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I N D E X

TO

[Signature]
By Authorized Signature

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FOR

THE COMMUNITY OF BERNARDO HEIGHTS

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FOR

THE COMMUNITY OF BERNARDO HEIGHTS

THIS DECLARATION is made this 29th day of September, 198C,
by GENSTAR DEVELOPMENT INC., a New York corporation (Penasquitos
Properties Division) (hereinafter referred to as "Declarant").

ARTICLE I

RECITALS

1.1 This Community Declaration is made by Declarant based
on the following facts and intentions:

A. Declarant is the Owner of that certain real
property located in the City of San Diego, County of San Diego,
State of California, which is more particularly described in
Exhibit "A."

B. Declarant intends to develop the property described
in Exhibit "A" as the initial increment of the Community by
subdividing and constructing improvements and, in conjunction
with Merchant Builders, developing residential projects within
the Community and establish certain other uses, including
commercial, professional and administrative, recreational, church
and other types of compatible uses as may be permitted by the
appropriate governmental entities. The Community is to be
established substantially in conformance with the Community
Concept Plan in increments by Annexation.

C. Declarant may add all or any part of the property
described in Exhibit "B" to the Community by Annexation and said
additional property so annexed will thereupon be developed as a
part of the Community.

D. This Community Declaration is created to benefit
the Community, to establish covenants, conditions and
restrictions regarding the use and operation of the Community and
all of the property contained therein and to provide an
organization to carry out and enforce the provisions of such
covenants, conditions and restrictions.

E. The terms defined in Exhibit "D" as they are used
in this Community Declaration shall have the meanings specified
in said Exhibit.

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ARTICLE II
THE COMMUNITY

2.1 PROPERTY SUBJECT TO RESTRICTIONS: All of the property in the Community shall be owned, held, conveyed, encumbered, used, occupied and improved subject to the easements, liens, covenants, conditions and restrictions stated in this Community Declaration. Declarant hereby declares that all of the property described in Exhibit "A" shall be subject to this Community Declaration and shall constitute the initial increment of the Community. Furthermore, pursuant to Paragraph 2.3 all or any portion of the property described on Exhibit "B" may be annexed to the Community; and, upon such annexation, the provisions of this Community Declaration shall fully apply to such annexed property. The Community Declaration is established to further a plan for subdivision, improvement and sale of all of the real property in the Community and for the purpose of enhancing the value, desirability and attractiveness of said real property and every part thereof. All of the easements, liens, restrictions, covenants, conditions and provisions hereof are equitable servitudes and shall run with the title to said real property and shall be binding on all parties having or acquiring any right, title or interest therein or thereto and shall be for the benefit of each Owner of any portion thereof and inure to the benefit of and be binding upon each successor in interest of such Owners.

2.2 LAND CLASSIFICATION: The real property within the Community shall be divided into the following land classifications, as said classifications are defined in Exhibit "D" and shown on the Community Concept Plan:

- A. Neighborhood Residential Areas
- B. Neighborhood Common Areas
- C. Community Common Areas
- D. Community Commercial Areas
- E. Community Recreation Facilities
- F. Membership Recreation Facilities and Golf Course Area.
- G. School Areas

- H. Church Sites
- I. Public Streets
- J. Private Streets

In the event that the nature or extent of the classification of any such property is changed by an amendment to the Community Concept Plan which is approved by the City, the classifications as established on any such amendment to the Community Concept Plan shall govern and supersede the foregoing classifications.

2.3 ANNEXATION OF ADDITIONAL PROPERTY: Additional property may be annexed to the Community only as specified in the following subparagraphs:

A. Declarant's Annexation Rights: Declarant may, but shall not be required to, annex all or any portion of the property described in Exhibit "B" to the Community at any time or from time to time without the vote or approval of any other Owners, the Community Association or any Neighborhood or Neighborhood Association; provided, however, that if such annexation is not effected either (i) prior to the fifth (5th) anniversary of the original issuance of the most recently issued Public Report of the State of California Department of Real Estate for a phase of a Residential Neighborhood in the Community or (ii) by December 31, 1990, then such annexation shall require the vote or written assent of two-thirds (2/3) of each class of members of the Community Association. Annexation by Declarant may be effected in increments.

B. Annexation Procedure: The annexation of any such property by Declarant shall be effected by the recordation of a Declaration of Annexation by or with the consent of Declarant describing the property to be annexed and providing for such additional covenants, conditions and restrictions on such annexed property as may be necessary to include such property in the Community and specifying that all of the covenants, conditions and restrictions of the Community Declaration shall apply to such annexed property in the same manner as if it were originally covered by the Community Declaration as part of the Community. No Declaration of Annexation shall in any event revoke or modify the limitations, restrictions and covenants established by the Community Declaration, discriminate between some owners of such property and other owners of any other property within the Community, except as otherwise provided herein, change the general common plan or scheme created by this Community Declaration, nor affect the provisions hereof or thereof as covenants running with the land or equitable servitudes. The

express desire and intention of Declarant is to establish a cohesive plan of such covenants and servitudes to be uniformly applicable to all portions of the Community, including those portions added thereto by annexation.

C. Community Common Area: Any Community Common Area within any portion of the property which is annexed shall be conveyed to the Community Association upon the annexation of any such property.

D. Rights and Obligations of Owners: After the required annexation procedures are fulfilled, all Owners in the Community shall be entitled to use of any Community Common Area in such annexed property, subject to the provisions of the Community Declaration, and Owners of such annexed property shall thereupon be subject to the Community Declaration. After each annexation, the Community Assessments shall be assessed to the annexed property with the annexed property being assessed for a proportionate share of the total Community expenses on the same basis as the other property in the Community.

E. Other Annexation of Property: Additional property adjacent to the Community which does not qualify for annexation pursuant to the terms of subparagraph A above may be annexed to the Community upon the written vote or consent of not less than two-thirds (2/3) of the total votes of the Community Association, excluding the votes of the Declarant, and written consent of the owner of such property and upon fulfillment of procedures by the owner of such property substantially similar to those set forth in Subparagraph A above.

ARTICLE III

COMMUNITY ASSOCIATION

3.1 PURPOSE AND ORGANIZATION: The Community Association is a non-profit mutual benefit corporation formed to operate and maintain the Community for the benefit of the Owners of Lots and Units in the Community. The Community Association is charged with the duties and given the powers set forth in this Article III. It was created by the Community Articles and its affairs shall be governed by the Community Articles, the Community By-Laws and this Community Declaration. In the event that the Community Association as a corporate entity is dissolved, a non-profit unincorporated association shall forthwith and without further action or notice be formed to succeed to all the rights and duties of said Association hereunder. The affairs of said unincorporated association shall be governed by the Community Articles and Community By-Laws as if they were created for the purpose of governing the affairs of an unincorporated association. Provided, however, that if there are no Annexations within six (6) years from the date of recordation of this Community Declaration whereby more than one (1) Neighborhood is established and annexed into the Community, the Community Association shall be dissolved. Its functions shall be assigned to the individual Neighborhood Association then in existence at the time of said dissolution.

3.2 MEMBERSHIP: Each Neighborhood Association established within the Community shall be a member of the Community Association. A Neighborhood Association shall become a member of the Community Association when any portion of a particular Neighborhood, as said Neighborhood is established by Declarant, is annexed into the Community. For any property annexed into the Community for which a Neighborhood Association has not yet been formed, the membership in the Community for such property shall be in Declarant.

3.3 COMMUNITY RIGHTS AND DUTIES: A member of any Neighborhood Association shall be entitled to use the Community Common Areas and Community Recreational Facilities. Such rights of use shall terminate upon the termination of membership of such Owner as a member of a Neighborhood Association or upon the termination of such Owner's ownership of property within the Community. Upon conveyance, sale or assignment of record of an Owner's interest in a Lot or Unit of property in the Community, the grantee of such Lot or Unit shall automatically succeed to the Community Rights of the selling Owner. No Owner in the Community may avoid any obligations imposed on Owners of property in the Community by this Community Declaration by non-use of Community Common Area,

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Community Recreation Facilities, Neighborhood Common Area, renunciation, non-use or abandonment of his Lot or Unit in the Community, or other act of abandonment or renunciation.

3.4 COMMUNITY VOTING RIGHTS: On matters which this Community Declaration requires the vote of members of the Community Association the following procedures shall apply:

A. Votes Per Neighborhood Association: Each Neighborhood Association shall have one (1) vote for each Lot or Unit then a part of the Neighborhood as established by the Neighborhood Declaration.

B. Votes of Declarant: For any Lots or Units owned by Declarant or Merchant Builders which are annexed into the Community but for which a Neighborhood Association has not been formed there shall be three (3) votes for each Lot and/or Unit in said property so annexed to the Community. Provided, however, that said vote shall become one (1) vote per Lot and/or Unit ten (10) years from the date of issuance of the first Final Subdivision Public Report for a Residential Neighborhood in the Community, or upon the establishment of a Neighborhood Association for such Lots and/or Units or annexation of such Lots and/or Units into a Neighborhood Association.

