

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

Comments

THIS DECLARATION, made on the date hereinafter set forth by VILLA MEDITERRANEAN, a general partnership composed of H & R CO. (a partnership composed of RALPH E. PERKINS, LAURA Y. PERKINS and HORACE STEELE) and EDWIN W. ESTES a married man, HIEUPORT B. ESTES, a married man, and MARION E. FLETCHER, a married woman, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in the City of Colton, County of San Bernardino, State of California, which is more particularly described as:

Lots 1 through 40 and Common Area Lot 41, inclusive, in Tract No. 10333 in the City of Colton, County of San Bernardino, State of California, as per Plat recorded in Book 142 of Maps, Pages 1, 2 and 3, Records of said San Bernardino County (hereinafter Phase I Property); Lots 1 through 32 and Common Area Lot 33, inclusive in Tract No. 10334 (hereinafter Phase II Property); Lots 1 through 38 and Common Area Lot 39, inclusive, in Tract No. 10335 (hereinafter Phase III Property); and Lots 1 through 32 and Common Area Lot 33, inclusive, in Tract No. 10336 (hereinafter Phase IV Property.)

Improved or to be improved with 142 residential units and four recreational areas in four phases, with the Phase I Property, the first forty residential buildings and all of the appurtenances and facilities thereof being hereinafter collectively referred to as the "Project", all of which is hereinafter more particularly described as follows:

Lots 1 through 40 and Common Area Lot 41, inclusive, in Tract No. 10333 in the City of Colton, County of San Bernardino, State of California, as per Plat recorded in Book 142 of Maps, Pages 1, 2 and 3, Records of said San Bernardino County. (Phase I Property).

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities, pursuant to the provisions of this Declaration, to create a nonprofit corporation to which should be delegated and assigned the powers of maintaining and administering the Common Area known as Lot 41, Tract No. 10333 (and such other Common Area lots as may be annexed to the Project), and administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges, hereinafter created;

and,

WHEREAS, Declarant will or has caused a nonprofit corporation pursuant to this Declaration to be formed for the purpose of exercising the functions aforesaid;

and,

WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, restrictions, liens, and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the property described above as the Project (the Phase I Property), the improvements, appurtenances, and facilities described herein and such additions thereto as may hereafter be made, pursuant to Article II hereof, shall be held, sold, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied, and improved only upon and subject to the following uniform restrictions, covenants, conditions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges, and equitable servitudes, all of which are hereby declared, established, expressed, and agreed to be in furtherance of a plan for the subdivision and sale of lots in a planned unit development, to be for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property and to be for the benefit of owners of lots in the Project, to run with the real property, and to be binding upon all parties having or acquiring any right, title, or interest in the Project or part thereof; and shall inure to the benefit of each portion of the Project and interest therein and inure to the benefit of and be binding upon each Owner and upon each successor and assignee in interest of each Owner and of Declarant, and are imposed upon said land and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement of tenements.

Any conveyance, transfer, sale, assignment, lease, or sublease made by Declarant or by the Association (as hereinafter defined) of a lot in the project will and hereby is deemed to incorporate by reference the provisions of this Declaration, including, but not limited to, the covenants, conditions, restrictions, limitations, grants of easements, rights, rights-of-way, liens, charges, and equitable servitudes contained herein. The provisions of this Declaration shall be enforceable by the Declarant, any Owner, or its or his successor in interest and shall also be enforceable by the Association, its Board of Directors, or any person, firm, corporation, or other association duly authorized by the Association or its Board of Directors to enforce all or any one or more of the provisions hereof.

## ARTICLE I

### DEFINITIONS

Section 1.01. The "Articles" shall mean the articles of incorporation of the Association, as said articles may be amended from time to time.

Section 1.02. The "Association" shall mean Park Mediterrania Owners Association, a corporation formed under the General Nonprofit Corporation Law of the State of California.

Section 1.03. The "Board" shall mean, the Board of Directors of the Association.

Section 1.04. The "By-Laws" shall mean the By-Laws of the Association, as such by-laws may be amended from time to time.

Section 1.05. The "Common Area" shall mean all real property, including all improvements thereon, owned from time to time by the Association for the common use and enjoyment of the owners. The common area to be owned by the Association, prior to the closing of the first lot sale in the first phase of development, is described as follows:

Lot 41 in Tract No. 10333 in the City of Colton, County of San Bernardino, State of California, as per Plat recorded in Book 142 of Maps, Pages 1, 2 and 3, Records of said San Bernardino County.

The common area (other than those portions thereof comprising private streets) shall be available for use only by owners and occupants within the properties and their guests and invitees. Nothing herein or in any other instrument shall be construed as a dedication for public use of all or any portion of the common area.

Section 1.06. The "Declarant" shall mean Villa Mediteranean, a general partnership composed of H & R Co. (a partnership composed of RALPH E. PERKINS, LAURA Y. PERKINS and HORACE STEELE) and EDWIN W. ESTES, a married man, HIEUPOUR B. ESTES, a married man, and MARION E. FLETCHER, a married woman, its successors and assigns, if such successors and assigns should acquire more than one undeveloped lot for the purpose of development.

As supplemented by the first supplementary Declaration of Covenants, Conditions and Restrictions Park Mediterrania - Phase II, Lots 1-33 of Tract 10336, recorded on March 10, 1980, Official Records of San Bernardino County, as Instrument No. 80-059282, as follows:

"Common Area" shall mean all real property, including all improvements thereon, owned from time to time by the Park Mediterrania Owners Association for the common use and enjoyment of the owners. Currently said Common Area consists of Lot 41 in Tract 10333. Prior to the closing of the first lot sale in the Second Phase of development, the Common Area will also include Lot 33 of Tract 10336. There shall be reserved to all members of the Park Mediterrania Owners Association in the Common Area and any additions thereto that may hereafter be brought within the jurisdiction of the Association pursuant to Article II of said DECLARATION a non-exclusive easement for use and enjoyment and ingress and egress over and to the Common Area.

Section 1.07. A "Lot" shall mean any numbered plot of land shown upon any recorded subdivision map of the properties (defined below) with the exception of the common area.

As supplemented by the first supplementary Declaration of Covenants, Conditions and Restrictions Park Mediterrania - Phase II, Lots 1-33 of Tract 10336, recorded on March 10, 1980, Official Records of San Bernardino County, as Instrument No. 80-059282, as follows:

"Lot" shall mean any numbered plot of land shown upon any recorded subdivision map of the properties described herein with the exception of the common area.

