

RECORDING REQUESTED BY:  
WHEN RECORDED MAIL TO:

OFFICE OF THE KERN COUNTY  
RECORDER RECORDED JULY 16, 1985  
Book 5778, Page 309 et seq.

LEISURE INDUSTRIES, INC.  
2800 28th Street, Suite 200  
Santa Monica, California 90405  
Attn: Legal Department

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
THE FAIRWAY OAKS

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 13th day of July, 1985, by LEISURE INDUSTRIES, INC., a California corporation ("Declarant").

**R E C I T A L S:**

A. Declarant is the owner of certain real property in the unincorporated area of Stallion Springs, County of Kern, State of California described as Lots 1 through 50, inclusive, of Tract No. 4660, as per Map recorded in Book 34, Pages 50 through 51 of Maps, in the Official Records of Kern County, California.

B. Declarant has deemed it desirable to impose a general plan for the improvement and development of the real property as a planned unit development, and the adoption and establishment of covenants, conditions and restrictions upon the real property and each and every portion thereof and upon the use, occupancy and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property.

C. Declarant has deemed it desirable for the efficient preservation of the value, desirability and attractiveness of the real property, pursuant to the provisions of this Declaration, to create a corporation to which should be delegated and assigned the powers of maintaining the real property as hereinafter provided, and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charges hereinafter created and referred to.

D. The FAIRWAY OAKS AT STALLION SPRINGS HOMEOWNERS' ASSOCIATION, a nonprofit corporation, has been incorporated under the laws of the State of California for the purpose of exercising the powers and functions aforesaid.

E. Declarant hereby declares that all of the real property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following easements, restrictions, covenants, conditions and 3 equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the property, in furtherance of a general plan for the protection, maintenance, division, improvement, sale and use of the property, or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the real property and shall be binding upon all persons having any right, title or interest in the property, or any part thereof, their heirs, successors and assigns; shall inure to the benefit of every portion of the property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, each Owner and their respective heirs, executors and administrators; may be enforced by Declarant, by any Owner or by the Association (as hereinafter defined).

I

DEFINITIONS

Section 1. Assessment. The term "Assessment" means an assessment made or assessed against an Owner and his Lot in accordance with the provisions of this Declaration.

Section 2. Association. The term "Association" as used herein shall mean and refer to The Fairway Oaks Homeowners' Association, a non-profit corporation, its successors and assigns.

Section 3. Board of Directors. The term "Board of Directors" or "Board" as used herein shall mean and refer to the duly elected Board of Directors of the Association.

Section 4. Bylaws. The term "Bylaws" means the duly adopted by-laws of the Association, as the same may from time to time be amended.

Section 5. Common Area. The term "Common Area" shall mean the real property within the Project owned or to be owned by the Association for the common use and enjoyment of the Owners, including greenbelt areas, walkways, private streets and improvements on or under the Common Area.

Section 6. Declarant. The term the "Declarant" as used herein shall mean and refer to LEISURE INDUSTRIES, INC., or its successors in interest.

Section 7. Declaration. The term "covenants" and/or "Declaration" as used herein shall mean and refer collectively to the covenants, conditions, restrictions, reservations, easements, liens and charges imposed by or expressed in this Declaration.

Section 8. Improvement. The term "improvement" as used herein shall mean any structure or appurtenance thereto of every type and kind on the Project, including but not limited to buildings, outbuildings, garages, swimming pools, spas, pool buildings, roads, driveways, parking areas, fences, gates, screening walls, retaining walls, stairs, decks, landscaping, antennae, hedges, windbreaks, plantings, shrubs, poles, signs, telephone kiosks, trash enclosures, exterior air conditioning and water softening fixtures or equipment, and utility installations and equipment.

Section 9. Institutional Holder. The term "Institutional Holder" as used herein shall mean and refer to any holder (beneficiary) of a first deed of trust or mortgage which encumbers a Lot, which holder is a bank or savings and loan association or established mortgage company, or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 10. Lot. The term "Lot" shall mean and refer to any of the Lots shown on the Map of Tract 4660, including improvements now or hereafter constructed thereon, which are or will be improved with an attached or detached single family dwelling. The term Lot shall not include the Common Area.

Section II. Member. The term "Member" shall mean and refer to those persons entitled to membership in the Association as provided in this Declaration and in the Association Articles of Incorporation and Bylaws.

Section 12. Mortgage. The term "Mortgage" as used herein shall mean and refer to any duly recorded and valid mortgage or deed of trust encumbering a Lot.

Section 13. Owner. The term "Owner" as used herein shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. Project. The term "Project" shall mean and refer to the real property subject to this Declaration, together with all buildings, fixtures, plantings, structures and other improvements now or hereafter constructed on said real property.

Section 15. Residence. The term "Residence" means a residential structure or structures, including enclosed yards and patio areas, located on a Lot.

## II

### PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. Additions to the Property. Additional real property may be annexed to the Project and brought within

the general plan and scheme of this Declaration upon the approval by vote or written consent of Members entitled to exercise not less than 66-2/3% of the total votes residing in Association Members other than Declarant. Upon obtaining the requisite approval pursuant to this Section 1, the owner of any real property who desires to annex it to the Project and add it to the general plan and scheme of this Declaration and subject it to the jurisdiction of the Association shall file of record a supplemental declaration as more particularly described in Section 2, below.

Section 2. Supplemental Declaration. The additions authorized under Sections 1 hereof shall be made by filing of record a declaration of annexation, or other similar instrument, with respect to the additional real property which shall be executed by the owner thereof and shall extend the general plan and scheme of this Declaration to such real property. The filing of record of said supplemental declaration shall constitute and effectuate the annexation of the additional real property described therein, and thereupon said real property shall become and constitute a part of Fairway Oaks, become subject to this Declaration and encompassed within the general plan and scheme of the covenants, conditions and restrictions contained herein, and become subject to the functions, powers and jurisdiction of the Association, and the owners of Lots in said annexed phase shall automatically become Members of the Association. Regular assessments shall commence as to all Lots in said annexed phase on the first day of the month following the conveyance of the first Lot in said annexed phase to an individual owner.

Such supplemental declaration may contain such 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 real property, or as the owner thereof may deem appropriate in the development of such real property, and as are not inconsistent with the general plan and scheme of this Declaration. In no event, however, shall such supplemental declaration revoke, modify or add to the covenants, conditions and restrictions established by this Declaration as the same pertain to the Project, except as hereinafter may be provided.

### III

#### NATURE AND PURPOSE OF COVENANTS

The covenants, conditions and restrictions set forth in this Declaration constitute a general scheme for the development, protection and maintenance of the Project to enhance the value, desirability and attractiveness of the Project for the benefit of all Owners of Lots therein. These covenants, conditions and restrictions are imposed upon Declarant and upon the Owners of all Lots. Said covenants, conditions and restrictions are for the benefit of all of the Project and shall bind the Owners of all Lots in the Project. Such covenants, conditions and restrictions shall be a burden upon and a benefit to not only

the original Owner of each Lot, but also his successors and assigns. All such covenants, conditions and restrictions are intended as and are hereby declared to be covenants running with the land or equitable servitudes upon the land, as the case may be.

#### IV

#### OWNERSHIP AND USE OF LOTS AND COMMON AREA

Section 1. Lot. Subject to the rights of the Association provided in this Declaration, each Owner shall be entitled to exclusive ownership and possession of his Lot.

Section 2. Common Area. The Association shall, prior to Declarant's conveyance of the first Lot, be deeded fee title to the Common Area. The Owner of each Lot shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with each transfer, whether voluntary or involuntary, of title to the Lot. Provided, however, that such right and easement of enjoyment shall be subject to the provisions of this Declaration, including the rights of the Association and Declarant to exercise all powers and perform all duties set forth in this Declaration, the Articles of Incorporation, and the By-laws. No Owner may separate such right and easement of enjoyment from the fee title to his Lot, although an Owner may delegate his right of enjoyment of the Common Area to the members, of his family, his tenants, or contract purchasers who reside in his Residence.

Section 3. Residential. Each Lot shall be improved, used and occupied for private dwelling purposes only, and no business or commercial activity shall be conducted therein, without the prior written consent of the Board of Directors, except as provided in Section 16, below.

