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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
ANTARES

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**AND RESERVATION OF EASEMENTS**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
ANTARES**

THIS DECLARATION is made by DMM Development Co., LLC, a California limited liability company ("Declarant").

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

A. Declarant is the owner of real property ("Phase 1") located in the City and County of San Diego, State of California, described as follows:

Parcels No. 2 and 8, as shown on Parcel Map No. 17924,  
Recorded on October 24, 1997, as Instrument No.  
1997-0534856, of Official Records of San Diego County,  
California; and a nonexclusive easement of access, ingress, egress,  
maintenance and repair over the portion of Parcel 10 of said Parcel  
Map shown on Exhibit "D" attached hereto.

B. It is the desire and intention of Declarant to create a "condominium project," as defined in Section 1351(f) of the California Civil Code, to subdivide the Property as authorized by Section 66427 of the California Government Code into "condominiums" as defined in Section 783 of the California Civil Code, and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the condominiums created pursuant to the Davis-Stirling Common Interest Development Act.

C. Declarant hereby declares that the Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions, reservations, rights, easements, conditions and covenants contained in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the subdivision, maintenance, improvement and sale of the Property for the purpose of enhancing the value, desirability and attractiveness of the Property. All provisions of this Declaration, including without limitation the easements, uses, obligations, covenants, conditions and restrictions hereof, are hereby imposed as equitable servitudes upon the Property. All of the limitations, restrictions, reservations, rights, easements, conditions and covenants herein shall run with and burden the Property and shall be binding on and for the benefit of all of the Property and all Persons having or acquiring any interest in the Property or any part thereof, and their successive owners and assigns. The development plan of the Property shall be consistent with the overall development plan, if any, submitted to VA and FHA.



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

## ARTICLE I

### 1. Definitions.

Unless otherwise expressly provided, the following words and phrases when used herein have the following specified meanings.

#### 1.1. Annexable Territory.

Annexable Territory means the real property described in Exhibit "C" attached hereto and incorporated herein by this reference, all or any portion of which may be made subject to this Declaration pursuant to Article XVI hereof.

#### 1.2. Architectural Committee or Committee.

Architectural Committee or Committee means the Architectural Review Committee created pursuant to Article IV hereof.

#### 1.3. Articles.

Articles means the Articles of Incorporation of the Association as amended. A copy of the Articles is attached hereto as Exhibit "A" and incorporated herein by this reference.

#### 1.4. Assessment, Annual.

Annual Assessment means a charge against the Owners and their Condominiums, representing a portion of the Common Expenses, which are to be levied as provided herein.

#### 1.5. Assessment, Capital Improvement.

Capital Improvement Assessment means a charge which the Board may levy against the Owners and their Condominiums, representing a portion of the cost to the Association for installation or construction of any capital Improvements on any of the Common Property. Such charge shall be levied in the same proportions as Annual Assessments.

#### 1.6. Assessment, Reconstruction.

Reconstruction Assessment means a charge which the Board may levy against the Owners and their Condominiums, representing a portion of the Association's cost to reconstruct any

Improvements on the Common Property. Such charge shall be levied among all of the Owners in the same proportions as Annual Assessments.

1.7. Assessment, Special.

Special Assessment means either (a) a charge against a particular Owner directly attributable to, or reimbursable by, that Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the Restrictions, or (b) a reasonable fine or penalty assessed by the Board, plus interest and other charges on such Special Assessments as provided for herein. Special Assessments shall not include any late payment penalties, interest charges or costs (including attorneys' fees) incurred by the Association in the collection of Annual, Capital Improvement or Reconstruction Assessments.

1.8. Association.

Association means ANTARES COMMUNITY ASSOCIATION, a California nonprofit corporation (formed pursuant to the California Nonprofit Mutual Benefit Corporation Law), its successors and assigns. The Association is an "association" as defined in Section 1351(a) of the California Civil Code.

1.9. Association Maintenance Areas.

Association Maintenance Areas shall mean certain landscaping and irrigation Improvements (but not the driveways, entry areas, walkways, fences or exterior surfaces of the Residences) which are located within yards of the Units between the exterior of the Residence or exterior of the fencing in the Unit and the Association Property. The Association shall have a nonexclusive easement for maintenance purposes over the Association Maintenance Areas. The precise location of the Association Maintenance Areas shall be defined by the Improvements originally constructed or installed by Declarant or as modified or reconstructed by the Association.

1.10. Association Maintenance Funds.

Association Maintenance Funds means the accounts created for Association receipts and disbursements pursuant to Article V hereof.

1.11. Association Property.

Association Property means all the real and personal property and Improvements to which the Association holds fee title or over which the Association holds an easement for the common use and enjoyment of the Members. The Association Property located in Phase 1 includes Parcel Nos. 2 and 8 of Parcel Map No. \_\_\_\_\_ excluding the Units and the Common Area, both depicted on the Condominium Plan for Phase 1 and the easement over a portion of Parcel 10 of said Parcel Map described in Paragraph A of the Preamble to this Declaration and depicted on Exhibit "D" to this Declaration. Additional Association Property may be annexed to the Property pursuant to Article XVI hereof.

1.12. Beneficiary.

Beneficiary means a Mortgagee under a Mortgage or a Beneficiary under a Deed of Trust and the assignees of such Mortgagee or Beneficiary.

1.13. Board or Board of Directors.

Board or Board of Directors means the Association's Board of Directors.

1.14. Budget.

Budget means a written, itemized estimate of the Association's income and Common Expenses prepared pursuant to the Bylaws.

1.15. Bylaws.

Bylaws means the Bylaws of the Association as adopted by the Board initially in the form of Exhibit "B" attached hereto and incorporated herein by this reference, as amended.

1.16. City.

City means the City of San Diego, in the County of San Diego, State of California, and its various departments, divisions, employees and representatives.

1.17. Close of Escrow.

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

1.18. Common Area.

Common Area means those certain volumes of airspace described in the Condominium Plan, which shall be owned by groups of Owners in each Phase as tenants in common. The Common Area in Phase 1 is shown on the Phase 1 Condominium Plan.

1.19. Common Expenses.

Common Expenses means those expenses for which the Association is responsible under this Declaration, including the actual and estimated costs of: maintaining, managing, operating, repairing and replacing the Common Property; unpaid Special Assessments, Reconstruction Assessments and Capital Improvement Assessments; maintain the recreational facilities on the Common Property; all utilities metered to more than one Unit and other commonly metered charges for the Property; trash collection and removal (as applicable); maintaining clustered mailboxes and address identification signs; managing and administering the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; gardening and other services benefiting the Common Property; fire, casualty, liability, workers' compensation, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the Directors, officers and agents of the Association; bonding the members of the Board; taxes paid by the Association, including any blanket tax assessed against the Property; amounts paid by the Association for discharge of any lien or encumbrance levied against the Property, or portions thereof; payments made pursuant to the Reciprocal Easement Agreement; and all other items incurred by the Association, for any reason whatsoever in connection with the Property, for the common benefit of the Owners.

1.20. Common Property.

Common Property means the Common Area, Association Maintenance Areas and the Association Property.

1.21. Condominium.

Condominium means an estate in real property as defined in California Civil Code Section 1351(f). A Condominium consists of an undivided fee simple ownership interest in the Common Area in a Phase, together with a separate ownership interest in fee in a Unit and all easements appurtenant thereto. Subject to the provisions of Section 11.5 hereof, the undivided fee simple interest in the Common Area in a Phase is appurtenant to each Unit in such Phase and shall be held by the Owners of Condominiums in that Phase as tenants in common.

1.22. Condominium Plan.

Condominium Plan means the Recorded plan, as amended, for all or a portion of a Phase consisting of (a) a description or survey map of the Phase or portion thereof, which shall refer to or show monumentation on the ground, (b) a three-dimensional description of the Phase or portion thereof, one or more dimensions of which may extend for an indefinite distance upwards or downwards in sufficient detail to identify the Association Property, Common Area and each Unit, and (c) a certificate consenting to the Recordation thereof signed and acknowledged by the record owner of fee title to the Phase or portion thereof, and by either the trustee or the Beneficiary of each Recorded Deed of Trust, and the Mortgagee of each recorded Mortgage encumbering the Phase or portion thereof.

1.23. County.

County means the County of San Diego in the State of California, and its various departments, divisions, employees and representatives.

1.24. Declarant.

Declarant means DMM Development Co., LLC, a California limited liability company, its successors, and any Person to which it shall have assigned any of its rights hereunder by an express written assignment. As used in this Section, "successor" means a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant, by sale, merger, reverse merger, consolidation, sale of stock or assets, operation of law or otherwise.

1.25. Declaration.

Declaration means this instrument as amended or restated from time to time.

1.26. Deed of Trust.

Deed of Trust means a Mortgage as defined herein.

1.27. DRE.

DRE means the California Department of Real Estate and its successors.

1.28. Dwelling Unit.

Dwelling Unit means all of the structural Improvement within the Units, including the Residence and the garage.

1.29. Exclusive Use Area.

Exclusive Use Area means those portions of the Association Property over which exclusive easements are reserved for the benefit of certain Owners including without limitation for yard purposes and internal and external telephone wiring designed to serve a single Unit but located outside the boundaries of that Unit, in accordance with California Civil Code Section 1351(i).

1.30. Family.

Family means one or more natural persons (a) related to each other by blood, marriage or adoption, or (b) a group of natural persons not all so related, but who maintain a common household in a Residence.

1.31. FHA.

FHA means the Federal Housing Administration of the United States Department of Housing and Urban Development and any department or agency of the United States government which succeeds to FHA's function of insuring notes secured by Mortgages on residential real estate.

1.32. FHLMC.

FHLMC means the Federal Home Loan Mortgage Corporation created by Title II of the Emergency Home Finance Act of 1970, and its successors.

1.33. Fiscal Year.

Fiscal Year means the fiscal accounting and reporting period of the Association selected by the Board.

1.34. FNMA.

FNMA means the Federal National Mortgage Association, a government-sponsored private corporation established pursuant to Title VIII of the Housing and Urban Development Act of 1968, and its successors.

1.35. GNMA.

GNMA means the Government National Mortgage Association administered by the United States Department of Housing and Urban Development, and its successors.

1.36. Improvements.

Improvements means all structures and appurtenances thereto, including but not limited to, buildings, walkways, sprinkler pipes, garages, sidewalks, roads, driveways, parking areas, fences, all types of walls, awnings, stairs, decks, landscaping, antennae, hedges, windbreaks, the exterior

surfaces of any visible structure and the paint on such surfaces, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or equipment.

1.37. Manager.

Manager means the Person employed by the Association as an employee, an agent or an independent contractor to perform functions of the Association as limited by the Restrictions and the terms of the agreement between the Association and said Person.

1.38. Member, Membership.

Member means any Person holding a Membership. Membership means the voting and other rights and privileges of Members as provided in the Restrictions, together with the correlative duties and obligations contained therein.

1.39. Module.

Module means a separate, three-dimensional airspace volume shown and designated as a "Module" on a Condominium Plan. A Module may include Units within it, but the Units do not constitute Modules in and of themselves.

1.40. Mortgage.

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

1.41. Mortgagee, Mortgagor.

Mortgagee means a Person to whom a Mortgage is made and includes the Beneficiary of a Deed of Trust. Mortgagor means a Person who mortgages his or its property to another (i.e., the maker of a Mortgage), and includes the Trustor of a Deed of Trust. The term "Trustor" is synonymous with the term "Mortgagor" and the term "Beneficiary" is synonymous with the term "Mortgagee."

1.42. Notice and Hearing.

Notice and Hearing means written notice and a hearing before the Board, as further provided in the Bylaws.

1.43. Notice of Addition.

Notice of Addition means an instrument Recorded pursuant to Article XVI hereof to annex additional real property to the Property.

1.44. Owner.

Owner means the Person or Persons, including Declarant, holding fee simple interest to a Condominium. The term "Owner" includes a Seller under an executory contract of sale but excludes Mortgagees.

1.45. Person.

Person means a natural individual or any other entity with the legal right to hold title to real property.

1.46. Phase 1.

Phase 1 means all of the real property described in Paragraph A of the Preamble of this Declaration.

1.47. Phase of Development.

Phase of Development or Phase means each of the following: (a) Phase 1 and (b) all the real property covered by a Notice of Addition, for which a Final Subdivision Public Report has been issued by DRE, unless otherwise defined in such Notice of Addition.

1.48. Project.

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

1.49. Property.

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

1.50. Reciprocal Easement Agreement.

Reciprocal Easement Agreement means the Reciprocal Easement and Use Agreement for Elysian originally entered into by RGC-M Associates L.P., a California limited partnership, and Elysian Community Association, a California nonprofit mutual benefit corporation, Recorded on May 4, 1990, as Instrument No. 90-244949, of Official Records of San Diego County, California, as amended or restated from time to time.

1.51. Record, File, Recordation.

Record, File, or Recordation means, with respect to any document, the recordation or filing of such document in the Office of the San Diego County Recorder.

1.52. Residence.

Residence means the residential portion (i.e., excluding the garage) of the Dwelling Unit within a Unit.

1.53. Restrictions.

Restrictions means this Declaration, the Articles, Bylaws and the Rules and Regulations of the Association.

1.54. Rules and Regulations.

Rules and Regulations means the rules and regulations adopted by the Board pursuant to this Declaration or the Bylaws, as amended.

1.55. Unit.

Unit means a separate interest in space as defined in Section 1351(f) of the California Civil Code. Each Unit is a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan.

1.56. VA.

VA means the Department of Veterans Affairs of the United States of America and any department or agency of the United States government which succeeds to VA's function of issuing guarantees of notes secured by Mortgages on residential real estate.

## ARTICLE II

### 2. Antares Community Association

#### 2.1. Organization of Association.

The Association is or shall be incorporated under the name of ANTARES COMMUNITY ASSOCIATION, as a corporation not for profit organized under the California Nonprofit Mutual Benefit Corporation Law, as required by Section 1363 of the California Civil Code.

#### 2.2. Duties and Powers.

The Association has the duties and powers set forth in the Restrictions and also has the general and implied powers of a nonprofit mutual benefit corporation, generally to do all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers set forth in Restrictions. The Association may install or construct capital Improvements on the Common Property. The Association may (a) reconstruct, replace or refinish any Improvement or portion thereof upon the Common Property; (b) replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Property; (c) employ personnel necessary for the effective operation and maintenance of the Common Property, including the employment of legal, management and accounting services; and (d) enter into contracts with Owners or other persons to provide services or to maintain and repair Improvements within the Project and elsewhere which the Association is not otherwise required to provide or maintain pursuant to this Declaration so long as such contracts provide for reimbursement of the Association for the costs of providing such services or maintenance. The Association shall perform all of the obligations of the "Adjacent Association," defined in the Reciprocal Easement Agreement.



2.3. Membership.

Every Owner shall automatically be a Member of the Association and shall remain a Member until such Owner's Condominium ownership ceases, at which time such Owner's Membership in the Association shall automatically cease. Ownership of a Condominium is the sole qualification for Membership in the Association. Membership in the Association is not assignable except to the Person to whom title to the Unit has been transferred, and every Membership in the Association is appurtenant to and may not be separated from the fee ownership of such Unit. The rights, duties, privileges and obligations of all Members are as provided in the Restrictions.

2.4. Transfer.

The Membership of any Owner may not be transferred, pledged or alienated in any way, except upon the transfer or encumbrance of such Owner's Condominium, and then only to the transferee or Mortgagee of such Condominium. A prohibited transfer is void and will not be reflected upon the books and records of the Association. A Class A Member who has sold his Condominium to a contract purchaser under an agreement to purchase may delegate his Membership rights to the contract purchaser. The delegation must be in writing and must be delivered to the Board before the contract purchaser may vote. The contract seller shall remain liable for all charges and assessments attributable to the contract seller's Condominium which accrue before fee title to the Condominium is transferred. If an Owner fails or refuses to transfer his Membership to the purchaser of such Owner's Condominium upon transfer of fee title thereto, the Board may record the transfer upon the Association's books. Until satisfactory evidence of such transfer has been presented to the Board, the purchaser will not be entitled to vote at Association meetings. The Association may levy a reasonable transfer fee against a new Owner and such Owner's Condominium (which fee shall be paid through escrow or added to the Annual Assessment chargeable to such new Owner) to reimburse the Association for the administrative cost of transferring the Membership to the new Owner on the Association's records. Such fee may not exceed the Association's actual cost involved in changing its records.

2.5. Classes of Membership.

The Association classes of voting Membership are as follows:

Class A. Class A Members are all Owners except Declarant for so long as there exists a Class B Membership. Class A Members are entitled to one (1) vote for each Condominium owned by such Class A Members which is subject to assessment. Declarant shall become a Class A Member upon conversion of Declarant's Class B Membership as provided below. When more than one (1) Person owns any Condominium, all such Persons are Members. The vote for such Condominium shall be exercised in accordance with Section 2.6, but no more than one (1) Class A vote may be cast for any Condominium.

Class B. The Class B Member is Declarant. The Class B Member is entitled to three (3) votes for each Condominium owned by Declarant which is subject to assessment. The Class B Membership shall be converted to Class A Membership upon the first to occur of the following events:

(1) The second anniversary of the first Close of Escrow in the most recent Phase; or

(2) The fourth anniversary of the first Close of Escrow in Phase 1.

2.6. Voting Rights.

(a) All voting rights are subject to the Restrictions. Except as provided in Section 14.2 hereof and Section 4.8 of the Bylaws, as long as there exists a Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of a specified percentage (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) of the Association's voting power before action may be undertaken shall require the approval of such specified percentage of the voting power of each class of Membership. Except as provided in Section 14.2 hereof and Section 4.8 of the Bylaws, upon termination of the Class B Membership, any provision of the Restrictions which expressly requires the vote or written consent of Owners representing a specified percentage (i.e., other than actions requiring merely the vote or written consent of a majority of a quorum) of the Association's voting power before action may be undertaken shall then require the vote or written consent of Members representing such specified percentage of both (1) the Association's total voting power and (2) the Association's voting power residing in Members other than Declarant.

(b) Class A Members are entitled to one (1) vote for each Condominium in which they hold the interest required for Membership. When more than one (1) Person holds such interest in any Condominium ("co-owners"), all such co-owners are Members and may attend any Association meeting, but only one (1) such co-owner shall be entitled to exercise the single vote to which the Condominium is entitled. Co-owners owning the majority interests in a Condominium may designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Condominium shall be exercised, if at all, as a unit. Where no voting co-owner is designated or if the designation has been revoked, the vote for the Condominium shall be exercised as the co-owners owning the majority interests in the Condominium agree. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the corresponding voting co-owner is acting with his co-owners' consent. No vote may be cast for any Condominium if the co-owners present in person or by proxy owning the majority interests in such Condominium cannot agree to said vote or other action. The nonvoting co-owner or co-owners are jointly and severally responsible for all of the obligations imposed upon the jointly-owned Condominium and are entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in

accordance with the voting percentages established in the Restrictions are binding on all Owners and their successors in interest.

2.7. Repair and Maintenance by the Association.

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

(b) Maintenance Items. The Association shall repair and pay for all centrally metered utilities, water charges, and mechanical and electrical equipment serving the recreational amenities maintained by the Association, the Common Property and Association Maintenance Areas; pay all charges for any utilities which serve individual Units but which are subject to a common meter; pay all Common Expenses and charges for water and utilities serving the recreational amenities maintained by the Association, the Common Property and Association Maintenance Areas; repair and maintain all Common Property and Association Maintenance Areas, including without limitation all walks, private driveways and other means of ingress and egress within the Property. The Association may, but is not required to, perform all corrective janitorial, landscaping and repair work within any Residence if the Owner thereof fails to do so after Notice and Hearing. Any wrought iron originally installed by Declarant on a wall or fence separating a Unit or Exclusive Use Area from Common Area shall be completely repaired, replaced and maintained by the Association and not by any Owner. The Association shall maintain the exterior surface and structural integrity of all walls or fences that (i) are not the exterior of a Residence or a garage, and (ii) either separate a Unit or Exclusive Use Area from Association Property, or separate a Unit or Exclusive Use Area from the exterior boundary of the Property. The Association has a right of entry into the portion of the Unit that is not the Residence to perform the obligations established in this Section. Such right shall be exercised in a reasonable manner with advance notice given to the Owner when possible. The Association shall also maintain all portions of walls or fences located entirely on Association Property.

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

(d) Inspection. The Board shall have the Common Property and Association Maintenance Areas and all Improvements thereon inspected at least once every three (3) years in order to (i) determine whether the Common Property and Association Maintenance Areas is being maintained adequately in accordance with the standards of maintenance established in this Section, (ii) identify the condition of the Common Property, Association Maintenance Areas and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement, or repair, and (iii) recommend preventive actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board may employ such experts and consultants as are necessary to perform the inspection and make the report required by this Section.