Section 1.08. The "Member" shall mean every person or entity who holds membership in the Association.

Section 1.09. The "Mortgage" shall mean a mortgage or deed of trust encumbering a lot or other portion of the properties. A "Mortgage" shall also mean an installment sales contract as to a lot or other portion of the properties entered into under and pursuant to Article 3, Chapter 5, Division 4 of the California Military and Veteran's Code whereunder the Department of Veteran's Affairs of the State of California ("DVA") is Seller (a "Cal-Vet" Contract). The term "Mortgagee" shall include the beneficiary under a deed of trust and the DVA under a Cal-Vet contract.

Section 1.10. An "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot which is a part of the property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The purchaser of a lot from the DVA under a recorded Cal-Vet contract shall be an owner.

Section 1.11. The "Properties" shall mean and refer to the real property hereinbefore described as Phase I Property and such additions thereto as may hereafter be brought within the jurisdiction of the Association as provided in Article II hereof.

Section 1.12. A "Phase of Development" shall mean all of the real property and improvements thereon made subject hereto by the recordation of a separate and distinct declaration of annexation, excepting that the first phase of development shall mean and refer to all of the real property and improvements thereon made subject hereto by the initial recordation hereof.

## ARTICLE II

### ANNEXATION OF ADDITIONAL PROPERTIES

Additional properties may be annexed to and become subject to this Declaration by any of the methods set forth hereinbelow in this Article, as follows:

Section 2.01. Annexation Pursuant to Approval. Upon approval in writing, by not less than 66-2/3% of the total votes residing in Association members other than the subdivider (Declarant), the owner of any property who desires to add it to the scheme of this Declaration and subject it to the jurisdiction of the Association may do so by filing of record, a Supplementary Declaration as described in Section 2.03 hereof.

Section 2.02. Annexation Pursuant to General Plan. It is anticipated that there will be a second phase to this development which will add 32 Residential Lots and 1 Common Area Lot, a third phase which will add 38 Residential Lots and 1 Common Area Lot, and a fourth phase which will add 32 Residential Lots and 1 Common Area Lot to this development. All of the real property described in Exhibits "A", "B" and "C" attached hereto may be annexed as Phases "II", "III", and "IV" respectively, of this development as long as doing so will add respectively 33 Lots, 39 Lots, and 33 Lots to the Project and to the scheme of this Declaration and subject to the jurisdiction of the Association without the assent of the Association or its members, provided and on condition that:

- a. Any annexation pursuant to this Section shall be made prior to four (4) years from the date of recording of this Declaration;
- b. Any annexation pursuant to this Section shall be made within three (3) years from the date of original issuance of the most recently issued Final Subdivision Public Report for a phase of the development;
- c. The development and annexation of additional properties shall be in accordance with the general plan of development heretofore described. Such annexation shall not result in an overburdening of common interests and will not result in a substantial increase in assessments against existing owners which was not disclosed in subdivision public reports for the phases of the subdivision in which existing owners purchased subdivision interests.
- d. A supplementary declaration, as described in Section 2.03 of this Article, shall be recorded, covering the applicable portion of the real property described in the Exhibits attached hereto.

As supplemented by the first supplementary Declaration of Covenants, Conditions and Restrictions Park Mediterrania - Phase II, Lots 1-33 of Tract 10336, recorded on March 10, 1980, Official Records of San Bernardino County, as Instrument No. 80-059282, as follows:

Lots 1-33 in Tract 10336 shall be devoted exclusively to planned unit development purposes, and shall be subject to the scheme of the DECLARATION and subject to the jurisdiction of the Park Mediterrania Owners Association. All of said property, the improvements, appurtenances and facilities therein and such additions thereto as hereinafter be made pursuant to Article II of said DECLARATION, shall be held, sold, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied, and improved only upon and subject to the restrictions, covenants, conditions, limitations, reservations, grants of easements, rights, rights of way, liens, charges and equitable servitudes specified in said DECLARATION and in this FIRST SUPPLEMENTARY DECLARATION.

Each owner of a lot (other than a common area lot) within said

Tract 10336 shall become a member of Park Mediterranean Owners Association, contemporaneously with acquisition of a lot, without further documentation of any kind and shall be obliged to pay to the Board or designated member thereof, or to the manager, if any, the regular monthly maintenance charges, as well as all other Association charges. The payment of assessments as to the lots in Phase II shall commence upon the first day of the month following conveyance of the first lot in said Phase II to a purchaser thereof. The initial monthly maintenance charge for the lots in Phase II shall be \$84.31 per month.

Said real property, hereinabove described as being the 33 lots in Phase II, Lots 1-33 of Tract 10336 in the City of Colton, County of San Bernardino, State of California, as per Plat recorded in Book 143 of maps, Pages 24-26, records of said San Bernardino County, is and shall hereafter be held, transferred, sold, conveyed, occupied and used subject to the covenants, conditions, restrictions, charges and liens set forth in that certain DECLARATION originally recorded July 2, 1979 as Instrument No. 255 in Book 9719 commencing at Page 430 of Official Records, San Bernardino County, California, Said restrictions shall run with and apply to and be binding upon all parties having or acquiring any right, title or interest in the property hereinabove described, or any part thereof; and said restrictions are imposed upon said real property and every part thereof as a servitude in favor of each and every parcel thereof, as the dominant tenement of tenements. Any conveyance,

transfer, sale, assignment, lease or sublease made by DECLARANT or by the Association of a lot in the Project will and hereby is deemed to incorporate by reference the provisions of said DECLARATION. It is hereby declared, established, expressed and agreed that said provisions are in the furtherance of a plan for the subdivision and sale of the lots as a planned unit development, for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property and to be for the benefit of the owners of lots in the Project, to run with the real property, and to be binding upon all parties having or acquiring any right, title or interest in the Project or any part thereof. Said provisions of the Declaration shall inure to the benefit of each portion of the Project and interest therein and inure to the benefit of and be binding upon each Owner and upon each successor and assignee in interest of each Owner and of declarant and are imposed upon said land and every part thereof as a servitude in favor of each and every parcel thereof as the dominant tenement of tenements.