Section 4. Insurance. Neither any Residence nor the Common Area shall be occupied or used for any purpose or in any manner which shall cause it either to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California standard fire policy form, or cause any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

Section 5. Animals or Pets. No more than two (2) domesticated dogs or cats, each weighing less than thirty (30) pounds, may be kept within any Residence or Lot. No other animals, livestock, birds or poultry shall be brought within the Project, except as may be permitted by rules established by the Board of Directors.

Section 6. Nuisance. No Lot or Residence shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Residences or annoy them by unreasonable noises or otherwise, nor shall any nuisance be committed or permitted to occur in any Lot or Residence. No noxious or

offensive activity shall be carried on in any Lot or Residence or on the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners or which shall increase the rate of insurance on the Project or any part thereof.

Section 7. Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Project or any Lot or Residence, without the prior written consent of the Board, except (1) one sign for each Residence, of not more than four (4) square feet, plain block letters, advertising the Residence for sale or rent, or (2) signs, regardless of size, used by Declarant, its successors or assigns, to advertise the Project during construction and sale periods; Declarant's sign rights will expire on the third anniversary of the original issuance of the Final Subdivision Public Report for the Project. All signs or billboards and the conditions promulgated for the regulation thereof shall conform to the requirements of all applicable governmental ordinances.

Section 8. Parking and Vehicular Restrictions. No Owner shall park, store or keep any vehicle, except wholly within the parking area designated therefor, and no inoperable vehicle shall be stored on the Project. No Owner shall park, store or keep on any street (public or private) or parking area within the Project any large commercial-type vehicle (including, but not limited to, any dump truck), any bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, inoperable vehicle or any other similar vehicle or any vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. No Owner of a Lot shall conduct, repairs or restorations of any motor vehicle, boat, trailer, aircraft or other vehicle upon any portion of any Lot or upon the Common Area.

Section 9. Trash. No rubbish, trash or garbage or other waste materials shall be kept or permitted upon any Lot or Common Area, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No clothing or household fabrics shall be hung, dried or aired in such a way in the Project as to be visible to other property, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Project except within an enclosed structure or appropriately screened from view.

Section 10. Temporary Buildings. Except for the improvements constructed or to be constructed by Declarant, no outbuilding, basement, tent, shack, shed or other temporary building or improvement of any kind shall be placed upon any portion of the Project either temporarily or permanently. No garage, trailer, camper, motor home or recreational vehicle shall be used as a residence in the Project, either temporarily or permanently.

Section 11.        Common Area.        The Common Area, except those portions thereof which an Owner has the exclusive right to use, shall be improved and used only for the following purposes:

(a)    Affording vehicular passage to the parking areas and pedestrian movement within the Project, including access to the Lots.

(b)    Recreational use by the Owners and occupants of Residences in the Project and their guests, subject to rules established by the Board of Directors,

(c)    Beautification and providing privacy to the residents of the Project through landscaping and such other means as the Board of Directors shall deem appropriate.

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted,

Section 12.        Outside Installations.        No radio station or short-wave operators of any kind shall operate from any Lot or Residence unless approved by the Board of Directors. No exterior radio antenna, C.B, antenna, television antenna, or other antenna of any type shall be erected or maintained in the Project unless approved by the Board. Excepting any improvements to be constructed by Declarant on the Common Area, no swimming pool, tennis court, basketball backboard or other fixed sports apparatus shall be constructed, maintained, or reconstructed in the Project without the prior written approval of the Board. Excepting fences or walls initially constructed by Declarant, no fence or wall shall be erected, altered or maintained in the Project, except with the approval of the Board. Any alterations or modifications of the walls or fences not addressed herein shall be subject to the prior written approval of the Board.

Section 13.        Alterations.        Except as otherwise provided herein, no Owner shall make any alteration or improvement to the Common Area, or remove any planting, structure, furnishing or other improvement therefrom without the prior written consent of the Board of Directors. Nothing shall be done in or to any Lot or Residence or in, on or to the Common Area which will impair the structural integrity of any building or other structure on the Project or which would structurally change any building located thereon. No plumbing or electrical additions, changes or work within any bearing or common walls shall be made by an Owner without the prior written consent of the Board.

Section 14.        Drilling.        No oil drilling, oil development operations, oil refining, quarrying or raining operations of any kind shall be permitted in the Project, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted upon the surface or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted in the Project.

Section 15. Violation of Governing Instruments. There shall be no violation of the restrictions in this Declaration or of the rules and regulations of the Association adopted in accordance with the provisions of the Bylaws. If any Owner, his family, guest, licensee, lessee or invitee, violates any such restrictions, the Board may impose a reasonable reimbursement assessment upon such Owner for each violation and may suspend the voting privileges of such Owner as further provided in the Bylaws. Such reimbursement assessment shall be collectible in the same manner as regular assessments hereunder, but the Board shall give such Owner notice and hearing as further provided in the Bylaws before invoking any such reimbursement assessment or suspension.

Section 16. Construction by Declarant. Nothing in this Declaration, except as provided to the contrary hereinbelow, shall limit the right of the Declarant to commence and complete construction of improvements to the Project and the Common Area or to construct such additional improvements as are necessary to complete the Project and the Residences on the Lots in the Project. The Declarant may use any of the Lots within the Project owned by it for models, sales office, construction office and incidental parking. The Declarant shall have the right and an easement to enter upon, use and enjoy and designate and permit others (including, without limitation, Declarant's agents, employees, representatives, contractors and prospective purchasers) to enter upon, use and enjoy the Common Area for any purpose in connection with or incidental to the construction, development, sale, lease or other transfer of property within the Project (including, without limitation, the erection, construction and maintenance of displays, sales offices and incidental parking, exhibits, signs and other structures), provided, however, that the exercise of such right and easement shall not unreasonably interfere with the reasonable use and enjoyment of the Common Area by the Members. Declarant's rights under this Section shall terminate on the third anniversary of the original issuance of the Final Subdivision Public Report for Fairway Oaks.

Section 17. Children. The Common Area shall be used only for the purposes intended, and no bicycles, scooters, baby carriages or similar vehicles, toys or other articles belonging to any Owner or his guests and lessees shall be kept thereon, except in any area that may be specifically designated for that purpose by the Association. Each Owner shall be accountable to the Association and the other Owners for the conduct and behavior of children residing in or visiting his Lot, and any damage to any portion of the Common Area, personal property of the Association or property of another Owner caused by any such child shall be repaired by and at the expense of the Owner with whom the child is residing or visiting.

Section 18. Leases by Owners. There shall be no restriction on the right of any Owner to lease or rent his Lot, provided, however, (i) all leases must provide that same are subject in all respects to the provisions of this Declaration, and the Articles of Incorporation and Bylaws of the Association, and that failure by the lessee to comply with the terms of the foregoing documents shall constitute a default under said



leases, and (ii) no Lot or Residence shall be subdivided for rental purposes.

Section 19. Outdoor Cleaning. No exterior clotheslines shall be erected or maintained and there shall be no outside drying, cleaning or laundering of clothes, rugs or other material on the Common Area.

V

MEMBERSHIP AND VOTING RIGHTS

Section 1. Organization. The Association is organized as a California corporation under the California Non-profit Mutual Benefit Corporation Law. The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed so as to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or Bylaws, then such provision shall be construed, to the extent possible, so that such provision shall be consistent with the provisions of this Declaration.

Section 2. Membership. Every person or entity who is a record Owner of a fee or undivided interest in any Lot which is subject by covenants of record to assessment by the Association, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from the fee ownership of any Lot which is subject to assessment by the Association. Ownership of such Lot shall be the sole qualification for membership. Transfer of a Lot shall automatically transfer membership in the Association.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A: Class A Members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be entitled to all rights and privileges of membership. The vote for such Lot shall be exercised as its Owners collectively determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B: The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

(a) At such time as the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;  
or

(b) The second (2nd) anniversary of the original issuance of the Final Subdivision Public Report for Fairway Oaks.

