

DECLARATION OF RESTRICTIONS

FOR

HARBOUR TOWNE

This is to certify that this is a true and correct copy of the Declaration recorded in the Office of the Recorder of Solano County, California, as Instrument No. 90-14377, on February 26, 1990, and rerecorded as Instrument No. 90-15709, on March 1, 1990, Solano County Records.

By:

Donna Wildes
Donna Wildes



First American Title Guaranty Company

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DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HARBOUR TOWNE,
A PLANNED UNIT DEVELOPMENT

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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HARBOUR TOWNE

THIS DECLARATION ("Declaration") is made this _____ day of _____, 1990, by BEAR COVE PROPERTIES, a California limited partnership ("Declarant").

RECITALS

A. Declarant is the owner of certain real property located in the City of Vallejo, County of Solano, State of California, described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

B. Declarant has established a general plan, set forth in this Declaration, for the subdivision, improvement, and development of the Property, and each and every Lot and parcel comprising the Property, and any additional real property that may be annexed to this Declaration, and desires to secure the harmonious and uniform development of the Property in accordance with such plan.

DECLARATION

Declarant declares that the real property described in Exhibit A, and each and every Lot and other parcel of real property thereon, is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, servitudes, liens and charges, all of which are declared and agreed to be in furtherance of a general plan for the development of said real property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of said real Property. These provisions are imposed upon Declarant, the Owners, and the Association and are for the benefit of all Lots and the Common Area, and shall bind the Owners and the Association. These provisions shall be a burden upon and a benefit to not only the original Owner of each Lot and the Association but also upon and to their successors and assigns. All covenants are intended as and are declared to be covenants running with the land as well as equitable servitudes upon the land.

ARTICLE 1.
DEFINITIONS

1.1 Architectural Committee. "Architectural Committee" means the committee of persons appointed and acting pursuant to Article 12 of this Declaration.

- 1.2 Articles. "Articles" means the Association's articles of incorporation and any amendments thereto.
- 1.3 Association. "Association" means the HARBOUR TOWNE AT GLEN COVE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, and its successors and assigns.
- 1.4 Association Rules. "Association Rules" means the rules and regulations regulating the use and enjoyment of the Common Area and the Association Maintenance Areas adopted by the Board from time to time.
- 1.5 Board of Directors. "Board of Directors" or "Board" means the Board of Directors of the Association.
- 1.6 Bylaws. "Bylaws" means the Bylaws of the Association and any amendments thereto.
- 1.7 City. "City" means the City of Vallejo, the City in which the Project is located.
- 1.8 Common Area. "Common Area" means all real property owned by the Association for the common use and enjoyment of the Owners and shall include, upon conveyance to the Association, the plots of land designated as Lots E, F, G, H, and I, and K and the Private Streets named Cliff Walk Drive, Castle Hill Court, Marina Ridge court, and Narragansett Court, all as shown on the Subdivision Map. Without limiting the generality of the foregoing, the Common Area includes the Private Streets comprising a portion thereof, as hereafter defined. Except for the purposes of holding actual fee title and for the purposes of Section 1.19 hereof, the Association Maintenance Areas shall be treated in all respects as part of the Common Area of the Development.
- 1.9 County. "County" means the County of Solano, State of California, the County in which the Project is located.
- 1.10 Declarant. "Declarant" (as previously defined above) means BEAR COVE PROPERTIES, a California limited partnership, and its successors and assigns, if such successors and assigns are assigned the rights of Declarant pursuant to Section 14.12 below, or if such successor or assign is a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.
- 1.11 Declaration. "Declaration" means this Declaration of Covenants, Conditions, and Restrictions and its amendments, modifications, or supplements.
- 1.12 Dwelling. "Dwelling" means any portion of a building situated on a Lot and intended for residential use and occupancy.
- 1.13 Garage. "Garage" means the enclosed automobile sheltering structure situated on each Lot, as originally constructed by

Declarant or thereafter constructed or reconstructed in accordance with the provisions of this Declaration.

1.14 Lot. "Lot" means any plot of land designated as a Lot on the Subdivision Map, or in any subdivision map referred to in any supplement or amendment to this Declaration, together with any improvements which may be added to such Lot from time to time.

1.15 Maintenance. "Maintenance" means the exercise of reasonable care to keep the Lots, Common Area, Private Streets, Association Maintenance Areas, Dwellings, driveways, landscaping and other improvements and fixtures in a state similar to their original condition, normal wear and tear excepted. Maintenance shall further mean, as it relates to landscaping, the exercise of regular fertilization, irrigation and other garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

1.16 Member. "Member" shall mean and refer to every person or entity holding a membership in the Association.

1.17 Mortgage and Mortgagee. "Mortgage" shall mean and refer to a mortgage or deed of trust encumbering a Lot or other portion of the Development. A "Mortgagee" shall include the beneficiary under a deed of trust as well as the mortgagee under a mortgage, as well as any guarantor or insurer of a Mortgage, including, without limitation, any Mortgagees of Declarant. An "institutional" Mortgagee is a Mortgagee that is (i) a bank, (ii) a savings and loan association, (iii) an established mortgage company or other entity chartered under federal or state law whose principal business is lending money on the security of real property or investing in such loans, (iv) any insurance company, or (v) any federal or state agency or instrumentality, including without limitation the Federal National Mortgage Association ("FNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Federal Housing Administration ("FHA"), and the Veterans Administration (the "VA"). "First Mortgage" and "First Mortgagee" shall mean a Mortgage or Mortgagee with priority over all other Mortgages and Mortgagees, respectively, encumbering the same Lot or other portion of the Development.

1.18 Association Maintenance Areas. "Association Maintenance Areas" means those portions of each Lot which are outside the area covered by (i) the Dwelling, (ii) the Garage, (iii) the fencing on each Lot, and (iv) the areas enclosed by and within such Dwelling, Garage, and fencing. Without limiting the generality of the foregoing, the Association Maintenance Areas include, without limitation, (i) the front yard (including walkways and landscaping, but excluding driveways) located within the portion of each Lot from the front yard fencing (as defined in this paragraph) to the sidewalk adjacent to the front boundary line of each Lot, and (ii) the rear and/or side portion of each Lot located outside of the fencing on the rear and/or side of each Lot; all as originally constructed by Declarant or as constructed

thereafter in accordance with the provisions of this Declaration. As used in this paragraph, "front yard fencing" means the fencing immediately adjacent to the front of each Dwelling and approximately parallel with the front boundary line of each Lot and approximately perpendicular to the side fencing of each Lot. Although owned in fee simple by the Owners of the applicable Lots of which they are a part, the Association Maintenance Areas shall be maintained by the Association as part of the Common Area. A set of plot plans for each of the Lots, showing the approximate location of location of the Association Maintenance Area on each Lot, shall be maintained at all times at the offices of the Association.

1.19 Owner. "Owner" shall mean and refer to each person or entity (including Declarant) holding a record ownership interest in a Lot. "Owner" shall also include a contract purchaser pursuant to a contract of sale recorded in the office of the Recorder of the County, provided that the vendor under such contract of sale has assigned all of his rights, title and interest to participate in the Association to the contract purchaser thereunder, and such assignment is either contained in said contract of sale or is otherwise recorded in the Office of the County Recorder. "Owner" shall also mean a Member of the Association, and ownership of a Lot shall include membership in the Association. "Owner" shall not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation or as a contract purchaser under a contract of sale which does not satisfy the conditions set forth in this paragraph.

1.20 Patio Easement Area. "Patio Easement Area" shall mean the areas designated on the Map as "use easements" along the side property lines of most of the Lots. An easement (the "Patio Use Easement") for the use of each Patio Easement Area shall be and is granted to the adjacent Lot and the Owner thereof pursuant to the provisions of subsection 2.6(f) hereof. The permitted uses of the Patio Easement Area shall be as set forth in said subsection 2.6(f).

1.21 Private Street. "Private Street" shall mean any roadway constructed in the Common Area to provide ingress to and from the Project (including streets, street signs, street lights, traffic signs and marks, striping, and the storm drain facilities which are a part thereof), excluding therefrom any roadways constructed upon the Project which have been or shall be in the future dedicated to the City or County, as applicable. The Private Streets are the areas shown on the Subdivision Map as Cliff Walk Drive, Castle Hill Court, Marina Ridge Court, and Narragansett Court.

1.22 Project; Development. "Project" or "Development" means the Property and the improvements thereto and thereon.

1.23 Subdivision Map. "Subdivision Map" or "Map" means the recorded final subdivision map referred to in Exhibit A hereto, as modified by the recorded certificate of correction referred to in said Exhibit A.

1.24 Visible from Neighboring Property. "Visible from Neighboring Property" means, with respect to any given object, that such object is or would be visible to an average person six (6) feet tall standing on an assumed floor elevation one (1) feet above the surface of any neighboring property in the area involved, assuming that such property had an elevation equal to the highest elevation of the ground surface of that portion of the private area upon which such object is located.

ARTICLE 2.

PROPERTY RIGHTS, RIGHTS OF ENJOYMENT, AND EASEMENTS

2.1 Ownership of Lot. Ownership of each Lot within the Development shall include title in fee simple to a Lot, a membership in the Association (which shall own the Common Area in fee simple), and any nonexclusive easement or easements appurtenant to such Lot over the Common Area or any other Lot, all as described in this Declaration, in the deed to the Lot, or in such other recorded instrument relating thereto, if any.

2.2 Nonexclusive Easements of Enjoyment; Association Rights. Every Owner has a nonexclusive easement of use and enjoyment in and to and throughout the Common Area and any improvements or facilities located therein, and for ingress, egress and support over and through the Common Area and Private Streets, and a nonexclusive easement for accepting and draining, upon and across the Common Area and Private Streets and the other Lots, rainwater or other water runoff from the Dwelling situated on each Lot. Each such easement shall be appurtenant to and pass with the title to every Lot, subject to the following rights and restrictions:

(a) The right of the Association to limit the number of guests and to adopt the Association Rules;

(b) The right of the Association to borrow money to improve, repair, or maintain the Common Area and Association Maintenance Areas, subject to the vote or written approval of at least sixty-seven percent (67%) of the total voting power of Owners, including therein at least sixty-seven percent (67%) of the total voting power of Owners other than Declarant;

(c) The right of the Association to assign, rent, license or otherwise designate and control use of any unassigned parking or storage spaces within, and any recreational facility situated upon, the Common Area;

(d) The right of the Association to suspend the right of an Owner to use any recreational or other facility in the Common Area as provided in Section 5.1(c) hereof;

(e) The right of the Association to adopt and enforce Association Rules concerning the control and use of the Private Streets and any other private streets, roadways and paving areas located upon or across the Common Area, including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon the Private Streets and any such other private streets and roadways. Declarant and/or the Association is authorized to delegate to a municipality or other governmental entity or to contract with any private security patrol company to exercise its authorized rights in connection with the Private Streets and any other such private streets, roadways, and parking areas.

2.3 Entry or Use Rights. Each Lot or the Common Area, as the case may be, shall be subject to the following rights of entry and use:

(a) The right of Declarant or its designees to enter upon any portion of the Development to construct the improvements to the Development and to make repairs and remedy construction defects, provided that such entry shall not interfere with the use or occupancy of any occupied Lot unless authorized by its Owner, which authorization shall not be unreasonably withheld.

(b) The right of the Association, or its agents, to enter any Lot to cure any violation or breach of this Declaration or the Bylaws or the Association Rules, provided that at least thirty (30) days prior written notice of such violation or breach (except in an emergency) has been given to the Owner and provided that, within the thirty (30) day period, such Owner has not acted to cure the specified violation or breach. The Association shall be entitled to levy a special assessment for its costs of effecting such cure against the Owner in accordance with Section 6.5(d) below. The rights of entry and cure shall be immediate in case of an emergency originating upon or threatening any Lot, whether or not the Owner is present.