Section 2.03. Supplementary Declaration. The additions authorized under the foregoing sections, shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional properties which shall extend the scheme of this Declaration to such properties. Such Supplementary Declaration contemplated above, may contain such complementary additions and modifications of the Covenants, Conditions and Restrictions, contained in this Declaration, as may be necessary to reflect the different character, if any of the added properties and shall not be inconsistent with the scheme of this Declaration. In no event, however, shall any such Supplementary Declaration revoke, modify, or add to the covenants, established by this Declaration within the existing property, except as hereinafter otherwise provided.

### ARTICLE III

#### EASEMENTS AND PROPERTY RIGHTS

Section 3.01. Easements of Enjoyment over Common Area; limitations. Every owner shall have a non-severable right and easement of ingress and egress and of use and enjoyment in and to the common area which shall be appurtenant to and shall pass with the title to every lot, subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any unassigned storage spaces and parking spaces, if any;

(b) The right of the Association to suspend the voting rights and right to use any recreational facilities by any owner for a period during which any assessment against his lot remains unpaid; and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations after reasonable notice and opportunity for a hearing before the board;

(c) The right of the Association to dedicate or transfer all of any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided, however, no such dedication or transfer shall be effective unless an instrument, signed by two-thirds (2/3) of each class of members and all first mortgagees, agreeing to such dedication or transfer has been recorded;

(d) The right of Declarant or its representatives, agents or designees to enter upon the common area and any of the lots for purposes of construction of the properties and future annexations thereto (including utility installations) and for purposes of making repairs and remedying construction defects; and provided, there shall be no entry by the declarant, its representatives, agents, or designees unto any lot or into dwelling unit without the owner's consent, which consent shall not be unreasonably withheld;

This right shall cease upon the third anniversary of the original issuance of the most recently issued public report for a phase of the development, unless two-thirds (2/3) of the members other than the subdivider vote to extend this right.

(e) The right of Declarant and its representatives, agents or designees to use the common area and the improvements constructed thereon during the "sales period" for display, exhibit and sales purposes, including, but not limited to, maintenance of one or more sales offices, and, for purposes of this declaration the, "sales period" is defined as that certain period commencing with the date of this Declaration and ending four (4) years thereafter;

(f) The right of the Association to grant easements over, across and under the common area for utilities and similar or related purposes.

Section 3.02. Delegation of Use. Any owner may delegate his right of enjoyment to the common area to the members of his family, his tenants, or contract purchasers who reside on such owner's lot, provided any persons to whom such rights are delegated shall be subject to all provisions of this declaration, the articles, by-laws, association rules, if any, and any board resolutions.

Section 3.03. Easements in Favor of Lots over Adjoining Lots in Common Area. Each owner of a lot is hereby granted appurtenant easements over adjoining lots and the common area so as:

(a) To enable the owner or occupant of such lot to maintain encroachments and valid easements for same so long as such encroachments shall exist in the event any improvements of such lot encroach upon adjoining lots or common area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the properties.

(b) To enable the owner or occupant of such lot to enter upon any adjoining lot in the common area, and the improvements constructed thereon, for purposes of abating condition therein threatening his lot or the improvements constructed upon his lot, which right of entry shall be immediate in the event of an emergency.

(c) To enable the owner or occupant of such lot to maintain the established drainage pattern (hereinafter defined) over his lot;

(d) To enable the owner or occupant of such lot to maintain all utility services for his lot which are available to other lots within the properties, including cable television.

Section 3.04. Easements Re: Maintenance, Upkeep, Landscaping and Pest Control of Lots in Favor of the Association. The Association is hereby granted an easement and right (but not an obligation) to enable it to cause its respective representatives, agents and designees to enter upon and gain access to each lot purposes of inspecting the upkeep, maintenance, landscaping and planning thereof in order to determine whether same is in compliance with the requirements of this declaration of covenants, conditions and restrictions and also in order to determine whether any problems exist in respect to the presence of or control of pests (including insects) or infestations which are or might be damaging to the landscaping and planting on such lot or elsewhere within the properties. In the event an owner of any lot in the property shall fail to maintain the premises in the improvements situated thereon in a manner satisfactory to the board of the Association, after the approval of two-thirds (2/3) vote of the board, shall have the right through its agents and employees to enter upon said lot and take such measures as may be appropriate under the circumstances including, but not limited to, the performing of upkeep or maintenance, the planting of grass, plants, shrubs, or trees, or the removal thereof, and/or spraying or chemically treating the landscaping or planning of such lot. The cost of such maintenance shall be added to and become a part of the assessment to which such lot is subject. Prior to the entry unto the lot by the Association for the maintenance purposes described herein, the owner or occupant of such lot shall be given notice of the alleged maintenance deficiency in a reasonable amount of time to eliminate the maintenance deficiency.

## ARTICLE IV

### MEMBERSHIP AND VOTING RIGHTS

Section 4.01. Membership. Every record owner of a lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot. Ownership of a lot shall be the sole qualification for membership.

Section 4.02. Voting Rights Vested. Voting rights attributable to subdivision interests shall not vest until regular assessments to defray expenses attributable to the ownership operation and furnishing of common interests by the Association have been levied.

Section 4.03. Classes. The Association shall have two classes of voting membership:

#### CLASS A

Class A members shall be all Owners with the exception of Declarant. Each Class A member shall be entitled to one (1) vote for each lot owned. When more than one person owns an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot (except in the case of cumulative voting as provided in the by-laws.)

The Class B member shall be declarant who shall be entitled to three (3) votes for each lot owned (except in the case of cumulative voting as provided in the by-laws.) The Class B membership shall cease and be converted to Class A membership upon the occurrence of whichever of the following is first in time:

(a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or

(b) When two years have elapsed from and after the date of the issuance of the latest original California Department of Real Estate Final Subdivision Public Report for a phase of development, or

(c) On May 1, 1983, which date is not later than four (4) years from the date of issuance of the subdivision public report for the first phase of the development.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.01a. Regular assessments to defray expenses attributable to the ownership, operation and furnishing of common interests by the Association shall be levied against each owner according to the ratio of the number of subdivision interests owned by the owner assessed to the total number of interest subject to assessment.

Section 5.01. Commencement of Assessments. As to each phase of development, the payment of assessments shall commence therein upon the first day of the month following the closing of the first sales of a subdivision interest (lot) in that phase.

Section 5.02. Creation of the Lien and Personal Obligation for Assessments. Declarant, for each lot owned within the properties subject to assessments, hereby covenants, and each owner of any lot, by acceptance of a deed therefor whether or not it shall be so expressed in such deed, is deemed to covenant assessments, such assessments to be established and collected as herein provided. The regular and special assessments, together with interest, costs and reasonable attorney's fees, shall be a continuing lien upon the lot against which such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the owner of such lot at the time the assessment fell due. The personal obligation for delinquent assessments against such lot shall not pass to such owner's successors in title unless expressly assumed by them.