C. Votes for Unsubdivided Neighborhood Areas: For any Neighborhood or portion thereof annexed into the Community by Declarant which is not divided by a final subdivision map or Condominium Plan into Residential Lots or Units, there shall be three (3) votes for each Lot and/or Unit per acre approved under the Planned Residential Development Permit for the property multiplied by the number of acres of the property so annexed (or such similar permit as may be established hereafter by the City). In the event that there is no such permit then in effect for any annexed property, then the votes of Declarant shall be based on the density established for the annexed property pursuant to the Community Concept Plan then in effect. Provided, however, that for any such unsubdivided property, said vote shall become one (1) vote per approved Lot and/or Unit per acre, ten (10) years from the date of issuance of the first Final Subdivision Public Report for a Residential Neighborhood in the Community.

D. Voting Procedures: The votes of each Neighborhood Association shall be cast in writing at a meeting called for the purpose of such voting. The President of each Neighborhood Association shall cast the costs allocated to that particular Association. Each such President shall be entitled to designate a substitute Neighborhood Board Director to act in his absence. Except for votes allocated to the Declarant or a Merchant Builder, the manner in which any particular Neighborhood

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Association casts its vote on a particular issue shall be determined by the Neighborhood Board. The votes attributed to Declarant or a Merchant Builder for any properties not part of a Neighborhood Association shall be cast in writing by a duly authorized representative of Declarant.

E. Special Voting Procedures: Until seventy-five percent (75%) of the Lots or Units in a Neighborhood have been sold to Owners other than Declarant or a Merchant Builder, special voting procedures shall be followed on all issues, other than election of Community Directors, which require approval of a percentage of the Community Voting Rights. The votes of such Owners other than Declarant or Merchant Builder on such issue shall be separately determined by the Neighborhood Association. As so determined, such votes shall be separately cast by the Neighborhood Association President. For any such issue to be approved, it must be approved by the required percentage of the Community Voting Rights, including a separate determination of approval of the issue by the required percentage of those Owners other than Declarant or Merchant Builder in all those Neighborhoods subject to this special procedure combined with the Community Voting Rights of those Neighborhood Associations for Neighborhoods in which seventy-five percent (75%) of the Lots or Units have been sold to Owners other than Declarant or Merchant Builders.

3.5 THE COMMUNITY BOARD: The Community Board shall undertake and carry out all of the powers and duties of the Community Association and the management and conduct of the affairs thereof as provided in the Community Declaration, except those acts which are expressly reserved to the vote of the Community membership in this Declaration. The Community Board may delegate its powers and duties to such committees, officers, Neighborhood or professional managers as the Community Board deems appropriate, subject at all times to the direction and control of said Board. The Community Board shall conduct its affairs as provided in the Community By-Laws.

A. Make-up of Board: The Community Board shall initially consist of three (3) Community Directors. Upon annexation of any additional Residential Neighborhoods such that the number of Residential Lots and/or Units aggregates a total of 750 Lots and Units, then the Community Board shall be reconstituted to increase the Community Board to five (5) Community Directors. Thereafter, upon the addition of any additional increment or increments of Lots and/or Units to the Community such that the Community consists of an aggregate of 1,500 or more Lots or Units, the Community Board shall be increased to a maximum of seven (7) Community Directors.

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B. Procedure for Selection: The Community Directors shall be elected by the Presidents of each of the Neighborhood Associations acting as the elector of each respective Neighborhood in the Community. Each such President shall cast one vote for each Lot or Unit not owned by Declarant or a Merchant Builder in the Neighborhood he represents and three (3) votes for each Lot or Unit in said Neighborhood owned by Declarant or Merchant Builder. For any property in a Neighborhood which has not been divided into residential Lots pursuant to a Final Subdivision Map, the votes allocated for such property to Declarant or a Merchant Builder shall be as set forth in Section 3.4. Except for representatives elected by or through Declarant, the representatives on the Community Board must be an Owner within the Community, but may be an employee or officer of a corporate Owner.

At least thirty (30) days prior to any election of any Community Director, the Community Association shall cause a Notice of Election to be sent to each Neighborhood Board. Each Neighborhood Board shall be entitled to nominate candidates for any open position on the Community Board by written notice to the Community Board. Except for representatives of Declarant, however, no more than one (1) Community Director from any particular Neighborhood shall be elected or shall otherwise serve on the Community Board at the same time. Nominations shall be closed two weeks after the date of the Notice of Election from the Community Association. The Community Association shall thereupon cause a slate of nominees to be circulated to each Neighborhood Board. Each Neighborhood Board shall thereupon instruct its President, as the elector of such Neighborhood, for whom the votes of the Neighborhood shall be cast. Where Lots or Units in a Neighborhood are owned by Declarant or a Merchant Builder, the President shall cast said votes as specified by the Declarant or Merchant Builder. The Declarant and Merchant Builder shall be entitled to three (3) votes for each Lot or Unit which they own in the Neighborhood. For any Neighborhood, the right of such three votes for each Lot or Unit shall terminate upon sale of seventy-five percent (75%) of the Lots or Units in such Neighborhood, as such Lots or Units are shown on the Community Concept Plan, to Owners other than Declarant or Merchant Builder.

In the event that a Neighborhood has not been subdivided into Lots or Units and is owned by Declarant, or a Merchant Builder, and no Neighborhood Association has been formed, then the said Owner of said Neighborhood shall select an elector to represent said Neighborhood at meetings convened for selection of the representatives to the Community Board and shall cast its votes for such property as allocated under Section 3.4 hereof.

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C. Initial Board: The initial Community Board shall be selected by Declarant and shall hold office until six (6) months after transfer and conveyance of the first residential Lot or Units in the Community to an Owner other than Declarant or a Merchant Builder, or until fifty-one percent (51%) of all residential Lots or Units in the Community, which are subject to the first Final Subdivision Public Report issued by the Department of Real Estate, have been sold and conveyed to purchasers other than Declarant or Merchant Builders, whichever first occurs. Within forty-five (45) days of the occurrence of said event, then a special election for a new Community Board shall be held pursuant to the procedures established in this Paragraph 3.5. Annually thereafter, on a date established by the current Community Board, an election of a new Community Board by the procedures herein stated shall be held.

D. Owners Rights: In any election of Community Directors, so long as the majority of the voting power resides in Declarant, the Community Board shall adopt special procedures to assure that at least twenty percent (20%) of the Community Directors are elected solely by the votes of the representatives on the Neighborhood Boards elected solely by vote of Neighborhood Owners other than Declarant or Merchant Builders. A representative to the Community Board elected pursuant to the procedures established under this provision may be removed prior to expiration of his term of office only by a vote of at least a simple majority of representatives of Neighborhoods, excluding those elected exclusively by vote of Declarant or Merchant Builders.

E. Liability of Board Members: No Community Director shall be personally liable to any of the Community members or to any other person or entity including Declarant or any Neighborhood Association, for any error or omission of the Community Association, Community Board representatives, its agents and employees, or the Architectural Committee, provided that such Board representative has, upon the basis of such information as may be possessed by him, acted in good faith.

3.6 POWERS OF COMMUNITY ASSOCIATION: The Community Association shall have all of the powers of a non-profit mutual benefit corporation organized under the laws of the State of California in operating for the benefit of its Members subject only to the limitations expressly set forth in the Community Articles, Community By-Laws and this Community Declaration. The Community Association shall have the power to do any and all acts which are authorized, required or permitted under this Community Declaration and to undertake any and all acts which may be reasonable and necessary for, or incidental to the exercise of any express powers granted the Community Association for the

peace, health, comfort, safety or general welfare of the Community. Except as expressly provided herein, the powers and duties of the Community Association shall be exclusively performed by the Community Association. As particularly provided in Paragraphs 4.10 and 6.2 the Community Association may supersede the actions or decisions of any Neighborhood Association in matters regarding the maintenance and overall operation of any such Project. In absence of action by the Community Association, the various Neighborhood Associations shall be entitled to perform the functions designated herein for an individual Neighborhood Association until the Community Association undertakes such function or activity. Without limiting the generality of the foregoing, the Community Association shall have the following powers and authority, which unless expressly provided otherwise shall be undertaken by the Community Board, or such committees, entities, persons or companies expressly designated by the Community Board to exercise such powers or authority:

A. Performance of Duties: Undertake all of the express duties required under Paragraph 3.7 to be done by the Community Association;

B. Right of Entry and Enforcement: The Community Board and its agents and representatives shall have the power and right to enter upon any Lot or Unit in a Neighborhood without liability to any Owner, and Neighborhood Common Area upon at least twenty-four (24) hours prior notice, except in emergencies, for the purpose of enforcing any of the provisions of these restrictions, or upon satisfaction of the procedures under Paragraph 6.2, for the purpose of maintaining and repairing the improvements located on said Lot or Unit. The Community Association shall also have the power and authority from time to time in its own name, on its own behalf or on the behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Community Declaration and to enforce, by mandatory injunction or otherwise, all of the provisions of this Declaration. The costs of any such action or suit, including reasonable attorneys' fees shall be paid to the prevailing party.