Section 4. Two Classes of Memberships. Notwithstanding anything to the contrary as may be contained elsewhere in this Declaration, any action by the Association which must have the approval of the membership of the Association before being undertaken, except for the action referred to in the article of this Declaration entitled "ENFORCEMENT OF BONDED OBLIGATIONS", shall require the vote or written assent of the percentage of each class of membership required by the particular Article of this Declaration under which such action is taken, during the period of time that there are two (2) outstanding classes of membership. After there has been a conversion of Class B membership to Class A membership^ such action shall require the vote or written assent of a bare majority of the total voting power of the Association as well as the vote or written assent of the therein required percentage of the total voting power of Members other than Declarant.

Section 5. Special Class A Voting Rights. Notwithstanding the provisions of this Article, so long as there are both Class A and Class B Members of the Association, not less than one (1) of the incumbent directors shall have been elected solely by the Class A Members. In no event shall the Class A' Members be entitled to elect more than twenty percent (20%) of the directors to the Board pursuant to the provisions of this Special Class A voting rights.

Section 6. Vesting of Voting Rights. All voting rights which are attributable to a specific Lot pursuant to the terms of this Declaration shall not vest until such time as such Lot is subject to Regular Assessments pursuant to the terms of this Declaration.

Section 7. Inspection Rights. All Owners shall have access to inspect the Association's books, records and financial statements (including annual audited financial statements when such are prepared), during normal business hours at the principal place of business of the Association.

## VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Covenant to Pay Assessment. Declarant, on behalf of itself, and for each Lot owned, 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 and agree to pay to the Association: (1) regular monthly assessments or charges (hereinafter "Regular Assessments"), (2) special assessments for capital improvements (hereinafter "Special Assessments"), and (3) reimbursement assessments (hereinafter "Reimbursement Assessments"), all such assessments to be established and collected as hereinafter provided. The Regular Assessments must be in an amount sufficient to include

an adequate reserve fund for maintenance, repairs and replacement of the Common Area, and the structural elements of the Residences for which the Association is responsible, that must be replaced on a periodic basis, and this reserve fund must be collected as a Regular Assessment rather than as a Special Assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. The personal obligation for delinquent assessments shall not pass to such person's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Lots and for the improvement, operation and maintenance of the Common Areas and the performance of the duties of the Association as set forth in this Declaration.

Section 3. Amount of Regular Assessments. The amount and time of payment of Regular Assessments against each Lot shall be determined by the Board of Directors of the Association giving due consideration to the current maintenance costs and future needs of the Association. The Regular Assessments against each Lot shall not be increased more than 20% over the Regular Assessments for the proceeding year against each Lot without the vote or written consent of a majority of the total voting power of each Class of Members of the Association (subject to the provisions of Section 4, Article V). Regular Assessments shall be fixed at a uniform rate for all Lots equal to the particular expense to be collected via such assessment multiplied by a fraction the numerator of which shall be one (1) and the denominator of which shall be the number of Lots then subject to this Declaration.

Section 4. Special Assessments for Capital Improvement. In addition to the Regular Assessments authorized above, the Association may levy, in any assessment year, Special Assessments applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement within the Common Area including fixtures and personal property related thereto or any other action or undertaking on behalf of the Association, provided that any such assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall require approval by the vote or written assent of a majority of the voting power of each Class of Members of the Association at a meeting duly called for this purpose (subject to the provisions of Section 4, Article V). The foregoing limitation on Special Assessments shall not apply to any Reimbursement Assessment which is authorized by the provisions of this Declaration. All Special Assessments shall be levied on the same basis as that prescribed for the levying of Regular Assessments.

Section 5. Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner who fails to comply with the provisions of this Declaration, the Association's Articles or Bylaws, or any rule or regulation

adopted by the Association, if such failure results in the expenditure of monies by the Association in carrying out its functions hereunder or for purposes of collecting any fines which may be levied by the Association. No such Reimbursement Assessment shall be levied except after notice and hearing as prescribed by the Bylaws. Except for collection of fines, such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended^ and shall be due and payable to the Association when levied. Not in limitation of the generality of the foregoing, in the event an Owner of any Lot in the Project shall fail to maintain his Residence in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Residence, the cost of which shall be deemed a Reimbursement Assessment. Reimbursement Assessments imposed against an Owner shall not be or become a lien against the Lot of such Owner enforceable by a sale of such Owner's Lot pursuant to Section 11y below. Charges imposed against an Owner consisting of reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments shall be added to and become a part of the Regular Assessment to which such Owner is subject.

Section 6. Notice and Quorum for Meetings Called Under Sections 3 and 4. Written notice of any meeting called to approve an increase in assessments greater than 20% under Section 3 or a Special Assessment under Section 4 shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting. At any such meeting called, the presence of Members or of proxies entitled to cast more than fifty percent (50%) of all of the votes of each Class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same quorum requirement.

Section 7. Date of Commencement of Regular Assessments; Due Dates. The Regular Assessments provided for herein shall commence as to all Lots in the Project (including those owned by Declarant) on the first day of the month following the conveyance of the first Lot by Declarant to an individual Owner. The Board of Directors shall fix the amount of the Regular Assessment against each Lot at least sixty (60) days in advance of each fiscal year end of the Association. Written notice of the amount of the Regular Assessments against each Lot shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors. In the event the Board shall determine at any time that the estimate of the Regular Assessment for the current fiscal year is, or will become, inadequate to meet the expenses of the Association for any reason, it shall immediately determine the approximate amount or such inadequacy and issue a supplemental estimate of the total Association expenses and determine the revised amount of the Regular Assessment against each Owner.

Section 8. Partial Exemption of Declarant. Declarant, or its successor in interest, if any, shall be exempted from payment of a portion of the Regular and/or Special Assessments relating to any Lot upon which the Residence is unconstructed or under construction. Such partial exemption shall include those portions of such assessments which are for the purpose of defraying expenses and reserves directly attributable to the existence and use of such residential improvements, and shall include, but not be limited to, roof maintenance and replacement, exterior maintenance of structures and fences, walkway lighting, refuse disposal, cable television and domestic water supply. Any such partial exemption shall be in effect with respect to a Lot only until a notice of completion of the Residence on such Lot has been recorded, or until one hundred twenty (120) days after the issuance of a building permit for such Residence, whichever first occurs.

Section 9. Certification of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Said signed certificate shall be conclusive evidence as to all third parties relying thereon to show that all assessments acknowledged therein have been paid but shall not relieve any Owner of the responsibility for assessments not in fact paid.

Section 10. Reserves. The Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or a portion of the Common Area, the structural elements of the Residences for which the Association is responsible, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust, along with interest earned thereon, if any, for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

Section 11. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any Lot on becoming an Owner of any Lot, is and shall be deemed to covenant and agree to pay to the Association each and every of the assessments provided for in this Declaration and agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney or attorneys are employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner agrees to pay reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner. Any assessment not paid within fifteen (15) days after the date on which it becomes due shall thereafter bear interest from the date of delinquency at the rate of ten per cent (10%) per annum. In addition to any other remedies herein or by

law provided, the Board, or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

(a) Enforcement by Suit. By commencement and maintenance of a suit at law against any Owner or Owners personally obligated to pay assessments for such delinquent assessments as to which they are personally obligated. Each suit to be maintained in the name of the Association. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon as provided for herein, costs of collection, court costs and reasonable attorneys\* fees in such amount as the Court may adjudge against the delinquent Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

(b) Enforcement by Lien. There is hereby created a claim of a continuing lien, with power of sale, on each and every Lot to secure payment to the Association of any and all assessments (except Reimbursement Assessments) levied against any and all Owners of such Lots pursuant to this Declaration, together with interest thereon as provided for in this Declaration, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time after the occurrence of any delinquency in the payment of any such assessment, the Board or any authorized representative thereof may make a written demand for payment to the delinquent Owner. Said demand shall state the date and amount of the delinquency. Each delinquency shall constitute a separate basis for a demand or claim of lien and a lien on account of prior delinquencies shall be deemed to include subsequent delinquencies and amounts due on account thereof. If such delinquency is not paid within ten (10) days after delivery of such demand, the Board or its duly authorized representative may thereafter elect to file and record a claim of lien on behalf of the Association against the Lot of the defaulting Owner in the Office of the County Recorder of Kern County. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:

- (1) The name of the record Owner;
- (2) The legal description of the Lot against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and estimated attorneys' fees (with any proper offset allowed);
- (4) That the claim of lien is made by the Association pursuant to this Declaration; and
- (5) That a lien is claimed against said Lot in an amount equal to the amount stated, together

with all other amounts becoming due from time to time in accordance with this Declaration.