(c) The right of the Association, or its agents, to enter any of the Lots to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Common Area and the Association Maintenance Areas or the Owners in common; watering, planting, cutting, removing, and otherwise caring for the landscaping upon the Common Area and the Association Maintenance Areas, cleaning, repairing, replacing and otherwise maintaining or causing to be maintained any underground utility lines serving each Lot. The rights shall be immediate in case of an emergency originating upon or threatening any Lot, whether or not the Owner is present.

(d) The right of any Owner, or Owner's representatives to enter the Lot of any other Owner for purposes of performing installations, alterations or repairs to mechanical or electrical

easements or rights of way. However, no such easement may be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner of his Lot and/or any recreational facilities located in the Development, unless approved by all of the affected Owner or Owners and by the vote or written consent of holders of not less than seventy-five percent (75%) of the voting rights of each class of Members and their respective First Mortgagees, as applicable.

2.6 Easements. There are hereby specifically reserved for the benefit of the Lot Owners, in common and for each Owner severally, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights-of-way as hereinafter described.

(a) There is reserved for the benefit of each Lot as dominant tenement, an easement for utility services over, under and through the Development, the Common Area, and each other Lot, jointly as the servient tenement.

(b) The Association shall have an easement appurtenant to the Common Area and all other Lots through each Lot for the maintenance and repair of the Common Area and the Association Maintenance Areas.

(c) Each Owner agrees, by acceptance of his deed, to permit free access to slopes or drainage ways located on his Lot, which slopes or drainage ways affect said other Lots, when such access is essential for the maintenance of permanent stabilization on said slopes or for the maintenance of said drainage ways for the protection or use of said other Lots.

(d) Each Owner agrees, by the acceptance of his deed, not to interfere with or obstruct the established drainage pattern over his Lot from or to adjacent or other Lots. For the purpose of this paragraph, "established drainage" means the drainage that existed at the time that such Lot is conveyed to an Owner by Declarant. Each Lot has been graded to provide the correct drainage pattern for water flow, and each Owner acknowledges, by acceptance of his deed, that he may not alter or interfere with this drainage, and that Declarant shall not be responsible for any alterations or interference in the drainage pattern as it was established at the time that each Lot was graded.

(e) Each Owner agrees, by the acceptance of his deed, that his Lot may be granted subject to easements for installation and maintenance of the utilities, sewer pipelines and facilities, and drainage facilities, over each of said Lots, and all pipelines and other facilities located and to be located in said easements, are reserved as shown on the said recorded Map and such easements that may be recorded by the parties hereto either prior or subsequent to the recordation of this Declaration. Within these easements, no structure shall be placed or permitted and no

changes may be made which may change the direction in the flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easement. The easement areas of each Lot and all improvements within it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. No structure shall be placed within an easement which will interfere with the use of, or the maintenance of, the facilities for which the easement has been granted. In addition, easements for all sewer pipelines and other sewer facilities located and to be located within public roads, streets or highways abutting each of said Lots are hereby reserved.

(f) (1) As set forth in Section 1.20 above, certain Lots contain Patio Easement Areas which shall be subject to Patio Use Easements as hereinafter granted and described. With respect to each Patio Easement Area, a perpetual Patio Use Easement over each Patio Easement Area is hereby granted to the immediately adjacent Lot and the Owner thereof, as the dominant tenement, over each Lot containing a Patio Easement Area, if any, located on each Lot, as the servient tenement.

(2) The Patio Easement Areas and the Patio Use Easements shall be for the exclusive use of the Lot and Lot Owner benefiting therefrom, and shall be used for patio and sideyard purposes only. The Lot and Lot Owner benefiting from each Patio Use Easement shall be responsible for the maintenance of the applicable Patio Easement Area in the same manner as if the Patio Easement Area were a part of such Owner's Lot. Each Lot and Owner benefiting from a Patio Use Easement shall indemnify, defend, and hold harmless the Lot and Owner burdened by such Patio Use Easement with respect to any claims, damages, costs, and expenses incurred in connection with the use or maintenance of the applicable Patio Easement Area.

2.7 Other Easements. Each Lot and its Owner and the Association, as the case may be, is declared to be subject to all easements, dedications, and rights-of-way granted or reserved in, on, over and under the Property and each Lot as shown on the Subdivision Map.

2.8 Delegation of Use. Any Owner may delegate his rights of use and enjoyment, including easements, in the Development to the members of his family, his guests and invitees, to his lessees, tenants, employees, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject, however, to this Declaration and said Bylaws and Association Rules. However, if an Owner has sold his Lot to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family, and the Owner's guests, tenants, employees, and invitees shall not be entitled to use and enjoy any of such rights in the Project while the Owner's Lot is occupied by the contract purchaser or tenant. Instead, the contract purchaser or tenant,

while occupying such Lot, shall be entitled to use and enjoy such rights, including the recreational facilities, and may delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner during the period of his occupancy. Each Owner shall notify the Association of the names of any contract purchasers or tenants of such Owner's Lot. Each Owner, contract purchaser, or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or performance of the covenants, conditions and restrictions contained in this Declaration. Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Lot shall require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

ARTICLE 3.
USE RESTRICTIONS

3.1 Residential Use. Lots shall be used for residential purposes only. Except as otherwise expressly provided in this Declaration, no part of the Development shall ever be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purpose. The foregoing notwithstanding, for a period of three (3) years from the date of recordation of this Declaration, Lots owned by Declarant may be used by Declarant or its designees as models, sales offices, and construction offices for the purpose of developing, improving, and selling Lots in the Development.

3.2 Leasing. Nothing set forth in this Declaration shall prevent an Owner from leasing or renting his Lot for residential purposes; provided, however, that (i) any lease or rental agreement shall be in writing and any lessee or renter thereunder shall agree to abide by and be subject to all terms and provisions of this Declaration and the Association rules, (ii) any lease or rental agreement shall comply with Section 2.8 above; and (iii) any lease or rental agreement shall specify that failure to abide by such provisions shall be a default under said lease or rental agreement; and provided further that with the exception of a Mortgagee in possession of a Lot following a default on a Mortgage, a foreclosure proceeding, or acceptance of a deed or

other arrangement in lieu of foreclosure, no Owner shall rent or lease his Lot for transient or hotel purposes.

3.3 Maintenance; Owner's Responsibility. Except as provided in Section 5.2(b), Each Owner of a Lot shall be responsible for maintaining the structures located upon his Lot, including without limitation the equipment and fixtures in the structure and its walls, roof, ceilings, windows and doors, together with the rear yard drain located on his Lot, all fencing located on his Lot, and all landscaping behind the front yard fence and within the rear and side yard fencing on each Lot, as constructed by Declarant, in a clean, sanitary, workable and attractive condition. However, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, except that windows may be covered only by drapes, shutters, blinds or shades and cannot be painted or covered by foil, cardboard, or other similar materials. Each Owner shall also be responsible for maintenance, repair, and replacement of all plumbing, electrical, heating, air-conditioning, and gas lines, conduits, apparatus, and equipment servicing his Lot and Dwelling, and repair, replacement, and cleaning of the windows and glass located thereon. If an Owner is required to make any repair or if the Owner desires to construct any improvement or install any fixture or equipment that will affect or involve any bearing wall or other structural member, the prior written approval of the Architectural Committee must first be obtained. However, such approval need not be obtained to make emergency repairs, provided that the structure so affected is restored to its original condition at the Owner's expense.

3.4 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind, shall be permitted upon or in the Development, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface of the Development or within five hundred (500) feet below the surface of the Development. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted upon the Development.

3.5 Offensive Conduct; Nuisances. No noxious or unreasonable activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be carried on, upon or within the Development, nor shall anything be done thereon which may be or become an annoyance or nuisance to the residents of the Development, or which shall in any way interfere with the quiet enjoyment of occupants of Lots. Unless otherwise permitted by the Association, no Owner shall serve food or beverages, cook, barbecue or engage in similar activities, except within such Owner's Lot. Unless permitted by the Association, no Owner shall install recreational, play or athletic equipment or engage in such activities within the Common Area or Association Maintenance Areas.

3.6 Parking Restrictions. Unless otherwise permitted by the Association, no automobile shall be parked or left on any property

subject to this Declaration other than on or within a Garage or assigned or appurtenant parking stall or space or in any designated guest parking area or space. No boat, trailer, camper, truck, or commercial vehicle shall be parked or left on any part of the Development other than in a parking area designated by the Association for the parking and/or storage of such vehicles. However, parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association Rules. Garages shall be used for the parking of automobiles only and shall not be converted to living or recreational activities. Garage doors shall remain closed at all times except when being used to enter or exit.

3.7 Signs. No signs of any kind shall be displayed to the public view on or from any Lot or on or from the Common Area or Association Maintenance Areas without the approval of the Association, except such signs as may be used by Declarant or its designees for the purpose of developing, improving, and selling Lots within the Project for a period of time not to exceed the date on which the last Lot is sold by Declarant, or three (3) years from the date of recordation of this Declaration, whichever is sooner. In exercising its rights under this provision, Declarant shall not unreasonably interfere with the use of the Common Area and Association Maintenance Areas by any Owner. The foregoing notwithstanding, one sign of customary and reasonable dimensions advertising a Lot for sale or rent may be placed with each Lot, the location and design thereof to be subject to the approval of the Association; provided, however, that if local ordinance or regulation allows a for-sale or for-rent sign or signs of larger dimensions, such ordinance or regulation shall control as to such dimensions.

3.8 Antennae, External Fixtures, Etc. No television or radio poles, antennae, flagpoles, clotheslines or other external fixtures other than those originally installed by Declarant or as approved pursuant to Article 12 below, and any replacement thereof, shall be constructed, erected or maintained on or within any Lot, including any structures thereof. No wiring, insulation, air conditioning or other machinery or equipment other than that originally installed, installed by Declarant, or as approved pursuant to Article 12 below, and any replacements thereof, shall be constructed, erected or maintained on or within any Lot, including any structures thereof. Each Owner shall have the right to maintain television or radio antennae within completely enclosed portions of his Dwelling. The location of common antennae or connection facilities for any cable television serving more than one Lot shall be as designated by the Association or the Architectural Committee, and each Lot and its Owner shall be subject to the right of the Association to install, use, and maintain such common antennae or facilities.

3.9 Awnings, Etc. No awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere

within the Development except such as are installed in accordance with the original construction of the Development, and any replacement thereof, or as are authorized and approved by the Association or the Architectural Committee.

3.10 Animals. No animals, reptiles, rodents, birds, fish livestock or poultry shall be kept in any Lot or elsewhere within the Development, except that domestic cats, fish, and birds within bird cages may be kept as household pets within any Lot, provided they are not kept or raised therein for commercial purposes, or in unreasonable quantities as determined by the Board and/or as set forth in the Association Rules from time to time. All dogs must be maintained on a leash while in the Common Area. The Association shall have the right to prohibit maintenance of any animal that in the sole and exclusive opinion of the Board constitutes a nuisance to any other Owner. Each person bringing or keeping a pet upon the Development shall be liable to other Owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests, and invitees, for any damage to persons or property proximately caused by any pet brought upon or kept upon the Development by that person or by members of his family, his guests or invitees.

3.11 Gas or Liquid Storage. No tank for the storage of gas or liquid fuel shall be installed on or in the Development unless such installation is done by Declarant or has been approved by the Association or the Architectural Committee.

3.12 Diseased Plants. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained within the Development.

3.13 Restricted Use of Recreational Vehicles, Etc. No boat, truck, trailer, van, camper, recreational vehicle, or tent shall be used as a living area while located on the Development. No truck, trailer, van, camper, or recreational vehicle may be stored within the Development unless it is that Owner's principal means of transportation. However, trailers or temporary structures for use incidental to the initial construction of the Development or the initial sales of Lots may be maintained within the Development, provided that such use does not unreasonably interfere with any Owner's use of the Common Area. Such trailers or structures shall be promptly removed on completion of all initial construction and sales.