Section 5.03. Purpose of Assessments. The assessments levied by the association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents within the properties and to promote the improvement and maintenance of the lots and common area as herein described.

Section 5.04. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual regular assessment per lot shall be \$892.80, which is \$74.40 per lot per month.

(a) From and after January 1 of the year, following conveyance of the first lot to an owner, the maximum annual regular assessment may be increased by the board by not more than 5% above the maximum annual regular assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year following conveyance of a lot to an owner, the maximum annual regular assessment may be increased above 5% by a vote of fifty-one (51%) of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) The board may fix the regular assessment at an amount not in excess of the maximum.

Section 5.05. Special Assessments. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto. However, in any fiscal year, the governing body of the Association may not, without the vote or written assent of a majority of the voting power of the association residing in members other than the subdivider, levy special assessments to defray the costs of any action or undertaking on behalf of the association which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year. Every general special assessment shall be levied

Civil Code Section 1366 allows an Association to levy "regular and special assessments sufficient to perform its obligations under the governing documents and this title." Section 1366 supersedes the portion of this paragraph which pertains to the levy of a special assessment for capital improvements to the extent that it means that the Association may

upon the same basis as that prescribed for the levying of regular assessments. The above provisions with respect to special assessment against a member is a remedy utilized by the governing body to reimburse the Association for costs incurred in bringing the member and his subdivision interest into compliance with provisions of the governing instruments for the subdivision. The board may in its discretion, pro-rate any special assessment in equal installments over the remaining months of the assessment year in question or collect the same in its entirety forthwith.

not levy special assessments for purposes other than funding capital improvements. Other instances may arise in which the Association must assess its members to allow it to perform its obligations under the governing documents and the Civil Code. In such instances, Civil Code Section 1366 allows the Association to levy special assessments for purposes other than funding capital improvements, if the Board determines that such assessments are necessary to enable the Board to carry out its obligations under the governing documents.

Section 1366(b) allows the Association to levy special assessments in an aggregate amount of up to 5% of the Association's budgeted gross expenses for the current fiscal year without the approval of the members. For purposes of Section 1366(b), a quorum is more than 50% of the members.

In addition, Civil Code Section 1366 allows the Association to levy a special assessment of any amount without member approval, if necessary for any one of the following situations:

- (a) An extraordinary expense required by Court order.
- (b) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the Association is responsible where a threat to personal safety on the property has been discovered.
- (c) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the Association is responsible, that

could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget under Civil Code Section 1365.

Section 5.06. Notice and Quorum for any Action Authorized Under Sections 5.04 and 5.05. Any action authorized under Sections 5.04 and 5.05 shall be taken at a meeting called for such purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At any such meeting a quorum shall be constituted if members who are present thereat hold not less than fifty-one percent (51%) of the total voting rights of each class of members.

Section 5.07. Uniform Rate of Assessment. Both regular and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 5.08. Fixing of Assessment; Due Dates; Certificate. The board shall cause a budget to be prepared and distributed to members not less than sixty (60) days prior to the beginning of each fiscal year wherein the amount of the regular assessment against each lot shall be specified and wherein the due dates for the payment of installments thereof as established by the board shall likewise be specified. The board shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments of installments thereof on a specified lot have been paid, and a properly executed certificate of the Association as to the status of assessments on such lot shall be binding upon the association as of the date of its issuance.

Section 5.09. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment made in accordance with this declaration shall be a debt of the owner of a lot at the time the assessment is made. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of six percent (6%) per annum. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common area or abandonment of his lot. Any assessment not paid within thirty (30) days after the due date shall be delinquent. The amount of any such delinquent assessment plus any other charges thereon as provided for in this declaration, shall be and become a lien upon the lot when the association causes to be recorded with the County Recorder of San Bernardino County, a Notice of Delinquent Assessment, which shall state the amount of such delinquent assessment and such other charges thereon as may be authorized by this declaration, a description of the lot against which the same has been assessed, and the name of the record owner thereof. Such notice shall be signed by the President, or Vice-President, and the Secretary, or Assistant Secretary, of the Association. Upon payment of such delinquent assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. Such assessment lien shall be prior to all other liens recorded subsequent to the recordation of such notice of delinquent assessment, except that the lien of the assessment provided for

Civil Code Section 1367(a) provides that assessments and any late charges, costs of collection and interest assessed shall be the debt of the owner of the separate interest at the time the assessment and such other sums are levied. No owner is liable for the assessments or dues levied against any other owner in the Association. Each owner is only responsible for paying the assessments and dues levied against him or against his lot.

Civil Code Section 1366(c) supersedes any contrary provisions of the By-laws or CC&Rs concerning treatment of delinquent assessments. Specifically, Civil Code Section 1366(c) allows the Association to recover from the delinquent

herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sales or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof. Unless sooner satisfied and released or the enforcement thereof initiated as hereinafter provided, such assessment lien shall expire and be of no further force or effect one year from the date of recordation of the notice of delinquent assessment. The one-year period may be extended by the Association for not to exceed one additional year by recording a written extension thereof. Such assessment lien may be enforced by sale by the Association, its attorney or other person authorized to make the sale, after failure of the owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Sections 2924, 2924b, 2924c of the Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The association shall have power to purchase the lot at foreclosure sale and to hold, lease, mortgage and convey the same. The foreclosure of such assessment lien shall be subject to, and shall not affect, the lien of any first mortgage.

Section 5.10. Exempt Property. The common area and any portion of the properties owned by any public entity or authority shall be exempt from assessments; provided, however, this exemption shall not apply to any such property devoted to dwelling use.

homeowner:

1. Reasonable costs incurred by the Association in collecting the delinquent assessment, including attorney fees.
2. A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the Declaration or By-laws specify a smaller amount in which case any late charge imposed shall not exceed the specified amount; and
3. Interest on all of the above sums including the delinquent assessment, reasonable collection costs and late charges, at an annual percentage rate not to exceed twelve percent (12%). Interest may only accrue commencing with the 30th day following the date upon which the assessment was due.