Upon such recordation of a duly executed original or copy of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of this Declaration, except for tax liens for real property taxes on any Lot and assessments on any Lot in favor of any municipal or other governmental assessing unit and except for certain Trust Deeds as provided in Section 12, below. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by the California Civil Code for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Board is hereby authorized to appoint its attorney, any officer or director of the Association, or any title company authorized to do business in California as Trustee for the purpose of conducting such power of sale foreclosure. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners and shall secure payment of all sums set forth in the claim of lien, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said claim of lien. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Lot. In the event such foreclosure is by action in Court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Such lien shall not be affected by any sale or transfer of a Lot except that a sale or transfer pursuant to a foreclosure shall extinguish a subordinate lien for common expense charges and assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of a Lot from liability for, nor the Lot so sold or transferred from the lien of, any common expense charges thereafter becoming due. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner. Upon the timely curing of any default for which a notice of claim of lien was filed by the Board and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Board shall cause an officer of the Association to file and record an appropriate release of such claim of lien in the Office of the County Recorder of Kern County, California. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or abandonment of his Lot. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a claim of lien, whether judicially, by power of sale, or otherwise, until the expiration of ten (10) days after a copy of said claim of lien, showing the date of recordation thereof, has been mailed to the Owner of the Lot which is described in such claim of lien.

Section 12. Subordination to Certain Trust Deeds. The lien for assessments provided for herein in connection with a

given Lot shall not be subordinate to the lien of any deed of trust or mortgage, except the lien of a first deed of trust or mortgage given and made in good faith and for value, that is of record as an encumbrance against such given Lot prior to the recordation of a claim of lien for the assessments provided for in this Declaration against such given Lot (such deed of trust or mortgage being hereinafter referred to as a "prior deed of trust"). The sale or transfer of any Lot shall not affect any assessment lien created pursuant to the terms of this Declaration to secure assessments becoming due whether prior to on or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent assessments as provided for by Section 1 of this Article; provided, however, that the sale or transfer of any Lot pursuant to a judicial foreclosure or foreclosure by power of sale of a prior deed of trust, shall extinguish any assessment lien which has attached and become effective with regard to the Lot being so transferred prior to the time of such sale or transfer, and shall prohibit the recordation of any assessment lien against such Lot on account of assessments which became due prior to the date of sale or transfer; provided, however, that there shall be a lien on the interests of the purchaser at such sale which shall attach, be created and become effective and be foreclosed in accordance with this Declaration and which shall secure all assessments becoming due after the date of any such sale or transfer. For the purpose of this Section 12, a sale or transfer of a Lot shall occur on the date of recordation of a deed or other instrument of title evidencing the conveyance of record title to the Lot.

Section 13 Exempt Property. The following property subject to this Declaration shall, unless devoted to use as a dwelling, be exempted from the assessments created herein:

- (a) Any portion of the Project dedicated to and accepted by any local public authority;
- (b) The Common Area; and
- (c) Any Lots owned by the Association.

## VII

### DUTIES AND POWERS OF THE ASSOCIATION

Section 1. General Powers of the Association. All powers relating to the management, operation and maintenance of the Common Area, as well as certain rights, duties and powers relating to the Lots and Residences, as hereinafter set forth, shall be vested in the Association and in its Board of Directors. The specific and primary purposes and powers of the Association and its Board of Directors are to provide for the operation, control, repair, reconstruction, maintenance and restoration of the Common Area, and the improvements thereon, the maintenance and repair of the Lots and structural elements of the Residences as hereinafter set forth, and to enforce the provisions of this Declaration and the Association's Articles and Bylaws, and



any other instruments relating to the management and control of the Association and the Project. The Association may do any and all other acts and things necessary, convenient or desirable in the administration of its affairs for the specific and primary purposes of meeting its duties as set forth in this Declaration. The Association, through its Board of Directors, shall have the authority to delegate its power to committees, officers of the Association or its employees.

Section 2. Contracts or the Association. The Association shall have the right and power to employ or engage a manager and other employees or agents and contract for such services, labor and materials as it may deem reasonable or necessary to operate and maintain the Project and the Common Area, and the improvements thereon and to discharge its other duties as herein provided. Except in the case of a management contract with terms approved by the Federal Housing Administration or Veterans Administration, any agreement for professional management of the Association or for services of the Declarant must provide that the management contract may be terminated by either party without cause or payment of a termination fee and the term of such contract shall not exceed one (1) year.

Section 3. General Duties of Association. In addition to the duties and powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Repair and maintain all Common Area within the Project, and structural elements of the Residences as more particularly set forth in Section 4, below. The responsibility of the Association for maintenance shall commence on the first day of the month following the close of escrow representing the conveyance of the first Lot by Declarant to an Owner;

(b) Maintain such policy or policies of insurance as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members as more particularly set forth in Article VIII.

(c) Have the authority to obtain all water, sewer, telephone, electrical, gas, and cable television services for the benefit of the Common Area and, if not separately metered or charged, for the Residences.

(d) Arrange for the services of a rubbish and garbage collection agency, public or private» for the purpose of removing from the Project all trash and refuse;

(e) Pay taxes and assessments which are or could become a lien on the Common Area, or some portion thereof, or other property of the Association, which are not separately imposed upon the Owners or the Lots;

(f) Prepare budgets and financial statements for the Association and its Members as prescribed in the Bylaws of the Association; and

(g) Initiate and execute disciplinary proceedings against Members of the Association for violations of provisions of this Declaration or the Association's Articles of Incorporation or Bylaws in accordance with the procedures set forth in this Declaration and the Bylaws.

Section 4. Maintenance of Project. Without limiting the generality of the statement of duties and powers contained elsewhere in this Declaration, the Association shall have a duty to accomplish the following in a good, safe and sanitary manner:

(a) Manage, maintain, repair and replace the Common Area, including, but not limited to, the common walkways, common driveways, common fences, recreational facilities, landscaping, drainage devices, the private roads and parking areas, and utilities located within or under the Common Area, unless maintained by another agency, and such maintenance shall be of a high quality so as to keep the entire Project in a first-class condition and in a good state of repair.

(b) Maintain the exteriors of the Residences (excluding Residence doors and windows) in good condition and repair including roofs, gutters, downspouts, exterior building surfaces, walls, fences and gates, sidewalks, paving, trees, landscaping, planting, and all other exterior improvements and hereditaments which are not the responsibility of an Owner as provided in Section 9, Article XI. Provided, however, that the repair of damages to the Residence or exterior of a Residence from causes other than normal wear and tear shall be the financial responsibility of the Owner, except to the extent such repair is actually undertaken by the Association pursuant to Article IX.

(c) Maintenance and repair of those elements of any Residence or Lot for which the Owner thereof is responsible, if such maintenance and repair is reasonably necessary in the discretion of the Board to protect the Common Area or preserve the appearance and value of the Project, and the Owner or Owners of said Residence have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Board to said Owner or Owners.

In the event that the need for maintenance or repairs under (a) or (b) above, is caused through the willful or negligent act of the Owner, his family, guests, or invitees, or in the event of any action by the Association under (c) above, the cost of such maintenance or repairs may be added to and become a part of the Regular Assessment to which such Lot is subject or may be levied against such Lot as a Reimbursement Assessment.

Section 5. Restrictions on Power of the Board. The Association shall be prohibited without the prior vote or written assent of a majority of the voting power of each Class of Members of the Association (subject to the provisions of Section 4, Article V) from doing any of the following: (i) incurring aggregate expenditures for capital improvements to any portion of the Project in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or (ii) selling during any fiscal year of the Association property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year; and (iii) paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a director or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

Section 6. Limitation on Board Authority to Contract. The Board of Directors shall not enter into any contracts for goods or services with a duration greater than one (1) year without the vote or written consent of a majority of each Class of voting power of the Association (subject to the provisions of Section 4, Article V) with the following exceptions: (i) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration; (ii) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; (iii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short rate cancellation by the insured; or (iv) lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under such agreement is not an entity in which Declarant has a direct or indirect ownership interest of ten percent (10%) or more. Under no circumstances whatsoever shall the Board of Directors bind the Association to any contract or lease which is not bona fide or which is not commercially reasonable to the Owners at the time entered into under the circumstances then prevailing.