The Board shall prepare a report of the results of the inspection required by this Section. The report shall be furnished to Owners within the time set forth for furnishing Owners with the Budget. The report must include at least the following:

(i) a description of the condition of the Common Property and Association Maintenance Areas, including a list of items inspected, and the status of maintenance, repair and need for replacement of all such items;

(ii) a description of all maintenance, repair and replacement planned for the ensuing Fiscal Year and included in the Budget;

(iii) if any maintenance, repair or replacement is to be deferred, the reason for such deferral;

(iv) a summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections;

(v) a report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and

(vi) such other matters as the Board deems appropriate.

(e) Disputes Regarding Maintenance. If any dispute shall arise between an Owner and the Association or any other Owner regarding who shall have the responsibility of maintaining an Improvement, the Board of Directors of the Association shall determine who shall be responsible for the maintenance of the Improvement and that decision shall be binding upon the Owner and the Association. If Owners wish to enter into agreements with other Owners allocating the responsibilities established in Section 2.9 with each other, such agreement shall be valid upon approval of the Board.

#### 2.8. Unsegregated Real Property Taxes.

To the extent not assessed to or paid by the Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Property. If all of the Units in a Phase are taxed under a blanket tax bill covering all of such Phase, then each Owner shall pay his proportionate share of any installment due under the blanket tax bill to the Association at least ten (10) days prior to the delinquency date. The Association shall transmit the taxes to the appropriate tax collection agency on or before the delinquency date. The Association shall allocate blanket taxes equally among the Owners and their Condominiums in such Phase, based upon the total number of Units in such Phase. The Association shall, at least forty-five (45) days prior to the delinquency date of any blanket tax installment, deliver to each Owner in such Phase a copy of the tax bill, along with a written notice setting forth the Owner's obligation to pay his proportionate share of the tax installment and the potential additional charges to the Owner for failure to comply. The Association shall pay the taxes on behalf of any Owner who does not pay his proportionate share. The Association shall add to the Annual Assessment of a delinquent Owner the amount of any sum advanced, plus interest at the rate of ten percent (10%) per annum and any amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill for a Phase, which late charge results from the failure of the delinquent Owner to make timely payment of his proportionate share of the taxes. Until Close of Escrow for the sale of ninety percent (90%) of the Condominiums in the Project has occurred, this Section may not be amended without the express written consent of Declarant.

#### 2.9. Repair and Maintenance by Owners.

##### (a) Residence.

Each Owner shall be responsible for maintaining all portions of the interior, exterior and structural integrity of his Residence. Such maintenance responsibilities include, but are not limited to, all maintenance and repair of the roof and exterior of the Residence, replacement of

all glass areas of an Owner's Residence, and the repair and replacement of the internal and external telephone wiring, plumbing, cooling and heating systems and related mechanical and electrical equipment which serve the Residence.

(b) Yard Areas.

Each Owner shall be responsible for maintaining all portions of the yard of his Unit. Each Owner shall not be responsible for maintaining any portion of his Unit which is designated as a Association Maintenance Area. The yard and every part thereof, including the interior of the fence enclosing the yard and the drainage system established by Declarant as part of the grading and original construction of the yard, shall be repaired, replaced and maintained continuously in a neat and orderly condition by the Owner of the yard. Each Owner's maintenance obligations shall include performing all necessary landscaping and gardening to properly maintain and periodically replace trees, plants, grass and other vegetation located in the yard, subject to the approval of the Architectural Committee. Each Owner shall be responsible for taking all steps necessary to maintain any manufactured slopes and landscaping on the slopes located in the Owner's Unit to ensure that (i) the slope does not fail or cause any damage to any adjacent property, and (ii) no runoff or erosion occurs.

(c) Walls.

Each Owner shall maintain the painting on the interior surface of any wall or fence which is located along the exterior of his Unit or Exclusive Use Area. Each Owner shall share maintenance of any other fence or wall located in his Condominium or defining the exterior of his Unit in accordance with Section 2.9(i) of this Declaration. If an Owner obtains approval from the Architectural Committee, the Owner may add fencing on top of the wall surrounding his Unit. Any fencing installed by an Owner must comply with the architectural standards and design specifications adopted by the Architectural Committee. The Owner shall be responsible for all maintenance, repair and replacement of any additional fencing he installs. Any wrought iron originally installed by Declarant on a wall or fence separating a Unit or Exclusive Use Area from Association Property shall be completely repaired, replaced and maintained by the Association, and not by any Owner.

(d) Storm Drains.

The Units may be served by private storm drains which will drain water from the Units to the street. The drains may service one or more Units. The Owners of the Units which utilize the storm drains shall be responsible for all maintenance and repair of the storm drains, including periodic inspections to ensure that the drains are not blocked and that the water may flow freely to the street or into other drainage collection facilities.

(e) Pest Control.

Each Owner shall be responsible for adopting an inspection and preventive program for the prevention and eradication of infestation by wood destroying pests or other organisms in his Unit. All costs involved in maintaining the inspection and preventive program as well as repairing and replacing the damaged Improvements in an Owner's Unit when the need for such

maintenance, repair or replacement is the result of wood destroying pests or organisms shall be an expense of the Owner.

(f) Telephone Wiring.

Pursuant to California Civil Code Section 1351(i)(2), internal and external telephone wiring designed to serve a single Unit but located on the Association Property shall be exclusive use common area, as defined in Civil Code Section 1351(i), allocated exclusively to the Unit which the telephone wiring serves. Pursuant to Civil Code Section 1364(a), each Unit Owner shall be responsible for maintaining his exclusive use common area telephone wiring. Access to such telephone wiring may be reasonably restricted by the Association pursuant to Civil Code Section 1364(f).

(g) Failure to Perform Maintenance.

If any Owner shall permit any Improvement, the maintenance of which is the responsibility of such Owner, to fall into disrepair or to become unsafe, unsightly or unattractive, or to otherwise violate this Declaration, the Board shall have the right to seek any remedies at law or in equity which it may have. In addition, the Board shall have the right, but not the duty, after Notice and Hearing as provided in the Bylaws, to enter upon such Owner's Unit to make such repairs or to perform such maintenance and to charge the cost thereof to the Owner. Said cost shall be a Special Assessment enforceable as set forth in this Declaration. Owners have the right to enter into agreements allocating the responsibilities established in this Section 2.9 so long as such agreement is approved by the Board.

(h) Damage to Residences-Reconstruction.

If all or any portion of any Unit (except the Association Maintenance Areas) is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Unit to rebuild, repair or reconstruct the Unit and the Residence within such Unit in a manner which will restore them substantially to their appearance and condition immediately prior to the casualty or as otherwise approved by the Architectural Committee. The Owner of any damaged Unit and the Architectural Committee shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause reconstruction to commence within three (3) months after the damage occurs and to be completed within nine (9) months after damage occurs, unless prevented by causes beyond his reasonable control. A transferee of title to the Unit which is damaged or within which is located a damaged Residence shall commence and complete reconstruction in the respective periods which would have remained for the performance of such obligations if the Owner of the Unit at the time of the damage still held title to the Unit. However, in no event shall such transferee of title be required to commence or complete such reconstruction in less than thirty (30) days from the date such transferee acquired title to the Unit.

(i) Party Walls.

(i) General Rules of Law to Apply. Each wall or fence which is (i) built as a part of the original construction of the Units, and (ii) separates the Units shall be treated as a party wall ("Party

Wall"), subject to the general rules of law regarding common law party walls and liability for property damage due to negligence or willful acts or omissions modified as provided in this Section.

(ii) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners of the Units separated by such Party Wall. However, each Owner shall be solely responsible for repainting the side of any Party Wall facing his Residence.

(iii) Destruction by Fire or Other Casualty. If a Party Wall is destroyed or damaged by fire or other casualty, any Owner whose Unit is affected thereby may restore it, and the Owner of the other Unit which is affected thereby shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

(iv) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes a Party Wall to be exposed to the elements or to deteriorate or require repair or replacement shall bear the whole cost of furnishing the necessary protection against such elements or the necessary repairs or replacement.

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

#### 2.10. Use of Manager.

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



## ARTICLE III

### 3. Rights in Common Property.

#### 3.1. Maintenance and Repair.

Declarant hereby reserves an easement over the Common Area and Association Maintenance Areas for the benefit of the Association to enable it to perform its duties and exercise its powers described in this Declaration. The Association's obligation to maintain the Common Property and Association Maintenance Areas in any Phase in which a Condominium is located commences on the date Annual Assessments commence on Condominiums in such Phase. Until commencement of Annual Assessments on Condominiums in any Phase in which a Condominium is located, Declarant shall maintain the Common Property and Association Maintenance Areas in such Phase. The Association's obligation to maintain the Association Property in a Phase comprised solely of Association Property shall commence upon conveyance of such Association Property to the Association. Declarant expressly reserves for the benefit of each Owner a nonexclusive easement over the yard area of the adjacent Unit as necessary to allow the Owner to maintain and repair the wall or fence surrounding the Owner's Unit in accordance with the provisions of this Declaration.

#### 3.2. Partition.

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

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

Subject to this Declaration, every Member has, for himself, his Family, his tenants and guests, a nonexclusive easement of access, ingress, egress, use and enjoyment of, in and to the Common Property. Such easement is appurtenant to and passes with title to every Condominium in the Project.

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

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

- (a) The Association's right, after Notice and Hearing, to suspend (i) the rights and easements of any Member, and the Persons deriving such rights and easements from any Member, for use and enjoyment of any recreation facilities located on the Common Property for any period during which the payment of any Annual, Special, Capital Improvement or Reconstruction Assessment levied against the Member and his Condominium remains delinquent, and (ii) such rights and easements for the period set forth in the Bylaws for any violation of the Restrictions. Any suspension for either nonpayment of any Assessment or violation of the Restrictions does not waive or discharge the Member's obligation to pay Assessments as provided herein.

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

(c) The Association's right, acting through the Board, to grant, consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Property for purposes consistent with the intended use of the Property as a residential Condominium project.

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

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

(f) The Association's right to reasonably restrict access to maintenance and landscaped areas and similar areas of the Property.

(g) The Association's right to reasonably limit the number and frequency of guests and tenants of the Owners using the Common Property recreational facilities.

(h) The Association's right to establish Rules and Regulations for the use of the Common Property.

### 3.5. Right to Grant Easements.

Declarant hereby reserves, together with the right to grant and transfer the same, easements over the Common Property, or any portion thereof, for the exclusive use by an Owner or Owners of contiguous property as a yard, recreational, gardening, and/or landscaping area. Any such easement may be conveyed by the Declarant prior to the last Close of Escrow for sale of a Condominium in the Property. Such conveyance must be approved in advance by the Board of Directors of the Association. The purpose of the easement, the portion of the Common Property affected, the Unit to which the easement is appurtenant, and any restrictions on use of the easement area shall be identified in the Recorded grant of easement.

### 3.6. Delegation of Use.

Any Owner entitled to the right and easement of use and enjoyment of the Common Property may delegate those rights and easements in writing to his tenants, contract purchasers or subtenants who reside in such Owner's Condominium, subject to reasonable notification and regulation by the Board. An Owner who has delegated such right and easement may not use or

enjoy the recreational facilities or equipment of the Property for so long as such delegation remains in effect.

3.7. Waiver of Use.

No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release such Owner's Condominium from the liens and charges thereof, by waiving use and enjoyment of the Common Property or by abandoning such Owner's Condominium.

3.8. Damage by Member.

To the extent permitted by California law, each Owner is liable to the Association for any damage to the Common Property not fully reimbursed to the Association by insurance (including without limitation any deductible amounts under any insurance policies against which the Association files a claim for such damage) if the damage is sustained due to the negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by the Owner, his guests, tenants or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Property from the Owner, or such Owner's respective Family and guests. The Association may, after Notice and Hearing, (a) determine whether any claim shall be made upon the insurance maintained by the Association, and (b) levy a Special Assessment equal to any deductible paid and the increase, if any, in insurance premiums directly attributable to the damage caused by such Owner or the person for whom such Owner may be liable as described herein. If a Condominium is jointly owned, the liability of its Owners is joint and several, except to the extent that the Association has previously contracted in writing with the joint owners to the contrary. After Notice and Hearing, the cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against such Owner.

ARTICLE IV

4. Architectural Review Committee.

4.1. Members of Committee.

The Architectural Review Committee, sometimes referred to herein as the "Architectural Committee" or the "Committee," shall be comprised of three (3) members. The initial members of the Committee shall be representatives of Declarant until one (1) year after the original issuance of the Final Subdivision Public Report ("Public Report") for Phase 1 ("First Anniversary"). After the First Anniversary the Board may appoint and remove one (1) member of the Committee, and Declarant may appoint and remove a majority of the members of the Committee and fill any vacancy of such majority, until the earlier to occur of (a) Close of Escrow for the sale of ninety percent (90%) of all the Condominiums in the Property and the Annexable Territory, or (b) the fifth anniversary of the original issuance of the Public Report for Phase 1, after which the Board may appoint and remove all of the members of the Committee. Committee members appointed by the Board must be Members, but Committee members appointed by Declarant need not be Members. The Committee has the right and duty to promulgate reasonable

standards against which to examine any request made pursuant to this Article in order to ensure that the proposed plans conform harmoniously to the exterior design and existing materials of the buildings in the Property. Board members may also serve as Committee members.

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

The Committee shall consider and act upon all plans and specifications submitted for its approval under this Declaration and perform such other duties as the Board assigns to it, including inspection of construction in progress to assure conformance with plans approved by the Committee. No construction, installation or alteration of an Improvement, including landscaping, in the Property may be commenced or maintained until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location thereof have been submitted to and approved in writing by the Committee; provided, however, that any Improvement may be repainted without Committee approval so long as the Improvement is repainted the identical color which it was last painted. Without limiting the generality of the foregoing, the provisions of this Article IV apply to the construction, installation and alteration of solar energy systems, as defined in Section 801.5 of the California Civil Code, subject to the provisions of California Civil Code Section 714, the City Building Code, applicable zoning regulations, and associated City ordinances. The Owner submitting the plans and specifications ("Applicant") shall obtain a written, dated receipt therefor from an authorized agent of the Committee. Until changed by the Board, the address for the submission of such plans and specifications is the Association's principal office. The Committee shall approve plans and specifications submitted for its approval only if it determines that (a) the installation, construction or alterations contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Property as a whole, (b) the appearance of any structure affected thereby will be in harmony with the surrounding structures, (c) the installation, construction or alteration thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Property or the enjoyment thereof by the Members, and (d) the maintenance thereof will not become a burden on the Association. Declarant and any Person to whom Declarant may assign all or a portion of its exemption hereunder need not seek or obtain Architectural Committee approval of any Improvements constructed on the Property by Declarant or such Person.

The Committee may condition its approval of proposals or plans and specifications for any Improvement upon any of the following: (1) the Applicant's furnishing the Association with security acceptable to the Association against any mechanic's lien or other encumbrance which may be Recorded against the Property as a result of such work, (2) such changes therein as it deems appropriate, (3) the Applicant's agreement to grant appropriate easements to the Association for the maintenance of the Improvements, (4) the Applicant's agreement to install (at its sole cost) water, gas, electrical or other utility meters to measure any increased consumption, (5) the Applicant's agreement to reimburse the Association for the cost of such maintenance, or (6) the Applicant's agreement to complete the proposed work within a stated period of time, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, requiring a fee to

accompany each application for approval, or stating additional factors which it will consider in reviewing submissions. The Committee may provide that the amount of the fee be uniform, or that it be determined in any other reasonable manner, such as by the reasonable cost of the construction, alterations or installations contemplated. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plans submitted for approval. The Committee shall transmit its decision and the reasons therefor to the Applicant at the address set forth in the application for approval within forty-five (45) days after the Committee receives all required materials. Any application submitted pursuant to this Section 4.2 shall be deemed approved unless the Committee transmits written disapproval or a request for additional information or materials to the Applicant within forty-five (45) days after the date the Committee receives all required materials. The Applicant shall meet any review or permit requirements of the City prior to making any construction, installation or alterations permitted hereunder.

4.3. Meetings of the Committee.

The Committee shall meet as necessary to perform its duties. The Committee may, by resolution unanimously adopted in writing, designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee except the granting of variances pursuant to Section 4.8. In the absence of such designation, the vote or written consent of a majority of the Committee constitutes an act of the Committee.

4.4. No Waiver of Future Approvals.

The Committee's approval of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the Committee's approval does not waive any right to withhold approval of any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval.

4.5. Compensation of Members.

The Committee's members shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in performing their duties.

4.6. Inspection of Work.

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

(a) Time Limit. The Committee's right to inspect the Work and notify the responsible Owner of any Noncompliance shall terminate sixty (60) days after the Work has been completed and the Committee has received written notice from

the Owner that the Work has been completed. If the Committee fails to send a notice of Noncompliance to an Owner before this time limit expires, the Work shall be deemed to comply with the approved plans.

(b) Remedy. If an Owner fails to remedy any Noncompliance within sixty (60) days from the date of notification from the Committee, the Committee shall notify the Board in writing of such failure. Upon Notice and Hearing, the Board shall determine whether there is a Noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a Noncompliance exists, the Owner shall remedy or remove the same within a period of not more than forty-five (45) days from the date that notice of the Board ruling is given to the Owner. If the Owner does not comply with the Board ruling within that period, the Board may Record a Notice of Noncompliance and commence a lawsuit for damages or injunctive relief, as appropriate, to remedy the Noncompliance.

#### 4.7. Scope of Review.

The Architectural Committee shall review and approve, conditionally approve or disapprove all plans submitted to it for any proposed construction, installation or alteration solely on the basis of aesthetic considerations, consistency with this Declaration, and the overall benefit or detriment which would result to the immediate vicinity and the Property generally. The Committee shall consider the aesthetic aspects of the architectural designs, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features. The Committee's approval or disapproval shall be based solely on the considerations set forth in this Article IV. The Committee is not responsible for reviewing, nor may its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. The Architectural Committee may consider the impact of views from other Residences or Condominiums and reasonable privacy right claims as factors in reviewing, approving or disapproving any proposed landscaping, construction or other Improvement. However, Declarant does not warrant any protected views within the Property and no Residence or Condominium is guaranteed the existence or unobstructed continuation of any particular view.

#### 4.8. Variances.

The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including without limitation, restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the Committee, and become effective upon Recordation. After Declarant has lost the right to appoint a majority of the Committee's members, the Board must approve any variance recommended by the Committee before any such variance becomes effective. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The

granting of such a variance does not waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor does it affect the Owner's obligation to comply with all applicable governmental ordinances affecting the use of his Residence.

4.9. Appeals.

For so long as Declarant has the right to appoint and remove a majority of the Committee's members, the Committee's decisions are final, and there is no appeal to the Board. When Declarant is no longer entitled to appoint and remove a majority of the Committee's members, the Board may adopt policies and procedures for the appeal of Committee decisions to the Board. The Board has no obligation to adopt or implement any appeal procedures, and in the absence of Board adoption of appeal procedures, all Committee decisions are final.

ARTICLE V

5. Association Maintenance Funds and Assessments.

5.1. Personal Obligation of Assessments.

Declarant, for each Condominium owned by it, hereby covenants to pay, and each Owner, by acceptance of a deed to a Condominium, whether or not it shall be so expressed in such deed, is deemed to covenant to pay to the Association (a) Annual Assessments, (b) Special Assessments, (c) Reconstruction Assessments and (d) Capital Improvement Assessments; such assessments to be established and collected as provided herein. The Association may not levy or collect any Annual Assessment, Capital Improvement Assessment, Special Assessment or Reconstruction Assessment that exceeds the amount necessary for the purpose for which it is levied. Except as provided in this Section 5.1, all such assessments (other than Special Assessments), together with interest, costs, and reasonable attorneys' fees for the collection thereof, are a charge and a continuing lien on the Condominium against which such assessment is made. Each such assessment (including Special Assessments), together with interest, costs and reasonable attorneys' fees, is also the personal obligation of the Person who was the Owner of the Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments may not pass to any new Owner ("Purchaser") unless expressly assumed by the Purchaser.

5.2. Maintenance Funds of Association.

The Board shall establish no fewer than two (2) separate Association Maintenance Fund accounts into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the Association's performance of functions under this Declaration. The Association Maintenance Funds may be established as trust accounts at a banking or savings institution and shall include: (a) an Operating Fund for current Common Expenses, (b) an adequate Reserve Fund for the deposit of Reserves attributable to Improvements within the Common Property (which would not reasonably be expected to occur on an annual or more frequent basis), and for payment of deductible amounts for insurance policies which the Association obtains as provided in Section 9.1 hereof, and (c) any other funds which the Board

may establish to the extent necessary under the Declaration's provisions. Nothing contained herein precludes the establishment of additional Maintenance Funds by the Association, so long as the amounts assessed, deposited into, and disbursed from any such Fund are designated for purposes authorized by this Declaration.