C. Employment of Manager: The Community Board shall have the power to employ the services of a manager or other employee, or a professional manager or management company, subject to the direction and control of said Board, to manage and carry out the affairs of the Community Association, and, to the extent not inconsistent with the laws of the State of California and upon such conditions as are otherwise deemed advisable by the Board, to delegate to the manager any of its powers; provided, however, that any contract with such professional manager or

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management company, and the compensation to be paid, for a term greater than one (1) year must be approved by the Neighborhood Boards representing at least fifty-one percent (51%) of the Community Voting Rights. In no event shall any management agreement be for a term greater than three (3) years and said agreement shall provide for termination for cause on a maximum of ninety (90) days written notice.

D. Services: The Community Board shall have the power to provide for, or engage the services of others for the maintenance, protection and preservation of the Community Common Areas, including grounds keepers, painters, plumbers and other maintenance personnel, as the nature and character of such Community Common Areas may require, and including such necessary personnel as the nature and character of the recreational facilities may require; provided, however, that no contract for such services shall be for a duration of more than one (1) year, except with the approval of the Neighborhood Boards representing at least a majority of the Community Voting Rights and in no event for a term greater than three (3) years. Said contract shall provide for termination for cause on a maximum of ninety (90) days written notice. The Community Board shall have the power to retain such legal and accounting services as may be required by the Community Board for operation of the Community Association or enforcement of this Community Declaration.

E. Other Property: The Community Board shall have the power to acquire and hold, as trustee for the benefit of its Members, tangible and intangible personal property and to dispose of the same by sale or otherwise. No such personal property of a value greater than five percent (5%) of the budgeted gross expenses of the Community Association shall be acquired by or disposed of by the Community Association without written approval of the Neighborhood Boards representing at least fifty-one percent (51%) of the Community Voting Rights.

F. Mergers: The Community Association shall have the power to the extent permitted by law, to participate in mergers and consolidations with other non-profit corporations organized for the same purposes as the Association, provided that any such merger or consolidation shall have the approval by affirmative vote or written consent of the Neighborhood Boards representing at least seventy-five percent (75%) of the Community Voting Rights.

G. Easements and Rights of Way: The Community Association shall have the power to grant and convey to any third party easements, licenses for use and rights of way, in, on, over or under any Common Area conveyed, or otherwise, transferred to the Community Association or under its jurisdiction, upon the

affirmative vote or written consent of the Neighborhood Boards representing at least seventy-five percent (75%) of the Community Voting Rights.

H. Dedication: The Community Association shall have the power to dedicate any of its property to an appropriate public authority or utility company for public use, provided that any such dedication shall have the approval either by affirmative vote or written consent of the Neighborhood Boards representing at least seventy-five percent (75%) of the Community Voting Rights.

I. Power to Resolve Disputes: Each Community Member and Neighborhood Association hereby vests in and irrevocably delegates to the Community Board or its duly authorized representative the right and power to negotiate with, bring all actions at law or equity, and enter into settlement agreements with Declarant concerning any matter involving liability of or alleged liability of Declarant to the Community Association or the Neighborhood Associations or any Community Member, related to the construction or operation of Community facilities and improvements. Representatives to the Community Board selected by Neighborhood Boards or other electors whose vote is controlled by Declarant shall be excluded from voting on any settlement effected pursuant to this provision.

J. Use Fees: The Community Board shall have the power to charge reasonable use fees to Owners and others for any recreation facility situated upon the Community Common Area, but in no event shall any such fees be charged for the use of the streets, sidewalks or circulation system of the Community.

3.7 DUTIES OF COMMUNITY ASSOCIATION: The Community Association shall have the duty and obligation to perform the acts and functions stated in this provision subject to and in accordance with this Community Declaration.

A. Member: The Community Association shall accept all Neighborhood Associations entitled under Paragraph 3.2 as Members.

B. Annual Meeting: There shall be annual meetings of the Presidents of Neighborhood Associations and other qualified representatives of each Owner of other Residential property in the Community for the purpose of selecting representatives to the Community Board, as required under Paragraph 3.5. The meetings of such representatives shall be held within ninety (90) days after the end of each calendar year and in accordance with the Community By-Laws.

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C. Community Standards: The Community Association shall establish and maintain overall quality standards for the Community compatible with Declarant's development plans. The inherent powers and duties emanating therefrom may be delegated by the Community Board to the Community Architectural Committee.

D. Community Assessments and Funds: The Community Association shall establish the Community Funds, determine, levy, collect and enforce all Community Assessments and cause to be prepared all budgets and financial statements, all pursuant to Article IV.

E. Community Common Area Maintenance: The Community Association shall maintain, replace, repair, paint and landscape the Community Common Area and other property and interest owned by the Community Association, and acquire, maintain and replace such furnishings and equipment as the Community Board shall determine proper. The Community Association shall additionally take all steps necessary and proper to control erosion and otherwise maintain slope areas within the Community Common Area. The Community Association shall landscape, irrigate, and otherwise maintain the landscaped areas which are adjacent to, or which are median strips a part of, dedicated major thoroughfares owned by the City as if such areas were a part of the Community Common Area; provided, however, that any irrigation of such areas shall take place only during night and early morning hours.

F. Operation of Community Common Area Facilities: The Community Association shall operate and cause to be operated the facilities situated on the Community Common Area and the Community Board shall periodically review the nature and scope of the operations of the Community Association to assure such operations are in satisfactory compliance with the requirements of the Community Declaration and the Community By-Laws.

G. Review of Neighborhood Operations: The Community Association shall periodically review the operation of the Neighborhood Associations and the maintenance and repair of the property within the Neighborhoods. As provided in Paragraph 6.2, the Community Association may take such steps as the Community Board deems appropriate to assure that the operation of the Neighborhoods substantially complies with the standards established for the Community.

H. Insurance: The Community Association shall provide insurance for the Community Common Areas, or other interests owned by the Community Association, including:

(1) A policy or policies of fire insurance, with extended coverage endorsement; including but without limitation, insurance against theft, vandalism, and malicious mischief, for any improvements on the Community Common Area to the highest insurable value as can be reasonably obtained by the Community Board and such other fire and casualty insurance as the Community Board determines necessary for adequate protection of the Community.

(2) A policy or policies insuring the Community Board, the Community Association, the Community Members, the Community Association's employees and Neighborhood Boards against any liability to the public or Community Members, incident to the ownership and use of the Community Common Area and any other property or interest owned by the Community Association, and including the personal liability exposure of the Community Members with respect to such property. Limits of liability under such insurance shall not be less than TWO MILLION DOLLARS (\$2,000,000.00) for any one person insured in any one accident, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for property damage for each occurrence (such limits and coverage to be reviewed at least annually by the Community Board and increased in its discretion). Said policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement wherein the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her or their action against other named insureds.

(3) Errors and omissions insurance covering the Community Board, and each Community Director and each and any officer of the Community Association.

(4) Worker's Compensation Insurance to the extent necessary to comply with any applicable laws.

(5) Such other insurance as may be reasonably required to qualify the Community or any part thereof for permanent financing through the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, or other similar entities purchasing or granting mortgages on improved Lots.

(6) Such other insurance as the Community Board determines as reasonable and appropriate to protect the Community Association and its members. Without a vote of a majority of the members other than Declarant, no prepaid casualty and/or liability insurance policies shall exceed one (1) year in duration; provided that such policies may have terms of up to three (3) years if such policy or policies provide for short rate cancellation by the insured.

I. Fidelity Bond: The Community Association shall require that appropriate fidelity bonds be provided protecting the Community Association for any Community Director, employees, managers or other such persons handling monies and accounts of said Association.

J. Liens and Charges: The Community Association shall pay any amount necessary to discharge any lien or encumbrance upon the Community Common Area, or any other property or interest of the Community Association. Where one or more Owners are jointly responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Community Association by reason of said lien or liens shall be specially assessed to said Owner(s).

K. Community Rules: The Community Association shall adopt such rules as the Community Board deems reasonable and appropriate and enforce the same, as provided in Section 3.8.

L. Community Safety: The Community Association may provide for such services for the protection and safety of the Community Common Areas as the Community Board deems reasonable and appropriate; including, but not limited to, security guards and patrols, electronic security devices and equipment and other related security services, equipment and material.

M. Circulation System: The Community Association shall control, operate, maintain and regulate the pedestrian and bicycle circulation system of the Community whether located on Community Common Area or Neighborhood Common Area in a manner that will facilitate and encourage the use thereof by all Community Members.

N. Utilities: The Community Association shall obtain all utility services necessary or desirable for the benefit of the Community Common Area; including, but not limited to, water, gas, electricity, telephone, community communications, refuse collection and sewage disposal.

O. Recreation Facilities: The Community Association shall accept, maintain and operate such Community Recreation Facilities as Declarant may from time to time convey to the Community Association.