3.14 Trash Disposal. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept on any portion of the Development other than in the receptacles customarily used therefor. Except on the scheduled day for trash pickup, these receptacles shall be located in places specifically designated for such purpose.

3.15 Outside Drying and Laundering. No exterior clothesline shall be erected or maintained and there shall be no exterior

drying or laundering of clothes on balconies, patios, porches, or other outside areas.

3.16 Fires. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor and such other fires as may from time to time be permitted by the Association Rules.

3.17 Mailboxes. There shall be no exterior newspaper tubes and no freestanding mailboxes unless freestanding mailboxes are required by the United States Postal Service, in which event their design; construction and placement shall be as originally determined by Declarant or as approved by the Architectural Committee. Unless otherwise required by the United States Postal Service, any such mailboxes shall be constructed by the Declarant and maintained by the Association.

3.18 Basketball Standards. Basketball standards are specifically prohibited from being attached to the front or back of a Dwelling or placed in the front, back, or side yard of any Lot, unless their design, construction and placement shall have been first approved by the Architectural Committee.

3.19 Common Area Trees. No Owner shall cut, trim, prune, remove, replace, or otherwise alter or affect the appearance or location of any living tree, plant, or other vegetation located in any portion of the Common Area or Association Maintenance Areas without the prior written consent of the Architectural Committee. Should any Owner fail to comply with the restriction imposed by this provision, the Association may recover from such Owner the cost of restoring or replacing any such vegetation, together with any consequential damages resulting therefrom.

3.20 Exterior Alterations. Except as provided in Article 12 below, no Owner shall, at his expense or otherwise, make any alterations or modifications to the exterior of the buildings, railings or walls situated within the Development without the prior written consent of the Association or the Architectural Committee and the holder of any Mortgage then of record whose interest may be affected thereby.

3.21 Division of Lots. None of the Lots shall be divided by subdivision map or parcel map, or otherwise, without the prior approval of the Association and the holder of any Mortgage then of record whose interest may be affected thereby.

3.22 Compliance With Laws, Etc. Nothing shall be done or kept in any Lot or in the Common Area which might increase the rate of, or cause the cancellation of, insurance on the Development, or any portion thereof, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Lot which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow furniture, furnishings or other personal

belongings of such Owner to remain within any portion of the Common Area or Association Maintenance Areas except as may otherwise be permitted by the Association.

3.23 Indemnification. Each Owner shall be liable to the remaining Owners for any damage to the Common Area or Association Maintenance Areas which may be sustained by reason of the negligence of that Owner, members of the Owner's family, the Owner's contract purchasers, tenants, guests or invitees, but only to the extent that any such damage is not covered by casualty insurance in favor of the Association. Each Owner, by acceptance of his deed, does further agree for himself and for the members of his family, his contract purchasers, tenants, guests or invitees, to indemnify each and every other Owner, and to hold him harmless from, and to defend him against, any claim of any person or persons for personal injury or property damage occurring within the Lot of the particular Owner, except to the extent (i) that such injury or damage is covered by liability insurance in favor of the Association or other Owner, or (ii) the injury or damage occurred by reason of the negligent act or omission of the Association or of any other Owner or person temporarily visiting said Lot.

3.24 Future Construction. Nothing in this Article 3 or elsewhere in this Declaration shall limit the right of Declarant, its successors and assigns, to complete construction of improvements to the Common Area and to Lots owned by Declarant or to alter the foregoing or to construct such additional improvements as Declarant deems advisable prior to completion and sale of the entire Development. The rights of Declarant hereunder and elsewhere in this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Development, by an express assignment incorporated in a recorded deed or other instrument transferring such interest to such successor or to a Mortgagee acquiring Declarant's interest in the Development by foreclosure or by deed in lieu of foreclosure.

3.25 Owner's Obligation for Taxes.

(a) To the extent allowed by local law, all Lots and the membership of an Owner in the Association shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to First Mortgages under local law shall relate only to the individual Lots and not to the Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor against his Lot and against his personal property.

(b) Until such time as real property taxes have been segregated by the County Assessor of the County, they shall be paid by the respective Owners. The proportionate share of the taxes for a particular Lot shall be determined by dividing the initial sale price or offered initial sale price of the Lot by the total initial sales prices and offered initial sales prices of all

Lots within the Development (the term "offered initial sales price" means the price at which an unsold Lot is then being offered for sale by Declarant). If, and to the extent that taxes are not paid by any Owner of a Lot and are allowed to become delinquent, they shall be collected from the delinquent Owner by the Association, and the Association shall be entitled to reasonable attorneys' fees and costs incurred in connection with such collection.

3.26 Improvements. Structures and improvements (including accessory structures) located or placed upon Lots shall conform to the following standards:

(a) All Dwellings shall have a net floor area in excess of 1200 square feet, excluding Garages, patios and/or deck areas. Unless approved by the Architectural Committee and by the appropriate City agency or agencies having jurisdiction thereof, (i) no improvements on a Lot may be expanded beyond the established footprint of such improvements as originally constructed by Declarant, and (ii) no improvements on a Lot may be constructed or reconstructed higher than the height as originally constructed by Declarant.

(b) Parking areas for not less than two (2) automobiles shall be provided within each Lot by Garages constructed by Declarant or which conform to the requirements of the Architectural Committee. No Owner shall convert, either temporarily or permanently, his Garage to any other use (with the exception of Garages converted to sales areas by Declarant, subject to Section 3.1 hereof).

3.27 Restrictions on Common Area, Etc. Except as otherwise set forth in this Declaration, the Common Area and Association Maintenance Areas, except for any structures located thereon, shall be improved and used only for (i) vehicular and pedestrian movement within the Development, including access to Lots; (ii) recreational use by the Owners and occupants of Lots and their guests, subject the Association Rules; and (iii) beautification of the Development and providing privacy to the residents thereof. Without limiting the generality of the foregoing, the following shall apply:

(a) No activity shall be carried on in the Common Area and the Association Maintenance Areas which shall be contrary to the Association Rules.

(b) No Owner shall make any alteration or improvement to the Common Area or the Association Maintenance Areas or remove any plantings, structures, furnishings or other objects therefrom except with the written consent of the Board.

(c) The Owner of each Lot shall be liable to the Association for all damage to the Common Area or the Association Maintenance Areas or to any improvements thereon or thereto,

including but not limited to buildings, recreational facilities, streets, street signs, street lights, traffic signs and marks, striping, storm drain facilities and landscaping, caused by such Owner, his guests, invitees, agents or other occupant of such Owner's Lot.

(d) No automobiles, boats, motorcycles, trailers, campers, motor homes or similar equipment shall be stored in any portion of the Common Area or the Association Maintenance Areas (including without limitation any driveway portion of the Common Area) and no such equipment shall be repaired thereon or therein. No dismantled or wrecked vehicle (including parts) or equipment shall be parked, stored, deposited or the like in the Common Area or the Association Maintenance Areas.

3.28 Speed Limit. The vehicular speed limit on the Private Street shown as Harbour Towne Drive on the map shall not exceed twenty (20) miles per hour, and such speed limit shall be reflected in appropriate signage to be maintained by the Association pursuant to Section 5.2(b) below.

3.29 Preservation of Views. No tree, shrubbery, or other obstruction (i.e., satellite dishes) of any kind shall be planted, erected, or maintained, as the case may be, on any Lot in such a manner as to unreasonably obstruct or interfere with the View obtainable from each Lot. As used herein, the term "View", as applied to each Lot, shall mean the view corridor (if any) within the side boundaries of each Lot, projected through the rear boundary of each Lot on the same plane as the more elevated of (i) the building pad for the Dwelling, or (ii) the top of any solid fence on the rear line of the Lot (as originally constructed by Declarant). The question of unreasonableness shall be determined by the Architectural Committee, and the determination of the Architectural Committee shall be final and shall be binding upon every Owner. The Architectural Committee shall also be empowered to force the cutting, pruning, or trimming of trees and shrubs in order to preserve the View on each Lot.

3.30 Enforcement. The failure of any Owner to comply with the provisions of this Article 3, or with any other provision of this Declaration, shall give rise to a cause of action in the Association and in any aggrieved Owner for the recovery of damages, or for injunctive relief, or both.

ARTICLE 4.

THE ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

4.1 Formation. The Association is a nonprofit mutual benefit corporation formed under the laws of the State of California, and upon the close of the first Lot sale to an Owner, shall be and become charged with the duties and vested with the powers set forth in the Articles, the Bylaws, and this Declaration.

4.2 Association Action. Except as to matters expressly requiring the approval of Owners as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association, including without limitation the exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may elect or appoint, or such persons or entities with delegated authority under the provisions of Section 5.1(d) below.

4.3 Membership.

(a) Qualifications. Each Owner, including Declarant, shall be a Member of the Association. Membership shall be appurtenant to each Lot, and the holding of an ownership interest in a Lot shall be the sole qualification for membership, provided that no Owner shall hold more than one membership even though such Owner, including Declarant, may own, or own an interest in, more than one Lot. Ownership of a Lot or interest therein shall be the sole qualification for an entitlement to membership in the Association. Each Owner shall remain a Member of the Association until such time as his ownership or ownership interest in all Lots in the Development ceases for any reason, at which time his membership in the Association shall automatically cease. A Member shall not include (i) persons or entities who hold an interest in a Lot merely as security for performance of an obligation, (ii) contract purchasers not qualifying as Owners under Section 1.20 above, or (iii) trustees under any instrument securing performance of an obligation.

(b) Members' Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, Bylaws, and Association Rules, as the same may be amended from time to time .

(c) Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Lots shall be appurtenant to each such Lot, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon a transfer of title to each such Lot or interest therein and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot or interest therein shall operate automatically to transfer the membership rights in the Association appurtenant thereto to the new Owner thereof.

4.4 Voting.

(a) Majority Approval Required. Except as otherwise provided in this Declaration, the Articles, or the Bylaws, and subject to the provisions of Section 4.4(b) below, all matters requiring the approval of Owners shall be deemed approved if Owners holding a majority of the total voting power of all Owners assent to by written consent or if approved at any duly called regular or special meeting at which a quorum is present, either in

person or by proxy, by Owners holding a majority of the total voting power of all Owners present, either in person or by proxy.

(b) Two Class Voting. The Association shall have two (2) classes of voting membership as follows:

(1) Class A: Class A Owners are all Owners, with the exception of Declarant. Each Class A Owner shall be entitled to one (1) vote for each Lot in which he or she owns an interest. If more than one Owner owns an interest in a Lot, the vote for such Lot shall be exercised as they determine, but in no case shall more than one (1) vote be cast with respect to that Lot.

(2) Class B: The Class B Owner shall be the Declarant, who shall be entitled to three (3) votes for each Lot owned in the Project. Class B membership shall cease and be irreversibly converted to Class A membership on the occurrence of one of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equal the total outstanding votes in the Class B membership; or

(ii) On the second anniversary of the original issuance of the final subdivision public report for the Development by the Commissioner of the California Department of Real Estate.

As long as two classes of voting memberships exist, any action by the Association that requires approval by the Owners shall require the approval by the designated percentage of voting power in each class, except for the action described in Section 5.2(i).

(c) Joint Owner Votes. The voting rights for each Lot may not be cast on a fractional basis. In the event two or more co-owners of a Lot are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the same as to the matter in question. If any Owner or Owners cast the voting rights of a particular Lot, it shall thereafter be conclusively presumed for all purposes that they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one person or entity casts the voting rights for a particular Lot, said voting rights shall not be counted and shall be deemed void.

(d) Vesting of Voting Rights. No Owner shall be entitled to vote in the manner provided herein unless and until assessments against such Owner's Lot have been levied by the Association.

(e) Secret Ballot. Voting for members of the Board shall be by secret ballot.