Section 7. Association Rules. The Board shall also have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable which may include the establishment of a system of fines and penalties enforceable as Reimbursement Assessments. The rules of the Association shall govern such matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Areas; provided, however, that the rules of the Association may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. Any rule of the Association which imposes a system of fines or penalties must provide that the accused be given notice and the opportunity to be heard by the Board with respect to the alleged violations before a decision to impose discipline is imposed, such notice and hearing to be in accordance with Section 7341 of the Corporation's Code, or any successor statute thereto. A copy of the rules of

the Association as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of the rules of the Association shall be delivered to each Owner in the same manner established in this Declaration for the delivery of notices, Upon completion of the notice requirements, said rules of the Association shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received thereby. The rules of the Association, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner and Institutional Holder of a Mortgage upon request. In the event of any conflict between any such rules of the Association and any other provisions of this Declaration, or the Articles or Bylaws, the provisions of the rules of the Association shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such conflict.

Section 8. Entry Into Residence. The Association and its representatives shall have the right to enter any Residence within the Project to the extent such entry is necessary in connection with the performance by the Association of its duties and responsibilities under this Article or under this Declaration, including, without limitation, the construction, maintenance or effectuation of emergency repairs for the benefit of the Residences, the Lots, the Common Areas, or for any of the Owners within the Project. Except for emergencies, the Association shall give the Owner of the Residence affected at least seventy-two (72) hours advance notice of such intended entry.

Section 9. Common Liens. The Association may pay any amount necessary to discharge any lien or encumbrance levied against the Project or any part thereof which may, in the opinion of the Board, constitute a lien against the Common Area or any part thereof, rather than merely against the interests therein of particular Owners. Where one or more Owners are responsible for the existence of such lien or encumbrance, they shall be jointly and severally liable for the costs of discharging it and any costs incurred by the Board by reason of said lien or liens shall be assessed to said Owners as a Reimbursement Assessment.

### §III

#### INSURANCE

Section 1. Types. The Association, to the extent available, shall obtain and continue in effect in its own name the following types of insurance:

- (a) A comprehensive policy of public liability insurance covering the Project with a limit of not less than One Million Dollars (\$1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to

include protection against such risks as shall customarily be covered or available with respect to Planned Unit Developments and shall contain an endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts or omissions of the Association or other Owners;

(b) A master or blanket policy of fire and casualty insurance with extended coverage for the full replacement value of the Residences and Common Area exclusive of foundations and excavations, without deduction for depreciation, providing for a separate loss payable endorsement in favor of each Mortgagee of a Lot, containing clauses waiving subrogation against Owners and the Association and persons upon the Project with the permission of an Owner, such insurance to afford protection against loss or damage by fire and other hazards covered by the standard extended coverage policy of hazard insurance; the policy or policies of insurance obtained hereunder shall meet at least the minimum requirements of Institutional Holders of Mortgages in the Project; and

(c) Fidelity coverage against dishonest acts on the part of directors, officers, employees or volunteers who handle or who are responsible to handle the funds of the Association, and such fidelity bonds shall name the Association as obligee, shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves.

Section 2. Waiver by Members. As to each of said policies which will not be voided or impaired thereby, the Members hereby waive and release all claims against the Association, the Board, the Declarant and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but to the extent of insurance proceeds received in compensation for such loss only.

Section 3. Other Insurance; Annual Review. The Association may purchase such other insurance as it may deem necessary, including, but not limited to, workers' compensation, officers' and directors' liability, errors and omission insurance and demolition insurance in amounts adequate to cover demolition in the event of destruction of the Residences or the Common Area and decision not to rebuild. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Association in light of inflation, practice in the area in which the Project is located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under existing policies are necessary or desirable to protect the interests of the Association and the Owners. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

Section 4. Premiums and Proceeds. Insurance premiums for any such blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Association

shall be an expense to be included in the Regular Assessments levied by the Association. All insurance proceeds available from fire and casualty insurance shall be paid to the Association and be held for the benefit of the Association, Owners, Mortgagees, and such other persons as their respective interests shall appear, and shall be paid out in accordance with Article IX of this Declaration. The Association is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two (2) directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim and such signatures shall be binding on the Association and the Members.

Section 5. Payment of Taxes or Premiums by Institutional Holders of Mortgages. Institutional Holders of Mortgages may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the Owners, in which case the rights of Institutional Holders of Mortgages shall be governed by the provisions of their Mortgages. Institutional Holders of Mortgages may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, and the Institutional Holder of a Mortgage making such payments shall be owed immediate reimbursement therefor from the Association.

Section 6. FMMA, FHLMC and GNMA Requirements. Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and bond requirements for Planned Unit Development projects established by Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), and/or Government National Mortgage Association ("GNMA"), respectively, so long as any of said entities are a Mortgagee or Owner of a Lot within the Project, except to the extent such coverage is not available or has been waived in writing by FNMA, FHLMC or GNMA, respectively.

## IX

### DAMAGE AND DESTRUCTION

Section 1. Bids and Determination of Available Insurance Proceeds. As soon as practicable after any damage to or destruction of all or any portion of the Common Area or all or any substantial portion of two or more Residences (unless all of such damage or destruction is covered by Section 7 of Article XI relating to Party Walls), the Board of Directors shall (i) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Project to substantially the same condition as they existed prior to the damage and the itemized price asked for such work, and (ii) determine the amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

Section 2. No Consent Required with Adequate Insurance.

Notwithstanding anything contained in Section 1, above, to the contrary, if the cost of repairing or rebuilding the portion of the Project so damaged or destroyed does not exceed the amount of insurance proceeds available to the Association, the Board shall be authorized and required without the consent or approval of the Members, to contract to repair or rebuild the damaged portions of the Project substantially in accordance with the original plans and specifications therefor. In the event any excess insurance proceeds remain, the Board, in its sole discretion, may retain such sums in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, subject to the prior rights of Institutional Holder of any first Mortgage whose interest may be protected by insurance policies carried by the Association. The rights of an Owner and the Institutional Holder of a first Mortgage on his Lot as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Lot.

Section 3. Insurance Proceeds Insufficient. If upon such damage or destruction the proceeds of insurance available to the Association are insufficient to cover the cost of repair, reconstruction and restoration of the damaged or destroyed portions of the Project, the following provisions shall apply:

(a) If all of such damage or destruction relates solely to the Common Area, then the Members otherwise entitled to vote, who hold a majority of the voting power in the Association, shall determine whether (i) to repair, reconstruct and restore the damaged or destroyed Common Area and specially assess all Lots equally for all additional funds needed for such purpose or (ii) not to repair, reconstruct or restore the Common Area but to distribute such insurance proceeds to the Owners (including Declarant with respect to retained or unsold Lots), in the ratio of one equal share for each Lot, but subject to (a) the rights of Institutional Holders of Mortgages, as their interests may appear, and (b) all unpaid Regular and/or Special Assessments.

(b) If such damage or destruction is done to all or a substantial portion of two or more Residences, then the proceeds of insurance available to the Association shall be allocated between (i) the individual Residences which are damaged or destroyed and for which insurance proceeds are available to the Association, and (ii) the Common Area, if any, which is damaged or destroyed and for which insurance proceeds are available to the Association. The share of available insurance allocated to the Common Area and the individual damaged or destroyed Residences (hereinafter referred to as "Allocable Shares") shall be determined by giving due consideration to the insurance adjustment, insurable value, estimated costs of repair, restoration or reconstruction, payments of insurance proceeds to Mortgagees for debt reduction and insurance proceeds which are otherwise not available to the Association.

If none of such damage or destruction relates to the Common Area, or if no insurance proceeds are available to the Association for the Common Areas, then all available insurance proceeds shall be allocated to the damaged or destroyed Residences. The following procedure shall be used to determine the disposition of the Allocable Shares of insurance proceeds.

(1) The Common Area's Allocable Share of such insurance proceeds, if any, shall be used or distributed as provided above in paragraph (a) of this Section.