5.3. Purpose of Assessments.

The assessments shall be used exclusively to (a) promote the Owners' recreation, health, safety and welfare, (b) operate, replace, improve and maintain the Common Property, and (c) discharge any other Association obligations under the Declaration. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration. Disbursements from the Operating Fund shall be made by the Board for such purposes as are necessary for the discharge of its responsibilities herein for the common benefit of all of the Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Board only for the purposes specified in this Article V and in Section 1365.5(c) of the California Civil Code, as amended. If the Association decides to use or transfer reserve funds to pay for litigation, the Association must notify its Members of the decision the next available mailing. Such notice shall provide an explanation of why the litigation is being initiated or defended, why operating funds cannot be used, how and when the reserve funds will be replaced, and a proposed budget for the litigation. The notice must state that the Members have a right to review an accounting for the litigation which will be available at the Association's office. The accounting shall be updated monthly. Association assessments or funds may not be used to abate any annoyance or nuisance emanating from outside the boundaries of the Property or in support of Federal, State or local political activities intended to influence governmental action affecting areas outside the boundaries of the Property (e.g., endorsement or support of political candidates, legislative or administrative actions by any governmental agency). Annual Assessments shall only be used to satisfy Common Expenses as provided herein and in the Bylaws.

5.4. Limitations on Annual Assessment Increases.

The Board shall levy Annual Assessments as follows:

(a) Maximum Authorized Annual Assessment for Initial Year of Operations. Until the first day of the Fiscal Year immediately following the Fiscal Year in which Annual Assessments commence, the Board may levy an Annual Assessment per Condominium in an amount which exceeds one hundred twenty percent (120%) of the amount of Annual Assessments disclosed for the Property in the most current Budget filed with and approved by DRE at the time Annual Assessments commence only if the Board first obtains the approval of Members casting a majority of votes at a meeting or election of the Association in which more than fifty percent (50%) of the Members are represented ("Increase Election"). Notwithstanding the foregoing, this Section does not limit Annual Assessment increases necessary for addressing an "Emergency Situation" as defined in Section 5.4(e).



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

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

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

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

(c) Supplemental Annual Assessments. If the Board determines that the Association's important and essential functions may be properly funded by an Annual Assessment in an amount less than the maximum authorized Annual Assessment described above, it may levy such lesser Annual Assessment. If the Board determines that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses, it shall immediately determine the approximate amount of the inadequacy. Subject to the limitations described in Sections 5.4(a) and (b) above and (e) below, the Board may levy a supplemental Annual Assessment reflecting a revision of the total charges to be assessed against each Condominium.

(d) Automatic Assessment Increases. Notwithstanding any other provisions of this Section 5.4, upon Declarant's annexation of any portion of the Annexable Territory pursuant to Article XVI, the Annual Assessment shall be automatically increased by the additional amount, if any, necessary to maintain the Common Property in or abutting such Annexable Territory in accordance with the standards prescribed by the then current DRE Operating Cost Manual, or if the Operating Cost Manual is no longer maintained by DRE, pursuant to standards prescribed by comparable maintenance cost guidelines prepared in accordance

with prudent property management practices. However, such increase shall occur only if (i) the annexation of such Annexable Territory is permitted by DRE, and VA or FHA, and (ii) the amount of such increase does not result in the levy of an Annual Assessment which is greater than the maximum potential Annual Assessment disclosed in all Final Subdivision Public Reports for the Property previously issued by DRE.

(e) Emergency Situations. For purposes of Sections 5.4(a), 5.4(b) and 5.6, an "Emergency Situation" is any one of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible where a threat to personal safety on the Property is discovered; and

(iii) An extraordinary expense necessary to repair or maintain the Property or any portion thereof for which the Association is responsible that could not have been reasonably foreseen by the Board when preparing the Budget. Prior to the imposition or collection of an assessment pursuant to this Subparagraph (iii), the Board shall adopt a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The resolution shall be distributed to the Members with the Notice of Delinquent Assessment.

5.5. Annual Assessments/Commencement-Collection.

Annual Assessments shall commence on all Condominiums in a Phase on the first day of the first calendar month following the first Close of Escrow in such Phase. All Annual Assessments shall be assessed uniformly and equally against the Owners and their Condominiums based upon the number of Condominiums owned by each Owner except as may be otherwise provided in a Notice of Addition. Annual Assessments for fractions of any month involved shall be prorated. Declarant shall pay its full pro rata share of the Annual Assessments on all unsold Condominiums for which Annual Assessments have commenced. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period. However, unless otherwise established by the Board, the initial Annual Assessments shall be assessed in accordance with the most recent Budget on file with and approved by DRE. Written notice of any change in the amount of any Annual Assessment, Capital Improvement Assessment or Reconstruction Assessment shall be sent via

first-class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

The Board may determine that funds in the Operating Fund at the end of the Fiscal Year be retained and used to reduce the following Fiscal Year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Property as a Condominium project, any amounts remaining in any of the Maintenance Funds shall be distributed to or for the benefit of the Members in the same proportions as such monies were collected from the Members.

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

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

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

#### 5.6. Capital Improvement Assessments.

The Board may levy, in any Fiscal Year, a Capital Improvement Assessment or Reconstruction Assessment applicable to that Fiscal Year only to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital Improvement or other such addition upon the Common Property including fixtures and personal property related thereto. No Capital Improvement Assessments in any Fiscal Year which, if added to the Capital Improvement Assessments already levied during such Fiscal Year, exceed five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year, may be levied without the vote or written consent of Members casting a majority of votes at an Increase Election.

Notwithstanding the foregoing, the Board may levy in any Fiscal Year, a Capital Improvement Assessment applicable to that Fiscal Year which exceeds five percent (5%) of the Association's Budgeted gross expenses for such Fiscal Year if such increase is necessary for addressing an Emergency Situation as defined in Section 5.4(e).

5.7. Delinquency.

Any installment of an assessment is delinquent if not paid within fifteen (15) days of the due date established by the Board. Any installment of Annual Assessments, Capital Improvement Assessments, Special Assessments, or Reconstruction Assessments not paid within thirty (30) days after the due date, plus all reasonable costs of collection (including attorneys' fees) and late charges as provided herein bears interest at the maximum rate permitted by law commencing thirty (30) days from the due date until paid. The Board may also require the delinquent Owner to pay a late charge in accordance with California Civil Code Section 1366(d)(2). The Association need not accept any tender of a partial payment of an assessment installment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender does not waive the Association's right to demand and receive full payments thereafter.

5.8. Creation and Release of Lien.

All sums other than Special Assessments assessed in accordance with this Declaration constitute a lien on the respective Condominium prior and superior to (a) any declaration of homestead Recorded after the Recordation of this Declaration, and (b) all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record (meaning any Recorded Mortgage or Deed of Trust with first priority or seniority over other Mortgages or Deeds of Trust) made in good faith and for value and Recorded prior to the date on which the "Notice of Delinquent Assessment" (described in this Section) against the respective Condominium was Recorded. Before the Association may place a lien upon an Owner's Condominium to collect a past due assessment, the Association shall send a written notice to the Owner by certified mail which contains the following information: (i) the fee and penalty procedure of the Association, (ii) an itemized statement of the charges owed by the Owner, including the principal owed, any late charges and the method of calculation, any attorney's fees, (iii) the collection practices used by the Association, and (iv) a statement that the Association may recover the reasonable costs of collecting past due assessments. The lien becomes effective upon Recordation by the Board or its authorized agent of a Notice of Delinquent Assessment ("Notice of Delinquent Assessment") securing the payment of any Annual, Capital Improvement or Reconstruction Assessment or installment thereof levied by the Association against any Condominium Owner, as provided in Section 1367 of the California Civil Code. The Notice of Delinquent Assessment must recite (i) the amount of the assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and Recording the Notice of Delinquent Assessment, (ii) the expenses of collection in connection with any delinquent installments, including without limitation reasonable attorneys' fees, (iii) a sufficient description of the Condominium against which the same has been assessed, (iv) the Association's name and address, (v) the name of the Owner thereof, and (vi) in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice

of Delinquent Assessment must be signed by an authorized Association officer or agent and must be mailed in the manner set forth in Section 2924b of the California Civil Code to the Owner of record of the Condominium no later than (10) calendar days after recordation. The lien relates only to the individual Condominium against which the assessment was levied and not to the Property as a whole. A monetary penalty imposed by the Association as a disciplinary measure for failure of an Owner to comply with the Restrictions may not become a lien enforceable by nonjudicial foreclosure against such Owner's Condominium; provided, however, that monetary penalties imposed for late payments and as a means of reimbursing the Association for costs incurred for the repair of damage to Common Property for which an Owner or an Owner's guests or tenants were responsible may become a lien against such Owner's Condominium enforceable by the sale of the Condominium in accordance with Section 5.9. Upon payment of the full amount claimed in the Notice of Delinquent Assessment, or other satisfaction thereof, the Board shall cause to be Recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of the amount claimed. The Board may require the applicable Owner to pay a reasonable charge, to be determined by the Board, for the preparation and Recordation of the Notice of Release before Recording it. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon the Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Delinquent Assessment.

#### 5.9. Enforcement of Liens.

The Board shall enforce the collection of amounts due under this Declaration by one (1) or more of the alternative means of relief afforded by this Declaration. The lien on a Condominium may be enforced by sale of the Condominium by the Association, the Association's attorneys, any title insurance company authorized to do business in California, or other persons authorized to conduct the sale as a trustee, after failure of the Owner to pay any Annual, Capital Improvement or Reconstruction Assessment, or installment thereof, as provided herein. The sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law. The Association (or any Owner if the Association refuses to act) may sue to foreclose the lien if (a) at least thirty (30) days have elapsed since the date on which the Notice of Delinquent Assessment was Recorded and (b) at least ten (10) days have elapsed since a copy of the Notice of Delinquent Assessment was mailed to the Owner affected thereby. The Association may bid on the Condominium at foreclosure sale, and acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, the Association or the purchaser at the sale may file suit to secure occupancy of the defaulting Owner's Unit, and the defaulting Owner shall be required to pay the reasonable rental value for the Unit during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving any lien securing the same, but this provision or any suit to recover a money judgment does not affirm the adequacy of money damages. Any recovery resulting from a suit at law or in equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

5.10. Priority of Assessment Lien.

Mortgages Recorded before a Notice of Delinquent Assessment have lien priority over the Notice of Delinquent Assessment. Sale or transfer of any Condominium does not affect the assessment lien, except that the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage extinguishes the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer relieves such Condominium from liens for any assessments thereafter becoming due. No Person who obtains title to a Condominium pursuant to a judicial or nonjudicial foreclosure of the first Mortgage is liable for the share of the Common Expenses or assessments chargeable to such Condominium which became due prior to the acquisition of title to the Condominium by such Person. Such unpaid share of Common Expenses or assessments is a Common Expense collectible from all of the Owners including such Person.

5.11. Alternative Dispute Resolution.

An Owner may dispute the assessments imposed by the Association if such Owner pays in full (i) the amount of the assessment in dispute, (ii) any late charges, (iii) any interest, and (iv) all fees and costs associated with the preparation and filing of a Notice of Delinquent Assessment (including mailing costs and attorneys fees not to exceed four hundred twenty-five dollars (\$425), and states by written notice that such amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days from the Recording of a Notice of Delinquent Assessment. Upon receipt of the written notice, the Association shall inform the Owner in writing that the dispute may be resolved through alternative dispute resolution as set forth in Civil Code Section 1354.

The right of any Owner to utilize alternative dispute resolution under this Section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any Owner and the Association, upon mutual agreement, from entering into alternative dispute resolution in excess of the limits set forth herein. An Owner may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association in the total amount paid under items (i) through (iv) above, if it is determined that the assessment levied by the Association was not correctly levied.

5.12. Receivers.

In addition to the foreclosure and other remedies granted the Association herein, each Owner, by acceptance of a deed to such Owner's Unit, hereby conveys to the Association all of such Owner's right, title and interest in all rents, issues and profits derived from and appurtenant to such Unit, subject to the right, power and authority of the Association to collect and apply such rents, issues and profits to any delinquent Assessments owed by such Owner, reserving to the Owner the right, prior to any default by the Owner in the payment of Assessments, to collect and retain such rents, issues and profits as they may become due and payable. Upon any such default the Association may, upon the expiration of thirty (30) days following delivery to the Owner of the "Notice of Delinquent Assessment" described herein, either in person, by agent or by receiver to be appointed by a court, and without regard to the adequacy of any security for the

indebtedness secured by the lien described herein, (a) enter in or upon and take possession of the Unit or any part thereof, (b) in the Association's name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and (c) apply the same, less allowable expenses of operation, to any delinquencies of the Owner hereunder, and in such order as the Association may determine. The entering upon and taking possession of the Unit, the collection of rents, issues and profits and the application thereof, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice

5.13. Capital Contributions to the Association.

Upon the acquisition of record title to a Condominium from Declarant, each Owner of a Condominium shall contribute to the capital of the Association an amount equal to Fifty-Two Dollars and Fifty-Five Cents (\$52.55), which is the amount equal to one-hundredth (1/100) of the product of two (2) monthly installments of Annual Assessments from the Phase 1 Budget (as reflected in the Final Subdivision Public Report for Phase 1), multiplied by eighteen (18), which is the number of Condominiums in Phase 1. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association or to Declarant if Declarant has previously advanced such funds to the Association.

ARTICLE VI

6. Project Easements.

6.1. Access.

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

6.2. Maintenance and Repair.

Declarant reserves for the benefit of the Board and all Association agents, officers and employees, nonexclusive easements over the Common Property and the Exclusive Use Area as necessary to perform maintenance, repairs and all other duties of the Association in accordance with the provisions of this Declaration.

6.3. Exclusive Use Area.

Declarant reserves for the benefit of certain Owners exclusive easements over the Project for use of the Exclusive Use Area, including without limitation for yard purposes as shown and assigned on the Condominium Plan or Plans for the Project.

6.4. Utility Easements.

Declarant reserves the right to grant additional easements and rights-of-way over the Property to utility companies and public agencies, as necessary, for the proper development and disposal of the Property. Such right of Declarant shall expire with respect to (i) any Phase upon Close of Escrow for the sale of all Condominiums in such Phase, or (ii) all Phases on the seventh anniversary of original issuance by DRE of the Final Subdivision Public Report for Phase 1.

6.5. Encroachments.

Declarant reserves for its benefit and the benefit of the Owners and the Association a reciprocal easement appurtenant to each Unit over the Units and the Common Property for the purpose of (i) accommodating any existing encroachment of any wall or any other authorized Improvement, (ii) accommodating encroachment of the upper floors of some Units into yards or Exclusive Use Areas of other Units; and (iii) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the Dwelling Units or other Improvements. Declarant further reserves easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of the same over all of the Common Property for the benefit of the Owners. Declarant reserves for the benefit of the Property, the Owners and the Association, reciprocal nonexclusive easements for drainage of water over, across and upon the Property. Use of the foregoing easements may not unreasonably interfere with each Owner's use and enjoyment of adjoining Units. No portion of the Common Property, including without limitation parking spaces and other amenities contemplated as a part of the Property, is proposed to be leased by Declarant to the Owners or the Association.

6.6. Completion of Improvements.

Declarant reserves for its benefit the right and easement to enter the Property to complete any Improvement which Declarant deems desirable to implement Declarant's development plan.

6.7. Reciprocal Easement Agreement.

Declarant assigns to Association all of the rights and delegates all of the duties of the "Adjacent Association" defined in the Reciprocal Easement Agreement as the rights and obligations relate to the Property. As each Phase of Development is added to the Property, the rights and obligations of the Adjacent Association shall automatically be transferred to the Association effective upon the first Close of Escrow in the Phase. Declarant assigns to Owners all of the rights and delegates all of the duties of the "Adjacent Owners" defined in the Reciprocal Easement Agreement as the rights and obligations relate to the Property. As each Phase of Development is added to the Property, the rights and obligations of the Adjacent Owners shall automatically be transferred to the Owners effective upon the first Close of Escrow in the Phase.

ARTICLE VII

7. Declarant's Rights and Reservations.

Nothing in the Restrictions limits, and no Owner or the Association may do anything to interfere with, the right of Declarant to (a) subdivide or resubdivide any portion of the Property, (b) complete or modify Improvements to and on the Common Property or any portion of the



Property owned solely or partially by Declarant, (c) alter the foregoing or its construction plans and designs, (d) modify its development plan for the Property and the Annexable Territory, including without limitation designating and redesignating Phases and constructing Residences of larger or smaller sizes, values, or of different types, or (e) construct such additional Improvements as Declarant deems advisable in the course of development of the Property so long as any Condominium in the Project remains unsold. Declarant's rights hereunder include, but are not limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Condominiums by sale, resale, lease or otherwise. Each Owner, by accepting a deed to a Condominium, hereby acknowledges that Declarant's activities may temporarily or permanently impair the view of such Owner and may constitute an inconvenience or nuisance to the Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration does not limit Declarant's right, at any time prior to acquisition of title to a Condominium in the Project by a purchaser from Declarant, to establish on that Condominium additional licenses, easements, reservations and rights-of-way to itself, to utility companies, or to others as may be reasonably necessary to the Property's proper development and disposal. Declarant may use any Condominiums owned by Declarant in the Project as model home complexes or real estate sales or leasing offices. Declarant need not seek or obtain Architectural Committee approval of any Improvement Declarant constructs or places on any portion of the Property. Declarant may assign its rights under the Restrictions to any successor in interest to any portion of Declarant's interest in any portion of the Property by a written assignment. Notwithstanding any other provision of this Declaration, no amendment may be made to this Article without the prior written approval of Declarant. Each Owner hereby grants, upon acceptance of his deed to his Unit, an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Article. Declarant and its prospective purchasers of Condominiums are entitled to the nonexclusive use of the Common Property and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to (a) show the Property to prospective purchasers, (b) dispose of the Property as provided herein, and (c) develop and sell the Annexable Territory. Declarant, its successors and tenants, are also entitled to the nonexclusive use of any portions of the Property which comprise private streets, drives and walkways for the purpose of ingress, egress and accommodating vehicular and pedestrian traffic to and from the Property and the Annexable Territory. The use of the Common Property by Declarant may not unreasonably interfere with the use thereof by the other Owners. The Association shall provide Declarant with all notices and other documents to which a Beneficiary is entitled pursuant to this Declaration, provided that Declarant shall be provided such notices and other documents without making written request therefor. Commencing on the date on which Declarant no longer has an elected representative on the Board, and continuing until the later to occur of the date on which Declarant (i) no longer owns a Unit in the Property or (ii) cannot unilaterally annex property to the Property, the Association shall provide Declarant with written notice of all meetings of the Board as if Declarant were an Owner and Declarant shall be entitled to have a representative present at all such Board meetings ("Declarant's Representative"). The Declarant's Representative shall be present in an advisory capacity only and shall not be a Board member or have any right to vote on matters coming before the Board.

## ARTICLE VIII

### 8. Residence and Use Restrictions.

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

#### 8.1. Single Family Residences.

That portion of the Unit comprising the Residence shall be used as a dwelling for a single Family and for no other purpose. The number of natural Persons residing in any Unit shall not exceed three (3) per bedroom in such Unit. An Owner may rent his Unit to a single Family provided that is rented pursuant to a lease or rental agreement which is (a) in writing and (b) subject to all of the provisions of this Declaration.

#### 8.2. Parking and Vehicular Restrictions.

(a) Designation of Parking Areas. The parking areas in the Project are divided into three categories: (i) parking areas in the garage portion of the Residences ("Garages"), (ii) parking areas located in the driveways adjacent to the Residences depicted on Exhibit "E" attached hereto ("Driveway Parking Spaces"), and (iii) parking areas on the Association Property designated as open guest parking on Exhibit "E" attached hereto ("Association Parking Areas"). The Driveway Parking Spaces are assigned to the Units served by the driveways where the Driveway Parking Spaces are located.

#### (b) Categories of Vehicles.

(1) Authorized Vehicles. The following vehicles are Authorized Vehicles: standard passenger vehicles, including without limitation automobiles, passenger vans designed to accommodate ten (10) or fewer people, motorcycles and pickup trucks having a manufacturer's rating or payload capacity of one (1) ton or less. Authorized Vehicles may be parked in any portion of the Property intended for parking of motorized vehicles, subject to the restrictions in this Declaration.

(2) Prohibited Vehicles. The following vehicles are Prohibited Vehicles: (i) recreational vehicles (e.g., motorhomes, travel trailers, camper vans, boats, etc.), (ii) commercial-type vehicles (e.g., stakebed trucks, tank trucks, dump trucks, step vans, concrete trucks, etc.), (iii) vehicles with commercial signage that cannot be removed (iv) buses or vans designed to accommodate more than ten (10) people, (v) vehicles having more than two (2) axles, (vi) trailers, inoperable vehicles or parts of vehicles, (vii) aircraft, other similar vehicles or any vehicle or vehicular equipment deemed a nuisance by the Board. As a general rule, Prohibited Vehicles may not be parked, stored or kept on any public or private street within, adjacent to or visible from the Property or any other Common Property parking area except for brief periods for loading, unloading, making deliveries or emergency repairs. Prohibited

Vehicles may only be parked in Garages if (a) they do not cause Authorized Vehicles to be parked in areas outside of Garages, and (b) if they are authorized by the Board.