P. Enforcement of Bonded Obligations: When Community Common Area improvements have not been completed prior to the issuance of the first final public report for any Residential Neighborhood and the Community Association is obliged under a bond or other arrangement (hereafter "Bond") to secure performance of the commitment of Declarant to complete the

improvements, the following provisions relative to the initiation of action to enforce the obligations of the Declarant and the surety under the bond shall pertain:

(1) The Community Board shall consider and vote on the question of action by the Community Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvement in the Planned Construction Statement appended to the Bond. If the Community Association has given an extension in writing for the completion of any Community Common Area improvements, the Community Board shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of any such extension.

(2) If the Community Board decides not to or fails to initiate enforcement action, notice shall be given to all Owners in the Community of such decision and there shall be a special meeting of all the Owners in the Community for the purpose of voting to override a decision by the Community Board not to initiate action to enforce the obligations under the Bond or on the failure of the Community Board to consider and vote on the question. The meeting shall be required to be held not less than fifteen (15) days nor more than forty-five (45) days after receipt by the Community Board of a petition for such a meeting signed by Owners representing not less than five percent (5%) of the Owners in the Community.

(3) There shall be a vote by the Owners in the Community other than the Declarant at the special meeting called for the purpose set forth in (2) above.

(4) A vote of a majority of the Owners in the Community other than the Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Community Association and the Community Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Community Association.

3.8 COMMUNITY RULES: The Community Board may from time to time, subject to the Community Declaration, adopt rules and regulations pertaining to the management, operation and use of facilities, improvements or property within the Community Common Area including, but not limited to, recreation facilities, waterways and the sidewalks and circulation system in the Community, minimum standards of maintenance of Common Areas, Lots and Units within a Project, traffic and parking restrictions, and any other subject within the jurisdiction of the Community

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Association. A copy of such rules as they may from time to time be adopted, amended or repealed by the Community Board shall be mailed or otherwise delivered to each Community Member. No rules may be adopted which materially affect the rights, privileges, or preferences of any Owner as specifically set forth in the Community Declaration.

3.9 ENFORCEMENT OF RESTRICTIONS AND RULES: In the event of a breach of any of this Community Declaration or any of the Rules by any Owner of property in the Community, his family, guests, employees, invitees, licensees, or tenants, the Community Board, for and on behalf of all other Owners, shall enforce the obligations of each Owner to obey such Rules or Restrictions in any manner provided by law or in equity, including, but not limited to, appropriate hiring of legal counsel, the pursuing of legal action, or suspension of the Owner's right to use the Community Common facilities; provided, however, such suspension may not be for a period in excess of thirty (30) days, after notice and hearing as herein provided, for each infraction. In addition to the other remedies herein set forth, the Community Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as herein provided, in a reasonable amount for each such violation and the payment of such fine may be enforced in the same manner as set forth in Article IV hereof. Prior to reaching a decision to impose any penalty provided herein for breach of any rules enacted hereunder or restrictions contained in these Restrictions, the Community Board shall send written notice to the Owner specifying the nature of the infraction and provide an opportunity to the Owner to a hearing before the Community Board regarding such infraction and the penalty to be imposed. Said notice shall be given at least fifteen (15) days prior to said hearing. In the event that said Board determines that said infraction has occurred, it may impose a penalty to become effective not less than five (5) days after said hearing. Any such determination of said Board shall be final. In the event legal counsel is retained or legal action is instituted by the Community Board pursuant to this Paragraph, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs, and reasonable attorneys' fees. The Community Board may establish a hearing committee and delegate thereto all of the power, authority and responsibility for holding any hearings and determinations required in this provision.

Notwithstanding anything to the contrary herein contained, neither the Community Board nor the Community Association members shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot or Unit, including access thereto over and across the Common Areas, on account of such Owner's failure to comply with

the provisions of this Community Declaration, the Community By-Laws or any Rules adopted by the Community Board or the Community Association relating to the operation of the Community Common Area or Common Area facilities, except when such loss or forfeiture is the result of a judgment of a court or a decision arising out of arbitration or on account of a foreclosure or under the power of sale herein granted for failure of the Owner to pay the assessments levied pursuant to the provisions hereof.

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ARTICLE IV

COMMUNITY FUNDS AND ASSESSMENTS

4.1 COMMUNITY FUNDS: The Community Association shall establish and maintain a Maintenance and Operation Fund into which the Community Board shall deposit Regular Community Assessments. The Community Association shall also establish and maintain such other funds as the Community Board deems appropriate for deposit and disbursement of other assessments as the Community Board may from time to time establish. All of said funds are generally referred to herein as the Community Funds. The Community Board shall establish and collect all Community Assessments and where necessary enforce the liens therefor as provided in this Article.

4.2 PURPOSE OF COMMUNITY ASSESSMENTS: The Community Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the Owners, tenants, and other authorized users of the Community and for the improvements, maintenance and operation of the Community Common Area, including the facilities located thereon, thereby preserving and enhancing the value of the Community as a whole and thus benefiting the entire Community.

4.3 NATURE OF COMMUNITY ASSESSMENTS: The Community Board shall establish the following Community Assessments, each of which shall be used only for the purposes specified in this provision:

A. Regular Community Assessments: The Regular Community Assessments shall be an annual assessment fixed and levied by the Community Board based upon the estimated costs of operation of the Community Association, and the accomplishment of its purposes, performance of its duties and the exercise of its powers that benefit the entire Community, as more particularly set forth in Paragraph 4.5.

B. Reconstruction Community Assessments: Reconstruction Community Assessments may be levied by the Community Board under the conditions and in the manner specified in Article IX.

C. Capital Improvement Community Assessments: Capital Improvement Community Assessments may be levied by the Community Association in any Assessment year, applicable to that year only for the purpose of defraying in whole or in part the cost of any construction of a capital improvement on the Community Common Area including, but not limited to, recreation facilities,

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outbuildings, storage or office facilities, fences, walkways, fixtures and personal property related thereto, provided that any Capital Improvement Community Assessment aggregating in excess of five percent (5%) of the gross of all other Community Assessments budgeted for that fiscal year shall have the vote or written assent of the Neighborhood Boards representing at least fifty-one percent (51%) of the Community Voting Rights. Capital Improvement Community Assessments shall be assessed and shall be allocated to Owners in the same manner as Regular Community Assessments.

D. Special Community Assessments: Special Community Assessments may be levied at any time during any fiscal year if the Regular Community Assessments prove inadequate for any reason, including nonpayment of any owner's share thereof. No such Special Community Assessment shall exceed five percent (5%) of the gross expenses budgeted by the Community Association for the fiscal year without the vote or written assent of the Neighborhood Boards representing at least fifty-one percent (51%) of the Community Voting Rights. Special Community Assessments shall be allocated in the same manner as Regular Community Assessments.

E. Enforcement Community Assessments: The Community Association may levy an Enforcement Community Assessment against any Owner for violation of any of the provisions of the Community Declaration or for violations of any of the Community By-Laws or Community Rules duly adopted by the Community Association covering the use of any of the Community. The Community Board shall have the authority to adopt a reasonable schedule of assessments for any violation of the Community Declaration, Community Articles, Community By-Laws and/or Community Rules. If after notice and a hearing as required by the By-Laws the Owner fails to cure or continues such violation, the Community Association may impose an additional fine each time the violation is repeated, and may assess such Owner and enforce the Enforcement Community Assessment as herein provided for nonpayment of a Community Assessment. A hearing committee may be established by the Community Board to administer the foregoing.

F. Single Benefit Community Assessment: The Community Board may establish a Single Benefit Community Assessment for reconstruction, capital improvement, extraordinary maintenance, or any other cost or expense not otherwise provided for in these Community Restrictions which will benefit less than all of the Community Members due to restrictions on the use or benefit of such assessments to individual Neighborhood or Neighborhoods. Such a Single Benefit Community Assessment may be imposed only by a vote of eighty percent (80%) of the representatives on the Community Board and must be ratified by a vote of eighty percent

(80%) of the Neighborhood Boards in the Community within ninety (90) days of the vote of the Community Board. Each Single Benefit Community Assessment shall be segregated in the Community funds solely to the Neighborhoods which solely derive the benefit therefrom. In the event that the Community Association obtains income directly related to an item which has been assessed as a Single Benefit Community Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Community Assessments. Whenever the Community Association performs any service or accomplishes any item of repair or maintenance which it is the duty of a Neighborhood Association or an Owner to accomplish, but which has not been accomplished by the Neighborhood Association or Owner, or whenever the Community Association determines to preempt the performance of a Neighborhood Association or a specific Owner of a given act of maintenance or repair, the Community Association shall specifically charge the cost thereof to the Owner for whom such work was done, or the Neighborhood for which such work was done, as the case may be, and shall include such additional cost as a Single Benefit Community Assessment for such Community Members or Neighborhood Association. Any Single Benefit Community Assessment charged to a Neighborhood shall be allocated among the Neighborhood Owners in the same manner as the Neighborhood Regular Assessments are allocated in the Neighborhood Restrictions.