(2) With respect to the damaged or destroyed Residences' Allocable Shares of such insurance proceeds, each Owner (including Declarant with respect to retained or unsold Lots) of a Lot on which a damaged or destroyed Residence is situate (which Lot was subject to the allocation of insurance proceeds) shall, for purposes of this Section, be entitled to one vote for each such Lot owned. The Owners who hold seventy-five percent (75%) or more of such votes shall determine whether (i) to repair, reconstruct or restore all of such damaged or destroyed Residence pursuant to a common plan by which each Owner of a Lot on which a damaged or destroyed Residence is situate shall contribute and be assessed for an amount equal to the difference between the actual cost of the repair, reconstruction or restoration of that Owner's Residence and the amount of that Lot's Allocable Share of available insurance proceeds (in which case the Association and the Owners of other Lots shall by this provision and other appropriate means, be protected and held harmless from any claim or liability, in excess of the Lots' Allocable Shares of available insurance proceeds, relating to such repair, reconstruction and restoration); or (ii) not to repair, reconstruct or restore such Residences pursuant to a common plan, but to distribute each damaged or destroyed Residence's Allocable Share of insurance proceeds to the Owner of the Lot on which such damaged or destroyed Residence is situate (including Declarant with respect to retained or unsold Lots); provided, however, that such distribution shall be subject to (a) the rights of Institutional Holders of Mortgages, as their interests may appear, and (b) all unpaid Regular and/or Special Assessments.

Section 4. Reconstruction. If a determination is made to repair, reconstruct and restore all or a portion of the Project, the Board shall (i) enter into a written contract with a contractor licensed in California and submitting the lowest reasonable bid for such repair, reconstruction and restoration^ (ii) disburse insurance proceeds available for said work and funds collected by reason of Special Assessments authorized therefor in appropriate progress payments and (iii) take all steps necessary to ensure the commencement and completion of such repair, reconstruction and restoration in a lawful and workmanlike manner at the earliest possible date.

Section 5. Failure to Determine to Repair, Reconstruct or Restore. If a determination to repair, reconstruct



or restore any damage or destruction described in this Article IX is not made, as provided in this Article IX, within a reasonable time (not to exceed one year) after such damage or destruction, the obligations of maintenance and repair set forth in Articles VII or XI apply.

Section 6. Interior Damage To Residence. Restoration and repair of any damage to the interior of any individual Residence, including, without limitation, doors, windows, and those elements of the Lot and Residence which Owner has the responsibility to maintain and repair, shall be made by and at the individual expense of the Owner of the Lot upon which such Residence is situate and, in the event of a determination to rebuild after partial or total destruction, shall be completed as promptly as practical and in a lawful and workmanlike manner.

X

EMINENT DOMAIN

The term "taking" as used in this Article 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 the Project or the improvements thereon, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners 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. All compensation and damages relating to any such taking shall be distributed as follows: (1) Any condemnation awards allocated to a particular Lot because of the condemnation of all or any portion of that Lot shall be paid solely to the Owner of that Lot; (2) Any condemnation awards payable to the Association as a result of the condemnation of all or any part of the Common Area shall be distributed among all Owners of Lots in the ratio of one equal share for each Lot, but subject to (i) the rights of Institutional Holders of Mortgages encumbering Lots within the Project, as their interests may appear, and (ii) all unpaid Regular and/or Special Assessments together with any interest charges attributable thereto. The Association shall give prompt written notice of condemnation proceedings to all Institutional Holders of Mortgages encumbering Lots.

XI

EASEMENTS, OWNERS' PROPERTY RIGHTS AND OBLIGATIONS

Section 1. Owner's Easements of Enjoyment. Every Owner shall have a right to transfer or convey his or her Lot free from a right of first refusal imposed by Declarant. Every Owner shall have a non-exclusive right and easement of ingress and egress and of enjoyment in, to, over and through the Common Area which shall be appurtenant to and shall pass with title to every Lot, subject to the following provisions:

(a) The right of the Association to limit the number of guests of Owners using the Common Area facilities;

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area;

(c) The right of the Association in accordance with the Articles, Bylaws and this Declaration, with the vote or written assent of two-thirds (2/3) of the voting power of each Class of Members, to borrow money for the purpose of improving the Common Area and in aid thereof, and, subject to the provisions of the Article of this Declaration entitled "RIGHTS OF LENDERS", to mortgage, pledge, deed in trusty or hypothecate any or all of the Common Area or its real or personal property as security for money borrowed or debts incurred, provided that the rights of such Institutional Holders of Mortgages shall be subordinated to the rights of the Owners;

(d) Subject to the provisions of the Article of this Declaration entitled "RIGHTS OF LENDERS", the right of the Association to dedicate, release, alienate or transfer all or any part of the Common Area to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast at least two-thirds (2/3) of each Class of the voting power of the Association, agreeing to such dedication, release, alienation or transfer has been recorded;

(e) The rights and reservations of Declarant as set forth in this Declaration, including the right of Declarant and its sales agents, representatives and prospective purchasers to the non-exclusive use of the Common Area and the unsold Lots and any facilities thereof, without cost, for access, ingress, use and enjoyment, in order to dispose of the Lots as provided herein, until the close of escrow for the sale of all of the Lots in the Project; provided, however, that such use shall not unreasonably interfere with the rights of enjoyment of the other Owners as provided herein.

(f) The right of the Board, after fifteen (15) days prior notice setting forth the reasons therefor, and providing such member an opportunity to be heard by the Board, orally or in writing, not less than 5 days prior to the effective date thereof, to suspend the voting rights and rights and easements of use and enjoyment of the recreational facilities, if any, located on the Common Area, of any Member, and the persons deriving such rights and easements from any Member, for any period during which the payment of any assessment against such Member and his Lot remains delinquent; and to impose monetary penalties or suspend such voting and use rights and easements for a reasonable period of time determined

by the Board for any violation of this Declaration, the Articles, By-laws or rules and regulations of the Association, it being understood that any suspension for either non-payment of any assessment or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligation to pay assessments as provided herein;

(g) The right of the Association, acting through the Board, to reasonably restrict access to areas of the Common Area.

Section 2. Encroachment Easements. Each Lot and the Common Area is hereby declared to have an easement over all adjoining Lots and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any building, or any other similar cause, and any encroachment due to building overhang or projection whether roof, eaves or otherwise, specifically area cantilevers, and any encroachment due to fireplace construction, or architectural pop-outs. There shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settling or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful act or acts of said Owner or Owners. In the event a Residence is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Lot agree that minor encroachments over adjoining Lots shall be permitted, and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

Section 3. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot or other property owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and any facilities thereon or by abandonment of his Lot or any other property in the Project.

Section 4. Additional Provisions Relating to Common Area. The Declarant, its successors and assigns, and all future Owners of the Lots, by acceptance of their respective deeds, covenant and agree as follows:

(a) In the event the improved part of the Project is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the Residences due to construction shall be permitted and that valid easements for said encroachments and the maintenance thereof shall exist.

(b) That a non-exclusive easement for support through the Common Area is appurtenant to each Lot and Residence and the Common Area is subject to such easements.

Section 5. Owners' Rights and Duties: Utilities. The rights and duties of the Owners within the project with respect to sanitary sewer and water, electricity, gas, telephone, and cable television lines and drainage facilities shall be governed by the following:

(a) Wherever sanitary sewer house connections and/or water house connection or electricity, gas, or telephone and cable television lines or drainage facilities are installed within the Project, which connections, lines or facilities, or any portion thereof, lie in or traverse any Lot or Residence owned by persons other than the Owner of the Lots or Residences served by said connections, the Owners of any Lots served by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots and Residences or to have utility companies enter upon the Lots and Residences within the Project in or upon which said connections, lines or facilities, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when the same may be necessary as set forth below;

(b) Wherever sanitary sewer house connections or electricity, gas, telephone, or cable television lines or drainage facilities are installed within the Project, which connections serve more than one Residence, the Owner of each Residence served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his Residence;

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide and make an assessment against any or all of the Owners involved, which assessment shall be collected and enforced in the manner provided by this Declaration.