(c) General Restrictions.

(1) Garages. Owners must park their vehicles in their Garages, except as provided in sections (c)(2) and (c)(3) below. Owners may use portions of their Garages for storage, subject to regulation by the Board, so long as the storage does not interfere with use of any of the parking spaces in the Garage.

(2) Driveway Parking Spaces. The Driveway Parking Spaces may only be used in connection with the Residence to which they are assigned. Some Driveway Parking Spaces are designated for guest use only. These Driveway Parking Spaces may only be used by guests of the Owners of the designated Residences. Driveway Parking Spaces that are not restricted to guest use only may be used by the Owner of the designated Residence or the Owner's guests.

(3) Association Parking Areas. Association Parking Areas may only be used in accordance with rules and regulations adopted by the Board. Association Parking Areas are intended to be reserved primarily for use by guests of residents in the Project. Owners are generally prohibited from parking in the Association Parking Areas. The Board has the power to make exceptions to this restriction allowing Owners to park their vehicles in the Association Parking Areas for limited periods of time in specific situations such as when an Owner is moving into or out of the Project. Such exceptions may only be made in a modification of the parking Rules and Regulations.

(d) Parking Regulations. The initial parking regulations for the Association Parking Areas are attached hereto as Exhibit "F". The Board may modify the regulations for the Association Parking Areas so long as the regulations do not conflict with this Declaration with the prior written approval of the Board of Directors of the Elysian Community Association. The Board shall enforce all parking and vehicle use regulations applicable to the Property, including removing violating vehicles from the Property pursuant to California Vehicle Code Section 22658.2 or other applicable ordinances or statutes. If the Board fails to enforce any of the parking or vehicle use regulations, the City may enforce such regulations in accordance with applicable laws and ordinances.

(e) Parking in Elysian. Elysian is the community adjacent to the Project. Although Owners will share use of the entry street and a designated recreation facility in Elysian with the members of the Elysian Community Association and their guests, Owners do not have the right to park in any of the parking areas in Elysian unless they are visiting residents of Elysian and abiding by the Elysian Community Association's rules and regulations. Owners, their Families, guests, tenants or invitees who park in Elysian in violation of Elysian's

rules and regulations can be fined by the Association or the Elysian Community Association and can have their vehicles towed. Unauthorized use of the parking spaces in Elysian is a violation of this Declaration.

(f) Parking in Elysian Parking Area. Property adjacent to the Project ("Elysian Parking Area") has been reserved for the exclusive use of the members of the Elysian Community Association and their guests in the Grant of Parking Easement Recorded in Official Records or in a subsequently Recorded deed. Owners, their Families, guests, tenants and invitees are prohibited from parking in the Elysian Parking Area. Owners, their Families, guests, tenants or invitees who park in the Elysian Parking Area in violation of this restriction, the Grant of Parking Easement, the deed of the Elysian Parking Area or Elysian's rules and regulations can be fined by the Association or the Elysian Community Association and can have their vehicles towed. Violation of the restrictions contained in the Grant of Parking Easement or the deed of the Elysian Parking Area is a violation of these restrictions; provided, however, that enforcement by the Elysian Community Association of these restrictions shall be in accordance with the provisions of its declaration pertaining to enforcement, rather than this Declaration.

### 8.3. Nuisances.

No noxious or offensive activities may be carried on upon the Property or on any public street abutting or visible from the Property. No horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents, may be placed or used in any such Residence. Noisy, unsightly, unusually painted or smoky vehicles, large power equipment and large power tools (excluding lawn mowers and other equipment utilized in connection with ordinary landscape maintenance), off-road motor vehicles or items which may unreasonably interfere with television or radio reception to any Unit and objects which create or emit loud noises or noxious odors may not be located, used or placed in the Property or on any public street abutting or visible from the Property, or exposed to the view of other Owners without the Board's prior written approval. The Board is entitled to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Owner may (a) permit or cause anything to be done or kept upon the Property or on any public street abutting or visible from the Property which may (i) increase the rate of insurance on Units or on the Property, (ii) result in the cancellation of such insurance, or (iii) obstruct or interfere with the rights of other Owners, or (b) commit or permit any nuisance thereon or violate any law. Each Owner shall comply with all requirements of the local or state health authorities and with all other applicable governmental ordinances regarding occupancy and use of a Residence. Each Owner is accountable to the Association and other Owners for the conduct and behavior of persons residing in or visiting his Unit. Any damage to the Common Property, personal property of the Association, or property of another Owner caused by such persons shall be repaired at the sole expense of the Owner of the Unit where such persons are residing or visiting.

#### 8.4. Signs.

Subject to the provisions of California Civil Code Sections 712 and 713, no sign, poster, display, billboard or other advertising device may be displayed on any portion of the Property or on any public street abutting or visible from the Property, or shown or displayed from any Unit, without the Architectural Committee's prior written consent, except one (1) sign or notice of customary and reasonable dimension which states that the Residence is for rent or sale, so long as it is consistent with the standards promulgated by the Architectural Committee in accordance with Section 4.2 hereof. Such sign or notice may be placed within a Unit, and may also be placed upon the Common Property within an area specifically established by the Committee for such purpose with the Architectural Committee's prior written approval. This Section does not apply to (a) any signs used by Declarant or its agents in connection with the sale of Condominiums or the construction or alteration of the Units or Common Property, (b) traffic and visitor parking signs installed by Declarant, and (c) traffic and parking control signs installed with the Board's consent. Notwithstanding the foregoing, this Section does not permit the maintenance of any sign which does not conform with applicable City ordinances.

#### 8.5. Antennae.

Owners are prohibited from installing any antennae on the exterior of a Residence for any purpose, except for an "Authorized Antenna," which may be installed so long as the proposed location for such installation is reviewed by the Architectural Committee prior to installation in order to ensure that the visibility of the Authorized Antenna is minimized with respect to other Owners. The Architectural Committee may require that the location of the Authorized Antenna be moved so long as such review by the Architectural Committee does not (1) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (2) unreasonably increase the cost of installation, maintenance or use of an Authorized Antenna, or (3) preclude reception of an acceptable quality signal.

An "Authorized Antenna" means (i) an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite service, that is one meter or less in diameter, (ii) an antenna that is designed to receive video programming service, including multichannel multipoint distribution service, instructional television fixed service, and local multipoint distribution service, that is one meter or less in diameter or diagonal measurement, or (iii) an antenna that is designed to receive television broadcast signals.

The Board may adopt additional restrictions on installation or use of an Authorized Antenna on an Owner's Residence as a part of the Association's Rules and Regulations so long as such restrictions do not (1) unreasonably delay or prevent installation, maintenance or use of an Authorized Antenna, (2) unreasonably increase the cost of installation maintenance or use of an Authorized Antenna, or (3) preclude reception of an acceptable quality signal. The Board may prohibit the installation of an Authorized Antenna if the installation, location or maintenance of such Authorized Antenna unreasonably affects the safety of managers, agents or employees of the Association and other Owners, or for any other safety related reason established by the Board.

The Board also has the power to (i) prohibit an Owner from installing an Authorized Antenna on property which such Owner does not own or is not entitled to exclusively use under the Restrictions, or (ii) allow an Owner to install an antenna other than an Authorized Antenna subject to applicable architectural standards and review by the Architectural Committee.

8.6. Inside and Outside Installations.

No outside installation, including but not limited to clotheslines, may be constructed, installed or maintained in any Unit, excepting antennae installed by Declarant as a part of the initial construction of the Property and except as may be installed by or with the prior consent of the Architectural Committee. No balcony, patio or deck covers, wiring, or installation of air conditioning, water softeners, or other machines may be installed on the exterior of the buildings of the Project or be allowed to protrude through the walls or roofs of the buildings (with the exception of those items installed during the original construction of the Project) unless the Architectural Committee's prior written approval is obtained. Outdoor patio or lounge furniture, plants and barbecue equipment may be maintained pursuant to rules and procedures of the Architectural Committee. The type and color of all exposed window coverings is subject to the Architectural Committee's prior written approval. No exterior addition, change or alteration to any Residence may be commenced without the prior written approval of the Architectural Committee. Nothing may be done in any Unit or in, on or to the Common Property which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided herein. No alteration, repair or replacement of wall coverings within Units which may diminish the effectiveness of the sound control engineering within the buildings in the Project may be made. No Owner may cause or permit any mechanic's lien to be filed against any portion of the Project for labor or materials alleged to have been furnished or delivered to the Project or any Condominium Unit for such Owner, and any Owner who does so shall immediately cause the lien to be discharged within five (5) days after notice to the Owner from the Board. If any Owner fails to remove such mechanic's lien, the Board may discharge the lien and charge the Owner a Special Assessment for such cost of discharge.

8.7. Animal Regulations.

No animals may be raised, bred or kept in any Residence except dogs, cats, fish, and birds inside bird cages may be kept as household pets within any Residence provided that they are not kept, bred or raised for commercial purposes, in unreasonable quantities or sizes or in violation of the Restrictions. As used in the Declaration, "unreasonable quantities" ordinarily means more than two (2) pets per Residence; provided, however, that the Board may determine that a reasonable number in any instance may be more or less. The Board may limit the size of pets and may prohibit maintenance of any animal which, in the Board's opinion, constitutes a nuisance to any other Owner. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Property must be either kept within an enclosure or on a leash held by a person capable of controlling the animal. Any Owner shall be liable to each and all remaining Owners, their Families, tenants, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by such Owner or by such Owner's Family, tenants or guests. Each Owner shall clean up after such Owner's animals which

have used any portion of the Property or public street abutting or visible from the Property. Any Owner who maintains any animal, insect or reptile within the Properties, whether in compliance with or in violation of the Restrictions, shall indemnify, defend and hold harmless the Association, its officers, directors, contractors, agents and employees from any claim brought by any person against the Association, its officers, directors, agents and employees for personal injuries or property damage caused by such animal, insect or reptile.

**8.8. Business or Commercial Activity.**

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

**8.9. Rubbish Removal.**

Trash shall be disposed of by residents of the Project only by depositing the same into trash containers subject to regulations adopted by the Board. No portion of the Property may be used for the storage of building materials, refuse or any other materials. No clothing, household fabrics or other unsightly articles may be hung, dried or aired on any portion of the Property, including the interior of any Residence, so as to be visible from other Residences or the street. Exterior fires (other than barbecue fires contained within receptacles therefor) are prohibited.

**8.10. Further Subdivision.**

Except as otherwise provided herein, no Owner may physically or legally subdivide his Unit in any manner, including without limitation any division of such Owner's Unit or Condominium into time-share estates or time-share uses. This provision does not limit the right of an Owner to (a) rent or lease such Owner's Condominium by means of a written lease or rental agreement subject to this Declaration; (b) sell such Owner's Condominium; or (c) transfer or sell any Condominium to more than one Person to be held by them as tenants-in-common, joint tenants, tenants by the entirety or as community property. Any failure by lessees of Units to comply with the Restrictions constitutes a default under the lease or rental agreement. Notwithstanding the foregoing, no Unit in the Project may be partitioned or subdivided without the prior written approval of the Beneficiary of any first Mortgage on that Unit. This Section may not be amended without the prior written approval of the Beneficiaries of at least seventy-five percent (75%) of the first Mortgages of Condominiums in the Project.

8.11. Drainage.

No one may interfere with or alter the established drainage pattern over the Property unless an adequate alternative provision is made for proper drainage with the Architectural Committee's prior written approval. For the purpose hereof, "established" drainage in any Phase means the drainage which (a) exists at the time of the first Close of Escrow in such Phase, or (b) is shown on any plans approved by the Architectural Committee.

Each Owner, by accepting a grant deed to his Condominium, acknowledges and understands that in connection with the development of the Property, Declarant may have installed one or more "sub-drains" beneath the surface of such Owner's Residence. The sub-drains and all appurtenant improvements constructed or installed by Declarant ("Drainage Improvements"), if any, provide for subterranean drainage of water from and to various portions of the Property. To ensure adequate drainage within the Property, it is essential that the Drainage Improvements, if any, not be modified, removed or blocked without having first made alternative drainage arrangements. Therefore, no Owner may alter, modify, remove or replace any Drainage Improvements located within such Owner's Residence without receiving prior written approval from the Architectural Committee in accordance with Article IV hereof. In connection with obtaining such approval, the Owner must submit a plan to the Architectural Committee for alternative drainage acceptable to the Committee.

8.12. Water Supply System.

No individual water supply, sewage disposal or water softener system is permitted in any Unit unless such system is designed, located, constructed and equipped in accordance with the requirements, standards, and recommendations of any applicable water district, the City the Architectural Committee and all other applicable governmental authorities.

8.13. View Obstructions.

Each Owner acknowledges that (a) there are no protected views within the Property, and no Condominium is assured the existence or unobstructed continuation of any particular view, and (b) any construction, landscaping or other installation of Improvements by Declarant or other Owners may impair the view from any Condominium, and the Owners hereby consent to such view impairment.

8.14. Rights of Disabled.

Subject to the provisions of Article IV hereof, each Owner may modify his Residence and the route over the Common Property leading to the front door of his Residence, at his sole expense, in order to facilitate access to his Residence by persons who are blind, visually impaired, deaf or physically disabled, or to alter conditions which could be hazardous to such persons in accordance with California Civil Code Section 1360 or any other applicable law or ordinance.



## ARTICLE IX

### 9. Insurance.

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

(a) Public Liability. The Board shall obtain and maintain adequate blanket public liability insurance (including medical payments), with such limits as may be considered acceptable to FNMA and as set forth in Section 1365.9 of the California Civil Code, insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Property.

(b) Fire and Casualty Insurance. The Board shall also obtain and maintain fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Property.

(c) Fidelity Bonds. Fidelity bond coverage which names the Association as an obligee must be obtained by or on behalf of the Association for any person or entity handling funds of the Association, including, but not limited to, Association officers, directors, trustees, employees and agents, and employees of the Manager, whether or not such persons are compensated for their services, in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the Manager at any given time during the term of each bond. The aggregate amount of such bonds may not be less than the sum equal to one fourth (1/4) of the Annual Assessments on all Condominiums in the Project, plus reserve funds.

(d) Insurance Required by FNMA, GNMA and FHLMC. The Association shall continuously maintain in effect such casualty, flood and liability insurance and fidelity bond coverage meeting the insurance and fidelity bond requirements for similar residential developments established by FNMA, GNMA and FHLMC, so long as any of which is a Mortgagee or Owner of a Condominium within the Project, except to the extent such coverage is not reasonably available or has been waived in writing by FNMA, GNMA and FHLMC, as applicable.

(e) Other Insurance. The Board shall purchase such other insurance, as necessary, including but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use.

(f) Beneficiaries. Such insurance shall be maintained for the benefit of the Association, the Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein.

9.2. Waiver of Claim Against Association.

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

9.3. Right and Duty of Owners to Insure.

Each Owner is responsible for insuring his entire Condominium including the Dwelling Unit, his personal property and all other property and Improvements within his Unit for which the Association has not purchased insurance in accordance with Section 9.1 hereof. Nothing herein precludes any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to person or property occurring inside his Unit or elsewhere upon the Property. Such policies may not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association occurs and the proceeds payable thereunder are reduced due to insurance carried by any Owner, such Owner shall assign the proceeds of such insurance to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

9.4. Notice of Expiration Requirements.

If available, each insurance policy the Association maintains must contain a provision that said policy may not be cancelled, terminated, materially modified or allowed to expire by its terms, without ten (10) days' prior written notice to the Board and Declarant, and to each Owner and Beneficiary, insurer and guarantor of a first Mortgage who has filed a written request with the carrier for such notice and every other Person in interest who requests such notice of the insurer. In addition, fidelity bonds shall provide that they may not be cancelled or substantially modified without ten (10) days prior written notice to any insurance trustee named pursuant to Section 9.6 and to each FNMA servicer who has filed a written request with the carrier for such notice.

9.5. Insurance Premiums.

Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board are a Common Expense.

9.6. Trustee for Policies.

The Association is trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. Unless the applicable insurance policy provides

for a different procedure for the filing of claims, all claims made under such policy must be sent to the insurance carrier or agent, as applicable, by certified mail and be clearly identified as a claim. The Association shall maintain a record of all claims made. All insurance proceeds under any such policies provided for in Section 9.1 must be paid to the Board as trustees. The Board shall receive and receipt for the proceeds and deal therewith as provided herein. The Association shall use insurance proceeds to repair or replace the property for which the insurance was carried, or otherwise dispose of such proceeds as provided in Article X hereof. The Board has the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in Section 10.4 of this Declaration. Any two (2) officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures are binding on all the named insureds. A representative chosen by the Board may be named as an insured, including a trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee, who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions necessary to accomplish this purpose.

9.7. Actions as Trustee.

Except as otherwise specifically provided in this Declaration, the Board has the exclusive right to bind the Association and the Owners in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to Beneficiaries of seventy-five percent (75%) of the first Mortgages held by first Mortgagees who have filed requests under Section 9.4. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Owners and Mortgagees who have requested the same in writing.

9.8. Annual Insurance Review.

The Board shall review the insurance carried by or on behalf of the Association at least annually to determine the amount of the casualty and fire insurance referred to in Section 9.1 above. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements on the Property except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

9.9. Required Waiver.

All policies of physical damage insurance the Association maintains must provide, if reasonably possible, for waiver of:

- (a) subrogation of claims against the Owners and tenants of the Owners;
- (b) any defense based upon coinsurance;

(c) any right of setoff, counterclaim, apportionment, proration or contribution due to other insurance not carried by the Association;

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

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

(f) notice of the assignment of any Owner of his interest in the insurance by virtue of a conveyance of any Condominium;

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

(h) any denial of an Owner's claim because of negligent acts by the Association or other Owners; and

(i) prejudice of the insurance by any acts or omissions of Owners that are not under the Association's control.

## ARTICLE X

### 10. Destruction of Improvements.

#### 10.1. Restoration of the Property.

Except as otherwise provided in this Declaration, if any destruction of any portion of the Property which the Association is responsible for repairing or replacing occurs, the Association shall restore and repair the same to its former condition as promptly as practical. The Association shall use the proceeds of any insurance maintained pursuant to Article IX hereof for reconstruction or repair of the Property unless otherwise provided herein. The Board may have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Architectural Committee have been approved in writing by sixty-seven percent (67%) of the Owners and by the Beneficiaries of fifty-one percent (51%) of first Mortgages upon the Condominiums. If the insurance proceeds amount to at least eighty-five percent (85%) of the estimated cost of restoration and repair, the Board shall levy a Reconstruction Assessment to provide the additional funds necessary for such reconstruction. If the insurance proceeds amount to less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Board

may levy a Reconstruction Assessment and proceed with the restoration and repair only if both of the following conditions ("Conditions to Reconstruction") have been satisfied: (a) the levy of a Reconstruction Assessment to pay the costs of restoration and repair of the Property is approved by the affirmative vote or written consent of sixty-seven percent (67%) of the Owners and by the written consent of the Beneficiaries of fifty-one percent (51%) of the first Mortgages on the Condominiums in the Project; and (b) within six (6) months after the date on which the destruction occurred, the Board Records a certificate of the resolution authorizing the restoration and repair ("Reconstruction Certificate"). If either of the Conditions to Reconstruction does not occur following a destruction for which insurance proceeds available for restoration and repair are less than eighty-five percent (85%) of the estimated cost of restoration and repair, it shall be conclusively presumed that the Owners have determined not to proceed with restoration and repair and not to allow the Board to levy a Reconstruction Assessment, in which case the Owners may proceed as provided in Section 10.2 below.

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

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

Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

10.3. Notice to Owners and Listed Mortgagees.

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

ARTICLE XI

11. Eminent Domain.

The term "taking" as used in this Article means condemnation by exercise of the power of eminent domain or by sale under threat of the exercise of the power of eminent domain. The Board shall represent the Owners in any proceedings, negotiations, settlements, or agreements regarding takings. All takings proceeds attributable to the Common Area and Corporation Property (excluding the Exclusive Use Areas) shall be payable to the Association. All takings proceeds attributable to Condominiums shall be payable to the Owners as provided in this Article XI.

11.1. Condemnation of Common Property.

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

11.2. Condemnation of Exclusive Use Area.

If there is a taking of all or any portion of an Exclusive Use Area which is not taken in connection with the taking of all or any portion of the Unit to which it is appurtenant, the Owner of the affected Unit shall be responsible for all proceedings, negotiations, settlements or agreements regarding the taking.

11.3. Condemnation of Condominiums.

If there is a taking of a Condominium, the Owner of the affected Unit shall be responsible for all proceedings, negotiations, settlements or agreements regarding the taking.