This section of the By-laws provides that delinquent assessments shall bear interest from the date of delinquency at the rate of six percent (6%) per annum. However, since Section 1366(c) provides that assessments shall not bear interest until they are thirty (30) days overdue, the Civil Code supersedes and controls over this provision of the By-laws.

In addition to the information set forth in this section, Civil Code Section 1367(b) requires that the claim of lien include the name and address of the trustee authorized by the Association to enforce the lien by non-judicial foreclosure.

## ARTICLE VI

### ARCHITECTURAL CONTROL

Section 6.01. Committee. Architectural control of the properties shall be vested in the board who may appoint an architectural committee (hereinafter referred to as the "committee") which shall consist of three (3) persons, none of whom shall be required to be an architect, or to meet any other particular qualifications except as set forth in Section 6.02, next.

Section 6.02. Membership. The board shall have the sole right to appoint members to, and to fill vacancies on, the committee. Any person, including a member of the board, may be appointed to the committee. Members of the committee shall be appointed by the board and shall serve for terms of three (3) years; provided, however, said members may be removed from the committee by the board without cause. In case of the death, resignation or removal of any member of the committee appointed by the board, the board shall appoint a successor to serve for the unexpired term of such member. The foregoing notwithstanding, the right of the board to appoint non-members to the committee shall only exist at any time during which declarant is owner of at least ten percent (10%) of the lots then within the properties.

However, the subdivider may appoint all of the original members of the committee and all replacements until the first anniversary of the issuance of the public report for the subdivision. The subdivider (declarant reserves to himself the power to appoint a majority of the members of the committee until 90% of all the subdivision interests in the overall development have been sold or until the fifth anniversary of the issuance of the Final Report for the first phase of the subdivision, whichever first occurs. After one year from the date of issuance of the original public report for the first (or only) phase of the subdivision, the governing body of the Association shall have the power to appoint one member to the Architectural Control Committee until 90% of all of the subdivision interests in the overall development have been sold or until the fifth anniversary date of the original issuance of the Final Public Report for the first phase of the subdivision, whichever first occurs.

Thereafter the governing body of the Association shall have the power to appoint all of the members of the Architectural Control Committee. Members appointed to the Architectural Control Committee by the governing body shall be from the membership of the Association. Members appointed to the committee by the subdivider need not be members of the Association.

Section 6.03. Duties. It shall be the duty of the committee to consider and act upon any and all proposals or plans submitted to it by the board or pursuant to the terms hereof to insure that any improvements constructed on the properties by anyone other than the declarant conform to plans approved by the committee and conform to architectural rules and landscaping and planting standards for lots adopted by the owners, and to perform other duties imposed upon it by this declaration. Notwithstanding anything contained in this declaration expressly or impliedly to the contrary, no building, fence, wall or other structure or improvement shall be constructed or placed upon the properties by anyone other than declarant, nor shall any exterior decoration, addition, change or alteration

Real property owners in California have no right to an unimpeded view from their property, unless this right was created by recorded easements or covenants. When such an easement or covenant is sought to be enforced by or against a successor to the original grantor or grantee thereof, it will only be enforced if it is reasonable

(including changes in drainage patterns) be made in, or to the properties, or any part thereof, by anyone other than declarant, until the plans and specification showing the nature, shape, dimensions, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of design and location in relation to surrounding improvements and topography by, the committee. The committee may, in its own name and on behalf of the Association, exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction of improvements on the properties or any portions thereof. In the event said board or the committee fails to approve or disapprove such design and location within thirty (30) days after said plans will not be required and this article will be deemed to have been fully complied with. At any time when no architectural committee is in existence, the board shall act in its place and stead.

(see Civil Code Section 1354).

Section 6.04. Meetings. The committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the members, at a meeting or otherwise, shall constitute the act of the committee. The committee shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. Members of the committee shall not receive any compensation of services rendered.

Section 6.05. Architectural Rules. The committee may, from time to time recommend to the members the adoption, amendment and repeal of rules and regulations to be known as "architectural rules," and if same are approved by a majority of each class of members the same shall be deemed adopted, amended or repealed, as appropriate. The architectural rules shall interpret this declaration by setting forth the standards and procedures for committee review and the guidelines for decoration, design and replacement of improvements.

Section 6.06. Waiver. The approval of the committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plans, drawings, specifications or other matters subsequently submitted for approval.

Section 6.07. Liability. Neither the committee nor any member thereof shall be liable to the Association, any owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, drawings, specifications, or other matters, or the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; provided that with respect to the liability of a member, such member has acted in good faith on the basis of actual knowledge possessed by him.

## ARTICLE VII

### AUTHORITY OF ASSOCIATION

Section 7.01. Specific Authority. The Association, for the benefit of the lots and the owners, shall acquire, provide and pay for out of the maintenance fund hereinabove provided for:

(a) Water, gas, electricity, refuse collection, other necessary utility services, maintenance, repair and replacement of landscaping and any facilities of the common area;

As amended by the amendment to Declaration of Covenants, Conditions and Restrictions, recorded on October 25, 1985, Official Records of San Bernardino County, as Instrument No. 85-265820, this section reads in full as follows:

Water, gas, electricity, refuse collection, other necessary utility services, maintenance and repair of exteriors of improvements on the lots, including with respect to all structures and/or units of the Project the design, application, preparation, placement, manufacture and/or construction of the project site, including but not limited to all grading, soil treatment, compaction and structure or unit layout or location; foundations; framing; exterior stucco and siding; roofing; sheet metal; air conditioning units; exterior plumbing, including anti-siphon valves and sewer lines; drainage lines; design or ventilation of fireplaces; or any of their component parts.

(b) Refuse collection for the lots (if the Association elects to contract for such service);

(c) A policy or policies of fire insurance, with extended coverage endorsement, for the full insurable replacement value of the improvements of the common area, or such other fire and casualty insurance as the Association shall determine which gives substantially equal or greater protection;

(d) A policy or policies (with cross-liability endorsement) insuring the Association, its agents, guests and invitees and the owners against liability to the public or to the owners, their guests and invitees incident to the ownership or use of the common area, in an amount not less than one million dollars (\$1,000,000.00) single limit for each occurrence, and one hundred thousand dollars (\$100,000.00) for property damage for each such occurrence;

(e) Workmen's Compensation insurance to the extent necessary to comply with any applicable law;

(f) Fidelity bonds in an amount equal to one hundred and fifty percent (150%) of the Association's annual assessments plus reserves which names the Association as obligee and insures against misuse or misappropriation of

Association funds by directors, officers and employees of the Association, whether compensated or not, and any management agent and his employees;

(g) Directors and Officers Errors and Omissions insurance (if the Association elects to obtain such coverage);

(h) As to the common area, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes (including taxes assessed on the common area), or assessments which, in the opinion of the board, shall be necessary, required, or proper.