4.4 ALLOCATION OF ASSESSMENTS TO LOTS OR UNITS: The Community Assessments established in Paragraph 4.3 and to be levied pursuant to Paragraph 4.5 shall be allocated to each assessable Lot or Unit as follows:

A. Regular Community Assessments: The Regular Community Assessments shall be established as two (2) elements. One element shall be the cost of landscape maintenance of major slopes and open space in the Community (the "Slope Maintenance" element). The other element of the Regular Community Assessment shall be the balance of the maintenance and operation budget of the Community Association, including, but not limited to, parkway and median maintenance, maintenance and operation of Community recreation facilities, administration and overhead and capital replacement reserves. Except for the Slope Maintenance element, the Regular Community Assessments shall be allocated equally to each Lot or Unit in the Community. The Slope Maintenance element of the Regular Community Assessments shall be allocated to each Neighborhood in the Community on a comparative gross acreage basis. To establish the proportionate amount of the total of the Slope Maintenance element for each Neighborhood, at the commencement of each fiscal year the gross acreage of each such Neighborhood shall be divided by the gross acreage of all Neighborhoods in the Community. For each Neighborhood divided

into Lots or Units, said proportionate share of the Slope Maintenance element for such Neighborhood shall be allocated equally to each Lot or Unit in such Neighborhood unless the Neighborhood Declaration provides otherwise.

B. Other Assessments: Reconstruction Community Assessments, Capital Improvement Community Assessments and Special Community Assessments shall be allocated in the same manner as Regular Community Assessments. Enforcement Community Assessments and Single Benefit Community Assessments shall be levied directly to the individual Lots, Units or Neighborhoods as specified in Paragraph 4.3.

4.5 BUDGET OF COMMUNITY EXPENSES: The Community Board shall prepare or cause to be prepared for each fiscal year a budget of the total operating expenses of the Community Association. Said budget shall contain estimates of all expenses of the Community Association determined on the basis of the actual services to be undertaken by the Community Association and the projected operating costs for each Community facility which is or will be operational during any part of the fiscal year. The budget shall include reserves for major repairs and replacement for each operational Community facility and improvements located on the Community Common Area and a reserve for unpaid Community Assessments. The budget shall be completed within sixty (60) days prior to the beginning of each fiscal year. The budget for the initial fiscal year shall be prorated for the balance of the year remaining. The Community Board shall assess the total operating expenses determined by the budget to all assessable Owners as the Regular Community Assessment, allocated as specified in Paragraph 4.4A. The Regular Community Assessment for any given year shall not be more than twenty percent (20%) greater per Lot or Unit than the Regular Community Assessments per Lot or Unit for the immediately preceding fiscal year, unless prior vote or written assent of the Neighborhood Boards representing at least fifty-one percent (51%) of the Community Voting Rights.

4.6 LEVY OF COMMUNITY ASSESSMENTS: Community Assessments shall be levied and commence according to the following procedures:

A. Commencement of Regular Community Assessments: Regular Community Assessments shall commence as to all Lots or Units in the Community on the first day of the month following the closing of the first sale of any Lot or Unit in any Neighborhood in the Community to an Owner other than Declarant or a Merchant Builder. As to any property which is then annexed into the Community, the Regular Community Assessment shall commence as to all of such annexed property upon the first day of

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the first month following the closing of the sale of the first Lot or Unit in such Annexation Property.

B. Annual Levy of Assessment: The Community Board shall fix the amount of the Regular Community Assessment against each Lot or Unit at least sixty (60) days in advance of each annual Community Assessment period. Written notice of the Regular Community Assessment shall be sent to every Owner subject thereto at least sixty (60) days prior to its effective date. Unless expressly provided otherwise by the Community Board, each Regular Community Assessment shall be payable in twelve equal monthly installments, the first of which installments shall be due and payable on the first day of the first month of each fiscal year.

C. Other Assessments: Subject to the procedures established in Paragraph 4.3, all other assessments shall be fixed at such times and in such amounts as the Community Board deems appropriate, and the Community Members shall be given reasonable notice thereof. The due dates for such other Community Assessments shall be established by the Community Board.

D. Certificate of Payment: The Community Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Community Association setting forth whether the Community Assessments on a specified Lot have been paid.

E. No Offsets: All Community Assessments shall be payable in the amounts specified by the particular Community Assessment and no offsets against such amounts shall be permitted for any reasons, including, without limitation, a claim that the Community Association is not properly exercising its duties of maintenance, operation or enforcement.

F. Community Assessment Rolls: The Community Association shall maintain and revise annually, an Assessment Roll for every Community Member reflecting the Lots or Units owned, the Neighborhood in which the Lot or Unit is located, and other data necessary to levy the Community Assessments herein provided for on the Community Members. The Assessment Rolls shall segregate the Community Members by Neighborhood and class, facilitating the imposition of the various Community Assessments herein provided for. Each Neighborhood Board shall supply the Community Association with the Neighborhood Assessment Rolls and all amendments or revisions thereto on a regular basis. If any Neighborhood fails to so furnish such Neighborhood Assessment Rolls, the Community Board shall be entitled to establish the said Rolls for such Neighborhood and charge the costs therefor to each Lot or Unit in the Neighborhood as a Special Benefit

Community Assessments.

G. Transfer of Property: After transfer or sale of property in the Community, the selling Owner or Owners shall not be liable for any Community Assessment levied on the property after the date of such transfer of ownership and written notice of such transfer is delivered to the Community Association. The selling Owner shall still be responsible for all assessments and charges levied on the property prior to any such transfer.

4.7 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS: The Declarant, for each Lot or Unit (excluding Community Common Area and Neighborhood Common Area) owned within the Community, hereby covenants, and each Owner of any Lot or Unit within the Community, including Merchant Builders, 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 Community Association the Community Assessments. The lien for the first Regular Community Assessment shall attach as of the commencement of such Community Assessment as hereinabove provided. A lien shall attach against each assessed Lot or Unit for any other Community Assessment ten (10) days after such other Community assessment is fixed by the Community Board. All of the Community Assessments, together with interest, costs, and reasonable attorneys' fees shall be charged on the land and shall be a continuing lien upon the Lot or Unit against which each Community Assessment is made. Each Community Assessment together with interest at ten percent (10%) per annum, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot or Unit at the time when the Community Assessment became due and payable. Upon transfer of title of any property in the Community, the Community Association shall be given written notice of any such transfer. Thereafter, the personal obligation for delinquent Community Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

✓ 4.8 EFFECT OF NON-PAYMENT OF COMMUNITY ASSESSMENTS - REMEDIES OF COMMUNITY ASSOCIATION: Any Community Assessments which are not paid when due shall be delinquent. If any Community Assessment is not paid when due, the Community Assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum. In the event of a default or defaults in payment of any Community Assessment and in addition to any other remedies herein or by law provided, the Community Association may enforce each such obligation as follows:

A. By suit or suits at law to enforce such Community Assessment obligation. Any judgment rendered in any such action shall include a sum for reasonable attorneys' fees in such amount that the Court may adjudge against such defaulting Owner. Upon full satisfaction of any such judgment, it shall be the duty of the Community Association by any authorized officer thereof to execute and deliver to the judgment debtor an appropriate satisfaction thereof.

B. Within thirty (30) days after the delinquency of any Community Assessment, the Community Association shall give a notice to the defaulting Owner which said notice shall state the date of the delinquency, the amount of the delinquency, and the interest charge for such delinquency, and make a demand for payment thereof. If such delinquency and interest is not paid within ten (10) days after delivery of such notice, the Community Association may elect to file a claim of lien against the Lot or Unit of such delinquent Owner. Such claim of lien shall state (1) the name of the delinquent Owner or reputed Owner; (2) a description of the Lot or Unit against which the claim of lien is made; (3) the amount claimed to be due and owing; (4) that the claim of lien is made by the Community Association pursuant to the terms of the Community Declaration; and, (5) that a lien is claimed against said described Lot or Unit in an amount equal to the amount of the stated delinquency, plus interest and attorneys' fees. Any such claim of lien shall be signed and acknowledged by an authorized officer of the Community Association, and shall be recorded in the Office of the Recorder of the County of San Diego, State of California. Each delinquency may constitute a separate basis for a claim of lien. Any such claim of lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a mortgage under power of sale. Any such sale provided for above shall be conducted in accordance with the provisions of Section 2924, 2924(b) and 2924(c) of the Civil Code of the State of California, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. In the event such foreclosure is by an action in Court, reasonable attorneys' fees shall be allowed. In the event the foreclosure is conducted as in the case of a mortgage under power of sale, any authorized officer of the Community Association shall be deemed to be acting as would an agent of the Mortgagee and shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. A certificate of sale shall be executed and acknowledged by any authorized officer of the Community Association or by the person conducting the sale. A deed upon foreclosure shall be executed in like manner.

The Community Association through its duly authorized agent, shall have the power to bid on the Lot or Unit if necessary using Community Association funds, or funds borrowed for such purpose, at the sale and to acquire and hold, lease, mortgage and convey the same.

C. Upon the timely curing of any default for which a notice of claim of lien was filed by the Community Association, officers of the Community Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by the Community Association, to cover the cost of preparing and filing or recording such release together with a payment of such other costs, interest or fees as shall have been incurred.