Section 6 Common Area Easements. The Association shall maintain, manage and administer the Common Area and the exteriors of Residences and Lots, for the use, enjoyment and convenience of the Owners. Each Lot within the Project subject to this Declaration is hereby declared to have an easement over all of the Common Area, for the benefit of the Lots, the Owners of the Lots, and each of them, and for their respective families, guests, invitees, tenants and contract purchasers, for all of the purposes and uses hereinabove set forth, and without limiting the generality of the foregoing, for ingress and egress over and through the Common Area. Such nonexclusive easements shall be subordinated to, and shall not interfere with, exclusive easements appurtenant to Residences over the Common Area, if any.

Section 7. Party Walls and Fences.

(a) Each wall or fence which is constructed as a part of any Residence and any part of which is placed on the dividing line between Residences or Lots shall constitute a Party Wall, and each of the adjoining Owners shall equally have the right to the use of such wall or fence except that each shall have the exclusive right to the use of the interior surface of the wall or fence on his side. Neither Owner shall use any portion of the wall or fence so as to interfere with the use and enjoyment of the other Owner.

(b) In the event any such party wall is damaged or destroyed through the act of one adjoining Owner or any of his agents, guests, invitees, tenants, or members of his family (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of the aforementioned Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly existed, without cost to the adjoining Owner.

(c) In the event any such party wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining Owners, his agents, guests or family, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly existed, at their joint expense.

(d) In addition to meeting the other requirements of this Declaration and of any building code or similar regulation or ordinance, any Owner proposing to modify, make additions to or rebuild his Residence in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner and the Association.

(e) In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to binding arbitration by the Association or its designated representative.

(f) The provisions of this paragraph shall remain in full force and effect unless modified or abrogated as to any particular party wall by the agreement of all persons that have an interest therein.

(g) Upon failure of any Owner required hereby to pay for the rebuilding or repair of a party wall for a period of sixty (60) days, the Association may pay the cost thereof and assess such cost to the responsible party, which assessment shall be due and payable and become an assessment obligation of such Owner and a lien in all respects as provided in Article VI.

Section 8. Creation of Easements. Each of the easements provided for in this Declaration shall be deemed to be established upon the recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots superior to all other encumbrances applied against or in favor of any portion of the Project which is the subject of this Declaration. In furtherance of the easements provided for in this Declaration, the individual grant deeds to Lots may, but shall not be required to, set forth said easements.

Section 9. Maintenance Responsibility of Owners. Each Owner shall be responsible for the maintenance, and repair, restoration and replacement of the doors and windows enclosing his Residence, the interior of his Residence, and shall also be responsible for the maintenance and repair of the utility outlets, plumbing, electrical and heating and cooling systems servicing his Residence and located within the exterior bearing walls of said Residence, including television cable equipment and connections, and all appliances and equipment located in said Residence. Each Owner shall also be responsible for the maintenance of any patios, balcony and/or yards on his Lot, including all landscaping or planting within such patios or yards. In the event an Owner fails to maintain the interior of his Residence and the utility outlets, plumbing, electrical and heating and cooling systems thereof as provided above, or the patios, balcony or yards on his Lot, or make repairs in such manner as shall be deemed necessary in the judgment of the Board of Directors to preserve the attractive appearance and protect the value thereof, the Board shall give written notice to such Owner, stating with particularity the work of maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of thirty (30) days from the giving of such notice. In the event any Owner fails to carry out such maintenance or repair within the period specified by any notice, the Board may (but shall not be obligated to) cause such work to be done and shall assess the cost thereof to such Owner as a Reimbursement Assessment, which assessment, if *not* paid, shall become a lien upon the interest of such Owner.

Section 10. Discharge of Liens. Each Owner shall promptly discharge any lien which may hereafter become a charge against his Lot, other than the lien of any Mortgage.

Section 11. Owner's Obligation For Taxes. To the extent allowed by law, all Lots, including their rights of use in and to the Common Area, and the membership of an Owner in the Association, shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to first Mortgages under local law shall relate only to the individual Lots and not to the Planned Unit Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor against his Lot and against his personal property.

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XII  
NOTICES

Section 1. General. In each instance in which notice is to be given to the Owner of a Lot, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one or more co-owners of a Lot, or to any general partner of a partnership owning such a Lot, shall be deemed delivery to all of the co-owners or to the partnership as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such Lot shall be deemed delivery to the corporation, or such notice may be delivered by United States mail, certified or registered, postage prepaid, return receipt requested, addressed to the Owner in writing for the purpose of giving notice, or if no such address shall have been furnished, then to the street address of such Lot, and any notice so deposited in the mail within Kern County, California, shall be deemed delivered forty-eight (48) hours after such deposit. Any notice to be given to the Association may be delivered personally to any member of the Board, or delivered in such other manner as may be authorized by the Association. Any notice to be given to the Association shall be delivered by the United States mail, certified or registered, postage prepaid, return receipt requested, and any notice so deposited in the mail within Kern County, California, shall be deemed delivered forty-eight (48) hours after such deposit.

Section 2. Notification of Sale of Lot. Concurrently with the consummation of the sale of any Lot under circumstances whereby the transferee becomes an Owner thereof or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth (i) the name of the transferee and his transferor, (ii) the street address or unit number of the Lot purchased by the transferee, (iii) the transferee's mailing address, and (iv) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given by Declarant, or the Board or any agent or representative thereof shall be deemed to be duly made and given to the transferee, if duly and timely made and given to said transferee's transferor.

XIII  
RIGHTS OF LENDERS

Notwithstanding any provisions to the contrary as may be provided elsewhere in this Declaration, Lenders shall have the following rights:

Section 1. Notice to Holders of Action. A holder or insurer of a first mortgage, upon written request to the Association (such request to state the name and address of such holder or insurer and the Lot number) will be entitled to timely written notice of:

(a) Any proposed amendment of any instrument effecting a change in (1) the boundaries of any Unit, (2) the non-exclusive easement to use and enjoy the Common Area appertaining to any Lot or the liability for common expenses appertaining thereto, (3) the number of votes in this Association appertaining to any Lot, or (4) the purposes to which any Lot are restricted;

(b) Any proposed termination of the planned Unit Development regime;

(c) Any condemnation or eminent domain proceeding affecting the Project or any portion thereof;

(d) Any significant damage or destruction to the Project the cost of repairing which would exceed Dollars (\$20,000.00); and

(e) Any default under this Declaration which gives rise to a cause of action against the Owner of a Lot subject to the mortgage of such holder or insurer, where the default has not been cured in thirty (30) days.

Section 2. Assessments on Foreclosure. Any Institutional Holder of a First Mortgage who obtains title to a Lot pursuant to the remedies provided in the Mortgage, or through foreclosure of the First Mortgage, but exclusive of a deed in lieu of foreclosure, shall not be liable for any claims for unpaid assessments or charges against such Lot which accrued prior to the acquisition of title to such Lot by the Institutional Holder of the First Mortgage.

Section 3. Right of First Refusal. Any Institutional Holder of a Mortgage who comes into possession of a Lot pursuant to the remedies provided in such Mortgage, or foreclosure of the Mortgage, shall be exempt from any right of first refusal, and any right of first refusal shall not impair the rights of an Institutional Holder to:

(a) Foreclose or take title to a Lot pursuant to the remedies in the Mortgage; or

(b) Accept a deed (or assignment) in lieu of foreclosure in the event of default by the Trustor of the Mortgage; or

(c) Sell or lease a Lot acquired by the Institutional Holder,

Section 4. Required Consent of Institutional Holders. Unless at least two-thirds of the Holders of Institutional Mortgages on Lots in the Project (based on one vote for each Lot) have given their prior written approval, the Association and the Owners shall not be entitled to:

(a) Change the method of determining the obligations, assessments (whether Regular or Special),



dues or other charges which may be levied against the Owner of a Lot;

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

(c) By act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design of the Project or the upkeep of the Common Area and the exteriors of the Residences;

(d) Use hazard insurance proceeds for losses to the Project improvements for other than the repair, replacement or reconstruction of such improvements;

(e) Fail to maintain fire and extended coverage on insurable Project property, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(f) Abandon or terminate the Association, except for abandonment, partition or termination as may be provided by Law;

(g) Fail to maintain an adequate reserve fund for the replacement and maintenance of the Common Area and the exteriors of the Residences.

