R. Kegaries

Its: Vice President

WHEN RECORDED, RETURN TO:

PALACIO PLANNED DEVELOPMENT HOA

c/o Beth A. Grimm,

A Professional Law Corporation

3478 Buskirk Avenue, Suite 1000

Pleasant Hill, CA 94523

Telephone: (925) 674-1500

AMENDMENT OF

CERIFICATE OF

Doc#: 14824423 5/21/1999 10:54 AM

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

The Declaration of Restrictions recorded March20, 1990, as Document

No.10459113; in the *official* records for Santa Clara County, specifically, Sections related to parking and maintenance, are

amended as expressed in "Exhibit A" attached to this Certificate of Amendment. The property affected by the Restated

Declaration consists of:

Sec attached "Exhibit B"

IN WITNESS WHEREOF, this Certificate of Amendment is executed by the undersigned, who are the President and Secretary of

Palacio Planned Development Homeowners Association.

We certify and declare, under penalty of perjury that the foregoing amendment has been approved by the percentage of

homeowners required by the original Declaration.

Executed San Jose, California, on the 26 day of April, 1999

BY: Signed by the President and Secretary of Palacio HOA – Kevin M. Jones and Kathleen A. Martinelli

respectively.

ASSOCIATION

ON BEHALF OF PALACIO PLANNED DEVELOPMENT HOMEOWNERS

Notary seal and wording from Kathleen M. Ittel

12

EXHIBIT "A"

MODIFIED AS

THE FOLLOWING SECTIONS OF THE DESCRIBED DECLARATION ARE

FOLLOWS:

ARTICLE V - IMPROVEMENTS

5.1 MAINTENANCE OF COMMON AREA AND PAINTING OF RESIDENCE UNITS:

5.1.1 GENERAL: The Association shall be responsible for

maintenance, repair, replacement, Painting and upkeep of Common Area, exterior painting (only) of the

residence units, and shall also maintain any private streets within the Project. The Association shall keep

the Common Area and Improvements thereon in good condition and repair, provide for all necessary

services and cause all acts to be done which' may be necessary or proper to assure the maintenance of the

Common Area in first class condition.

RESIDENCES:

5.3.1 IN GENERAL: Each Owner shall maintain and care for his Lot and all Improvements located on his Lot in a manner

consistent with the standards established by the Project Documents and other first class residential subdivisions in the County.

The Association shall paint the exteriors of the residence Units, but all dry rot and/or other damages are the responsibility of the

Owner to repair. Each Owner shall be responsible for maintenance, repair and replacement of driveways and walkways located

on his Lot, except for sidewalks adjacent to private streets, maintenance of which shall be the Association's responsibility. Special

architectural design standards may be established in the Rules. Each Owner shall be responsible for the repair and maintenance of

all fences within or bordering such Owner's Lot.

OTHER SECTIONS THAT ARE MODIFIED INCLUDE:

2.27 PARKING AREA: The term "Parking Area" shall mean only areas specifically marked for parking

purposes, wherever located within the Project, including driveways on Lots, specifically designated

parking spaces, and streets as marked for parking.

4.5 PARKING: Vehicles shall not be parked anywhere in the Project except wholly within garages and

Parking Areas (see Section 2.27 for definition). Parking on the street requires a validly issued Association

permit. Unpermitted vehicles will be subject to penalty or tow, as will vehicles parked in non-designated

areas of the streets. One side of the street will be treated as a fire lane and no parking will be allowed.

Vehicles may be parked in the 4(driveways as long as the vehicle fits and is parked entirely within said

driveway, and in no event shall vehicles be parked in such a manner as to inhibit or block access to

Residences, garages or Parking Areas, or in such a manner as they extend onto the sidewalk. If the

vehicle extends onto or over the sidewalk it subjects the owner of the Lot to discipline and the vehicle to

tow.

All Parking Areas shall be used solely for the parking and storage of vehicles used for personal transportation. No boat, trailer;

camper, motorcycle, golf cart, commercial vehicle, mobile home, other recreational vehicles or dilapidated vehicles shall be

parked or stored in any Parking Area. Garage doors shall remain closed except when the garage is in use. No part of the Common

Area shall be used for repair, construction or reconstruction of any vehicle, boat or any other item or thing. There are no

exceptions to this. As long as applicable ordinances and laws are observed, the Board may cause the removal of any vehicle,

which is in violation of this Declaration.

13

EXHIBIT "B"

All that certain real property situate in the City of San Jose, County of Santa

Clara, State of California, described as follows:

Parcel 1:

Lot(s) I thru 81, as shown on the subdivision map entitled "Tract No.8279,"

filed October 4, 1989 in Book 606 of Maps, at page(s) 23-25, Santa Clara County Records.

Parcel 2.

A 10 foot easement for private storm drain, private storm drain release and

private sanitary sewer along the North line of Parcel 3 of Parcel Map recorded in Book 554 of Maps at page 12, Santa Clara

County Records.

Parcel 3:

An exclusive easement for a private street over the following described property:

Commencing at the most southwesterly corner of Parcel 2 as said parcel is shown on that certain Parcel

Map recorded in Book 554 of Maps at Page 12, Santa Clara County Records; thence along the southerly

line thereof North 89°42' 13" East 367.00 feet; thence South 111°45" West 105.32 feet to a point on a

curve and the True Point of Beginning; thence southerly along a curve to the right, the radial point of

which bears South 59 29' 20" West, through a central angle of 31 42' 25" having a radius of 67.00 feet, an

arc distance of 37.08 feet; hence South 111,45" West 12200 feet; thence along a curve to the right

through a central angle of $3^{\circ} 42' 25''$ having a radius of 67.00 feet, an arc distance of 37.08 feet; thence

North 1 11' 45" East 192.43 feet to the True Point of Beginning