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

E. Each Owner hereby vests in and irrevocably delegates to the Community Board or its duly authorized representatives the right and power to bring all actions at law or equity, and lien foreclosures, whether judicially or by power of sale, or otherwise, against any Community Member for the collection of delinquent Community Assessments in accordance herewith, and hereby expressly waives any objection to the enforcement in accordance with this Community Declaration of the obligation to pay Community Assessments as set forth in this Community Declaration.

4.9 COLLECTION OF COMMUNITY ASSESSMENT: At the option of the Community Board, the Community Board may delegate the collection and administration of the proportionate amount of the Community Assessment allocable to any particular Neighborhood to the Neighborhood Association for that Neighborhood. Any such collection and administration so delegated shall be undertaken at the cost of said Neighborhood Association. The Neighborhood Association shall deposit any Community Assessments so collected in a separate trust fund for the benefit of the Community Association. Such Community Assessments collected by a Neighborhood Association shall be paid to the Community Association on a minimum of a monthly basis. The Neighborhood Association shall furnish the Community Association on a minimum of a monthly basis a report of the current status of the Community Assessment payments of each Owner in the Neighborhood.

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4.10 NEIGHBORHOOD ASSESSMENTS: The Community Association is empowered to, but shall not have the duty to, collect, enforce and otherwise administer the Neighborhood Assessments of any and all Neighborhoods such that Community Assessments and Neighborhood Assessments may be collected contemporaneously. The Community Board shall disburse funds collected on behalf of any such Neighborhood Association as promptly as possible. The Community Board may not charge for any such collection other than any actual additional costs for such collection that are charged to the Community Association. In the event a Neighborhood Association fails to levy or collect Neighborhood Assessments or fails to duly operate and maintain the Neighborhood to the standards established for the Community, the Community Association may elect to preempt the rights of the Neighborhood Association and may fix, levy, collect and enforce said Neighborhood Assessments and arrange for such operation and maintenance. Such preemption regarding Neighborhood Assessments and maintenance shall require a vote of eighty percent (80%) of the Community Board, which vote must be ratified by a vote of eighty percent (80%) of the Neighborhood Boards in the Community within ninety (90) days of the vote of the Community Board. Any Neighborhood Assessments collected under such preemption by the Community Association shall be used solely for the purposes stated in the Neighborhood Restrictions for the Neighborhood from which the Assessments were collected. If by vote of eighty percent (80%) of the Board, the Community Board finds it necessary to directly retain the funds collected pursuant to this provision and directly disburse such funds to assure that the is being properly operated and maintained, the Community Association may do so. A Neighborhood Association may not levy or collect any Neighborhood Assessments during the period in which the Community Association has preempted its rights to so levy or collect assessments. A resolution by the Community Board for any such preemption shall end at the beginning of the next fiscal year of the Neighborhood Association; such preemption may be reenacted by the Community Board on a finding of a necessity to do so by a vote of eighty percent (80%) of the Community Board, which vote shall be ratified in the same manner as the original vote to so preempt. The Community Association may include in any such preempted Neighborhood's Assessment a reasonable amount for reimbursement of direct costs of administration and collection of such preempted Assessment.

4.11 SUBORDINATION OF THE LIEN TO MORTGAGES: The lien of the Community Assessments and Neighborhood Assessments provided for herein shall be subordinate to the lien of any recorded first mortgage (meaning a mortgage or deed of trust with first priority over other mortgages). Sale or transfer of any Lot or Unit shall not affect any Community Assessment lien or Neighborhood Assessment lien. However, the sale or transfer of any such Lot

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or Unit which is subject to any recorded first mortgage pursuant to a decree of foreclosure, or a sale under power of sale under such first mortgage shall extinguish the lien of such Community Assessments and Neighborhood Assessments as to payments thereof which become due prior to such sale or transfer. Pursuant to the provisions hereof, liens shall be created on the interest of the purchaser at such foreclosure sale, to secure all Community Assessments and Neighborhood Assessments assessed hereunder to such purchaser, as an Owner after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein. The lien for unpaid Community Assessments shall be prior to any lien for an unpaid Neighborhood Assessment. Nothing in this Section shall be construed to release any Owner from his personal obligation to pay for any Community Assessment or Neighborhood Assessment levied pursuant to these Community Restrictions or Neighborhood Restrictions.

4.12 ASSOCIATION ACCOUNTS:

A. Balance Sheets - Operating Statements: The Community Board shall prepare or cause to be prepared and distribute to each Owner copies of the following budgets, balance sheets and operating statements covering the following accounting periods:

(1) A pro-forma operating statement (budget), for each fiscal year, which budget shall be distributed to each Owner at least sixty (60) days prior to the beginning of each fiscal year;

(2) An annual report to be distributed within one hundred twenty (120) days after the close of each fiscal year which annual report shall consist of the following: (i) a balance sheet as of the end of the fiscal year, (ii) an operating (income) statement for the fiscal year, (iii) a statement of changes in financial position for the fiscal year; and (iv) any information required to be reported under Section 8322 of the Corporations Code. The annual report shall be prepared by an independent accountant for any fiscal year in which the gross income to the Association exceed Seventy-Five Thousand Dollars (\$75,000.00). If the report is not prepared by an independent accountant, it shall be accompanied by a certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association. ✓

(3) A balance sheet as of an accounting date which shall be the last day of the month closest in time to six (6) months from the first sale of a Lot or Unit to a member of the

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Community Association (other than to Merchant Builders) and an operating statement for an accounting period from the aforesaid accounting date. Said operating statement for the first six months accounting period shall include a schedule of assessments received or receivable itemized by Lot or Unit numbered and by name of the person or entity assessed.

B. Audit: Any Community Member or Neighborhood Association may, at any reasonable time, and at the Community Member's or Neighborhood Association's own expense, cause an audit or inspection to be made of the books and records of the Community Association, provided, however, that not more than a total of three (3) such audits may be performed in any fiscal year. The Community Board shall obtain such other audits as required by the Community By-Laws.

4.13 PROPERTY SUBJECT TO ASSESSMENTS: The following property within the Community shall be subject to Community Assessments:

A. Residential Lots or Units, whether improved or unimproved;

B. Unsubdivided property in Neighborhood Residential Areas.

4.14 PROPERTY NOT SUBJECT TO ASSESSMENTS: The following property within the Community shall not be subject to any of the Community Assessments or Neighborhood Assessments:

- A. Community Common Areas
- B. Neighborhood Common Areas
- C. Park Areas
- D. School Areas
- E. Church Sites
- F. The Community Recreation Facilities
- G. Membership Recreation Facilities
- H. The Golf Course Area
- I. Public and Private Streets
- J. Commercial Areas, if any.

K. Property owned by any governmental entity.
If use of any such property changes to an assessable use, then,
any such property shall be assessed pursuant to this Article.

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ARTICLE V

PROPERTY RIGHTS: COMMUNITY COMMON AREA

5.1 OWNERSHIP OF COMMUNITY COMMON AREA: The Community Common Area shall be conveyed to and owned by the Community Association. The Community Association shall accept the conveyance of Community Common Area conveyed to it pursuant to this Article.

5.2 PERMITTED USES OF COMMUNITY COMMON AREA: The Community Common Area shall be used by the Owners, their families, tenants, guests, patrons or invitees for the common interest and benefit of the Community in accordance with the uses established on the Community Concept Plan.

5.3 OWNER'S EASEMENTS OF USE: Every Owner shall have a right and easement of enjoyment in and to the Community Common Area which shall be appurtenant to and shall pass with the title to every Lot or Unit, subject to the following provisions:

A. The right of the Community Association to charge reasonable admission and other fees for the use of any recreation facility situated upon the Community Common Area;

B. The right of the Community Association to suspend the voting rights and the right to the use of Community Common Area facilities (except the streets, sidewalks, and other means of ingress and egress) by an Owner (and his invitees, guests, or lessees) for any period during which any Community assessment against his Lot or Unit remains unpaid, or for a period not to exceed thirty (30) days for any infraction of its published Community Rules, the Community By-Laws, or this Community Declaration, pursuant to the provisions of Section 3.9 hereof.

C. The right of the Community Association to limit the use of portions of the Community Common Area and/or Recreation Area facilities solely to those Community Owners who own Lots or Units in a specific Neighborhood or Neighborhoods and the right of the Community Association to limit or permit usage thereof by non-Members as the Community Association deems appropriate. The Community Association may limit the number of guests of Owners using Community Common Area and Common Recreation Facilities;

D. The right of the Community Association to dedicate or transfer all of any part of the Community Common Area to a Neighborhood Association or to any public agency, authority, or utility for such purposes and subject to such conditions as the Community Association may deem proper;

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E. The right of the Community Association to enact and enforce rules and regulations affecting use of the Community Common Area in furtherance of this Community Declaration;

F. The rights of Owners stated in Paragraph 5.6 to exclusive easements appurtenant to the various Neighborhood Residential Lots or Units for encroachments on the Community Common Area, as originally constructed by Declarant; and,

G. The right of the Community Association to limit and restrict the use of the Community Common Area and portions thereof, during specific times or on specific dates, and to prohibit all use and access to portions of the Community Common Area as deemed necessary by the Community Board for health, safety, welfare, privacy or security purposes.