Section 7.02. Periodic Review of Insurance. All insurance and bonds obtained by the Association shall be reviewed at intervals of not less than two (2) years as to adequacy of coverage and amount.

Section 7.03. Delegation of Powers. The Association acting by and through the board shall have the authority to delegate its powers, duties and responsibilities to committees or employees, including a managing agent.

Section 7.04. Association Rules. The Association acting by and through the board shall have the power to adopt, amend and repeal such rules and regulations as it deems reasonable (herein sometimes referred to as the "association rules".) The Association rules shall govern with respect to the conduct within the properties of, and the use of the common areas by an owner, the family member of an owner, or by any guest, invitee, contract purchaser, lessee or renter of an owner, or their respective family members, guests or invitees; provided, however, that the Association rules shall not be inconsistent with or materially alter any other provisions of this declaration, the articles or by-laws. A copy of the Association Rules as the same may from time to time, be adopted, amended or repealed, shall be mailed or otherwise delivered to each owner and a copy shall be posted in a conspicuous place within the properties. In the event of any conflict between any such Association rules, and any other provision of this declaration or the articles or by-laws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this declaration, the articles or the by-laws to the extent of any such inconsistency.

## ARTICLE VIII

### USE RESTRICTIONS

Section 8.01. Residential Use. Lots shall be used for residential purposes only, provided, however, that lots owned by declarant may be used by declarant, or its designees during the sales period (as defined in Article III, Section 3.01(e) herein) as models, sales offices, temporary parking areas and construction offices for the purpose of developing, improving and selling lots within the properties.

In connection with the maintenance and use of such models, declarant or its designees shall have the right to remodel, renovate, alter or otherwise improve same without the consent of the board or the architectural committee or any other person or entity, any provision of this declaration to the contrary notwithstanding. Nothing herein shall prevent an owner from leasing or renting his lot, provided, however, any lessee or renter thereof shall abide by and be subject to all of the

terms and provisions of this declaration, the Articles, By-Laws, Association Rules and board resolutions, if any.

Section 8.02. Commercial Use. Excepting as otherwise expressly provided in this declaration, no part of the properties shall ever be used or caused, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, vending, or other such non-residential purpose. The foregoing notwithstanding, nothing in this Section 8.02 shall be construed as prohibiting the installation and maintenance of vending and similar machines on specified portions of the common area if approved by the board.

Section 8.03. Offensive Conduct; Nuisances. No noxious or offensive activities shall be carried on, upon, or within the properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the residents of the properties, or which shall in any way interfere with the quiet enjoyment of owners or occupants of lots. In connection with the foregoing, no loudspeaker or sound amplification system shall be used so as to produce sounds audible beyond the boundaries of the lot of the owner or occupant using the same. Unless otherwise permitted by the board, no owner shall serve food or beverages, cook, barbecue, or engage in similar activities within the common area excepting those portions thereof expressly designated by the board therefor, if any. Nothing in this Section 8.03 shall be construed as prohibiting the installation and maintenance of alarm systems of all kinds.

Section 8.04. Parking Restrictions; Use of Garages. Unless otherwise expressly permitted herein or by the board, no automobile, motorized vehicle, motorcycle, bicycle, boat, camper, trailer or recreational vehicle shall be parked or left on any property subject to this declaration other than on or within a driveway, garage, carport or portion of the common area expressly designated therefor by the board, if any. The temporary parking of commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association rules. Garages and carports, if any, shall be used for parking and storage only and shall not be converted for living or recreational activities. Garage doors, if any, shall remain closed at all times excepting when entering or exiting or when the garage is being repaired or maintained.

Section 8.05. Signs. No sign of any kind shall be displayed to the public view on or from any lot or on or from the common area without the approval of the architectural committee, excepting such signs as may be used by the declarant or its designees during the sales period for the purpose of developing, selling and improving lots within the properties. Notwithstanding the foregoing, one sign of customary and reasonable dimensions advertising a lot for sale or rent may be placed within each lot by the owner thereof or his agent.

Section 8.06. Antennae, External Fixtures, Etc. Except as otherwise consented to in writing by the board, no external television poles or television antennae shall be permitted. No external radio poles, radio antennae, flag poles, clotheslines or other external fixtures other than those originally installed by declarant or approved by the architectural committee, and any replacements thereof, shall be constructed, erected or maintained on or within any lot or the common area. The foregoing shall not be construed as prohibiting the maintenance

of television poles or television antennae within enclosed portions of residential structures, including attics. No external wiring, insulation, air-conditioning or other external machinery or equipment other than that originally installed by declarant or approved by the architectural committee, and any replacements thereof, shall be constructed, erected or maintained on any lot or the common area.

Section 8.07. Fences, Etc. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be constructed, erected or maintained on any lot or elsewhere within the properties except by declarant and except those which are installed in accordance with the original construction of the properties, and any replacements thereof, or those which are approved by the architectural committee, and any replacements thereof.

Section 8.08. Animals. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in or on any lot or elsewhere within the properties except that domestic dogs, cats, fish and birds inside bird cages, may be kept as household pets within any lot, provided they are not kept, bred, or raised therein for commercial purposes, or in unreasonable quantities. As used in this declaration, "unreasonable quantities" shall be deemed to limit the total number of all dogs, cats and birds to two (2) of each species per lot. The board shall have the right to prohibit maintenance on any animal which constitutes, in the sole and exclusive opinion of the board, a nuisance to any other owner. Each person bringing or keeping a pet upon the property shall, to the extent permitted under California law, be absolutely liable to each and all other owners, their family members, guests, invitees, lessees, renters and contract purchasers, and their respective family members, guests, and invitees for any damage to person or property caused by any pet brought upon or kept upon the properties by such person or by members of his family, his guests or invitees.

Section 8.09. Restricted Use of Recreational Vehicles, Etc. No boat, truck, trailer, camper or recreational vehicle shall be used as a living area while parked in the properties; provided, however, trailers or temporary structures for use incidental to the initial construction of the properties or the initial sales of the lots may be maintained by declarant or declarant's designees within the properties during the sales period, but shall be promptly removed upon expiration thereof.