Section 5. Rights of Institutional Holders. All Institutional Holders of Mortgages on individual Lots shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours;

(b) Receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and

(c) Receive written notice of all meetings of the Owners of the Association and shall be entitled to designate a representative to attend all such meetings,

Section 6. Payment of Taxes and Insurance Premiums. Institutional Holders of Mortgages on Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Area, and may pay overdue premiums on hazard insurance policies or secure hazard insurance coverage upon the lapse of a policy for the Project property to be insured by the Association and the mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Section 7. Priority on Distribution of Proceeds. No Owner or any other party shall have priority over any rights of Institutional Holders of Mortgages upon individual Lots pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area property, if any, and/or the individual Lots.

Section 8. Mortgage Protection Clause, No breach of the covenants, conditions or restrictions herein contained, nor any lien created hereby, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise,

Section 9. Conflicts. In the event of any conflicts between any of the provisions of this Article and any other provisions of the Declaration, the provisions of this Article shall control.

#### XIV

#### ENFORCEMENT OF BONDED OBLIGATIONS

In the event that the Common Area within the Project has not been completed prior to the issuance of a Final Subdivision Public Report covering the Project by the Department of Real Estate of the State of California, and the Association is obligated under a bond or other arrangement (hereinafter the "Bond") to secure performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such 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 improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to over-ride such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for

such meeting, signed by Members representing five percent (5%) of the total voting power of the Association.

(c) The only Members entitled to vote at such meeting shall be the Owners other than Declarant. A vote at such meeting of a majority of voting power of such 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 name of the Association.

XV  
PARTITION

Section 1. Partition Prohibited. Each of the Owners in the Project is hereby prohibited from partitioning or in any other way severing or separating his ownership interest in a Lot or any portion of a Lot from his membership in the Association or his right of use in and to the Common Area, except upon showing that; (1) three years after damage or destruction to the Project which renders a material part thereof unfit for its use prior thereto, the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (2) that three-fourths (3/4) or more of the buildings and improvements in the Project have been destroyed or substantially damaged, and that Owners holding in the aggregate more than a fifty percent (50%) interest in all the Lots in the Project are opposed to repair or restoration of the Project, or (3) that the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in the aggregate more than a fifty percent (50%) interest in all the Lots in the Project are opposed to repair or restoration of the Project; provided, however, that if any Lot shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition as between such co-tenants.

Section 2. Power of Attorney. The Board is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interests in the Project may be had pursuant to Section 1 hereof. The power of attorney herein granted may be exercised, upon the vote or written assent of Owners holding in the aggregate more than fifty percent (50%) of the interest in all the Lots in the Project, by at least a majority of the members of the Board of Directors, who are hereby authorized to record a certificate of exercise in the Office of the County Recorder, Kern County, California, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

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GENERAL PROVISIONS.

Section 1. Enforcement. The Association, or any Owner or the successor in interest of an Owner, shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations and the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure by the Association or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Should any of the covenants contained in this Declaration be void or be or become unenforceable in law or in equity, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

Section 3. Term. Subject to the limitations set forth in section 4 of this Article, this Declaration and the covenants herein contained shall be in effect until January 1, 2034, and shall automatically be extended for successive periods of ten (10) years unless within six (6) months prior to the expiration of the initial term or any ten (10) year renewal period a written agreement executed by the then record Owners of more than three-fourths (3/4) of the Lots within the Project shall be placed on record in the Office of the County Recorder of Kern County, by the terms of which agreement the effectiveness of this Declaration is terminated or the covenants herein contained are extinguished in whole or in part as to all or any part of the property then subject hereto.

Section 4. Amendments.

(a) Subject to the rights of lenders as set forth in the Article hereof entitled "RIGHTS OF LENDERS", and subject to Paragraph (b), below, this Declaration of Covenants, Conditions and Restrictions may be amended only by the affirmative assent or vote of seventy five percent (75%) of the voting power of each class of members of the Association, (subject to the provisions of Section 4 of Article V); provided, however, that the percentage of voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. This amendment provision shall not be amended to allow amendments by the assent or vote of less than the prescribed percentage of voting power required for amendments hereof. An amendment or modification shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment or modification has been

approved as hereinabove provided, and recorded in the Official Records of Kern County, California.

(b) The consent of all Owners of Lots shall be required for any amendment of any instrument effecting a change in (1) the boundaries of any Lot, (2) the non-exclusive easement to use and enjoy the Common Areas appertaining to the Lot or the liability for common expenses appertaining to the Lot, (3) the number of votes in the Association appertaining to the Lot, or (4) the fundamental purposes to which any Lot or Common Area are restricted.

Section 5. Nonliability of Officials. To the fullest extent permitted" by law, neither the Board, any committee of the Association or any member of such Board or committee shall be liable to any Member of the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 6. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a Planned Unit Development project and for the maintenance thereof. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 7. Singular Includes Plural. Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 8. Nuisance. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Board, the Association, or any other Owner in the Project. Such remedies shall be deemed cumulative and not exclusive.

Section 9. Conflicts. In case of any conflict between this Declaration and the Articles of Incorporation or Bylaws of the Association, this Declaration shall control.

Section 10. Attorneys' Fees. In the event of any controversy or claim respecting this Declaration, or in connection with the enforcement of this Declaration, the prevailing parties shall be entitled, in addition to all expenses, costs and damages, to reasonable attorneys' fees, whether or not such controversy or claim is litigated and prosecuted to judgment.

Section 11. The Declaration. By acceptance of a deed or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for

himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby, and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners.

## XVII

### ARCHITECTURAL COMMITTEE

Section 1. Members of Committee. The Architectural Committee shall consist of three (3) members. The initial members of the Architectural Committee shall be representatives of Declarant, whose business address is 2800 28th Street, Santa Monica, California 90405. Subject to the following provisions, Declarant shall have the right and power at all time to appoint and remove a majority of the members of the Architectural Committee or to fill any vacancy of such majority until the "turn-over" date which shall be the date on which either (i) ninety percent (90%) of the Lots in the Fairway Oaks Project have been sold and the deeds recorded ("close of escrow"), or (ii) five (5) years following the date of issuance of the Final Subdivision Public Report for the Project, whichever occurs earlier. Commencing one (1) year from the date of issuance of the Final Subdivision Public Report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Committee, until the turn-over date. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Persons appointed to the Architectural Committee by the Board shall be from the Class A membership of the Association, but persons appointed to the Architectural Committee by Declarant need not be Members of the Association. The Architectural Committee shall have 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 Project.

Section 2. Review of Plans and Specifications. The Architectural Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board. No construction, alteration, addition, modification, decoration, redecoration or reconstruction of an Improvement in the Project shall be commenced or maintained,

until the plans and specifications therefor showing the nature, kind, shape, height, width, color, materials and location of the same shall have been submitted to the Architectural Committee and approved in writing by the Architectural Committee. The address for submission of such plans and specifications shall be the address of the principal place of business of the Association. The Architectural Committee shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole, that the appearance of any structure affected thereby will be in harmony with the surrounding structures, and that the construction thereof will not detract from the beauty, wholesomeness and attractiveness of the Common Area or the enjoyment thereof by the Members, and that the upkeep and maintenance thereof will not become a burden on the Association. Decisions of the Architectural Committee and the reasons therefor shall be transmitted by Architectural Committee to the applicant at the address set forth in the application for approval, within thirty (30) days after receipt by Architectural Committee. Any application submitted pursuant to this Section 2 shall be deemed approved, unless written disapproval or a request for additional information or materials by the Architectural Committee shall have been transmitted to the applicant within thirty (30) days after the date of receipt by the Architectural Committee of such application or additional information.

Section 3. Nonliability of Architectural Committee Members.

Neither Declarant, the Architectural Committee nor any member of the Architectural Committee, the Board nor their duly authorized representative, shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. Architectural Committee's approval or disapproval shall be based solely on the considerations set forth in this Article, and the Architectural Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plans or design from the standpoint of structural safety or conformance with building or other codes.

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

LEISURE INDUSTRIES, INC. a California corporation

By                   / s /                    
Terrence V, Fennessy  
Its:           President