5.4 ALTERATION OR IMPROVEMENT OF COMMUNITY COMMON AREA:

Other than work performed by Declarant in connection with development of the Community Common Area, no work which in any way alters any Community Common Area from its natural or existing state after the date such Community Common Area was conveyed by Declarant to the Community Association shall be made or done except by the Community Association or its agents. The Community Association shall reconstruct, replace or refinish any improvement or portion thereof situated within the Community Common Area. Such work shall be in accordance with the original design, finish or standard of construction of such improvement when such Community Common Areas was conveyed by Declarant to the Community Association and which was approved by the City, or, in a different manner if approved by the City. Additionally, the Community Association shall maintain and landscape the Community Common Area and the Community Association may place and maintain upon the Community Common Area such signs as the Community Board may deem necessary for the identification of the property and the roads, regulation of traffic, including parking, the regulation and use of the Community Common Area, and for the health, welfare and safety of the Owners and guests in all Neighborhoods subject to the jurisdiction of the Community Association.

5.5 LIMITATIONS ON USE OF COMMUNITY COMMON AREA: The following restrictions on use of the Community Common Area shall apply:

A. Insurance; Hazards and Waste: Nothing shall be done or kept in the Community which will increase the rate of insurance on the Community Common Area without the prior written consent of the Community Association. No Owner shall permit anything to be done or kept on his Lot or Unit or in the Neighborhood Common Area or Community Common Area which will result in the cancellation of insurance on any Lot improvement,

Neighborhood Common Area, or Community Common Area or which would be in violation of any law. No waste will be committed in the Community Common Area.

B. No Obstructions: There shall be no obstruction of the Community Common Area except as permitted herein or as provided by the Community Rules. Nothing shall be placed or stored in the Community Common Area except as allowed by the express permission of the Community Board.

C. Nuisances: No noxious or unreasonably offensive activities shall be carried on, nor shall anything be done or placed on the Community Common Area which are or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to Owners in the Community in the enjoyment of their property or in the enjoyment of the Community Common Area.

D. Rubbish: No portion of the Community shall be used or maintained as a dumping ground for rubbish. No oil or other refuse shall be allowed to enter storm drains.

E. Fires: There shall be no exterior fires on Community Common Area, except barbecue fires contained within receptacles provided by the Community Association, or as otherwise permitted by the Community Board.

F. Signs: No sign of any kind shall be placed or displayed on the Community Common Area, without the prior consent of the Community Board, except:

(1) Such signs as may be required by legal proceedings, or the prohibition of which is precluded by law;

(2) During the time of construction of any improvement by Declarant, identification signs regarding financing and construction;

(3) Such signs as may be required for traffic control and regulation of open areas within the Community;

(4) Such identification signs as may be deemed appropriate by the Community Board to designate facilities within the Community; and,

(5) Declarant may locate on the Community Common Area any and all signs as Declarant deems necessary or desirable in its sole discretion to facilitate the marketing of Lots and Units in the Community. Declarant may permit Merchant Builders to place such signs on Community Common Area for the same purpose as Declarant deems appropriate. Declarant's rights to so

establish signs shall be subject to the approval of the Community Board, beginning on January 1, 1990.

G. Temporary Structures and Recreational Vehicles, Boats, Trailers: No trailer, tent, shack or other outbuildings shall be kept upon the Community Common Area or in any street within the Community except, in connection with work or construction diligently pursued. No housetrailers, campers, recreational vehicles, boats, or trailers shall be kept upon Community Common Area or in any street or Lots, Units or Neighborhood Common Area within the Community except in locations expressly designated by the Community Association.

H. Vehicles: No vehicle of any type, motorized or otherwise, shall be operated on the Community Common Area except as authorized by the Community Association. No automobile or other motor vehicles shall be parked in the Community Common Area or in any street within the Community except in designated parking areas. No vehicles shall be kept or stored on the Community Common Area or in any street within the Community for purposes of accomplishing repairs thereto or the reconstruction thereof, except as permitted by resolution of the Community Board. Golf carts and similar vehicles shall be operated within the community only pursuant to the Community Rules.

I. Pets: No pet or other animal shall be permitted on the Community Common Area except as allowed by the Community Rules. The Owner of any pet or animal shall be responsible for the immediate removal and clean-up of such animal's waste in the Community Common Area. The Owner of any pet or animal shall at no times allow such animal to run unrestrained on Community Common Area or the streets, sidewalks or pathway areas of the Community and the Owner of such pets shall at all times have full and complete control over such animal. The Community Board shall have the right after notice and hearing to remove animals from Community Common Area which it finds constitutes a continuing unreasonable nuisance to Community Owners.

J. Delegation of Use: Any Community Owner may delegate, in accordance with the Community By-Laws, his right of enjoyment to the Community Common Area and facilities to the members of his family or his tenants in possession of his Lot or Unit.

K. Non-Severability: In no event shall an Owner sell or otherwise sever or separate the interest he may have in the Community Common Area from his ownership interest in a Lot or Unit.

5.6 EASEMENTS AND ENCROACHMENTS OVER COMMUNITY COMMON AREA:
The ownership rights of the Community Association to the Community Common Area shall be subject to the following easement rights and encroachment rights:

A. Utilities: Each Owner of a Lot or Unit served by utility connections, lines or facilities, including those for water, electric, gas, sanitary sewer, telephone, drainage and Community Communication services, shall have the right and is hereby granted an easement across and through the Community Common Area for entry to the full extent necessary by the appropriate utility companies where such connections, lines or facilities may be located for repair, replacement and maintenance thereof pursuant to the direction of the Community Association. Whenever utility connections, lines or facilities installed within the Community serve more than one Lot or Unit, the Owner of each Lot or Unit served thereby shall be entitled to full use and enjoyment of the portions thereof which service his Lot or Unit. Declarant hereby reserves to itself easements over, under and through the Community Common Area for installation of such utility connections, lines or facilities as shown on recorded subdivision maps for property in the Community together with the right to grant and transfer the same to the Community Association, Neighborhood Associations, utility companies, the City, Merchant Builders or other appropriate entities and the right to use such utility connections, lines or facilities for the benefit of the lands described on Exhibit "B."

B. Development and Sales: There is hereby reserved to Declarant and granted to Merchant Builders in the Community, easements over the Community Common Area and the facilities located thereon for construction and sales activities all as more particularly described in Article X. Furthermore, there is reserved to Declarant easements and rights of way over, under and across the Community Common Area for access to and development of the adjacent property described on Exhibit "B," if said property is annexed to the Community, which easements and rights Declarant may assign to its successors in interest and Merchant Builders of said adjacent property.

C. Encroachments: Each Owner of a Lot or Unit adjacent to the Community Common Area shall hereby have an easement over said Community Common Area for use and maintenance of encroachments thereon due to settlement or shifting of buildings or other improvements, original construction errors or any other similar causes, so long as said encroachments exist. However, no such easement for encroachment shall exist if an encroachment occurred due to the willful conduct of the Owner of the Lot or Unit. The rights and obligations of Owners in the Community shall not be otherwise altered or affected by any such

encroachment. In the event any Lot, Unit or Neighborhood Common Area adjoining the Community Common Area is situated on the interior of the enclosure of an original boundary fence to the Community Common Area, such property shall be maintained as such Common Area, until and unless such fence is relocated.

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ARTICLE VI

PROPERTY RIGHTS: RESIDENTIAL NEIGHBORHOOD

6.1 NEIGHBORHOOD RESTRICTIONS: Each residential Neighborhood shall have Neighborhood Restrictions which shall specify the procedures for operation and management of the Neighborhood and establish the uses permitted and prohibited regarding the Lots and/or Units and the Neighborhood Common Area. The Neighborhood Restrictions shall be established by the Merchant Builder of the Neighborhood prior to the sale of the first Lot or Unit in the Neighborhood and shall be subject to review and approval by Declarant to assure consistence and compatability with the standards and procedures of the Community Restrictions. There shall be no amendment of the provisions in any such Neighborhood Restrictions regarding the uses permitted or prohibited in the Neighborhood except with written consent of the Community Board and, until ten (10) years after the date of recordation of this Community Declaration, the Declarant. The Owner of each Lot or Unit shall comply with the Neighborhood provisions of the Restrictions applicable thereto, including, without limitation, the provision thereto pertaining to maintenance and landscaping. A Neighborhood Association shall be established for each Neighborhood. There shall be only one Neighborhood Association for each Neighborhood in the Community within the boundaries of a Neighborhood as established by Declarant.

6.2 NEIGHBORHOOD MAINTENANCE: For the benefit of the entire Community, it is essential that each Neighborhood, and every Lot and Unit and all Neighborhood Common Areas therein be properly maintained. The following standard and procedures shall apply to such Neighborhood maintenance:

A. Owner's Improvement Maintenance: Each Owner of each Lot or Unit shall maintain the building or buildings upon such Lot or Unit, including walkways and paving, in good condition, making all appropriate repairs and replacements as often as the same shall become necessary, except to the extent such maintenance is to be accomplished by the Neighborhood Association.