Section 8.10. Trash Containers. Trash, garbage or other waste shall be kept only in sanitary containers customarily used therefor placed in locations approved by the board. No owner of a lot shall permit or cause any trash or refuse to accumulate or be kept on any portion of the properties other than in such containers.

Section 8.11. Clotheslines and Storage. No clotheslines, refuse containers, or storage or clothes drying areas shall be maintained on any lot in a location visible from adjoining lots or the common area, except as may be permitted by the board. No lumber, metals, machinery, equipment or building materials shall be kept, stored, or allowed to accumulate on any lot or the common area except building or other materials to be used in connection with the construction, alteration or improvement undertaken by declarant during the sales period or elsewhere approved in accordance with the terms of this declaration. Personal property belonging to the Association may be stored within those portions of the common area designated therefor by the board, if any.

Section 8.12. Window Coverings. Windows may only be covered by drapes or shades, and may not be painted or covered by foil, cardboard or other similar materials except with prior approval of the architectural committee. Drapes and shades shall conform to any architectural rules adopted respecting same, if any.

Section 8.13. Exterior Alterations and Changes. Excepting as to alterations and modifications made by declarant, no owner shall at his expense or otherwise make any alterations, modifications or changes (including color and material changes) to the exterior of the buildings, fences, railings, walls or to other improvements constructed on his lot, or change the landscaping, planting, grade or drainage pattern of his lot, without the prior approval of the architectural committee.

Section 8.14. Compliance With Laws, Etc. Nothing shall be done or kept in any lot or any common area which might increase the rate of, or cause the cancellation of, any insurance coverage on any of the lots or the common area without the prior consent of the board. No owner shall permit anything to be done or kept on his lot which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No owner shall allow furniture, furnishings or other personal belongings to such owner to remain within any portion of any common area except as may be permitted by the board.

Section 8.15. Drainage. Each owner of a lot in the properties agrees that he will either:

(a) refrain from interference with the established drainage pattern over his lot from adjoining or other lots or parcels in the properties, or

(b) subject to approval of the architectural committee, make adequate provision for proper drainage from any such other lot or parcel over his lot. For the purpose of this declaration, the "established drainage pattern" is defined as the drainage pattern established at the time the overall grading of that portion of the properties in which such owner's lot is situated was completed.

Section 8.16. Upkeep of Lot. Each owner or occupant is required to keep and maintain all areas and the exterior of all improvements located on his lot in an attractive, clean, sightly and wholesome condition at all times, and to take all necessary steps to prevent erosion from occurring to his lot. Each owner shall carry fire and extended coverage insurance on the improvements constructed upon his lot.

As amended by the amendment to Declaration of Covenants, Conditions and Restrictions, recorded on October 25, 1985, Official Records of San Bernardino County, as Instrument No. 85-265820 (hereinafter referred to as "Amendment recorded on October 25, 1985"), this section reads in full as follows:

Section 8.16. Upkeep of Lot. Each owner or occupant is required to keep all areas and the exterior of all improvements located on his lot in an attractive, clean, sightly and wholesome condition at all times, and to take

all necessary steps to prevent erosion from occurring to his lot. Each owner shall carry fire and extended coverage insurance on the improvements constructed upon his lot.

As a minimum, this section contemplates that each homeowner will obtain an HO-6 insurance policy, or a comparable policy, for his or her property.

Section 8.17. Landscaping. All landscaping and plantings on each lot shall be installed, kept and maintained by the owner or occupant thereof in accordance with standards therefor established by the Association.

As amended by the amendment of October 25, 1985, Section 8.17 was deleted in its entirety.

Section 8.18. Temporary Residential Structures. No tents, shacks, trailers, garage or outbuilding shall at any time be used on any lot as a resident, either temporarily or permanently; nor shall any resident of a temporary character be constructed, placed or erected on any lot.

As amended by the amendment of October 25, 1985, former Section 8.18 was renumbered Section 8.17.

Section 8.19. Storage of Materials, Junk, Trash, Etc. The storage of or accumulation of junk, trash, manure and other offensive or noxious materials on any lot is specifically prohibited. No burning on any lot shall be permitted except in fireplaces or barbecues, if any.

As amended by the amendment of October 25, 1985, Section 8.19 was renumbered Section 8.18.

## ARTICLE IX

### DAMAGE TO, OR DESTRUCTION OF, COMMON AREA

Section 9.01. Requirement to Rebuild. In the event of total or partial damage or destruction of the improvements in the common area, the same shall be promptly repaired and rebuilt.

Section 9.02. Rebuilding. In connection with such rebuilding, a special assessment for the cost of reconstruction over and above the available insurance proceeds shall be made by the board in accordance with the special assessment provisions hereof.

Section 9.03. Contract for Rebuilding. In connection with such rebuilding, the board shall obtain bids from at least two reputable contractors and shall award the reconstruction work to the lowest qualified bidder. The board shall have authority to enter into a written contract with said contractor for such reconstruction work and the insurance proceeds held by the Association shall be disbursed to said contractor according to the terms of the contract. It shall be the obligation of the board to take all necessary steps to insure the commencement and completion of such reconstruction work at the earliest possible date.

## ARTICLE X

### GENERAL PROVISIONS

Section 10.01. Enforcement. The Association, board, manager or any owner shall have the right to enforce, by any proceeding at law for damages, including costs and fees of counsel, or in equity for injunctive relief, or both, all restrictions, conditions, covenants, reservations, liens, easements and charges now or hereafter imposed by the provisions of this declaration or any amendment hereto as well as all provisions of the articles, by-laws, association rules or board resolutions. Failure by the Association or by any owner to enforce any such remedy shall, in no event, be deemed a waiver of the right so to do thereafter.

Section 10.02. Severability. Invalidation of any one of these covenants, conditions or restrictions, by judgment, or court order or otherwise, shall in no way affect other provisions hereof which shall remain in full force and effect.