11.4. Condemnation of Portions of Units.

If there is a taking of all or any portion of a Condominium and the Owner does not notify the Board of his intent to rebuild the Dwelling Unit within ninety (90) days from receipt of a request for notice from the Board, then the Board, at its option, may have the remaining portions of the

taken Unit razed and charge the costs to the Owner as a Special Assessment. The remaining portions of the taken Unit and appurtenant Exclusive Use Area shall become part of the Association Property, and the Owner of such taken Unit, by acceptance of the award allotted to them in taking proceedings and failure to provide the Board with notice of intent to rebuild, hereby relinquish (a) to the other Owners in such Phase, on the basis of their relative ownership of the Common Area therein, such Owners' undivided interest in the Common Area, and (b) to the Association, the remaining portions of the Unit and the appurtenant Exclusive Use Area. Each Owner relinquishing his interest in the Common Area pursuant to this Section shall, at the Board's request and at the Association's expense, execute and acknowledge such deeds and other instruments which the Board deems necessary or convenient to evidence such relinquishment. Each Owner of a taken Unit or Residence is not liable for assessments under this Declaration which accrue on or after the date such Owner accepts his condemnation award.

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

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

11.6. Notice to Owners and Mortgagees.

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

ARTICLE XII

12. Rights of Mortgagees.

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration defeats or renders invalid the rights of the Beneficiary under any Deed of Trust upon one (1) or more Condominiums made in good faith and for value, provided that after the foreclosure of any such Deed of Trust such Condominium(s) will remain subject to this Declaration. For purposes of this Declaration, "first Mortgage" means a Mortgage with first priority over other Mortgages or Deeds of Trust on a Condominium, and "first Mortgagee" means the Beneficiary of a first Mortgage. For purposes of any provisions of the Restrictions which require the vote or approval of a specified percentage of first Mortgagees, such vote or approval is determined based upon one (1) vote for each Condominium encumbered by each such first Mortgage. In order to induce VA, FHA, FHLMC, GNMA and FNMA to participate in the financing of the sale of Condominiums, the following provisions are added hereto (and to the extent these added provisions conflict with any other provisions of this Declaration or any other of the Restrictions, these added provisions control):

(a) Each Beneficiary, insurer and guarantor of a Mortgage encumbering one (1) or more Condominiums, upon filing a written request for notification with the Board, is entitled to written notification from the Association of: (i) any condemnation or casualty loss which affects either a material portion of the Project or the Unit(s) securing the Mortgage; (ii) any delinquency of sixty (60) days or more in the performance of any obligation under the Restrictions, including without limitation the payment of assessments or charges owed by the Owner(s) of the Unit(s) securing the Mortgage, which notice each Owner hereby consents to and authorizes; (iii) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and (iv) any proposed action of the Association which requires consent by a specified percentage of first Mortgagees who have submitted a written request to the Association that they be notified of such proposed action.

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

(c) Each first Mortgagee of a Mortgage encumbering any Condominium who obtains title to such Condominium pursuant to the remedies provided in such Mortgage or by foreclosure of such Mortgage shall take title to such Condominium free of any claims for unpaid assessments or charges against such Condominium which accrued prior to the time such Mortgagee acquires title to such Condominium in accordance with Section 5.10.

(d) Unless at least sixty-seven percent (67%) of the first Mortgagees or sixty-seven percent (67%) of the Owners (other than Declarant) have given their prior written approval, the Association may not:

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

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

(iii) partition or subdivide any Condominium Unit that is not composed of multiple dwelling areas; or

(iv) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Property. (The granting of easements for public utilities or for other purposes



consistent with the intended use of the Common Property under this Declaration, and the granting of exclusive easements to Owners over portions of the Common Property to conform the boundaries of the Common Property to the as-built location of authorized Improvements is not a transfer within the meaning of this clause); or

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

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

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

(viii) change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distributions of hazard insurance proceeds or condemnation awards or determine the pro rata share of ownership of each Condominium in the Common Area except in connection with dividing a Condominium containing multiple dwellings.

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

(i) examine current copies of the Association's books, records and financial statements and the Restrictions during normal business hours;

(ii) require the Association to submit an annual audited financial statement for the preceding Fiscal Year if one is available, or have one prepared at the expense of the requesting entity if such statement is not otherwise prepared by the Association; provided that, upon annexation of additional Condominiums to the Property such that fifty (50) or more Condominiums are subject to this Declaration, the Association may be required to submit such a statement without expense to the

requesting entity within one hundred twenty (120) days of the end of the Fiscal Year;

(iii) receive written notice of all meetings of Owners;  
and

(iv) designate in writing a representative authorized to attend all meetings of Owners.

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

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

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

(i) The Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of VA, FHA, FHLMC, FNMA or GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Condominiums. Each Owner hereby agrees that it will benefit the Association and the Members, as a class of potential Mortgage borrowers and potential sellers of their residential Condominiums, if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations. Each Owner hereby authorizes his Mortgagees to furnish information to the Board concerning the status of any Mortgage encumbering a Condominium.

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

(k) All intended Improvements in any Phase other than Phase 1 must be substantially completed or the completion of such Improvements must be

secured by a bond or other arrangement acceptable to DRE prior to the first Close of Escrow in such Phase. All such Improvements shall be substantially consistent with the Improvements in Phase 1 in structure type and quality of construction. The requirements of the immediately preceding sentence are for the benefit only of and may be enforced only by FNMA.

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

### ARTICLE XIII

#### 13. Duration and Amendment.

##### 13.1. Duration.

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

##### 13.2. Termination and Amendment.

(a) Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form must be included in the notice of any Association meeting or election at which a proposed amendment is to be considered. To be effective, a proposed amendment must be adopted by the vote, in person or by proxy, or written consent of Members representing not less than (i) sixty-seven percent (67%) of the voting power of each Class of Members and (ii) sixty-seven percent (67%) of the Association's voting power residing in Members other than Declarant, provided that the specified percentage of the Association's voting power necessary to amend a specified Section or provision of this Declaration may not be less than the percentage of affirmative votes prescribed for action to be taken under that Section or provision. So long as there exists a Class B Membership, the prior approval of VA and FHA is required for any amendment of this Declaration for the purpose of (i) terminating the Declaration, (ii) dissolving the Association (except pursuant to a consolidation or merger), or (iii) conveyance of all of the Common Property. A draft of the proposed amendment must be submitted to VA and FHA for approval prior to its approval by the Membership.

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

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

(ii) Any amendment which would require a Mortgagee after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing before such foreclosure.

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

(iv) Any amendment relating to (A) the insurance provisions in Article IX hereof, (B) the application of insurance proceeds in Article X hereof, or (C) the disposition of any money received in any taking under condemnation proceedings.

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

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

(vii) Any amendment concerning:

(A) Voting rights;

(B) Rights to use the Common Property;

(C) Reductions in reserves for maintenance, repair and replacement of the Common Property;

- (D) Responsibility for maintenance and repairs;
- (E) Redefinition of boundaries of any Unit;
- (F) Reallocation of interests in the Common Area or rights to its use;
- (G) Convertibility of Common Property into Units or Units into Common Property;
- (H) Imposition of restrictions on leasing of Units;
- (I) Establishment of self-management by the Association if professional management has been required by the Restrictions or any Beneficiary of a first Mortgage;
- (J) - Expansion or contraction of the Project or addition, annexation or deannexation of real property to or from the Property;
- (K) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of such liens; or
- (L) Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in this Declaration.

(c) Termination of this Declaration requires approval of the Members as provided in subsection (a) of this Section 13.2. No such termination is effective unless it is also approved in advance either by fifty-one percent (51%) of the Beneficiaries of the first Mortgages on all of the Condominiums in the Project who have submitted a written request to the Association that they be notified of proposed actions requiring the consent of a specified percentage of such Beneficiaries (if termination is proposed due to substantial destruction or condemnation of the Project) or by sixty-seven percent (67%) of such Beneficiaries (if termination is for reasons other than such substantial destruction or condemnation).

(d) Each Beneficiary of a first Mortgage on a Condominium in the Project which receives proper written notice of a proposed amendment or termination of this Declaration by certified or registered mail with a return receipt requested is deemed to have approved the amendment or termination if the

Beneficiary fails to submit a response to the notice within thirty (30) days after the Beneficiary receives the notice.

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

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

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

### 13.3. Protection of Declarant.

Declarant's prior written approval is required for any amendment to the Restrictions which would impair or diminish Declarant's rights to complete the Property or sell or lease Condominiums therein in accordance with this Declaration. Notwithstanding any other provisions of the Restrictions, until such time as (i) Declarant is no longer entitled to add Annexable Territory to the Property without the consent of the Association pursuant to Section 16.1, or (ii) Declarant no longer owns any Condominiums in the Property, whichever occurs last, the following actions, before being undertaken by the Association, must first be approved in writing by Declarant:

(a) Any amendment or action requiring the approval of first Mortgagees pursuant to this Declaration, including without limitation all amendments and actions specified in Sections 13.2;

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

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

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

#### ARTICLE XIV

##### 14. Enforcement of Certain Bonded Obligation.

###### 14.1. Consideration by Board.

If (a) the Common Property Improvements in any Phase are not completed prior to the issuance of a Final Subdivision Public Report for such Phase by DRE, and (b) the Association is obligee under a bond or other arrangement ("Bond") required by DRE to secure performance of Declarant's commitment to complete such Improvements, then 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 such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Property Improvement, then the Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

###### 14.2. Consideration by the Members.

A special meeting of Members for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or the Board's failure to consider and vote on the question shall be held no fewer than thirty-five (35) nor more than forty-five (45) days after the Board receives a petition for such a meeting signed by Members representing five percent (5%) of the Association's total voting power. A vote of a majority of the Association's voting power residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the Association's name.

#### ARTICLE XV

##### 15. General Provisions.

###### 15.1. General Provisions.

###### (a) Enforcement of Restrictions.

All disputes arising under the Restrictions, other than those described in Section 15.11 or regulated by Civil Code Section 1375, shall be resolved as follows:

(i) Violations Identified by the Association. If the Board determines that there is a violation of the Restrictions, or the Architectural Committee determines that an Improvement which is the maintenance responsibility of an Owner needs installation, maintenance, repair, restoration or painting, then the Board shall give written notice to the responsible Owner identifying (i) the condition or violation complained of, and (ii) the length of time the Owner has to remedy the violation including, if applicable, the length of time the Owner has to submit plans to the Architectural Committee and the length of time the Owner has to complete the work proposed in the plans submitted to the Architectural Committee.

If an Owner does not perform such corrective action as is required by the Board and the Architectural Committee within the allotted time, the Board, after Notice and Hearing, may remedy such condition or violation complained of, and the cost thereof shall be charged to the Owner as a Special Assessment.

If the violation involves nonpayment of any type of Assessment, then the Board may collect such delinquent Assessment pursuant to the procedures set forth in Article V.

(ii) Violations Identified by an Owner. If an Owner alleges that another Owner, his Family, guests or tenants, is violating the Restrictions (other than nonpayment of any type of Assessment), the complaining Owner must first submit the matter to the Board for Notice and Hearing before the complaining Owner may resort to alternative dispute resolution, as required by Section 1354 of the California Civil Code, or litigation for relief.

(iii) Alternative Dispute Resolution. If a dispute exists between or among (i) Declarant, its builders, general contractors or brokers, or their agents or employees, and any Owner(s) or the Association, or (ii) any Owner, and another Owner, or (iii) the Association, and any Owner, including any claim based on contract, tort, or statute, arising out of or relating to the rights or duties of the parties under the Restrictions or the design or construction of the Project (excluding disputes relating to the payment of any type of Assessments), if the disputing parties agree and subject to Section 1354 of the California Civil Code, the matter will be submitted to alternative dispute resolution so long as the requirements of Sections 15.1(a) and (b) above have been met, if they are applicable.



(iv) Legal Proceedings. Failure to comply with any of the terms of the Restrictions by an Owner, his Family, guests, employees, invitees or tenants, is grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of any lien, or any combination thereof; provided, however, that the procedures established in Section 1354 of the California Civil Code and in Sections 15.1(a), (b) and (c) above must first be followed, if they are applicable.

(v) Additional Remedies. The Board may adopt a schedule of reasonable fines or penalties which, in its reasonable discretion, it may assess against an Owner for the failure of such Owner, or of a resident of or visitor to such Owner's Unit, to comply with the Restrictions. Such fines or penalties may only be assessed after Notice and Hearing. After notice and hearing, the Board may direct the officers of the Association to record a notice of noncompliance against Unit owned by any Member of the Association who has violated any provision of this Declaration. The notice shall include a legal description of the Unit and shall specify the provision of the Declaration that was violated, the violation committed, and the steps required to remedy the noncompliance. Once the noncompliance is remedied or the noncomplying Owner has taken such other steps as reasonably required by the Board, the Board shall direct the officers of the Association to record a notice that the noncompliance has been remedied.

(vi) No Waiver. Failure to enforce any provision hereof does not waive the right to enforce that provision, or any other provision hereof.

(vii) Right to Enforce. The Board and any Owner may enforce the Restrictions as described in this Article, subject to Section 1354 of the California Civil Code. Each Owner has a right of action against the Association for the Association's failure to comply with the Restrictions. Each remedy provided for in this Declaration is cumulative and not exclusive or exhaustive.

(viii) Attorneys' Fees. Any judgment rendered in any action or proceeding pursuant to this Declaration shall include a sum for attorneys' fees in such amount as the court or arbitrator, as applicable, may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon,

costs of collection and costs of court or alternative dispute resolution, as applicable.

(b) Elysian Community Association. Elysian Community Association and the Association share use of certain streets and recreation facilities pursuant to the Reciprocal Easement and Use Agreement for Elysian Recorded on May 4, 1990, as Instrument No. 90-244949, of Official Records of San Diego County ("Street Agreement"). The Section of this Declaration entitled "Parking and Vehicular Restrictions" of this Declaration and this Section are added to the Declaration for the benefit of the Elysian Community Association as well as the Association, the Owners and Declarant. The Elysian Community Association is a third-party beneficiary of these provisions entitled to enforce them in accordance with the enforcement provisions of this Declaration and applicable laws. These remedies are cumulative, not exhaustive. Neither this Section nor the Section of this Declaration entitled "Parking and Vehicular Restrictions" may be amended without the vote or written consent of at least sixty-seven percent (67%) of the members of the Elysian Community Association. Elysian shall be entitled to enforce these restrictions by fine, towing or legal or equitable action, at Elysian's discretion, in the manner set forth in Elysian's governing documents. The prevailing party in any such action shall be entitled to attorney's fees and costs.

#### 15.2. Severability.

The provisions hereof are independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction does not affect the validity or enforceability of any other provisions hereof.

#### 15.3. Interpretation.

This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a residential condominium development and for the maintenance of Common Property, and any violation of this Declaration is a nuisance. The Article and Section headings have been inserted for convenience only, and may not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular includes the plural and the plural the singular; and the masculine, feminine and neuter each includes the other, unless the context dictates otherwise.

#### 15.4. Mergers or Consolidations.

Upon a merger or consolidation of the Association with another association its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving association pursuant to a merger. The surviving or consolidated association may administer and enforce the covenants, conditions and restrictions established by this Declaration governing the Property, together with the covenants and restrictions established upon any other

property, as one (1) plan. Any such merger or consolidation requires the prior written approval of VA.

15.5. Use of Facilities.

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

15.6. No Public Right or Dedication.

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

15.7. Nonliability and Indemnification.

(a) Nonliability and Indemnification of Board, Officers or Committee members.

(i) General Limitation. Except as specifically provided in the Restrictions or as required by law, no right, power, or responsibility conferred on the Board or the Architectural Committee by the Restrictions may be construed as a duty, obligation or disability charged upon the Board, the Architectural Committee, any member of the Board or of the Architectural Committee, or any other Association officer, employee or agent. No such person is liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such person's acts or omissions within what such person reasonably believed to be the scope of such person's Association duties ("Official Acts"), except to the extent that such injuries or damage result from such person's willful or malicious misconduct. No such person is liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious misconduct. The Association is not liable for damage to property in the Property unless caused by the negligence of the Association, the Board, the Association's officers, the Manager or the Manager's staff.

(ii) Damages Limitation. A volunteer Board member or volunteer Association officer shall not be personally liable in

excess of the coverage of insurance specified below to any person who suffers injury, including without limitation bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of the volunteer officer or Board member if all of the following conditions are satisfied:

(1) The Board member or officer is a tenant of a Unit or an Owner of no more than two (2) Units;

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

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

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

(5) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim was made one (1) or more policies of insurance which include coverage for (A) general liability of the Association and (B) individual liability of officers and Board members for negligent acts or omissions in that capacity; provided, that both types of coverage are in the minimum amount specified in Section 1365.7(a)(4) of the California Civil Code.

A Board member or Association officer who at the time of the act or omission was the Declarant or received direct or indirect compensation as an employee from Declarant or from a financial institution that purchased a Condominium at a judicial or nonjudicial foreclosure of a Mortgage is not a volunteer for purposes of this Section 15.7(a)(ii). The payment of actual expenses incurred by a Board member or Association officer does not affect the member's or officer's status as a volunteer for purposes of this Section 15.7(a)(ii).

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

(1) The Board determines that such person acted in good faith and in a manner such person reasonably believed to be in the Association's best interests;

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

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

Any determination of the Board required under this Section 15.7(a)(iii) must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote or written consent of a majority of a quorum of the Members voting at a meeting called for such purpose, provided that the person to be indemnified may not vote. Payments made hereunder include amounts paid and expenses incurred in settling any such action or threatened action. This Section 15.7(a)(iii) is intended to authorize payments and indemnification to the fullest extent permitted by applicable law. The entitlement to indemnification hereunder inures to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

(b) Nonliability of Owners. Pursuant to California Civil Code Section 1365.9, as amended or restated from time to time, no Owner shall be liable for any cause of action in tort which can be brought against the Owner solely because of the Owner's undivided interest in the Common Area so long as the Association maintains one or more policies of insurance which include coverage for general liability of the Association in an amount of at least two million dollars so long as the Project is composed of no more than 100 Condominiums, and at least three million dollars (\$3,000,000) if the Project is composed of 100 Condominiums or more, and that insurance is in effect for the cause of action being brought.

#### 15.8. Notices.

Except as otherwise provided herein, notice to be given to an Owner must be in writing and may be delivered personally to the Owner. Personal delivery of such notice to one (1) or more

co-owners of a Condominium or to any general partner of a partnership owning a Condominium constitutes delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation constitutes delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address has been furnished, to the street address of such Owner's Unit. Such notice is deemed delivered three (3) business days after the time of such mailing, except for notice of a meeting of Members or of the Board, in which case the notice provisions of the Bylaws control. Any notice to be given to the Association may be delivered personally to any member of the Board, or sent by United States mail, postage prepaid, addressed to the Association at such address as may be fixed from time to time and circulated to all Owners.

15.9. Priorities and Inconsistencies.

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

15.10. Constructive Notice and Acceptance.

Every person who owns, occupies or acquires any right, title, estate or interest in or to any Condominium or other portion of the Property does hereby consent and agree, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in the Property or any portion thereof.

15.11. Dispute Notification and Resolution Procedure (Declarant Disputes).

Any disputes between the Association (or any Owners) and the Declarant or any director, officer, partner, employer, subcontractor or agent of the Declarant relating to this Declaration, the use or condition of the Property, and/or the construction and installation of any Improvements located thereon not otherwise regulated by Civil Code Section 1375 shall be subject to the following provisions:

(a) Notice. Any person with a claim against the Declarant or any director, officer, partner, employer, subcontractor or agent thereof (collectively the "Declarant" for purposes of this Section) shall notify the Declarant in writing of the claim, which shall describe the nature of the claim and the proposed remedy (the "Claim Notice").

(b) Right to Inspect and Right to Corrective Action. Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the Declarant and the Claimant shall meet at a mutually acceptable place within the Property to discuss the claim. At such meeting or at such other mutually agreeable time, Declarant and Declarant's representatives shall have full access to the property that is subject to the claim for the purposes

of inspecting the property. The parties shall negotiate in good faith in an attempt to resolve the claim. If the Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Property to take and complete corrective action.

(c) Judicial Reference of Disputes.

In any lawsuit between Declarant and the Association or any Owner relating to the condition or construction of any portion of the Project, all of the issues in such action, whether of fact or law, shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641-645 or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. Declarant shall not be required to participate in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The parties shall share equally in the costs of the judicial referee.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The parties shall use the procedures adopted by Judicial Arbitration and Mediation Services ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

- (1) The proceedings shall be heard in the county in which the Project is located;
- (2) The referee must be a retired judge or an attorney with substantial experience in relevant real estate matters;
- (3) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;
- (4) The referee may require one or more pre-hearing conferences;
- (5) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
- (6) A stenographic record of the hearing shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;
- (7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

- (8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee may not be appealed. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties. The parties acknowledge and accept that they are waiving their right to a jury trial and right to appeal the decision of the referee.