(f) Cumulative Voting. The election of members to the Board may be by cumulative voting pursuant to California Corporations Code Section 7615 and as described herein, provided an Owner has placed a candidate's name in nomination prior to the voting and given notice at the meeting prior to the voting of the Owner's intention to cumulate votes. If any Owner has given such notice, then all Owners shall have the right to cumulate their votes for candidates in nomination. Under cumulative voting, each Owner, either in person or by proxy, may give a single candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes the Owner is entitled to exercise under this Declaration, or the Owner may distribute these cumulated votes among any two or more candidates as the Owner desires. The candidates receiving the highest number of votes up to the number of Board members to be elected shall be elected. Unless the entire Board is removed by a vote of the Owners, an individual director may not be removed prior to the expiration of his or her term if the votes against removal would have been sufficient to elect that director if cast cumulatively at an election at which the same total number of votes were cast and all directors authorized at the time of the most recent election of that director were being elected. These cumulative voting provisions do not apply to the election of specially elected directors by Owners other than Declarant pursuant to Section 4.4(g) below.

(g) Specially Elected Director(s). As long as a majority of the voting power of the Association resides in Declarant, or as long as there are two outstanding classes of membership in the Association, the election of twenty percent (20%) of the directors (the "specially elected directors") shall be determined at a special election held immediately before the regular election of directors (except in the case of the election of a specially elected director following removal of his predecessor). At the duly constituted meeting of Members, nominations for the specially elected director(s) shall be made by the nominating committee, if any, appointed by the Board pursuant to the Bylaws, and from the floor. When nominations have been closed, the special election shall take place. Declarant shall not have the right to participate in or vote in such special election (although Declarant or Declarant's representatives may be present), and the candidate(s) receiving the highest number of votes up to the number of specially elected director(s) to be elected shall be deemed to be the specially elected director(s), and the term, powers and duties of such director(s) shall be the same as that of any other director. In case of the death, resignation, or removal of a specially elected director, his successor shall be elected at a special meeting of Members, and the provisions set forth in this paragraph shall apply to the election of a successor. Except as otherwise provided in this Declaration, the provisions of this Declaration and of the Articles and Bylaws applicable to directors, including their election and removal, shall apply to a specially elected director. A specially elected director may be removed from office prior to

the expiration of such director's term of office only by the vote of at least fifty-one percent (51%) of the voting power residing in Members other than Declarant.

ARTICLE 5.
POWERS AND DUTIES OF THE ASSOCIATION

5.1 Powers. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California, subject only to such limitations on the exercise of its powers as are set forth in the Articles, the Bylaws, and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

(a) Assessments. The Association shall have the power to establish, fix and levy assessments against the Owners of Lots and to enforce payment of such assessments all in accordance with the provisions of this Declaration.

(b) Right of Enforcement. The Association shall have the power and authority from time to time in its own name and on its own behalf, or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits at law for damages or in equity to restrain and enjoin any breach or threatened breach of any provisions of this Declaration and to enforce by mandatory injunction, or otherwise, all of said provisions. Except as may be otherwise provided in this paragraph, the Association does not have the power or authority to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of such Owner's Lot if the Owner does not comply with the provisions of this Declaration or the Association Rules, except when the loss or forfeiture is the result of court judgment, an arbitration decision, a foreclosure, or a sale under a power of sale based upon failure of the Owner to pay assessments levied by the Association.

(c) Right to Impose Sanctions.

(1) In addition to any other enforcement rights described in this Declaration or authorized by law, and subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by this Declaration, the Bylaws, or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws, or the Association Rules:

(i) Impose monetary penalties, including late charges and interest;

Association; (ii) Suspend voting rights in the
Area; and (iii) Suspend use privileges for the Common
(iv) Commence a legal action for damages,
injunctive relief, or both.

(2) The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees. The Association may take more than one of the foregoing enforcement actions against any one violation or threatened violation, provided that a suspension of use privileges shall not exceed thirty (30) days (unless the suspension is for delinquent assessments) and a monetary penalty shall not exceed \$100 (excluding late charges imposed for delinquent assessments) for any one violation. The Association, in its sole discretion, may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate.

(3) The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his or her Lot except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

(4) The enforcement of monetary penalties is subject to the restrictions described in Section 6.5(d).

(5) If an Owner fails to cure a default within sixty (60) days after written notice to that Owner, the Association shall give the notice required in Section 11.9 to the Mortgagee or Mortgagees of record.

(6) No disciplinary action may be taken against an Owner without notice and an opportunity to be heard in accordance with the provisions of California Corporations Code §7341 and Section 8.5 of the Bylaws.

(d) Delegation of Powers. Subject to Section 11.17 below, the Association may delegate any of its powers, duties and responsibilities to committees, officers or employees, including a professional managing agent (such managing agent being sometimes referred to in this Declaration as the "Manager"). The foregoing notwithstanding, the Association may not delegate to the Manager the following powers: (i) to levy fines, hold hearings, or impose discipline; or (ii) to make capital expenditures.

(e) Association Rules. The Association may adopt, amend, and repeal such rules and regulations as it deems reasonable (previously defined in this Declaration as the "Association Rules"). The Association Rules shall govern the use of the Common Area and Association Maintenance Areas by an Owner, the family members of an Owner, or by any guest, invitee, tenant, lessee, or contract purchaser, or their respective family members, guests or invitees; provided, however, that the Association Rules shall not be inconsistent with or materially alter any provisions of this Declaration. A copy of the Association Rules, as the same may from time to time be adopted, amended or repealed, shall be delivered to each of the Owners and all occupants of the Development. In the event of any conflict between any such Association Rules and any provisions of this Declaration, the provisions of this Declaration shall control to the extent of such inconsistency.

5.2 Duties of the Association. In addition to the duties described in the Articles and the Bylaws, and without limiting the generality thereof, the Association shall have the obligation to conduct all business affairs of common interest to all Owners, and to perform each of the following specific duties:

(a) Acceptance of Common Area. The Association shall accept title to all Common Area (including without limitation the Private Streets) conveyed to it by Declarant pursuant to Article 7 hereof.

(b) Operation and Maintenance of Common Area and Association Maintenance Areas. The Association shall manage and maintain in good condition and repair the Common Area and the Association Maintenance Areas, including without limitation the facilities, improvements, and landscaping thereon and thereof, and any and all other property acquired by the Association, including personal property, in a first class condition and in a good state of repair. In this connection, the Association may employ a Manager and may enter into contracts for services or materials for the benefit of the Association or the Common Area and the Association Maintenance Areas, subject to the restrictions set forth in this Declaration. Without limiting the generality of the foregoing, the Association shall maintain appropriate signage on the Private Street shown on the Map as Cliff Walk Drive to reflect the speed limit described in Section 3.28 above. When necessary, the Association shall have the right, after giving the Owner of a Lot twenty-four (24) hours prior notice, to enter upon any privately-owned Lot in connection with construction, maintenance or repair for the benefit of the Common Area, the Association Maintenance Areas, or the Owners in Common, except that in the case of an emergency originating in or threatening a Lot, the right of entry shall be immediate.

(c) Taxes and Assessments. The Association shall pay all real and personal property taxes and assessments and all other

taxes levied against the Association, the Common Area, and/or the personal property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they must be paid, or a bond posted insuring payment, prior to the sale or disposition of any property to satisfy the payment of any such contested taxes and assessments.

(d) Water and Other Utilities. Subject to Section 5.3 below, the Association shall acquire, provide and/or pay for water, gas and electricity for Lots, to the extent that such utilities are not separately metered, and acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electricity, telephone, and gas and other necessary utility services for the Common Area.

(e) Insurance. The Association shall obtain from reputable insurance companies, and maintain in effect, the insurance described in Article 8 below.

(f) Enforcement of Restrictions and Rules. The Association shall perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration and/or the Association Rules.

(g) Preparation and Distribution of Financial Statements, Reports, and Copies of Governing Instruments. The Association shall prepare and distribute the following financial statements, reports, and copies of the governing instruments as indicated:

(1) Balance Sheet; Operating Statement. A balance sheet rendered as of an accounting date that is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a Lot (the "accounting date"), and an operating statement for the period from the date of the first closing to such accounting date. The operating statement shall include a schedule of assessments received and/or receivable identified by the Lot number and name of the Owner assessed. Copies of the balance sheet and operating statement shall be distributed to each Owner and to any Mortgagee that has requested a copy within sixty (60) days after such accounting date.

(2) Pro Forma Budget. A pro forma operating budget for each fiscal year consisting of: (i) estimated revenue and expenses on an accrual basis; (ii) the amount of cash reserves currently available for replacement or major repair of the Common Area facilities and for contingencies; and (iii) an itemized estimate of the remaining life of the major components of the Common Area for which the Association is responsible, a description of the methods of funding used to defray the costs of future repairs, replacements, or additions to such components, and a general statement of the procedures used by the Association in

calculating and establishing reserves to defray such costs. The budget shall be prepared consistently with the prior fiscal year's pro forma operating budget, and shall include adequate reserves for contingencies and for maintenance, repairs, and replacement of the Common Area improvements and other improvements or personal property owned or maintained by the Association, which reserves shall be sufficient to satisfy the requirements of any institutional Mortgagee. A copy of the pro forma operating budget shall be distributed to each Owner and to any Mortgagee that has requested a copy not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the fiscal year for which the budget applies. Any Owner or Mortgagee may submit written comments on the pro forma operating budget to the Association.

(3) Annual Report. An annual report consisting of a balance sheet rendered as of the last day of the fiscal year, an operating statement for the fiscal year, and a statement of changes in financial position for the fiscal year. A copy of the annual report shall be distributed to each Owner, and to any Mortgagee that has requested a copy, within one hundred twenty (120) days after the close of the fiscal year. In any fiscal year in which the gross income of the Association exceeds \$75,000, a copy of the review of the annual report prepared by a licensee of the California State Board of Accountancy in accordance with generally accepted accounting principles shall be distributed with the annual report. If the annual report is not reviewed by an independent account, the report shall be accompanied by the certificate of an authorized officer of the Association that the report was prepared from the books and records of the Association without independent audit or review.

(4) Statement of Enforcement Policies. A statement of the Association's policies and practices in enforcing its remedies against Owners for delinquent regular or special assessments, including the recording and foreclosing of liens against a delinquent Owner's Lot. A copy of this statement shall be distributed to each Owner, and to any Mortgagee that has requested a copy, within sixty (60) days prior to the beginning of each fiscal year.

(5) Copies of Governing Instruments, Etc. Copies of this Declaration, the Articles, Bylaws, or Association Rules, and the statement regarding unpaid assessments described in Section 6.7 below, shall be provided to any Owner within ten (10) days of the mailing or delivery of a written request therefor. The Association may impose a fee to provide these materials, which fee may not exceed the Association's reasonable costs in preparing and reproducing the materials.

(h) Inspection of Books and Records. Any Owner, or that Owner's duly appointed representative, shall have access to the Association's membership register, books of account, and minutes from any meeting of the Owners, the Board, or any committee of the

Board, in order to inspect and copy such records for any purpose reasonably related to his or her interest as an Owner. Access shall be at any reasonable time at the office of the Association or such other place within the Development as the Board prescribes. The Board shall establish rules regarding the notice an Owner must give to the custodian of the records of the Association to obtain access, the hours and days of the week when the records may be inspected and copied, and the charges imposed by the Association for copying records requested by an Owner. Any member of the Board may at any reasonable time inspect, copy, or make extracts of any books, records, and documents of the Association and inspect the physical properties owned or controlled by the Association.

(i) Enforcement of Bonded Obligations.

(1) If the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant to complete Common Area improvements, not completed at the time the Commissioner of the California Department of Real Estate (the "DRE") issues a final subdivision public report ("Public Report") for the Development, 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 improvement for which a notice of completion has not been filed by the later of (i) sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the bond, or (ii) thirty (30) days after the expiration of any written extension given by the Association.