As amended by the amendment of October 25, 1985, former Section 10.02 was renumbered Section 10.03. In place of former Section 10.02, a new Section 10.02 was added to read in full as follows:

The Association shall have the sole and exclusive right and obligation to prosecute or defend, under the name of the Association, any action affecting or relating to the common areas or the personal property owned by the Association, or any action affecting or relating to the original design, construction or sale of any individual unit, or any repairs or maintenance performed by the original owner, developer or general contractor as specifically enumerated in Article VII as amended, notwithstanding any provision to the contrary contained in California Code of Civil Procedure §374 as amended 1/1/80 which reads as follows:

An Owners' Association established in a project consisting of condominiums, as defined in Section 783 of the Civil Code, or of a community apartment project, as defined in Section 783 of the Civil Code, or of a community apartment project, as defined in Section 11004 of the Business and Professions Code, an undivided interest subdivision project as

defined in Section 11000.1 of the Business and Professions Code, or a planned development, as defined in Section 11003 of the Business and Professions Code, shall have standing to sue as the real party in interest for any damages to commonly owned lots, parcels, or areas which the Owners' Association is obligated to maintain, preserve or repair occasioned by the act or omissions of others, without joining with it the individual owner of such project or development.

Section 10.03. Term. This declaration shall run with and bind the properties, and shall inure to the benefit of and be enforceable by the Association or any of the owners of any lots, their respective heirs, successors and assigns, for a term of fifty-nine (59) years from the date this declaration is recorded, after which time this declaration shall automatically be extended for successive periods of ten (10) years unless an instrument, signed by owners of seventy-five percent (75%) of the lots, and their respective first mortgagees, has been recorded, agreeing to terminate this declaration.

As amended by the amendment of October 25, 1985, former Section 10.03 was renumbered Section 10.04.

Section 10.04. Amendments. This declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of each class of members; provided, however, if there is only one class of members in existence, then such instrument must be signed by not less than seventy-five percent (75%) of all members other than declarant. Any amendment must be recorded.

As amended by the amendment of October 25, 1985, former Section 10.04 was renumbered Section 10.05.

Section 10.05. Headings. The headings used in this declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this declaration, or otherwise.

As amended by the amendment of October 25, 1985, former Section 10.05 was renumbered Section 10.06.

Section 10.06. Cumulative Remedies. Each remedy provided for in this declaration shall be cumulative and not exclusive.

As amended by the amendment of October 25, 1985, former Section 10.06 was renumbered Section 10.07.

Section 10.07. Violations as Nuisance. Every act or omission in violation of the provisions of this declaration shall constitute a private nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any owner, any member of the board, the manager, or the Association.

As amended by the amendment of October 25, 1985, former Section 10.07 was renumbered Section 10.08.

Section 10.08. Access to Books. Any owner may, at any reasonable time and upon reasonable notice to the board or manager and at his own expense, cause an audit or inspection to be made of the books and financial records of the Association as provided in the by-laws.

As amended by the amendment of October 25, 1985, former Section 10.08 was renumbered Section 10.09.

Section 10.09. Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this declaration in any conveyance of a lot.

As amended by the amendment of October 25, 1985, former Section 10.09 was renumbered Section 10.10.

Section 10.10. Binding Effect. This declaration shall inure to the benefit of and be binding upon the successors and assigns of the declarant, and the heirs, personal representatives, grantees, lessees, successors and assigns of the owners.

As amended by the amendment of October 25, 1985, former Section 10.10 was renumbered Section 10.11.

Section 10.11. Indemnification of Officers and Directors. Except to the extent covered by insurance of any type, every director and every officer of the Association shall be, and is hereby, indemnified by the Association against all expenses and liabilities, including fees of counsel, reasonably incurred by or imposed upon such director or officer in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a director or officer of the Association, or any settlement thereof, whether or not he is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of a settlement, the indemnification herein shall apply only when the board approves such settlement. The foregoing right of indemnification shall be in addition to, and shall not be exclusive of, all rights to which each such director or each such officer may otherwise be entitled.

As amended by the amendment of October 25, 1985, former Section 10.11 was renumbered Section 10.12.

Section 10.12. Attorney's Fees. Should suit be instituted hereon, hereunder or in connection herewith to enforce any of the terms or provisions hereof, or to retain any of the remedies provided for herein, the prevailing party shall be entitled to an award of reasonable attorney's fees from any court of competent jurisdiction.

As amended by the amendment of October 25, 1985, former Section 10.12 was renumbered Section 10.13.

## ARTICLE XI

### RIGHT OF CITY OF COLTON TO COMPEL PERFORMANCE

In consideration of the approval of the development by the City of Colton, California (the "City"), declarant hereby covenants and agrees, and each owner of a lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, and all heirs, executors, administrators, assigns and successors, agrees as follows:

(a) The City has determined that the common area and improvements and lot landscaping and the exterior of lot improvements shall be maintained in a first class condition and good state of repair.

(b) If the Association fails to maintain the common area or an owner fails to maintain his lot in accordance with the standards described in (a), the City may cause the necessary maintenance to be done to conform with such standards and assess the costs thereof to the Association or owner obligated to so maintain by an action at law therefor or, in the case of an owner, the same manner as assessments are levied under this declaration, and, in this regard, the City shall be considered a third party beneficiary and shall be entitled to levy assessments in the same

manner as the Association is entitled to levy assessments pursuant to this declaration.

(c) The foregoing notwithstanding, the City shall take no action hereunder unless it has given the Association or owner, as the case may be, thirty (30) days prior written notice of its decision to perform maintenance pursuant hereto, and within said period of time the Association or owner, as the case may be, has not filed an appeal of such decision with the Planning Commission of the City. If the appeal is filed with the Planning Commission of the City, the Planning Commission shall thereafter hear such matter and shall determine whether the Association or owner, as the case may be, has failed to comply with the aforescribed standards of maintenance. Such hearing shall be held no earlier than fifteen (15) days after the appeal to the Planning Commission has been filed. Following the decision of the Planning Commission, an appeal may be taken therefrom to the City Council of the City pursuant to the same procedural requirements which are applicable to appeals taken in respect to other matters from the Planning Commission to the City Council of the City.

## ARTICLE XII

### EMINENT DOMAIN

#### COMMON AREA

The term "taking" as used in this Article XII shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened taking of all or any portion of any common area, the members hereby appoint the board and such persons as the board may delegate to represent all of the members in connection with the taking. The board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Association. In the event of a taking of less than all of the common area, the rules as to restoration and replacement of the common area shall apply as in the case of destruction of improvements upon the common area. In the event of a total taking, the board shall retain any award in the general funds of the Association.

IN WITNESS WHEREOF, the undersigned, being the declarant herein, has herein set its hand and seal this 6th day of June, 1979.

VILLA MEDITERRANEAN, a General  
Partnership

By: H & R CO., a General Partnership

By \_\_\_\_\_  
Ralph E. Perkins

By \_\_\_\_\_  
Edwin W. Estes