(d) Delinquent Assessments. The procedures set forth in subparagraphs (a), (b) and (c) above shall not apply to any action taken by the Association against Declarant for delinquent assessments, which shall be governed by Article V, or in any action involving any Common Property completion bonds, which shall be governed by the provisions of Article XIV.

(e) Miscellaneous. Notwithstanding any other provision herein to the contrary, in any dispute between the Association and/or any Owner and the Declarant, each party shall bear its own attorneys fees.

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

Nothing herein shall be considered to reduce or extend any applicable statute of limitation. If at any time an action would be barred by a statute of limitation if not filed within sixty (60) days, then such action may be filed notwithstanding any other provision of this Section.

#### 15.12. Additional Provisions.

Notwithstanding the provisions contained in the Restrictions, the Association and the Owners should be aware that there may be provisions of various laws, including without limitation the Davis-Stirling Common Interest Development Act codified at Sections 1350 et seq. of the California Civil Code and the federal Fair Housing Act codified at Title 42 United States Code, Section 3601 et seq., which may supplement or override the Restrictions. Declarant makes no representations or warranties regarding the future enforceability of any portion of the Restrictions.



15.13. No Representations or Warranties.

No representations or warranties of any kind, express or implied, other than the standard warranty required by VA and FHA, have been given or made by Declarant, or its agents or employees in connection with the Property, or any portion thereof, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a condominium project, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the DRE.

ARTICLE XVI

16. Annexation of Additional Property.

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

16.1. Additions by Declarant.

Declarant or its successors or assigns may add the Annexable Territory, or any portion or portions thereof (including any recreation facilities located thereon) to the Property and bring such added territory within the general plan of this Declaration without the approval of the Association, the Board or Members. As each Phase is developed, Declarant may, with respect thereto, Record a supplemental declaration ("Supplemental Declaration") which may supplement this Declaration with such additional covenants, conditions, restrictions, reservations and easements as Declarant may deem appropriate for that Phase. Prior to any annexation under this Section 16.1, detailed plans for the development of the additional property must be submitted to VA and VA must determine that such plans are in accordance with the development plan and so advise Declarant.

16.2. Other Additions.

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

16.3. Rights and Obligations-Added Territory.

Subject to the provisions of Section 16.4, upon the Recording of a Notice of Addition containing the provisions as set forth in this Section, all provisions contained in this Declaration will apply to the real property described in such Notice of Addition (the "Added Territory") in the same manner as if it were originally covered by this Declaration. Thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the Added Territory will be the same as with respect to the property originally covered hereby, and the rights, powers and responsibilities of the Owners, lessees and occupants of Units within the Added Territory, as well

as within the property originally subject to this Declaration, will be the same as if the Added Territory were originally covered by this Declaration. From and after the first day of the month following the first Close of Escrow in the Added Territory, the Owner of Condominiums located in the Added Territory shall share in the payment of assessments to the Association to meet Common Expenses of the entire Property as provided in Section 5.5 hereof. Voting rights attributable to the Condominiums in the Added Territory do not vest until Annual Assessments have commenced as to such Condominiums.

16.4. Notice of Addition.

The additions authorized under Sections 16.1 and 16.2 must be made by Recording a Notice of Addition, or other similar instrument (which notice or instrument may contain the Supplemental Declaration, if any, affecting each such Phase), with respect to the Added Territory ("Notice of Addition") which will extend the general plan of this Declaration to such Added Territory. The Notice of Addition for any addition under Section 16.1 must be signed by Declarant. The Notice of Addition for any addition under Section 16.2 must be signed by at least two (2) officers of the Association to certify that the requisite Member approval under Section 16.2 was obtained. The Recordation of said Notice of Addition effectuates the annexation of the Added Territory described therein, and thereupon said Added Territory will constitute a part of the Property, become subject to this Declaration and encompassed within the general plan of covenants, conditions, restrictions, reservation of easements and equitable servitudes contained herein, and become subject to the Association's functions, powers and jurisdiction; and the Owners of Condominiums in said Added Territory will automatically become Members. Such Notice of Addition may contain a Supplemental Declaration with such additions and modifications of the covenants, conditions, restrictions, reservation of easements and equitable servitudes contained in this Declaration as may be necessary to reflect the different character, if any, of the Added Territory, or as Declarant deems appropriate in the development of the Added Territory, and as are not inconsistent with the general plan of this Declaration. In no event, however, may such Notice of Addition or Supplemental Declaration revoke, modify or add to the covenants, conditions, restrictions, reservation of easements, or equitable servitudes established by this Declaration as the same pertain to the real property originally covered by this Declaration.

16.5. Deannexation and Amendment.

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

This Declaration is dated for identification purposes October 27, 1997.

DMM DEVELOPMENT CO., LLC,  
a California limited liability company

BY: RGC COURTHOMES, INC.,  
a California corporation,  
Its Manager

By: E. James Murar  
E. James Murar  
Its Chief Executive Officer

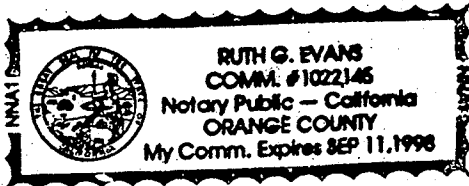
By: Patrick J. Brown  
Patrick J. Brown  
Its Vice President

STATE OF CALIFORNIA )  
                                  ) ss  
COUNTY OF ORANGE )

On October 28, 1997, before me, RUTH G. EVANS, Notary Public, personally appeared E. JAMES MURAR and PATRICK J. BROWN, known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity on behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Ruth G. Evans  
Notary Public in and for said State



**SUBORDINATION**

The undersigned, as Beneficiary of the beneficial interest in and under that certain Deed of Trust recorded on July 31, 1997, as Instrument No. 1997-0365342, in the Official Records of San Diego County, California (the "Deed of Trust"), which Deed of Trust is between DMM Development Co., LLC, a California limited liability company, as Trustor, and Imperial Bank, a California corporation, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antares ("Declaration"), to any Notice of Addition of Territory recorded pursuant to the provisions of Article XVI of the Declaration ("Notice"), and to all maintenance and other easements to be conveyed to the Association in accordance with the Declaration or any Notice. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Property by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration and any applicable Notice, which shall remain in full force and effect.

Dated: 11/12/97, 1997.

IMPERIAL BANK, a California corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

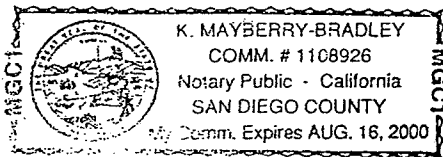
By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF San Diego )

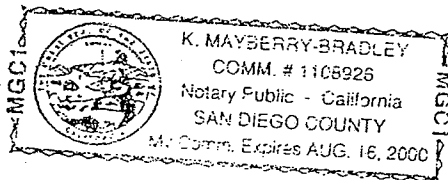
On November 12, 1997, before me, K. Mayberry-Bradley,  
personally appeared Nancy D. Kordoban and \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person(s) whose name(s)-(is) (are) subscribed to the within instrument and acknowledged to me  
that ~~(he)~~ (she) ~~(they)~~ executed the same in ~~(his)~~ (her) ~~(their)~~ authorized capacity(ies), and that by  
~~(his)~~ (her) ~~(their)~~ signature(s) on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



K. Mayberry-Bradley  
Notary Public in and for said State

(SEAL)



**SUBORDINATION**

The undersigned, as Beneficiary by assignment recorded on December 19, 1996, as Instrument No. 1996-0635038 of the beneficial interest in and under that certain Deed of Trust recorded on December 19, 1996, as Instrument No. 1996-0635037, in the Official Records of San Diego County, California (the "Deed of Trust"), which Deed of Trust was originally between RGC-M Associates, L.P., a California Limited Partnership, as Trustor, and Calprop, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antares ("Declaration"), to any Notice of Addition of Territory recorded pursuant to the provisions of Article XVI of the Declaration ("Notice"), and to all maintenance and other easements to be conveyed to the Association in accordance with the Declaration or any Notice. By executing this Subordination, the undersigned agrees that should the undersigned acquire title to all or any portion of the Property by foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure or any other remedy in or relating to the Deed of Trust, the undersigned will acquire title subject to the provisions of the Declaration and any applicable Notice, which shall remain in full force and effect.

Dated: October 29, 1997.

CURCI-TURNER COMPANY,  
a California general partnership

By: *John Curci*

Its: General Partner

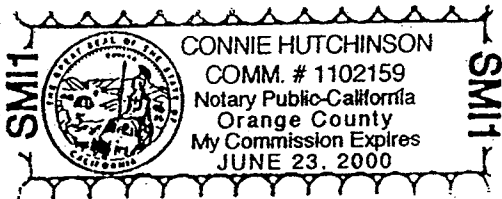
By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF Orange )

On October 29, 1997, before me, Connie Hutchinson,  
personally appeared John Curci\* \* \* \* \* and \* \* \* \* \*,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the  
person(s) whose name(s) (is) (are) subscribed to the within instrument and acknowledged to me  
that (he) (she) (they) executed the same in (his) (her) (their) authorized capacity(ies), and that by  
(his) (her) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which  
the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



*Connie Hutchinson*  
Notary Public in and for said State  
Connie Hutchinson

**RECORDING REQUESTED BY:**

First American Title Insurance Co.

**WHEN RECORDED, MAIL TO:**

JACKSON, DEMARCO &  
PECKENPAUGH (HZF)  
4 Park Plaza, 16th Floor  
Post Office Box 19704  
Irvine, California 92623-9704

This instrument is certified to be a true and  
correct copy of that certain instrument recorded  
on 12/12/97 as File No. 97-0630767  
in the  
office of the County Recorder of San Diego County.

FIRST AMERICAN TITLE INSURANCE

*[Signature]*  
By Authorized Signature

1154268-22

(Space Above For Recorder's Use)

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR  
ANTARES**

This First Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antares ("First Amendment") is executed by DMM Development Co., LLC, a California limited liability company ("Declarant").

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

A. Declarant is the owner of real property ("Phase 1") located in the City and County of San Diego, State of California, described as follows:

Parcels No. 2 and 8, as shown on Parcel Map No. 17924,  
Recorded on October 24, 1997, as Instrument No.  
1997-0534856, of Official Records of San Diego County,  
California; and a nonexclusive easement of access, ingress, egress,  
maintenance and repair over a portion of Parcel 10 of said Parcel  
Map depicted in the Declaration, defined below.

B. On November 21, 1997, a Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antares ("Declaration") was recorded as Instrument No. 1997-05925333 in the Official Records of San Diego County. The Declaration encumbers Phase 1.

C. Declarant wishes to amend the Declaration to correct Exhibit "E".



D. Section 13.2(f) of the Declaration provides that Declarant may, prior to the first Close of Escrow for the sale of a Condominium in Phase 1, amend the Declaration.

THEREFORE, Declarant declares that the Declaration is amended as follows:

1. Exhibit "E." Exhibit "E" to the Declaration is deleted and replaced with Exhibit "E" attached hereto.

2. Miscellaneous. Except as expressly modified herein, the capitalized terms in this First Amendment shall have the same meanings as are given such terms in the Declaration. Except as amended herein, the Declaration is hereby ratified and affirmed.

This First Amendment has been executed on December 9, 1997.

DMM DEVELOPMENT CO., LLC,  
a California limited liability company,  
BY: RGC COURTHOMES, INC.,  
a California corporation,  
Its Manager,

By: Patrick J. Brown  
Patrick J. Brown, Its Vice President

By: Robert D. Murar  
Robert D. Murar, Its Chief Financial Officer

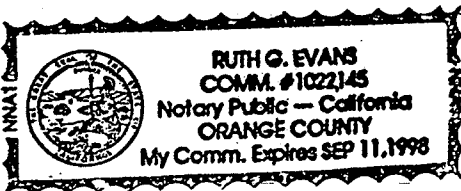
"Declarant"

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On December 9, 1997, before me, **Ruth G. Evans**, Notary Public, personally appeared **Patrick J. Brown** and **Robert D. Murar**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Ruth G. Evans  
Notary Public in and for said State



**RECORDING REQUESTED BY:**

RECORDED REQUEST OF  
*First American Title*  
SUBDIVISION MAPPING DEPT.

**WHEN RECORDED, MAIL TO:**

JACKSON, DeMARCO &  
PECKENPAUGH (HZF)  
4 Park Plaza, 16th Floor  
Post Office Box 19704  
Irvine, California 92713-9704

This instrument is certified to be a true and  
exact copy of that certain instrument recorded  
on 12/4/97 as File No. 97-0614156  
in the  
office of the County Recorder of San Diego County.

FIRST AMERICAN TITLE INSURANCE  
*Martine Casden - Allen*  
By Authorized Signature

1154268-22

(Space Above for Recorder's Use)

**NOTICE OF ADDITION OF TERRITORY  
AND SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ANTARES (PHASE 2)**

**NOTICE OF ADDITION OF TERRITORY  
AND SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
ANTARES (PHASE 2)**

THIS NOTICE OF ADDITION OF TERRITORY AND SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Notice of Addition") is made by DMM DEVELOPMENT CO., LLC, a California limited liability company (the "Declarant").

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

A. On November 21, 1997, Declarant recorded a Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antares ("Declaration") as File No. 1997-0592533, of Official Records of San Diego County, California ("Official Records"). The Declaration is binding upon all Owners of Condominiums in the condominium project known as Antares (the "Property").

B. Declarant is the owner of certain real property ("Annexed Property") in San Diego County, California, described as follows:

Parcel Nos. 3, 7 and 6 as shown on Parcel Map No. 17924, Recorded on October 24, 1997, as File No. 1997-0534856, of Official Records of San Diego County, California; and a nonexclusive easement of access, ingress, egress, maintenance, and repair over the portion of Parcel 10 of said Parcel Map as shown on Exhibit "A" attached hereto and incorporated herein by this reference.

C. The Annexed Property is part of the Annexable Territory as defined in the Declaration.

D. Pursuant to Article XVI of the Declaration, Declarant now desires to add the Annexed Property to the Property as a Phase of Development thereof.

THEREFORE, Declarant hereby declares as follows:

1. Annexation of Annexed Property. Declarant, as the owner of the Annexed Property, hereby declares that the Annexed Property is annexed to and made a part of the

Property as Phase 2 thereof. This Notice of Addition constitutes a Notice of Addition of Territory, as described in Section 16.4 of the Declaration.

2. Interests in Common Areas. Subject to the provisions of Section 11.5 of the Declaration, each Owner of a Condominium in the Annexed Property shall have an equal and undivided one-seventeenth (1/17th) interest in the Common Area which is located in the Annexed Property. Such Common Area shall be conveyed in fee simple to the Owners of Condominiums in the Annexed Property as tenants in common, subject to certain reservations and easement grants.

3. Association Property and Association Property Maintenance Areas. Parcels 3 and 7 of Parcel Map No. 17924 (exclusive of the Units and the Common Area as shown on the Condominium Plan for the Annexed Property), Parcel 6 of said Parcel Map and the easement over Parcel 10 described in the Preamble of this Notice comprises the Association Property in the Annexed Property. The Association Maintenance Areas are defined in Section 1.9 of the Declaration. Declarant shall convey the Association Property and Association Maintenance Areas to the Association prior to the first Close of Escrow in the Annexed Property. Declarant hereby expressly reserves for the benefit of certain Units, exclusive easements for use of the Exclusive Use Area (as defined in the Declaration) for yard purposes as shown on the Condominium Plan for the Annexed Property.

4. Membership in Association. Each Owner of one or more Condominiums in the Annexed Property shall automatically become a Member of the Antares Community Association ("Association"), a California nonprofit mutual benefit corporation, as provided in Section 2.3 of the Declaration.

5. Assessment Obligations and Voting Rights. The rights and obligations of all Owners of Condominiums located in the Annexed Property with respect to payment of assessments and voting are set forth in Article V and Section 2.6, respectively, of the Declaration. The Annual Assessments to be paid to the Association and each Owner's voting rights shall commence as to all Condominiums in the Annexed Property on the first day of the calendar month following the first Close of Escrow in the Annexed Property.

6. Maintenance Obligations. The respective maintenance obligations of the Association, the Owners and Declarant shall be as described in the Declaration.

7. VA Approval. Detailed plans for the development of the Annexed Property have been submitted to VA, which has determined that such plans are in accordance with the general plan previously submitted to VA for the overall development of the Property, and VA has so advised Declarant.

8. Conformity with Development Plan. This Notice of Addition conforms with the Development Plan currently on file with DRE, and is being Recorded prior to the

seventh (7th) anniversary of the Recordation of the Declaration. This Notice of Addition is being Recorded prior to the third (3rd) anniversary of the issuance of the most recently issued Final Subdivision Public Report from the DRE for a Phase of Development, as required by Section 16.1 of the Declaration.

9. Miscellaneous. The provisions of this Notice of Addition shall run with all of the Annexed Property and the Property; shall be binding upon all Persons having or acquiring any interest in the Annexed Property, the Property, or any part thereof; shall inure to the benefit of and burden every portion of the Annexed Property, the Property, and any interest therein; and shall inure to the benefit of, be binding upon, and may be enforced by any Owner, Declarant, each successor in interest of Declarant, the Association, and their successive Owners and assigns. Except as otherwise provided herein, the terms in this Notice of Addition shall have the same meanings as are given such terms by the Declaration. Except as otherwise expressly provided herein, all of the provisions of the Declaration are hereby incorporated by reference as if fully set forth herein.

This Notice of Addition has been executed on the date set forth below to be effective as of the date of its Recordation.

Dated: November 12, 1997 DMM DEVELOPMENT CO., LLC, a California limited liability company

BY: RGC COURTHOMES, INC., a California corporation, Its Manager

By: Patrick J. Brown  
Patrick J. Brown  
Vice President  
Its: \_\_\_\_\_

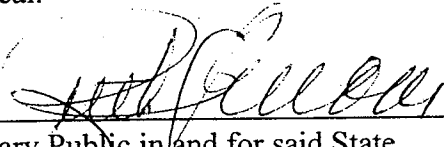
By: Robert D. Murar  
Robert D. Murar  
Chief Financial Officer  
Its: \_\_\_\_\_

"Declarant"

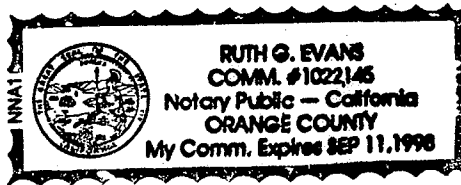
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF ORANGE )

On November 12, 1997, before me, Ruth G. Evans, Notary Public, personally appeared Patrick J. Brown and Robert D. Murar, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) (~~is~~) (are) subscribed to the within instrument and acknowledged to me that (~~he~~) (~~she~~) (they) executed the same in (~~his~~) (~~her~~) (their) authorized capacity(ies), and that by (~~his~~) (~~her~~) (their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public in and for said State

(SEAL)



**EXHIBIT "A"**

**DEPICTION OF EASEMENT IN PHASE 2**



SEP 02, 2004 11:40 AM

OFFICIAL RECORDS  
SAN DIEGO COUNTY RECORDER'S OFFICE  
GREGORY J. SMITH, COUNTY RECORDER  
FEES: 29.00  
PAGES: 8



2004-0839846

For Recorder's Use

11599

Recording Requested By:  
ANTARES COMMUNITY ASSOCIATION

When Recorded, Return To:  
Anne L. Rauch, Esq.  
EPSTEN GRINNELL & HOWELL  
9980 Carroll Canyon Road, Second Floor  
San Diego, CA 92131

**SECOND AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR ANTARES COMMUNITY ASSOCIATION**

THIS AMENDMENT is made on this 18<sup>th</sup>-day of August, 2004, by Antares Community Association and its membership, hereinafter referred to as "**Association**," with reference to the following:

**RECITALS**

A. Pursuant to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antares recorded on November 21, 1997 in the Office of the County Recorder of San Diego County as Document No. 1997-0592533, and all annexation documents related thereto, the Association is vested with the responsibility for the management and control of that certain portions of real property in the County of San Diego, State of California, more particularly described as follows:

**LEGAL DESCRIPTION:**

Parcels 1 through 10 as shown on Parcel Map No. 17924 Recorded on October 24, 1997 as Instrument No. 1997-0534856 of Official Records of San Diego County, California.

hereinafter referred to as "**Property**;"

B. The Association membership is made up of the individual Owners of the Property.



C. The Property is subject to the covenants and restrictions contained in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antares filed, as File/Page No. 1997-0592533 of Official Records of the County Recorder of San Diego County, and First Amendment to Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Antares filed as File/Page No. 97-0630767, and all annexation documents related thereto, hereinafter collectively referred to as "**Declaration.**"

D. The Declaration, in **Article XIII, Section 13.2**, provides that it may be amended by the affirmative vote or written consent of sixty-seven percent (67%) of the total voting power of the Association. The President and Secretary of the Association certify that to the best of their knowledge, the affirmative vote or written consent of the required percentage of Association members has been obtained.