(2) If the Board fails to consider and vote on the action to enforce the obligations under the bond, or if the Board decides not to initiate action to enforce the obligations under the bond, then on receipt of a petition signed by Owners representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of Owners for the purpose of voting to override the decision of the Board not to initiate action or to compel the Board to take action to enforce the obligations under the bond. The Board shall give written notice of the meeting to all Owners entitled to vote in the manner provided in this Declaration or in the Bylaws for notices of special meetings of Owners. The meeting shall be held not less than thirty-five (35) nor more than forty-five (45) days after receipt of the petition. At the meeting, the vote in person or by proxy of a majority of the Owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be considered the decision of the Association and the Board shall implement this decision by initiating and pursuing appropriate action in the name of the Association.

(3) The Association shall act in a reasonably prompt manner to exonerate Declarant and its surety under any bond in favor of the Association, provided such exoneration is

appropriate. In the event Declarant believes that the Board and/or the Owners of the Association have unreasonably refused to release the bond, Declarant shall have the right to submit such matter to binding arbitration in accordance with the then current rules of the American Arbitration Association.

(j) Other Duties. The Association shall perform such other acts as may be reasonably necessary to exercise its powers or perform its duties under any of the provisions of this Declaration, the Articles, Bylaws, Association Rules, or Board resolutions.

5.3 Limitations on Authority of Board or Association. Except with the vote or written assent of Owners holding not less than fifty-one percent (51%) of the voting rights of each class of Owners, if two classes exist, or, if only one class exists, (i) fifty-one percent (51%) of the voting rights of all Owners, and (ii) fifty-one percent (51%) of the voting rights of all Owners other than Declarant, the Board shall not take any of the following actions:

(a) Incur 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;

(b) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(c) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member of the Board for expenses incurred in carrying on the business of the Association;

(d) Enter into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one year, with the following exceptions:

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

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

(3) Prepaid casualty or liability insurance policies not to exceed three (3) years duration, provided the policy permits short rate cancellation by the insured;

(4) Lease agreements for laundry room fixtures and equipment not to exceed five (5) years duration, provided the Declarant does not have a direct or indirect ownership interest of ten percent (10%) or more in any lessor under such agreements;

(5) Agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five (5) years, provided the Declarant does not have a direct or indirect ownership interest of ten percent (10%) or more in any lessor under such agreements; and

(6) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five (5) years, provided the Declarant does not have a direct or indirect ownership interest of ten percent (10%) or more in any lessor under such agreements.

5.4 Limitation on Liability. No director, officer, committee member, employee, Manager, or other agent of the Association, including Declarant or any employee or agent of the Declarant when acting in such capacity, shall be liable to any Owner or any other party whatsoever, including without limitation the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity, provided that such person or entity has acted in good faith and in a manner such person or entity reasonably believed to be in the best interests of the Association.

ARTICLE 6.

ASSESSMENTS: ESTABLISHMENT, COLLECTION AND ENFORCEMENT

6.1 Agreement to Pay. Declarant, for each Lot owned by it in the Development that is expressly made subject to assessment as set forth in this Declaration, hereby covenants and agrees, and each Owner, by acceptance of a deed for his Lot (whether or not expressed in such deed), is deemed to covenant and agree, for each Lot owned, to pay to the Association the following assessments, such assessments to be established, made and collected as hereinafter provided:

- (a) Regular assessments;
- (b) Special assessments;
- (c) Reconstruction assessments; and
- (d) Enforcement assessments.

6.2 Limited Exemptions from Assessment.

(a) Notwithstanding the provisions of this Article 6, any Lot having no structural improvements for human occupancy shall be exempt from the payment of that portion of any assessment

that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of the structural improvement. This exemption includes, but is not limited to, assessments for the following, as applicable:

(1) Exterior maintenance, including maintenance of the Association Maintenance Areas; and

(2) Lighting for the Private Drives.

(b) The exemption set forth in Section 6.2(a) shall be in effect until the earliest of the following events:

(1) Recordation of a notice of completion of the structural improvements for human occupancy on each such Lot;

(2) Occupation or use of the Lot; or

(3) Completion of all elements of the residential structures that the Association is obligated to maintain.

(c) The Declarant and any other Owner of a Lot are exempt from the payment of that portion of any assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete at the time assessments commence. This exemption from the payment of assessments shall be in effect until the earliest of the following events:

(1) A notice of completion of the common facility has been recorded; or

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

6.3 Personal Obligations. Each assessment or installment thereof, together with any late charge, interest thereon, collection costs and reasonable attorneys fees, shall also be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment thereof, became due and payable. In the event more than one person or entity is the Owner of a Lot, the personal obligation to pay such assessment, or installment thereof, respecting such Lot shall be both joint and several. The personal obligation for delinquent assessments, or delinquent installments thereof, and such other sums, shall not pass to an Owner's successors in interest unless expressly assumed by them. No Owner of a Lot may exempt himself from payment of assessments, or installments thereof, by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment of, or by abandonment of, the Lot.

6.4 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members of the Association, to improve, replace, repair, operate and maintain the Common Area, to

perform the duties of the Association as set forth in this Declaration, and to further any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Development.

6.5 Description of Assessments.

(a) Regular Assessments.

(1) Not less than sixty (60) nor more than ninety (90) days prior to the beginning of each fiscal year of the Association, the Association shall meet for the purpose of establishing the regular annual assessment for the forthcoming year. At such meeting the Board shall review the preliminary pro forma operating budget prepared in accordance with the provisions of subsection 5.2(g)(2) above, any written comments received from Members and Mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate, the Board, subject to the restrictions described herein and without the requirement for a vote of the Owners, shall establish the regular assessment for the forthcoming fiscal year. However, the Board may not establish a regular assessment for any fiscal year that is more than one hundred twenty percent (120%) of the regular assessment for the prior fiscal year without the approval by vote or written consent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association.

(2) Unless the Association is exempt from federal or state income taxation, including without limitation an exemption under Internal Revenue Code §528 and Revenue and Taxation Code §23701t, all reserve funds, to the extent possible, shall be designated and accounted for as capital contributions to the Association, and the Board shall take such steps as may be reasonably necessary to prevent the reserve funds from being included in the Association's income for federal and state income tax purposes, including, if necessary, depositing the funds in segregated accounts and not commingling the funds with general operating funds.

(b) Special Assessments.

(1) Subject to the restrictions hereinafter set forth, the Board may levy a special assessment if the Board, in its discretion, determines that the estimated total amount of funds are or will become inadequate to meet the estimated expenses of the Association, including the maintenance of appropriate reserves, for a particular fiscal year for any reason (including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the Common Area). The Board shall determine the amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board,, it shall become a special assessment. The Board, in its discretion, may prorate

such special assessment over the remaining months of the fiscal year or immediately levy the entire assessment against each Lot. Unless the Association is exempt from federal or state income taxation, including without limitation an exemption under Internal Revenue Code §528 and Revenue and Taxation Code §23701t, the Board shall take such steps as may be reasonably necessary to prevent the special assessment from being included in the Association's income for federal and state income tax purposes, including, if necessary, depositing the funds in a segregated account, not commingling the funds with any other funds of the Association, and using the funds solely for the purpose for which they were levied.

(2) The Board may not levy any special assessment that either by itself or in the aggregate with other special assessments levied for that fiscal year would be in excess of five percent (5%) of the budgeted gross expenses of the Association for the fiscal year without the approval by vote or written consent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association.

(3) The restriction set forth in subsection (2) hereinabove shall not apply to an enforcement assessment levied pursuant to Section 6.5(d) below against a particular Lot to reimburse the Association for costs incurred in bringing the Owner or the Owner's Lot into compliance with this Declaration, the Articles, Bylaws, or Association Rules.

(c) Reconstruction Assessment. "Reconstruction assessment" shall mean a special assessment levied against each Owner and his Lot representing a portion of the cost to the Association for the reconstruction, rebuilding, or major repair of any portion(s) of the Development pursuant to Article 9 hereof.

(d) Enforcement Assessments. "Enforcement Assessment" shall mean a special assessment levied against a particular Owner and his Lot directly attributable to such Owner, for certain costs incurred by the Association. After compliance with the due process requirements set forth in Section 8.5 of the Bylaws, the Board may levy an Enforcement Assessment against an Owner and his Lot for the following purposes:

(1) To reimburse the Association for particular costs or expenses which have been incurred by the Association for materials or services furnished at the request or with the consent of the Owner of such Lot; or

(2) To reimburse the Association for costs incurred in bringing the Owner and/or his Lot into compliance with the provisions of this Declaration, the Articles, the Bylaws, or the Association Rules. In this regard, Enforcement Assessments shall also include penalties levied against an Owner pursuant to Section 5.1(c) hereof; and/or

(3) To reimburse the Association for costs incurred in repairing damage to the Common Area, or any improvements or personal property located thereon, for which the Owner was allegedly responsible.

Enforcement Assessments shall be due and payable at the times and in the amounts fixed by the Board. No Enforcement Assessment may become a lien upon a Lot that is enforceable by power of sale pursuant to Section 6.12 below, except that this restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

(e) Definition of Quorum; Conduct of Meetings. Notwithstanding any other provisions of this Declaration, the Articles, or the Bylaws, for the purposes of subsection 6.5(a)(1) and subsection 6.5(b)(2) hereof, a "quorum" means more than fifty percent (50%) of the Members of the Association. Any meeting or election of the Association for purposes of complying with subsections 6.5(a)(1) and/or 6.5(b)(2) shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 33, Division 2 of Title 1 of the California Corporations Code, and Section 7613 of the California Corporations Code.

(f) Emergencies. Notwithstanding the restrictions on assessment increases set forth in subsections 6.5(a)(1) and 6.5(b)(2), the Board may increase assessments if necessary for emergency situations. For purposes of this paragraph, an emergency situation is any one of the following:

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

(2) An extraordinary expense necessary to repair or maintain the Development or any part thereof for which the Association is responsible when a threat to personal safety on the Development is discovered.

(3) An extraordinary expense necessary to repair or maintain the Development or any part thereof 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 pursuant to subsection 6.5(a)(1) above. However, prior to the imposition or collection of an assessment under this paragraph, 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 the resolution shall be distributed to the Members with the notice of assessment.

6.6 Allocation of Assessments. Regular and special assessments shall be allocated equally among each Lot subject to the

assessment by dividing the total amount of the assessment by the total number of Lots subject to the assessment. Special or enforcement assessments levied against a particular Lot to reimburse the Association for costs incurred in bringing an Owner or his Lot into compliance with the provisions of this Declaration shall not be subject to the foregoing allocation provisions.

6.7 Assessment Period. Unless the Board determines otherwise, the Association's fiscal year shall be a calendar year, and the regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, provided that the first regular assessment period for all Lots shall commence on the first day of the calendar month following the date on which the sale of the first Lot to a purchaser is recorded and shall terminate on December 31 of the year in which the initial sale is recorded.

6.8 Notice and Assessment Installment Due Dates. At least ten (10) days prior to the commencement of any regular or special assessment, the Association shall give each Owner written notice of the amount of assessment, and the due date (or due dates if paid in installments, and the amount of each installment). The notice need only be given once for any assessment paid in installments. Unless the Board specifies otherwise, the installment due dates shall be the first day of each month. Any assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within fifteen (15) days after its due date. There shall be a late charge on each delinquent assessment payment equal to ten percent (10%) of the delinquent payment or ten dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent payment, but it shall not eliminate or supersede any charges imposed on prior delinquent payments. Interest shall accrue on any delinquent payment at the rate of twelve percent (12%) per annum commencing thirty (30) days after the assessment becomes due.

6.9 Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Association shall provide the requesting Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or the Owner's Lot is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or Association Rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (iii) the amount of any assessments levied against the Owner's Lot that are unpaid as of the date of the statement, including any late charges, interest, or costs of collection that as of the date of the statement are or may be made a lien against the Owner's Lot as provided by this Declaration, the Articles, Bylaws, or Association Rules.

6.10 Right to Enforce. The Association has the right to collect and enforce assessments. In addition to the enforcement powers described elsewhere in this Declaration, the Association may enforce delinquent assessments, including delinquent installments, by suing the Owner directly on the debt established by the assessment, or by establishing a lien against the Owner's Lot as provided in Section 6.11 below and foreclosing the lien through either judicial proceedings or nonjudicial proceedings under a power of sale as provided in Section 6.12 below. The Association may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Lot for the delinquent assessment. In any action instituted by the Association to collect delinquent assessments, accompanying late charges, or interest, the prevailing party shall be entitled to recover costs and reasonable attorneys fees.

6.11 Creation of Lien.

(a) A delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys fees), and penalties as may be authorized under this Declaration, shall become a lien on the Lot against which the assessment was levied upon the recordation of a notice of delinquent assessment in the office of the County Recorder. The notice shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Lot, the name of the Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association, or by any authorized employee or agent of the Association (including, without limitation, the Manager) authorized to do so by the Board.

(b) Unless the Association considers the immediate recording of the notice to be in its best interests, the notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written notice of default and demand for payment. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

6.12 Foreclosure Under Assessment Lien. The Association may enforce any assessment lien established under Section 6.11 by filing an action for judicial foreclosure, or, if the notice of delinquent assessment contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code Section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h that apply to nonjudicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the notice of

delinquent assessment or by a trustee substituted in accordance with the provisions of Civil Code Section 2934a. The Association may bid on the Lot at the sale, and may hold, lease, mortgage, and convey the acquired Lot. If the default is cured before the sale, or before completion of a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien, and upon receipt of a written request by the Owner, a notice of rescission of the declaration of default and demand for sale.

6.13 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive the benefit of any homestead or exemption laws of the State of California in effect at the time any assessment, or installment thereof, becomes delinquent or any lien is imposed pursuant to the terms hereof.

ARTICLE 7.
CONVEYANCE AND USE OF COMMON AREA

7.1 Conveyance of the Common Area. Prior to or concurrently with the first conveyance to an Owner of a Lot, there will be conveyed to the Association the following Common Area: (i) the Private Streets designated as Cliff Walk Drive, Castle Hill Court, Marina Ridge Court, and Narragansett Court on the Map; and (ii) Lots E, F, G, H, I and K as designated on the Map. The Association must accept the fee interest in the real property so conveyed, which conveyance and acceptance shall be subject to any or all of the following exceptions, liens and encumbrances:

(a) The lien of real property taxes and assessments not delinquent, which taxes and assessments shall be prorated between Declarant and the Association as of the date of conveyance;

(b) Such easements and rights of way on, over or under all or any part thereof as may be reserved to Declarant or granted to or for the benefit of the United States of America, the State of California, the City, the County, or any other political subdivision or public organization, any public or private utility, or any Lot, whether in this Declaration, the Map, or otherwise, for the purpose of constructing, erecting, operating and maintaining thereon, therein and thereunder, at that time or at any time in the future, the following:

(1) Roads, streets, street signs, street lights, traffic signs and marks, striping, walks, driveways, parkways, and park areas;

(2) Subsurface wires and conduits for the transmission of electricity for lighting, heating, power, telephone, television and other purposes and for the necessary attachments in connection therewith; and

(3) Public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems,

sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith.

(c) Such easements and rights of way on, over or under all or any part thereof for Maintenance or improvement of the Common Area or utilization in connection with real property contiguous to the Common Area;

(d) Any other lien, encumbrance or defect of title of any kind whatsoever (other than of the type which would at any time or from time to time create a lien upon such property to secure an obligation to pay money) which would not materially and actually prejudice the Association and the Owners in their use and enjoyment of such property.

Upon the conveyance of any such property to the Association, such property shall, within the meaning of this Declaration, become and constitute Common Area. Prior to such conveyance, such property shall not be deemed to constitute Common Area.

7.2 Use of the Common Area. The Common Area shall be for the use and enjoyment of the Owners of Lots in the Development.

ARTICLE 8. INSURANCE

8.1 Liability Insurance. The Association shall obtain and maintain in force comprehensive public liability insurance insuring the Association, the Manager (if any), the Declarant, and the Owners of the Lots, and their respective family members, guests and invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area and including, if obtainable, a cross liability endorsement insuring each insured against liability to each other insured. The limits of such insurance shall be not less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

8.2 Fire and Extended Coverage Insurance. The Association shall obtain and maintain in force a master or blanket policy of fire insurance for the full insurable value of all improvements in or on the Common Area and Association Maintenance Areas within the Development. Such policy and any endorsements thereon shall be in the form and content, and for such term and in such company as may be satisfactory to a majority of institutional First Mortgagees; and, if more than one institutional First Mortgagee has a loan of record against the Development, or any part thereof, such policy and endorsements shall meet the maximum standards of the various Mortgagees represented in the Development. Such policy shall

contain extended coverage and replacement cost endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause, and a determinable cash adjustment clause, or a similar clause to permit cash settlement covering full value of the improvements in the event of partial destruction and decision not to rebuild. Such policy shall be in such amounts as shall be determined from time to time by the Association, shall name as insured the Association, the Owners, and Declarant (so long as Declarant is the owner of any of the Lots), and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described in Section 8.5 below.

8.3 Director and Officer's Insurance. To the extent insurance is available, the Association shall purchase and maintain insurance in an amount of not less than \$1,000,000 on behalf of any director, officer, or member of a committee of the Association (collectively, the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, regardless of whether the Association would have the power to indemnify the agent against such liability under applicable law.

8.4 Other Insurance. The Association may, and if required by any institutional First Mortgagee, shall purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild, and a blanket policy of flood insurance. The Association shall also purchase and maintain workers' compensation insurance, to the extent that the same is required by law, for all employees of the Association, if any. The Association shall also purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than 150% of each year's estimated annual operating expenses and reserves and which shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any Mortgagee, and shall purchase such insurance on personal property owned by the Association, and such other insurance, as it deems necessary or as is required by any Mortgagee.

8.5 Trustee. All insurance proceeds payable under Sections 8.1 and 8.2 above, and subject to the rights of Mortgagees under Section 11.7 below, shall be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank, or branch thereof, located in the City which has agreed in writing to accept such trust. In the event repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for herein.

8.6 Owner's Insurance. Each Owner shall obtain and maintain, at his expense, fire and casualty coverage as may be required by the Owner's individual Mortgagee, or, if not Mortgagee encumbers a

Lot, fire and casualty coverage as may be determined by the Board, with respect to damage or destruction to improvements on the Owner's Lot, other than improvements in or on the Association Maintenance Areas located on each Owner's Lot, which Association Maintenance Areas are to be covered by the fire and casualty insurance to be maintained by the Association pursuant to Section 8.2. All such individually carried insurance shall include a waiver of subrogation clause acceptable to the Board and to any institutional First Mortgagee.

8.7. Adjustment of Losses. The Association is hereby appointed attorney-in-fact by each Owner to negotiate and agree upon the value and extent of any loss under the policy or policies carried pursuant to this Article 8, with the exception of the insurance specified in Section 8.6. The Association is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

8.8 Distribution to Mortgagees. Subject to the provisions of Section 11.7, in the event that rebuilding is not authorized pursuant to Article 9 hereof, any Mortgagee has the option to apply insurance proceeds payable on account of a Lot in reduction of the obligation secured by the Mortgage held by such Mortgagee.

8.9 Declarant's Insurance. Nothing contained in this Article 8 or elsewhere in this Declaration shall prevent Declarant from maintaining such insurance policy or policies as may be required by Declarant's construction or other lenders.

ARTICLE 9.

DESTRUCTION OF IMPROVEMENTS

9.1 Destruction; Proceeds 85% of Reconstruction Costs. In the event of a total or partial destruction of the improvements to the Common Area and Association Maintenance Areas in the Development, and if the available proceeds of the insurance carried pursuant to Article 8 are sufficient to cover not less than eighty-five (85%) of the costs of repair and reconstruction thereof, the same shall be promptly rebuilt unless, within ninety (90) days from the date of such destruction, Owners then holding at least seventy-five percent (75%) of the total voting power of each class of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction is to take place, the Association shall be required to execute, acknowledge and record in the Office of the County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Owners to rebuild.

9.2 Destruction; Proceeds Less Than 85% of Reconstruction Costs. If the proceeds of such insurance are less than eighty-five percent (85%) of the costs of repair and reconstruction, such repair and reconstruction may nevertheless take place if, within ninety (90) days from the date of said destruction, Owners then holding at least sixty-six and two-thirds percent (66-2/3%) of the total voting power of each class of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall execute, acknowledge and record in the Office of the County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

9.3 Procedures Respecting Rebuilding. If the Members determine to rebuild pursuant to Sections 9.1 or 9.2 above, the Owners of all Lots shall be obligated to contribute such funds as shall be necessary to pay their proportionate share of the cost of reconstruction over and above the available insurance proceeds. The proportionate share of each Owner for damage to or destruction of the Common Area and/or the Association Maintenance Areas, or any portion thereof, shall be apportioned equally to each Lot. In the event of the failure or refusal of any Owner to pay such proportionate share, the Association may levy a reconstruction assessment against the Lot of such Owner which may be enforced under the lien provisions contained in Article 6 hereof or in any other manner provided in this Declaration.

9.4 Rebuilding Contract. If the Owners determine to rebuild, the Association or its authorized representative shall, after having obtained bids from at least two reputable contractors pursuant to Sections 9.1 and 9.2, shall award the repair and reconstruction work to the lowest responsible bidder that otherwise meets the requirements set forth by the Association in soliciting bids. The Association shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of such contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

9.5 Rebuilding Not Authorized. If the Owners determine not to rebuild, then, subject to the rights of Mortgagees as set forth in Section 11.7 hereof, any insurance proceeds then available for such rebuilding shall be distributed to each Owner of each Lot proportionately in accordance with the relative fair market value

of each Lot as determined pursuant to Section 9.7 hereof; or in the case of damage or destruction to the Common Area, shall instead be distributed to the Owners equally. The Association, within one hundred twenty (120) days after the date of such damage or destruction, shall execute, acknowledge, and record in the office of the County Recorder of the County, a certificate declaring the intention of the Association not to rebuild.

9.6 Minor Repair and Reconstruction. The Association shall have the duty to repair and reconstruct improvements located in or on the Common Area and/or the Association Maintenance Areas, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated costs of repair and reconstruction does not exceed Twenty-Five Thousand Dollars (\$25,000) in the case of damage or destruction to the Common Area or the Association Maintenance Areas. The Association is empowered to levy a reconstruction assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied pursuant to Sections 6.5(b) and 6.5(c) above.

9.7 Valuation. Wherever in this Declaration reference is made to a determination of the relative fair market value of two or more Lots, it shall mean the relative fair market values of such Lots as of the date immediately prior to any damage or destruction, as determined by an appraisal by an independent appraiser who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraisers organization. The costs of such appraisal shall be paid from the insurance proceeds.

9.8 Arbitration. In the event of a dispute among the Owners or Mortgagees with respect to the provisions of this Article 9, any Owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to all Owners and their respective Mortgagees as promptly thereafter as possible, giving all Owners and Mortgagees an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in the matter shall be final and conclusive upon all parties. The arbitrator may include in his decision an award for costs and/or attorneys fees against any one or more parties to the arbitration. The awards or decision may be confirmed and enforced by any court of competent jurisdiction.

9.9 Negligently or Willfully Caused Damage. Any Owner or other person negligently or willfully causing damage to the Development shall be liable to the Association therefor.

ARTICLE 10.
CONDEMNATION

10.1 Sale by Unanimous Consent. If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of at least fifty-one percent (51%) of each class of Owners and with the prior written consent of at least sixty-six and two-thirds percent (66-2/3%) of all institutional First Mortgagees, the Common Area, or such portion thereof, may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Lot in the Development grants to the Association and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Association.

10.2 Distribution of Proceeds of Sale. Upon a sale occurring pursuant to Section 10.1 above, the proceeds shall be distributed equally to each Owner and their respective Mortgagees, as their interests may appear.