E. The Association and its members now wish to amend the Declaration as set forth herein.

**DECLARATION**

NOW THEREFORE, the Declaration is hereby amended as follows:

1. Article I, Section 1.9 shall be amended to read as follows:

1.9 Association Maintenance Areas

Association Maintenance Areas shall mean certain landscaping and irrigation Improvements (but not the driveways, entry areas, walkways, fences or exterior surfaces of the Residences) which are located within yards of the Units between the exterior of the Residence or exterior of the fencing in the Unit and the Association Property. The Association Maintenance Areas shall also include the landscaping and irrigation in the planter area between the sidewalk and exterior perimeter wall enclosing the Antares Community Association along Townsgate Drive, as illustrated in the attached diagram which is attached as Exhibit "A" hereto and made a part hereof. The Association shall have a nonexclusive easement for maintenance purposes of the Association Maintenance Areas. The precise location of the Association Maintenance Areas shall be defined by the Improvements originally constructed or installed by Declarant or as modified or reconstructed by the Association.

2. Except as expressly amended herein, the remaining portions of the Declaration shall remain in full force and effect.

////

///

IN WITNESS WHEREOF, this Amendment is executed on the day and year herein-  
above written by the undersigned Directors.

ANTARES COMMUNITY ASSOCIATION  
a California nonprofit mutual benefit corporation

By: *Gianni Fanditto*  
President

By: *Mark Gano*  
Secretary

(Attach Proper Notary Certificate(s) of Acknowledgment)

# EXHIBIT A

11603

SCALE:  
1" = 20'



LANDSCAPE MAINTENANCE  
AREA BY HOA

CARMEL COUNTRY ROAD

CITY  
MAINTAINED

HOMEOWNER  
MAINTAINED

SIDEWALK

PROPERTY LINE

TOWNSGATE DRIVE



GRAPHIC SCALE 1" = 20'

**RECORDING REQUESTED BY:**

First American Title Company

**WHEN RECORDED MAIL TO:**

Jackson, DeMarco & Peckenpaugh (JRS)  
4 Park Place, 16<sup>th</sup> Floor  
Post Office Box 19704  
Irvine, California 92623-9704

This instrument is certified to be a true and exact copy of that certain instrument recorded on 11/12/99 as File No. 99-0735908 in the office of the County Recorder of San Diego County.

FIRST AMERICAN TITLE INSURANCE

*Martha E. Allen*  
By Authorized Signature

A.P.N. 304-061-31, 32, 35 & 45 through 58

(Space Above for Recorder's Use)

**FIRST AMENDMENT TO THE RECIPROCAL EASEMENT AND USE AGREEMENT FOR ELYSIAN**

This First Amendment to the Reciprocal Easement and Use Agreement for Elysian ("First Amendment") is entered into by and between DMM DEVELOPMENT CO., LLC, a California limited liability company, ("Developer") and the ANTARES COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation, ("Antares"), as successors-in-interest to RGC-M ASSOCIATES L.P., a California limited partnership, and the ELYSIAN COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation, ("Association").

PREAMBLE

1. RGC-M ASSOCIATES, L.P., and the Association entered into that certain RECIPROCAL EASEMENT AND USE AGREEMENT FOR ELYSIAN (hereinafter "Agreement"), which was recorded on May 4, 1990, as File/Page No. 90-244949 of Official Records of San Diego County, State of California; and

2. The Agreement affected, and created covenants running with, certain properties (hereinafter collectively referred to as "Properties") identified as the "Project" (comprised of "Phase 1" and the "Annexable Territory") which is described in "Exhibit A" hereto, and as the "Adjacent Property" which is described in "Exhibit B" hereto; and

3. Antares is the homeowners association formed to operate, manage, and maintain the Adjacent Property in accordance with the Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Antares, which was recorded on November 21, 1997, as File/Page No. 1997-0592533 of Official Records of San Diego County, State of California, and any recorded amendments thereto; and

4. The Developer is the successor in interest of RGC-M ASSOCIATES, L.P.,

and is presently developing the Adjacent Property as a residential community which will be controlled by Antares; and

5. For the purpose of the Agreement, each condominium constructed in the Project and the Adjacent Property comprises one Residence for the apportionment of Shared Expenses; and

6. The Developer, Antares, and the Association now wish to amend the Agreement, in part, to revise the formula used to calculate "Shared Expenses" for the Streets and Recreational Facilities which were the subject of the Agreement, and to provide that each "Convenience Unit" constructed as a portion of a condominium on the Adjacent Property shall be counted as an additional Residence for the purpose of apportioning Shared Expenses. The proposed location of each Convenience Unit is identified on "Exhibit C" attached hereto.

NOW, THEREFORE, the Developer, Antares, and the Association hereby agree as follows:

A. Except as otherwise specifically provided herein, all capitalized words and phrases used in this First Amendment shall have the same meanings given them in the Agreement.

B. Paragraph 9 of said Agreement is amended in its entirety to read as follows:

9. Adjacent Owner's Share. Each Adjacent Owner's Share shall be an amount equal to the Shared Expenses divided by the sum of the number of Residences in the Project and the number of Residences in the Adjacent Property then subject to payment of a portion of the Shared Expenses. With respect to the Adjacent Property, each Convenience Unit developed as part of a condominium shall count for purposes of determining the Adjacent Owner's Share as if it were a separate Residence. Each Adjacent Owner's Share allocated to a Convenience Unit shall be allocated equally among all Adjacent Owners then subject to the payment of a portion of the Shared Expenses.

C. Paragraph 10 of said Agreement is amended in its entirety to read as follows:

10. Commencement. The obligation to pay an Adjacent Owner's Share shall commence as to all Residences in any phase of development of the Adjacent Property on the first day of the month following the month in which the close of escrow for the first sale of a Residence in such phase of development of the Adjacent Property occurred.

D. Paragraph 12 of said Agreement is amended in its entirety to read as follows:

12. Capital Improvements. Should the Association determine the need for a

capital improvement or other such addition to the Streets or to the Recreational Facilities, the cost of which, in the aggregate, exceeds five percent (5%) of the Estimated Shared Expenses for the then current calendar year, then the vote or written consent of at least a majority of the voting power of the Adjacent Owners (with each Adjacent Owner having one (1) vote for each Residence owned by such Adjacent Owner) shall be required to approve and render effective any amounts levied by the Association to cover the cost of such expenditure ("Capital Improvement Fee"). Notwithstanding the foregoing, a Capital Improvement Fee in excess of five percent (5%) of the Estimated Shared Expenses for the then current calendar year may be levied by the Association without the consent of the Adjacent Owners, if such increase is necessary for an emergency situation as defined in Paragraph 13 below. Such Capital Improvement Fees shall be paid by each Adjacent Owner within fifteen (15) days of the due date thereof established by the Board of Directors of the Association.

E. Paragraph 13 of said Agreement is amended in its entirety to read as follows:

13. Emergency Situations. For purposes of Paragraph 11 and 12 above, an emergency situation is any one of the following: (a) an extraordinary expense required by an order of a court; (b) an extraordinary expense necessary to repair or maintain the Streets or the Recreational Facilities where a threat to personal safety on the Streets or Recreational Facilities is discovered; or (c) an extraordinary expense necessary to repair or maintain the Streets or the Recreational Facilities, or any part thereof, that could not have been reasonably foreseen by the Board of Directors of the Association in preparing and distributing the Association Budget pursuant to the Declaration. However, prior to the imposition or collection of an amount pursuant to this Paragraph, the Board of Directors of the Association shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and such resolution shall be distributed to the Adjacent Owners with the notice of the assessment.

F. Paragraph 15 of said Agreement is amended in its entirety to read as follows:

15. Collection of Adjacent Owner's Share. The Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Antares, which was recorded on November 21, 1997, as File/Page No. 1997-0592533 of Official Records of San Diego County, State of California, has established the Antares Community Association ("Adjacent Association") as the homeowners association for the Adjacent Property ("Adjacent Community"). The Adjacent Association shall be responsible for collection and payment of the Adjacent Owner's Shares to the Association. However, all obligations of each Adjacent Owner, and all rights and remedies of the Association provided hereinafter, shall have full force and effect.

G. Paragraph 16 of said Agreement is amended in its entirety to read as follows:

16: Accounting and Collections. The Shared Expenses collected by the Association shall be segregated into "Operating" and "Reserve Accounts" in a federally insured bank or savings and loan association and shall be used exclusively for the operation, maintenance, repair, replacement and insurance of the Streets and of the Recreational Facilities.

H. In paragraph 18 of said Agreement, the reference to California Civil Code Section 1366(c)(2) is updated to California Civil Code Section 1366(d)(2).

I. Paragraph 23 of said Agreement is amended in its entirety to read as follows:

23. Rules and Regulations. Each Adjacent Owner shall at all times comply with provisions of the Declaration and any rules and regulations adopted by the Association respecting the use and enjoyment of the Streets and/or the Recreational Facilities. Such rules and regulations shall apply uniformly to all Owners of Residences in the Project and all Adjacent Owners. Each Adjacent Owner shall be liable for any damage to the Phase 1 Streets and/or Recreational Facilities not fully reimbursed by insurance which was sustained because of the negligence, wilful misconduct or unauthorized use by such Adjacent Owner or such Adjacent Owner's agent, tenants, guests, family members, or any other person deriving his right to the use and enjoyment of the Streets and/or Recreational Facilities from such Adjacent Owner.

J. Paragraph 27 of said Agreement is amended in its entirety to read as follows:

27. Notices. Any notices to be given hereunder by any Party to any other Party shall be in writing and shall be delivered either personally or by United States mail, registered or certified, postage paid with return receipt requested. Notices shall be delivered or addressed to the Parties, until notice is directed to be given at a different address, at the following addresses:

Association: Elysian Community Association  
c/o S&L Association Management, Inc.  
12625 High Bluff Drive, Suite 111  
San Diego, CA 92130-2053  
Attn: P. Lindsey-Stap

With a copy to: Epsten & Grinnell, APC  
Attn: Mary M. Howell, Esq.  
16835 W. Bernardo Drive, Suite 210  
San Diego, CA 92127

Developer: DMM Development Co., LLC  
Attn: Mr. E. James Murar

20 Corporate Plaza  
Newport Beach, CA 92660

Antares: Antares Community Association  
c/o Ruth Evans  
20 Corporate Plaza  
Newport Beach, CA 92660

With a copy to: Jackson, DeMarco & Peckenpaugh  
Attn: Helene Z. Fransz, Esq.  
4 Park Plaza - 16th Floor  
P.O. Box 19704  
Irvine, CA 92623-9704

Notices not personally served shall be deemed delivered four (4) days after mailing.


K. The balance of the Agreement is unchanged.

L. Each of the parties hereto warrants that it has full legal authority to execute this document, and the parties agree that each is relying upon the other's warrant of authority in executing this First Amendment.

M. This First Amendment shall be effective upon recording in the Office of the County Recorder of San Diego County, California.

DMM Development Co., LLC, a California limited liability corporation


By: RGC COURTHOMES, INC., a California corporation, its manager,

By:   
Patrick J. Brown, Its Vice President

By:   
Robert D. Murar, Its Chief Financial Officer

"Developer"

ANTARES COMMUNITY ASSOCIATION,  
a California nonprofit mutual benefit corporation

By:   
PATRICK J. BROWN, President



By: Tammie A. Eisele  
TAMMIE A. EISELE, Secretary

"Antares"

ELYSIAN COMMUNITY ASSOCIATION,  
a California nonprofit mutual benefit corporation

By: Helene C. Schriber  
Helene C. Schriber, President

By: Helmut J. Reichensperger  
Helmut J. Reichensperger, Secretary

"Association"

Recorded Request Of  
FIDELITY NATIONAL TIT

This document is certified to be true and correct

RECORDING REQUESTED BY,  
AND WHEN RECORDED MAIL TO:

copy of the original document recorded  
as instrument No. 90-244949 in 5-4-90@12:00

McKittrick, Jackson, DeMarco &  
Peckenpaugh (HMZ)  
4041 MacArthur Boulevard, 5th Floor  
Post Office Box 2710  
Newport Beach, California 92658-8995

of the county of San Diego  
FIDELITY NATIONAL TITLE  
INSURANCE COMPANY  
By Martine Carlin  
Title Officer

8914370-5

(Space Above for Recorder's Use)

RECIPROCAL EASEMENT AND USE AGREEMENT  
FOR ELYSIAN

This Reciprocal Easement and Use Agreement for Elysian ("Agreement") is entered into by and between RGC-M ASSOCIATES L.P., a California limited partnership ("Developer") and ELYSIAN COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation ("Association"). Developer and the Association (collectively, the "Parties") are entering into this Agreement with reference to the following facts:

A. Developer is the owner of certain real property located in the City of San Diego, County of San Diego, State of California, as described on Exhibit "A" hereto ("Phase 1"). Developer intends to develop Phase 1 and the Annexable Territory, defined in the Declaration described below as a multi-phase condominium project ("Project") known as Elysian. Developer may, but has no obligation to, annex all or any portion of the Annexable Territory to the Project.

B. Developer is the owner of property located adjacent to the Project, described on Exhibit "B" ("Adjacent Property") which Developer also intends to develop as a multiphased condominium project.

C. Association is the homeowners association formed to operate, manage and maintain the Project in accordance with the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Elysian recorded concurrently with this Agreement ("Declaration").

D. The Association is or will be the owner of certain streets located in Phase 1 and described on Exhibit "C" hereto ("Phase 1 Streets") which provide regular access to a

public street. Certain streets located on the Adjacent Property and described on Exhibit "D" hereto (the "Adjacent Property Streets") provide a means of emergency access to a public street.

E. When the Project is developed, the Owners in the Project will not have any emergency access to a public street and will require use of the Adjacent Property Streets. In addition, the owners of lots or condominiums (the "Residences") in the Adjacent Property (the "Adjacent Owners") may not have any means of regular access to a public street and may require use of the Phase 1 Streets.

F. Certain recreational facilities, including a swimming pool, restrooms, pool equipment, storage area, patio furniture, and landscaping (collectively the "Recreational Facilities") are located on the Phase 1 Common Area described on Exhibit "E". The Association desires to grant nonexclusive easements to the Adjacent Owners for the use and enjoyment of the Recreational Facilities located in Phase 1 in exchange for an agreement by the Adjacent Owners to share in the costs and expenses of maintaining the Recreational Facilities.

G. In view of the foregoing, Developer and Association now wish to enter into this Agreement whereby (i) Developer reserves for the benefit of the Adjacent Owners nonexclusive easements of access, ingress, egress, use and enjoyment in, to and over the Phase 1 Streets, (ii) Developer reserves for the benefit of Owners in the Project nonexclusive easements for emergency access, ingress and egress in, to and over the Adjacent Property Streets, (iii) Developer reserves for the benefit of the Adjacent Owners nonexclusive easements for the use and enjoyment of the Recreational Facilities located in Phase 1, and (iv) the Adjacent Owners will share the costs of maintenance, repair, operation and insurance of the Phase 1 Streets and Recreation Facilities.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Nonexclusive Easements Over Phase 1 Streets.

Developer hereby reserves for the benefit of the Adjacent Owners (including Developer) and their respective families, guests, tenants, agents, employees and invitees, nonexclusive easements for (i) regular vehicular and pedestrian access, ingress and egress over the Phase 1 Streets and through the entry gate located thereon ("Regular Street Easement"), and (ii) emergency vehicular and pedestrian access, ingress and egress over the Phase 1 Streets and through the entry gate located thereon ("Emergency Access Easement"). (The Regular Street Easement and Emergency Access Easement are collectively referred to herein as the "Phase 1 Street Easements".) Such easements shall be

*did not require approval*

exercisable by any Adjacent Owner only if Developer has not recorded a termination of either or both of the easements pursuant to Paragraph 5 below. Nothing contained herein shall limit the right of the Association, and the Phase 1 Owners to use the Phase 1 Streets for access, ingress, egress, use and enjoyment in accordance with the Declaration.

2. Nonexclusive Easements Over Recreational Facilities. Developer hereby reserves for the benefit of the Adjacent Owners (including Developer) and their respective families, guests, tenants, agents, employees and invitees, non-exclusive easements of use, access, ingress and egress over and to the Recreational Facilities ("Recreational Facilities Easement"). Such easements shall be exercisable by any Adjacent Owner only if Developer has not recorded a termination of either or both of the easements pursuant to Paragraph 5 below. Nothing contained herein shall limit the right of the Association, and the Phase 1 Owners to use the Recreational Facilities for access, ingress, egress, use and enjoyment in accordance with the Declaration.

3. Nonexclusive Easement Over Adjacent Property Streets. Developer hereby reserves for the benefit of the Association and all Owners in the Project (including Developer) and their respective families, guests, tenants, agents, employees and invitees, nonexclusive easements of vehicular and pedestrian emergency access, ingress and egress to and over the Adjacent Property Streets and through any gates which may be installed thereon. Nothing contained herein shall limit the right of the Adjacent Owners to use the Adjacent Property Streets for access, ingress, egress, use and enjoyment. When the Adjacent Property is developed, Developer's plans may require moving the location of the Adjacent Property Streets. The easement created in this paragraph shall extend over the Adjacent Property Streets and through any gates constructed thereon, in the locations actually constructed by Declarant.

4. Effective Date of Easements. The Phase 1 Street Easements and the Recreational Facilities Easement may be exercised by each Adjacent Owner upon the close of escrow for the sale of his Residence. The easement over the Adjacent Property Streets may be exercised by any Owner in the Project upon the first Close of Escrow for the sale of a Condominium in Phase 1.

5. Termination of Easements. Developer shall have the right to unilaterally terminate either of the Phase 1 Street Easements and/or the Recreational Facilities Easement at any time prior to the first close of escrow for the sale to an individual member of the home-buying public of a Residence in the Adjacent Property. Such termination shall be evidenced by a recorded quitclaim deed which conveys the easement being terminated to the Association.

6. Maintenance. The Association shall maintain the Phase 1 Streets and the Recreational Facilities in accordance with the Declaration. The minimum level of maintenance for the Adjacent Property Streets shall be the level of maintenance comparable to that of the Phase 1 Streets.

7. Shared Maintenance Costs. If the Developer does not terminate the Recreational Facilities Easement pursuant to Paragraph 5 above, the Adjacent Owners shall share the cost of maintaining, repairing, replacing and insuring the Recreational Facilities, including the cost of maintaining adequate reserves in accordance with the Declaration. In addition, if the Developer does not terminate the Regular Street Easement in accordance with Paragraph 5 above, then the Adjacent Owners shall also share the cost of maintaining, repairing, replacing and insuring the Phase 1 Streets and any entry gates thereon, including the cost of maintaining adequate reserves in accordance with the Declaration. The expenses to be shared by the Adjacent Owners described in this Paragraph are hereinafter referred to as the "Shared Expenses".

8. Payment of Shared Expenses. No later than December 1 of each calendar year, the Association shall deliver to the Adjacent Owners a good faith estimate of the amount of Shared Expenses to be incurred during the next calendar year ("Estimated Shared Expenses"). Each Adjacent Owner shall pay to the Association his Share of the Estimated Shared Expenses, calculated in accordance with Paragraph 9 below, in equal monthly installments due on the first day of each calendar month of each calendar year during the term hereof, commencing as provided in Paragraph 10 below.

No later than February 28 of each calendar year, the Association shall deliver to each Adjacent Owner a statement of the actual Shared Expenses for the immediately preceding calendar year ("Actual Shared Expenses"). If an Adjacent Owner's Share of the Estimated Shared Expenses for any calendar year exceeds his Share of the Actual Shared Expenses for such year, the Association shall reduce his Share for the following calendar year by such excess amount. If an Adjacent Owner's Share of the Actual Shared Expenses exceeds his Share of the Estimated Shared Expenses, then he shall pay such excess amount to the Association within fifteen (15) days after receipt of the statement of Actual Shared Expenses for such year.

9. Adjacent Owner's Share. Each Adjacent Owner's Share shall be an amount equal to the Shared Expenses divided by the sum of the number of Residences in the Project and the number of Residences in the Adjacent Property then subject to the payment of a portion of the Shared Expenses. For the calendar year in which an Adjacent Owner's obligation to pay a Share of

the Shared Expenses commences, such Adjacent Owner's Share shall be prorated from the commencement date as identified in Paragraph 10 below to the end of such year. In addition, if the Association's billing date is other than the first of the month, each Adjacent Owner's Share shall be prorated from the first of such month to the billing date.

10. Commencement. The obligation to pay an Adjacent Owner's Share shall commence as to any Residence in the Adjacent Property on the first day of the month following the month in which close of escrow for such Residence occurred.