10.3 Distribution of Condemnation Award. If the Common Area, or a portion thereof, is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagees by the terms of the judgment of condemnation, and if not so apportioned, then the award shall be distributed equally to each Owner and their respective Mortgagees, as their interests may appear.

ARTICLE 11.
PROTECTION OF MORTGAGEES

11.1 Mortgage Permitted. Any Owner may encumber his Lot with a Mortgage.

11.2. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage and First Mortgagee encumbering all or a portion of the Development, or any Lot therein, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee thereunder shall expressly subordinate its interest, in writing, to such lien.

11.3 Foreclosure. If any Lot is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. Upon foreclosure of the Mortgage, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure purchaser taking

title to the Lot free of the lien for assessments or installments thereof that have accrued up to the time of the foreclosure sale. Upon taking title to the Lot, the foreclosure purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Association that became due and payable on or after the foreclosure purchaser acquired title to the Lot. The subsequently levied assessments or other charges may include previously unpaid assessments, provided all Owners, including such foreclosure purchaser and the successors and assigns thereof are required to pay their proportionate share thereof as provided herein.

11.4 Control of Amendments. In addition to the requirements of Article 13, inclusive, and unless a greater majority is expressly required elsewhere in this Declaration or by law, the prior written consent (or deemed consent as provided below in this Section 11.4) of at least fifty-one percent (51%) of all First Mortgagees (based upon one vote for each First Mortgage owned) shall be required to add or amend any material provisions of this Declaration, the Articles, the Bylaws, or the Map, which establish, provide for, govern, or regulate any of the following:

- (a) Voting;
- (b) Assessment, collection of assessments, assessments liens, or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Area or improvements located thereon and therein;
- (d) Casualty and liability insurance or fidelity bonds;
- (e) Rights to use the Common Area;
- (f) Responsibility for maintenance and repair of Lots, the Common Area, and the improvements located thereon and therein;
- (g) Expansion or contraction of the Development or the addition, annexation, or withdrawal of real property to or from the Development;
- (h) Boundaries of any Lot;
- (i) The interests or rights of the Association or Owners in and to the Common Area;
- (j) The convertibility of Lots into Common Area or of Common Area into Lots;
- (k) The leasing of Lots;
- (l) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Lot; or

(m) Any provisions that are for the express benefit of First Mortgagees or insurers or governmental guarantors of First Mortgages.

For purposes of this provision, an addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any First Mortgagee who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

11.5 Restriction on Certain Changes. In addition to the requirements of Section 11.4 above and of Article 13 below, after the conveyance of a Lot to an Owner other than Declarant, unless at least sixty-seven percent (67%) of the total voting power of Owners and at least fifty-one percent (51%) of all First Mortgagees have given their prior written approval (or have been deemed to have given their approval as hereinafter set forth), neither the Association nor the Owners shall be entitled:

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

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

(c) By act or omission to change, waive or abandon the provisions of this Declaration, or the enforcement of any of them, pertaining to the architectural design or control of the exterior appearance of structures in the Development, the maintenance of the Common Area walks, fences, and driveways, or the upkeep of lawns, plantings, and other landscaping in the Development, as applicable;

(d) To fail to maintain fire and extended coverage insurance on insurable Association property, including any Common Area improvements, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon current replacement cost);

(e) To use hazard insurance proceeds for losses to Lots or to the Common Area improvements in the Development or to any other Association property, for other than the repair, replacement or reconstruction of such improvements or property, except as provided by statute in case of substantial loss to the Lots or Common Area of the Development.

Any First Mortgagee who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

11.6 Right to Examine Books and Records. Institutional First Mortgagees shall have the right to examine the books and records of the Association and the right to require the submission of financial data concerning the Association or the Development, including annual audit reports, budgets, reports, and operating statements as furnished to the Owners.

11.7 Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of institutional First Mortgagees of Lots pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or in other documents relating to the Development is to such extent null, void, and of no force and effect. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected institutional First Mortgagees, naming such Mortgagees as their interests may appear.

11.8 Status of Amenities. All amenities (such as parking, recreation, and service areas) and Common Area shall be available for use by Owners and all such amenities, with respect to which regular or special assessments for maintenance or other uses may be levied, shall constitute Common Area. All such amenities shall be owned by the Association free of encumbrances except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Owners or by the Association (as set forth in Section 7.1 above).

11.9 Default Notice Requirement. If any Owner is in default under any provision of this Declaration or any other document or instrument pertaining to the governance of the Association and the Development, and the default is not cured within sixty (60) days after written notice to that Owner, the Association shall give to the Mortgagee(s) of record of such Owner written notice of such default and of the fact that the sixty (60) day period has expired. Subject to the provisions of Section 11.3, such Mortgagee(s) shall have the right, but not the obligation, to cure such Owner's default.

11.10 Payments by Mortgagees. Mortgagees of Lots may, jointly or severally, pay taxes or other charges which are in default and which may or have become charged against any Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association,

and, upon making such payments, such Mortgagees shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

11.11 Lien Not Invalidated by Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

11.12 Mortgagee Need Not Cure Breach. Subject to the provisions of Section 11.3, any Mortgagee who acquires title to a Lot by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is not curable or of a type that is not practical or feasible to cure.

11.13 Status of Loan to Facilitate Resale. Any First Mortgage given to secure a loan to facilitate the resale of a Lot after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

11.14 Appearance at Meetings. Because of its financial interest in the Development, any Mortgagee may appear (but cannot vote) at meetings of Owners and of the Board to draw attention to violations of this Declaration which have not been corrected or made the subject of remedial proceedings or assessments.

11.15 Right to Furnish Information. Any Mortgagee shall have the right to furnish information to the Association concerning the status of any Mortgage.

11.16 Right of First Refusal Inapplicable to Mortgagee. No right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Lot shall be granted to the Association without the written consent of any Mortgagee of the Lot. Any right of first refusal or option to purchase a Lot that may be granted to the Association (or other person, firm, or entity) shall not impair the rights of a First Mortgagee (i) to foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage, or (ii) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage, or (iii) to sell or lease a Lot acquired by the Mortgagee.

11.17 Limitation on Term of Management Contract. Any agreement between the Association and Declarant pursuant to which Declarant agrees to provide services, and any agreement for professional management by a manager shall provide for termination by either

party without cause or payment of a termination fee on thirty (30) days written notice, and shall have a maximum contract term of one (1) year, provided that the Association may renew any such contract on a year-to-year basis. If the Development is professionally managed, the Association shall not terminate professional management and assume self-management without the consent of at least sixty-seven percent (67%) of the voting rights of each class of Owners, and of at least fifty-one percent (51%) of First Mortgagees.

11.18 Controlling Provisions. In the event of any conflict between any of the provisions of this Article 11 and any other provisions of this Declaration, the provisions of this Article 11 shall control.

ARTICLE 12. ARCHITECTURAL CONTROL

12.1 Architectural Approval. Except with respect to construction or refurbishing of Lots, Common Area, or improvements thereto in the Development by the Declarant, no building, fence, exterior wall, or other structure shall be commenced, erected, or maintained in the Development, nor shall any exterior addition to or change or alteration in any such structures (including, but not limited to the following: solar or heating systems; pools, spas, ponds, and fountains; landscaping, stonework, or concrete work; related mechanical, plumbing, or electrical facilities; awnings, patio covers, and antennae) be made, until the plans and specifications showing the nature, kind, shape, materials, and location of the same shall have been (i) submitted to and approved by the City, if such approval is required, and (ii) submitted to and approved in writing by the Architectural Committee (provided for in Section 12.2) as to harmony of external design and location in relation to surrounding structures and topography. The specific procedures and standards relating to such approval are set forth in Section 12.3 below.

12.2 Appointment of Architectural Committee. Declarant shall appoint all of the original members of the Architectural Committee, consisting of three (3) persons, and any replacements for them. The initial appointees (and any replacements) shall hold office until the first anniversary of the original issuance of a Public Report for the Development by the DRE. Thereafter, Declarant may appoint a majority of the members of the Architectural Committee, and any replacements for them, until ninety percent (90%) of the Lots in the Development have been sold and deeds to them recorded in favor of Owners, or until the fifth anniversary of the original issuance of the Public Report for the Development, whichever first occurs. After one (1) year from the date of the original issuance of the Public Report for the Development, the Board shall have the power to appoint one member of the Architectural Committee, and such power of appointment shall continue until ninety percent (90%) of Lots in the Development have been sold and deeds to them recorded in favor of

Owners, or until the fifth anniversary of the original issuance of the Public Report for the Development, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Board shall be members of the Association, but members of the Architectural Committee appointed by Declarant need not be Members of the Association.

12.3 Construction and Alteration of Improvements on Lots. The right of an Owner, excluding the Declarant, to construct, reconstruct, refinish, alter, maintain any improvements, or landscape any Lot, or to make or create any excavation or fill thereon, shall be subject to all of the limitations, conditions and rights set forth in this Section 12.3, as follows:

(a) Subject to the provisions of Section 12.3(i) below, and except to the extent permitted by Section 12.3(b) below, any construction or reconstruction of, or the refinishing or alteration of any part of the exterior of any Lot or of any improvement placed thereon by Declarant is absolutely prohibited unless and until the Owner first obtains the approval therefor from the Architectural Committee as provided in this Section 12.3, and otherwise complies with the requirements of this Section 12.3. The Association may remove any improvement constructed, reconstructed, refinished, altered or maintained in violation of this Section 12.3 and the Owner thereof shall reimburse the Association for all expenses incurred in connection therewith. The Board may levy an enforcement assessment against the Owner and the Owner's Lot for any work it may perform and all expenses incurred in connection therewith.

(b) Except to the extent reasonably necessary for the construction, reconstruction or alteration of any improvement for which the Owner has approved plans pursuant to this Section 12.3, inclusive:

(1) No excavation or fill which would be Visible From Neighboring Property shall be created or installed upon any Lot; and

(2) No change shall be made in the natural or existing drainage of surface waters upon any Lot unless and until the Owner of such Lot first obtains the approval therefor from the Architectural Committee and from the City, if required, and such Owner otherwise complies with all the provisions of this Section 12.3. The Association may, in the event of any violation hereof, restore such Lot to its state existing immediately prior to such violation, and the Owner shall reimburse the Association for all such expenses incurred by the Association in connection therewith.

(c) Landscaping, to the extent not provided by Declarant or the Association and Visible From Neighboring Property, shall conform to the applicable provisions of the current Architectural Committee Rules.

(d) Any Owner proposing to construct or reconstruct or to refinish or alter any part of the exterior of any improvement on or within his Lot, or to perform any work which under Section 12.1 or 12.3 requires the prior approval of the Architectural Committee, shall apply to the Architectural Committee for approval by notifying the Architectural Committee of the nature of the proposed work, said notification to be delivered with:

(1) A plot plan of the Lot showing the location of all existing and proposed improvements;

(2) Floor plans to the extent they relate to the proposed improvements;

(3) Drawings showing all affected elevations;

(4) A description of the materials and colors with appropriate samples if required by the Architectural Committee; and

(5) The Owner's proposed construction schedule.

(e) The Architectural Committee shall grant the requested approval only if:

(1) The Owner shall have strictly complied with the provisions of subsection (d) hereinabove;

(2) The Architectural Committee finds that the plans and specifications conform to this Declaration, particularly to the requirements and restrictions of this Section 12.3, and to the rules of the Architectural Committee in effect at the time such plans were submitted; and

(3) The members of the Architectural Committee find that the proposed improvement would be compatible with the standards of the Development and the purposes of this Declaration as to quality of workmanship and materials, harmony of external design with existing structures, and as to locations with respect to topography and finished grade elevation.

All such approvals shall be by majority vote of the Architectural Committee and shall be in writing; provided, however, that any request for approval which has not been approved or rejected in writing within thirty (30) days from the date of submission shall be deemed rejected. Any proposal which is deemed rejected in this manner may be resubmitted to the Architectural Committee at any time after it is deemed rejected. Upon such resubmittal, any request for approval which has not been approved or rejected in writing within fifteen (15) days from the date of resubmission to the Architectural Committee shall be deemed approved.

(f) Upon receipt of approval from the Architectural Committee pursuant to subsection (e) above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval. The Owner shall commence any and all such work not more than one (1) year from the date of such approval. If the Owner shall fail to comply with this subsection, any approval given pursuant to subsection (e) hereinabove shall be deemed revoked unless the Architectural Committee, upon the written request of the Owner made prior to the expiration of the one (1)-year period, extends the time for such commencement. The Owner shall, in any event, complete the work within six (6) months after commencing construction thereof unless, and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner, his agents or contractors.

(g) That portion of landscaping for each Lot Visible From Neighboring Property not installed by Declarant or the Association shall be completed by each Owner within six (6) months from initial occupancy.

(h) Upon completion of any Work, the Owner shall give notice thereof to the Architectural Committee, and within sixty (60) days thereafter the Architectural Committee, or its duly authorized representatives, may inspect such Work to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with approved plans. If the Architectural Committee finds that such Work was not done in substantial compliance with approved plans, it shall notify the Owner of such noncompliance within such sixty (60)-day period and shall require the Owner to remedy such noncompliance. Further, the Architectural Committee shall notify the Association of such failure, and the Association, at its option, may either remove the improvement or remedy the noncompliance, and the Owner shall reimburse the Association for all expenses incurred in connection therewith. If, for any reason, the Architectural Committee fails to notify the Owner of any such noncompliance within sixty (60) days after receipt of said notice of completion, the Work shall be deemed to have been completed in compliance with the approved plans therefor.

(i) Before the Association may determine to remove or restore any improvement pursuant to Sections 12.3(a) or 12.3(b) hereof or remedy any noncompliance pursuant to Section 12.3(h) hereinabove, the Board shall notify the affected Owner in writing that such action is being contemplated by the Association and that such Owner is entitled to a hearing before the Board prior to any determination being made by the Board regarding such matter. Such hearing shall be noticed and held in accordance with Section 8.5 of the Bylaws. At such hearing, the affected Owner shall have the

right to present either oral or written argument to the Board regarding any matter under consideration. The Board shall make its decision and notify the affected Owner of such decision in writing.

12.4 Common Area and Association Maintenance Areas: Construction and Alteration of Improvements, Excavations and Landscaping.

No improvement, excavation or work which in any way alters any Common Area or Association Maintenance Areas from its natural or existing state on the date such Common Area was conveyed by Declarant to the Association pursuant to Article 7 (or to an Owner, with respect to the Association Maintenance Areas), shall be made or done except upon strict compliance with and with the restrictions and limitations of the following provisions:

(a) No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation on or in the Common Area or Association Maintenance Areas.

(b) Except to the extent otherwise provided in subsection (c) hereinbelow, if the Association proposes to construct or reconstruct, or to refinish or alter the exterior of any improvement located or to be located upon the Common Area or Association Maintenance Areas, or if the Association proposes to make or create any excavation or fill, or to change the natural or existing drainage of surface waters, or to remove any trees, shrubs or ground cover upon the Common Area or Association Maintenance Areas, the Association shall submit to the Architectural Committee for approval two sets of final plans and specifications for any such work in such form and containing such information as the Architectural Committee may from time to time require. The Architectural Committee shall approve the plans and specifications submitted to it pursuant to this paragraph only if all of the following conditions have been satisfied:

(1) If the plans are to construct any new improvement, including any alteration of the exterior appearance of any existing improvement, upon the Common Area or Association Maintenance Areas, the Architectural Committee finds that such improvement: (i) is desirable in order to provide or improve access to or to enhance the use and enjoyment of the Common Area or Association Maintenance Areas; (ii) is desirable to protect, support or preserve any property which constitutes a part of the Development; or (iii) is desirable for the construction of a recreational facility.

(2) The Architectural Committee finds that the proposed work will not be detrimental to or incompatible with the amenities and purposes of the Development.

(3) All such approvals shall be in writing; provided, however, that plans that have not been approved or rejected within thirty (30) days from the date of submission thereof to the Architectural Committee shall be deemed approved. One set of plans as finally approved shall be retained and maintained by the Architectural Committee as a permanent record.

(c) The Association may at any time and from time to time:

(1) Reconstruct, replace or refinish any improvement or portion thereof in or on the Common Area or Association Maintenance Areas in accordance with: (i) the last plans therefor approved by the Architectural Committee pursuant to subsection (b) hereinabove; (ii) the plans filed by Declarant with the Architectural Committee pursuant to subsection (d) hereinbelow; (iii) the plans required by the City; or (iv) if none of the foregoing is applicable, and if such improvement existed upon the Common Area or Association Maintenance Areas when such Common Area was conveyed by Declarant to the Association (or to an Owner, in the case of the Association Maintenance Areas), then, in accordance with the original design, finish or standard of construction of such improvement at the time of such conveyance.

(2) Construct, reconstruct, replace or refinish any road improvement or surface upon any portion of the Common Area or Association Maintenance Areas, including the Private Streets, street signs, street lights, traffic signs and marks, striping, and storm drain facilities.

(3) Replace destroyed or damaged trees or other vegetation and to the extent that the Association deems necessary for the conservation of water and soil or for the beautification of the Development, plant trees, shrubs and ground cover;

(4) Place and maintain upon the Common Area and Association Maintenance Areas such signs as the Association may deem necessary for the identification of the Development and the regulation of traffic, including parking, the regulation and use of the Common Area and Association Maintenance Areas, and for the health, welfare and safety of Owners and their tenants, guests and invitees.

(d) Notwithstanding the foregoing provisions, any improvement, excavation or alteration may be made by the Association without the approval of the Architectural Committee if approved by a majority of each class of Members, or if there is only one class, by a majority of votes of the Members, which majority shall include a majority of the Members other than Declarant.

12.5 Waiver. The approval by the Association of any plans, drawings, or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the

Association under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

12.6 Liability. Neither the Association nor any Member thereof shall be liable to any Owner or to any other person or entity for any damage, loss or prejudice suffered or claimed on account of (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, or (c) the development or manner of development of any property within the Development, provided, however, that such Member has, with the actual knowledge possessed by him, acted in good faith.

ARTICLE 13. AMENDMENT

13.1 Amendment Prior to Close of First Sale. Prior to the closing of the first sale of a Lot in the Development to a purchaser other than Declarant, this Declaration and any amendment to it may be amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking this Declaration. Any such revoking or amending instrument shall make appropriate reference to this Declaration and any supplements or amendments hereto, and which instrument shall be acknowledged and recorded in the Office of the County Recorder.

13.2 Amendment After Close of First Sale. After the closing of the first sale of a Lot to a purchaser other than Declarant, this Declaration may be amended or revoked only by the vote or written assent of Owners holding at least fifty-one percent (51%) of the voting rights of each class of Owners, or if a single class of Owners is then in effect, by the vote or written consent of not less than (i) fifty-one percent (51%) of all the votes and (ii) fifty-one percent (51%) of the votes excluding Declarant. However, if any provision of this Declaration requires a greater percentage of the voting rights of the Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. In addition, if the consent or approval of the DRE, the City, the County, or any other governmental authority, any Mortgagee, or any other person, firm, agency or entity is required under this Declaration or applicable law with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless and until such consent or approval is obtained. Any such amendment or revocation shall be evidenced by an instrument referencing this Declaration and any prior amendments thereto, which instrument shall be executed and acknowledged by a duly authorized officer or other representative of the Association, and recorded in the office of the Recorder of the County.

13.3 Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid as to anyone relying thereon in good faith.

13.4 Compliance with Business and Professions Code §11018.7. All amendments or revocations of this Declaration shall comply with all applicable provisions of California Business and Professions Code §11018.7.

13.5 Conformity with Mortgage Requirements. It is the intent of Declarant that this Declaration and any and all other documents and instruments pertaining to the governance of the Association, and the Development in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize a Mortgage of a Lot in the Development by FNMA, FHLMC, FHA, the VA, or any similar or successor entity.

13.6 Approval of Amendments by City. The prior written approval of the City shall be required for any amendment to this Declaration which would materially affect the City's original conditions of approval of the Project and/or the original layout and design thereof. A copy of the City's original conditions of approval of the Project shall be kept on file at all times at the office of the Association, and shall be provided to any Owner upon such Owner's written request. The Association may impose a fee to provide such copies, which fee may not exceed the Association's reasonable costs in preparing and reproducing the materials.

ARTICLE 14. GENERAL PROVISIONS

14.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.

14.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provisions hereof shall not invalidate any other provisions hereof.

14.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.

14.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be enjoined by any owner, any member of the Board, the Manager, and/or the Association.

14.5 No Discrimination. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his Lot on the basis of race, sex, marital status, physical disability, age, national origin, sexual orientation, color or religion.

14.6 Access to Books. Any Owner may, at any reasonable time, upon reasonable notice, and at his own expense, cause an audit or inspection to be made of the books and financial records of the Association.

14.7 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose.

14.8 Notification of Sale of Lot. Concurrently with the consummation of the sale of any Lot under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee and their Mortgagee(s) and transferor, the street address of the Lot purchased by the transferee, the transferee's and the Mortgagee's mailing addresses, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his transferor if the Association has received no notice of transfer as provided above, by certified mail, return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of a Lot over the age of twelve (12) years.

14.9 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

14.10 Exhibits. Any and all exhibits attached hereto shall be deemed to be made a part hereof and incorporated by reference herein.

14.11 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Lot.

14.12 Successors and Assigns. This Declaration shall run with the land and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of Declarant, and the heirs, personal representatives, grantees,

IN WITNESS WHEREOF, Declarant has executed this instrument
this _____ of _____, 1990.

DECLARANT:

BEAR COVE PROPERTIES,
a California limited partnership

By: Bear Forest Properties,
a California corporation,
its general partner

By: *Jeffrey B. Lawrence*
Jeffrey B. Lawrence, President

[Attach notarial acknowledgment]

3008 (6/82) — (Corporate) Partner of a Limited Partnership
First American Title Company

STATE OF CALIFORNIA
COUNTY OF Contra Costa ss.

On February 7, 1990 before me, the undersigned, a Notary Public in and for
said State, personally appeared Jeffrey B. Lawrence

_____ personally known to me (or proved to me on the
basis of satisfactory evidence) to be the persons who executed the within instrument as

President BEAR FOREST

PROPERTIES, a California corporation

the corporation therein named, and acknowledged to me that said
corporation executed the within instrument pursuant to its by-
laws or a resolution of its board of directors, said corporation being

known to me to be the general partner of Bear Cove

Properties, a California limited partnership

the limited partnership that executed the within instrument, and
acknowledged to me that such corporation executed the same as
such partner and that such partnership executed the same.

WITNESS my hand and official seal.

Signature *Jennifer Schwind*

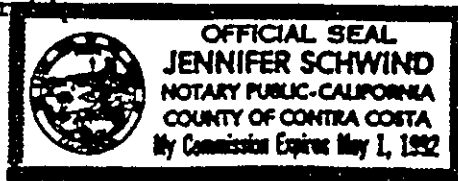


EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

THAT CERTAIN PROPERTY LOCATED IN THE CITY OF VALLEJO, COUNTY OF SOLANO, STATE OF CALIFORNIA, AND DESCRIBED AS FOLLOWS:

All that real property shown on that certain final subdivision map entitled "FINAL MAP FOR HARBOUR TOWNE", recorded September 6, 1989, in Book 56 of Maps, at Page 89, et seq. Official Records of Solano County, California, as corrected by that certain CERTIFICATE OF CORRECTION recorded on February 5, 1990, as series no. 90-8795, Official Records of Solano County, California.

EXCEPTING THEREFROM: Lots A, B, C, D, and J as shown on said Final Map.