11. Limitation on Increases. Any proposed increase in the Shared Expenses which exceeds one hundred and twenty percent (120%) of the Actual Shared Expenses for the preceding calendar year must be approved in advance by a majority of the voting power of the Adjacent Owners (with each Adjacent Owner having one (1) vote for each Residence owned by such Adjacent Owner). Notwithstanding the foregoing, a proposed increase in the Shared Expenses may exceed one hundred twenty percent (120%) of the Actual Shared Expenses for the preceding calendar year if such increase is necessary for an emergency situation, as defined in Paragraph 13 below.

12. Capital Improvements. Should the Association determine the need for a capital improvement or other such addition to the Streets, the cost of which, in the aggregate, exceeds five percent (5%) of the Estimated Shared Expenses for the then current calendar year, then the vote or written consent of at least a majority of the voting power of the Adjacent Owners (with each Adjacent Owner having one (1) vote for each Residence owned by such Adjacent Owner) shall be required to approve and render effective any amounts levied by the Association to cover the cost of such expenditure ("Capital Improvement Fee"). Notwithstanding the foregoing, a Capital Improvement Fee in excess of five percent (5%) of the Estimated Shared Expenses for the then current calendar year may be levied by the Association without the consent of the Adjacent Owners, if such increase is necessary for an emergency situation as defined in Paragraph 13 below. Such Capital Improvement Fees shall be paid by each Adjacent Owner within fifteen (15) days of the due date thereof established by the Board of Directors of the Association.

13. Emergency Situations. For purposes of Paragraph 11 and 12 above, an emergency situation is any one of the following: (a) an extraordinary expense required by an order of a court; (b) an extraordinary expense necessary to repair or maintain the Streets where a threat to personal safety on the Streets is discovered; or (c) an extraordinary expense necessary to repair or maintain the Streets or any part thereof that could not have been reasonably foreseen by the Board of Directors of

the Association in preparing and distributing the Association Budget pursuant to the Declaration. However, prior to the imposition or collection of an amount pursuant to this Paragraph, the Board of Directors of the Association shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and such resolution shall be distributed to the Adjacent Owners with the notice of the assessment.

14. Books and Records. Each Adjacent Owner shall be entitled to inspect and copy at his or her sole expense, the books and records of the Association relating to the Shared Expenses upon reasonable notice to the Association during normal business hours. The Association shall maintain all such records for any calendar year for at least three (3) years after the end of such calendar year.

15. Adjacent Association. Notwithstanding the provisions of Paragraph 7, if Developer establishes a homeowners association ("Adjacent Association") for the Adjacent Property ("Adjacent Community"), then Developer may provide in the declaration of covenants, conditions and restrictions for the Adjacent Property for such Adjacent Association to be responsible for collection and payment of the Adjacent Owners' Shares.

16. Accounting and Collections. The Shared Expenses collected by the Association shall be segregated into "Operating" and "Reserve Accounts" in a federally insured bank or savings and loan association and shall be used exclusively for the operation, maintenance, repair, replacement and insurance of the Streets.

17. Personal Obligation of Adjacent Owner's Share. Each Adjacent Owner, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay the Adjacent Owner's Share, to be established and collected as hereinafter provided. All of an Adjacent Owner's Share, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be (i) a charge on the land and shall be a continuing lien upon the Adjacent Owner's Residence and, (ii) shall also be the personal obligation of the Adjacent Owner. The personal obligation of an Adjacent Owner's Share shall not pass to the successors-in-title to any Adjacent Owner, unless expressly assumed by them.

18. Nonpayment of Shared Expenses. Any installment of an Adjacent Owner's Share ("Installment") shall be delinquent if not paid within fifteen (15) days of the due date as established by the Board of Directors of the Association. If any

Installment is not paid within thirty (30) days after the due date, such Installment plus all reasonable costs of collection (including attorneys' fees) and late charges as provided herein, shall bear interest at the rate of up to twelve percent (12%) per annum, commencing thirty (30) days from the due date until paid. The Board may also require the delinquent Adjacent Owner to pay a late charge in accordance with California Civil Code Section 1366(c)(2). The Association may bring an action at law against the Adjacent Owner personally obligated to pay the same, or foreclose the lien against the Adjacent Owner's Residence. No Adjacent Owner may waive or otherwise escape liability for his Share by nonuse of the Streets. The Association need not accept any tender of a partial payment of an Installment and all costs and attorneys' fees attributable thereto, and any acceptance of any such tender shall not be deemed to be a waiver of the Association's right to demand and receive full payments thereafter.

19. Notice of Assessment. No action shall be brought to enforce any lien herein, unless at least thirty (30) days has expired following the date a Notice of Assessment is deposited in the United States mail, certified or registered, postage prepaid, to the Adjacent Owner of the Residence, and a copy thereof has been recorded by the Association; said Notice of Assessment must recite a good and sufficient legal description of the Residence, the record Adjacent Owner or reputed Adjacent Owner thereof, the amount claimed (which may at the Association's option include interest on the unpaid Installment and late charges as described above plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association, and in order for the lien to be enforced by nonjudicial foreclosure, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Assessment shall be signed and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association, and said lien shall be prior to any declaration of homestead Recorded after the date on which this Agreement is Recorded. The lien shall continue until fully paid or otherwise satisfied.

20. Foreclosure Sale. A sale to foreclose an Association lien may be conducted by the Board of Directors, its attorneys or other persons authorized by the Board in accordance with the provisions of Sections 2924, 2924a, 2924b, 2924c and 2924f of the Civil Code of the State of California, or in accordance with any similar statute hereafter enacted applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, through duly authorized agents, shall have the power to bid on the Residence at foreclosure sale, and to acquire and



hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Adjacent Owner's Residence, and the defaulting Adjacent Owner shall be required to pay the reasonable rental value of such Residence during any period of continued occupancy by the defaulting Adjacent Owner or any persons claiming under the defaulting Adjacent Owner.

21. Curing of Default. Upon the timely curing of any default for which a Notice of Assessment was filed by the Association, the officers thereof shall record an appropriate Release of Lien, upon payment by the defaulting Adjacent Owner of a reasonable fee to cover the cost of preparing and Recording such release. A certificate executed and acknowledged by any two (2) members of the Board stating the indebtedness secured by the liens upon any Residence created hereunder shall be conclusive upon the Association and the Adjacent Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Adjacent Owner upon request at a reasonable fee, to be determined by the Board.

22. Cumulative Remedies. The liens and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid Installments, as above provided.

23. Rules and Regulations. Each Adjacent Owner shall at all times comply with provisions of the Declaration and any rules and regulations adopted by the Association respecting the use and enjoyment of the Streets. Such rules and regulations shall apply uniformly to all Owners of Residences in the Project and all Adjacent Owners. Each Adjacent Owner shall be liable for any damage to the Phase 1 Streets <sup>What? no penalties?</sup> not fully reimbursed by insurance <sup>When?</sup> which was sustained because of negligence, wilful misconduct or unauthorized use by such Adjacent Owner or such Adjacent Owner's agent, tenants, guests, family members, or any other person deriving his right to the use and enjoyment of the Streets from such Adjacent Owner.

24. Term and Termination. Until the first Close of Escrow for the sale of a Condominium in the Project, Developer shall have the right to unilaterally terminate this Agreement. Unless this Agreement is terminated as provided in this Paragraph or by a written agreement executed by both Parties, this Agreement shall continue in full force and effect for a term of fifty (50) years from the date hereof, after which the term shall be extended for successive ten (10) year periods. Upon

termination of this Agreement as to Residences in all or any portion of the property covered by this Agreement, the Association agrees to execute in favor of the applicable owner(s) a quitclaim deed or any other document required by a title insurance company to verify such termination. Any termination of this Agreement shall be effective upon recordation.

25. Amendment. For so long as Developer is the sole owner of the Adjacent Property, no amendment, change or modification of this Agreement shall be valid unless it is in writing and executed by Developer and two authorized officers of the Association, certifying that the modification or amendment has been approved by the vote or written consent of at least sixty-seven percent (67%) of the voting power of the Association. If Developer is not the sole owner of the Adjacent Property, then no amendment, change, or modification to this Agreement shall be valid unless it is in writing and executed by (a) two (2) authorized officers of the Association certifying that the modification or amendment has been approved by the vote or written consent of at least sixty-seven percent (67%) of the voting power of the Association; (b) either at least sixty-seven percent (67%) of the Adjacent Owners or two (2) authorized officers of the Adjacent Association certifying that the modification or amendment has been approved by the vote or written consent of at least sixty-seven percent (67%) of the voting power of the Adjacent Association, and (c) Developer, if Developer owns any portion of the Adjacent Property. Such amendment shall be recorded in the Official Records of San Diego County, California.

26. Covenants Running With the Land. The Parties hereby declare that the Project and Adjacent Property is to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the foregoing limitations, restrictions, easements, covenants, and conditions, all of which are declared to be in furtherance of and for the protection of and maintenance and improvement of the Project and Adjacent Property for the purpose of enhancing its value, use, desirability, and attractiveness. All provisions of this Agreement are hereby imposed as equitable servitudes on the Project and Adjacent Property. All provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of the Project and Adjacent Property and any portion thereof or interest therein, and all Parties having or acquiring any right, title, or interest in the Project and Adjacent Property, or any portion thereof or interest therein, and their successive owner and assigns.

27. Notices. Any notices to be given hereunder by any Party to any other Party shall be in writing and shall be delivered either personally or by United States mail, registered or certified, postage paid with return receipt requested. Notices shall be delivered or addressed to the Parties, until notice is given at a different address, at the following addresses:

Association: Elysian Community Association  
c/o RGC-M Associates, L.P.  
20 Corporate Plaza  
Newport Beach, California 92660  
Attn: Douglas A. Hill

Developer: RGC-M Associates, L.P.  
20 Corporate Plaza  
Newport Beach, California 92660  
Attn: Douglas A. Hill

Notices not personally served shall be deemed delivered three (3) days after mailing.

28. Miscellaneous.

(a) Assignment by Developer. Developer shall be entitled to assign all or any portion of its rights under this Agreement by means of an express written and recorded assignment to any persons or entities who acquire all or any portion of the Adjacent Property.

(b) Waiver. The waiver by any Party of the breach by any other Party of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement.

(c) Enforcement. The Parties acknowledge that the rights granted hereunder are of a special and unique kind and character and that if there is a breach of any covenant, condition, or restriction contained herein by any Party, the other Parties would not have an adequate remedy at law. The Parties, therefore, agree that, in addition to remedies at law or hereunder, this Agreement may be enforced, without limitation, by an action for specific performance and such other equitable relief as is provided under the laws of the State of California.

(d) Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

(e) Language Construction. Whenever the context of this Agreement requires, the masculine gender shall include the feminine and neuter and the singular number shall include the plural. Designations used herein are for convenience only and shall not be controlling in the interpretation of this Agreement.

(f) Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

(g) Mortgage Protection. No portion of this Agreement or any amendment or violation thereof shall operate to defeat or render invalid, in whole or in part, the rights of the beneficiary, insurer, guarantor, or holder of any mortgage or deed of trust encumbering any portion of the Project or Adjacent Property; provided that, after foreclosure of any such mortgage or deed of trust, the property foreclosed shall remain subject to this Agreement.

(h) Entire Agreement. This Agreement constitutes the sole agreement between the Parties and supersedes any and all other Agreements, whether oral or written with respect to the obligations identified herein. The Parties hereby acknowledge that no representations, inducements, promises, or agreements, whether oral or otherwise, have been made by any Party or anyone acting on behalf of any Party which is not embodied herein; and that no other agreement, statement, or promise not contained in this Agreement regarding the provisions of this Agreement shall be valid or binding.

(i) Attorneys' Fees. If any action or proceeding is instituted by any person to enforce or interpret the provisions hereof, the prevailing party in such action or proceeding shall be entitled to recover from the other party or other parties as costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and the costs and expenses of litigation.

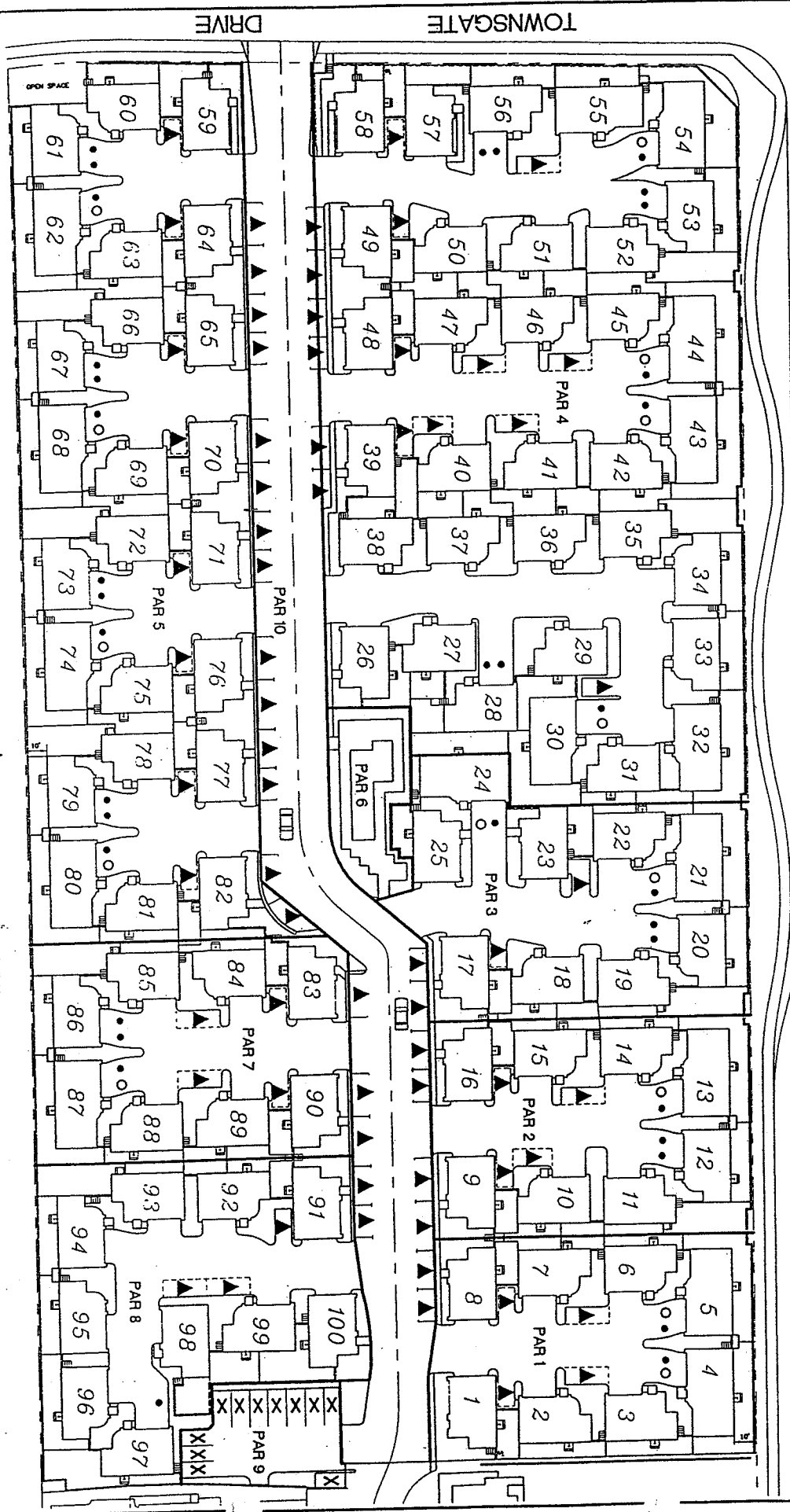
(j) Effective Date. This Agreement shall be effective as of the date of its recordation.

(k) Exhibits. All exhibits to this Agreement are incorporated herein by this reference.

**EXHIBIT "E"**

**DEPICTION OF PROPOSED DRIVEWAY  
PARKING SPACES IN THE PROPERTY**

CARMEL COUNTRY ROAD



- ▲ OPEN GUEST PARKING ONLY
- ASSIGNED GUEST PARKING ONLY
- ✕ ELYSIAN I EXCLUSIVE PARKING
- ASSIGNED GUEST/OWNER PARKING

ANTARES PARKING EXHIBIT

**MORRISON ENGINEERING**  
 CIVIL ENGINEERING • LAND PLANNING • SURVEYING  
 1927 Franklin Street, Suite A, San Diego, CA 92101  
 Tel: 619-238-0425  
 Fax: 619-238-0425

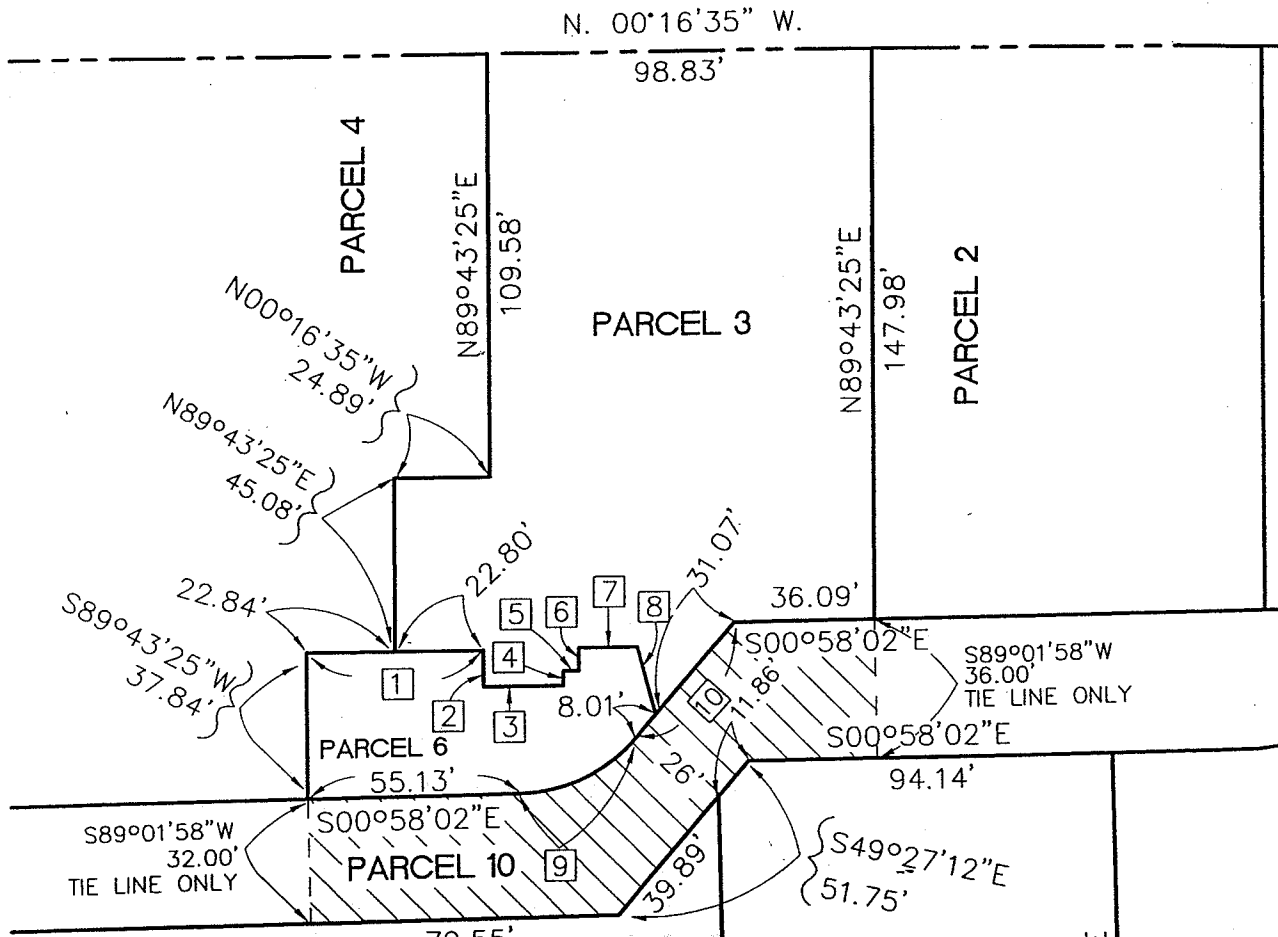
# CONDOMINIUM PLAN ANTARES

PARCELS 3, 6, AND 7 OF PARCEL MAP NO. 17924

PHASE 2

DEPICTION OF EASEMENT

SCALE: 1" = 50'



DATA TABLE			
No.	BEARING/Δ	R	D/L
1	S 00°16'35"E	-	45.64'
2	S 89°43'25"W	-	9.48'
3	S 00°16'35"E	-	20.70'
4	N 89°43'25"E	-	3.80'
5	S 00°16'35"E	-	4.00'
6	N 89°43'25"E	-	5.95'
7	S 00°16'35"E	-	15.16'
8	S 74°52'12"W	-	18.14'
9	48°29'10"	40'	33.85'
10	S 49°27'12"E	-	39.08'

PHASE 2, ANTARES

MORRISON  
ENGINEERING

JOB NO. 95002