B. Landscaping Installation and Maintenance: Unless the Merchant Builder has agreed to install landscaping on a particular Lot or Unit, within one (1) year from the date of purchase of a Lot or Unit from a Merchant Builder, the initial Owner or a successor thereof shall cultivate and landscape the unimproved areas of said Lot in conformance with the standards established by the Community Architectural Committee. Except to

the extent that Neighborhood Restrictions require such maintenance to be accomplished by the Neighborhood Association, the Owner of each Lot or Unit shall maintain the landscaping upon said Lot or Unit in good condition in conformance with the Community Architectural Committee's standards, removing all weeds, and watering and trimming lawns and shrubs as often as the same shall be necessary.

C. Neighborhood Maintenance: Each Neighborhood Association shall perform all maintenance and landscaping required by the Neighborhood Restrictions as established or amended by the Declarant or amended by thereof; there shall be no amendment of such duties and obligations by the Neighborhood Association except with the prior written consent of the Community Association and, until ten (10) years from the date of this Community Declaration, Declarant.

D. Default in Maintenance: In the event that required maintenance, repair or landscaping is not accomplished by the Owner or Neighborhood Association, as the case may be, after thirty (30) days' written notice from the Community Board, the Community Board may elect to preempt the maintenance and repair functions of the Neighborhood by a vote of eighty percent (80%) of the representatives thereon, which vote must be ratified by a vote of two-thirds (2/3rds) of the Neighborhood Boards in the Community within ninety (90) days of the vote of the Community Board. After such preemption is ratified the Community Board may cause the work to be done and the cost of such maintenance, repair or landscaping shall be added to and become a part of the Single Benefit Community Assessment to which such Lot, Unit or Association is subject, unless the Community Association was otherwise obligated to perform such maintenance.

E. Entry: The Community Association or its agents may enter any Lot or Unit and Neighborhood Common Area when necessary in connection with any maintenance, repair, landscaping or construction which the Community Association is authorized to accomplish. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired at the expense of the Community Association.

F. Work Approval: No work of improvement, grading, or excavation shall be undertaken upon any Lot or Unit, or Neighborhood Common Area without the prior approval of the Community Architectural Committee given as provided herein, except for work to be accomplished by Declarant or Merchant Builders.

G. Easements for Maintenance: There are hereby established easements over, under and through each Lot or Unit for the benefit of each other Owner, the Community Association and the Neighborhood Association for maintenance of the other Lots, Units or Neighborhood Common Areas and the Community Common Areas; provided, however, that such easements may only be utilized with prior notice to the Owner with as little inconvenience as possible and that any damage to the Lot or Unit caused by the use of such easements shall be paid for by the Owner thereof.

H. Encroachment of Community Facilities: In the event any Community Common Area improvement, including structures or any portions thereof, roof overhangs and fences as originally constructed by Declarant encroaches upon any Lot or Unit or Neighborhood Common Area, there shall be an easement for the location and maintenance of such encroachment exists.

6.3 USES AND ACTIVITIES WITHIN NEIGHBORHOOD: The Lots or Units in each of the Neighborhoods shall be occupied and used for residential purposes. Prior to the sale or conveyance of any Lot or Unit within the Community, the Merchant Builder shall have imposed on said Lot or Unit appropriate use restrictions, which restrictions shall comply with the standards for Neighborhood Restrictions adopted by the Declarant. The Community Association shall expressly be made a third party beneficiary to such Neighborhood Restrictions. The Community Association shall have the right to enforce any provision of any Neighborhood Declaration, to the extent that the Community Association, upon a vote of eighty percent (80%) of the Community Board, deems it necessary to protect the overall interests in the Community. The Community Association shall not, however, in any event, be considered as having a duty or obligation to enforce any particular provision of any particular Neighborhood Declaration.

ARTICLE VII

PROPERTY RIGHTS
NON-RESIDENTIAL AREAS AND MERCHANT BUILDERS

7.1 NON-RESIDENTIAL AREAS: The Non-Residential Areas in the Community shall be owned and improved pursuant to the uses established therefore in the Community Concept Plan. Prior to the conveyance of property in such Non-Residential Areas to Owners, Declarant shall establish Supplemental Restrictions pertaining to the nature and requirements for the use thereof compatible with the standards established for the Community. In no event shall the Community Association interfere with the rights of the Owners of such non-residential property to duly carry out their commercial enterprises in accordance with the Community Concept Plan and such Supplemental Restrictions. Owners of property in such Non-Residential Areas shall not be entitled to the membership rights in the Community Association and shall not be subject to the limitations, requirements or any assessment specified in this Community Declaration, unless expressly provided otherwise herein.

In the event that any Non-Residential Area shown on the Community Concept Plan is subsequently established or changed in its use to residential use, then all of the provisions of this Community Declaration shall apply to such property as said provisions apply to other Neighborhood Residential Areas.

7.2 MERCHANT BUILDERS: Merchant Builders, as Owners of any Neighborhood being developed and marketed within the Community, shall be entitled to the rights of Owners as specified herein. ~~Merchant Builders shall be entitled to participate in the govern-~~ment of the Community as provided in Article IV and to develop and market the Lots or Units in their Neighborhood. The development rights of Merchant Builders shall be as specified in Article X herein.

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ARTICLE VIII

COMMUNITY ARCHITECTURAL CONTROL

8.1 SCOPE: Except as stated in this Community Declaration, there shall be no excavation, construction, development or other such work in the Community, including any change or alteration or exterior addition to any improvements situated in the Community without compliance with this Article. There shall be no landscaping in the Community after initial installation thereof by the Declarant or the Merchant Builder except in compliance with this Article. Except as herein provided, the provisions of this Article shall not apply to or limit Declarant or any Merchant Builder in their development of the Community or the Neighborhoods, nor to the Community Association in its performance of its responsibilities. Except as herein provided, the provisions of this Article shall not apply to the Owners of property situated in the Community Commercial Areas, Membership Recreation Facilities and Golf Course Area, School Areas or Church Sites. The provisions of this Article shall preempt and supersede any inconsistent provision of any rules or restrictions of any Neighborhood Association to the extent that any such Neighborhood rules and restrictions are in conflict with these provisions. The Community Board may, by resolution, delegate to the Neighborhood Board or the Neighborhood Architectural Committee all or any of its architectural control functions over the real property within the boundaries of a Neighborhood Association subject to the express standards established by the Community Architectural Committee. Such delegated duties shall be revocable by resolution of the Community Board.

8.2 COMMUNITY ARCHITECTURAL COMMITTEE: The Community Board shall establish a Community Architectural Committee to perform the duties established by this Article by the following procedures:

A. Initial Members: The initial members of the Architectural Committee shall be appointed by Declarant, prior to the conveyance of the first Unit in a Residential Neighborhood to an Owner other than Declarant or a Merchant Builder. Such designation shall be reflected in the Minutes of the Association. Declarant shall designate one member to serve a term of one (1) year; one (1) member to serve a term of (2) years and one (1) member to serve a term of three (3) years from the date of appointment. The alternate member shall serve a term of three (3) years. Each of said members shall serve the length of said terms unless they have resigned or have been removed from office. Thereafter, the terms of all Architectural Committee members appointed shall be three (3) years. Any new member appointed to

replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned, been removed or whose terms have expired may be reappointed; however, no person shall serve as a member of the Community Architectural Committee, either regular or alternate, for a period in excess of six (6) years in any ten (10) year period.

B. Appointment and Removal: Until such time as the Lot or Unit Owners other than Declarant or Merchant Builders own ninety percent (90%) or more of the Lots or Units within the Community, or fifteen (15) years after the issuance of the Final Subdivision Public Report of the Department of Real Estate for the first Neighborhood in Community, whichever occurs first, the right to appoint and remove a majority of the members and alternate members of the Community Architectural Committee shall be, and is hereby, vested solely in Declarant unless prior to said time Declarant waives its rights hereunder by notice in writing to the Association. Provided, however, after one year from the sale of the first Lot or Unit, the Community Board shall have the right to appoint one member to the Committee. When Declarant waives or no longer has the right to appoint and remove the members of the Committee, said right shall be vested solely in the Board. All Committee members appointed by the Community Board shall be Owners. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the specification in the Minutes of the Association of each new Committee member or alternate member appointed and each member or alternate replaced or removed from the Community Architectural Committee.

C. Resignations: Any member or alternate member of the Community Architectural Committee may at any time resign from the Committee upon written notice delivered to Declarant or to the Board, whichever then has the right to appoint members.

D. Vacancies: Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint members.

8.3 DUTIES: It shall be the duty of the Community Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to adopt Community Architectural Committee Rules and Standards, to perform other duties delegated to it by the Community Association, and to carry out all other duties imposed upon it by this Community Declaration.

8.4 MEETINGS: The Community Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any two (2)

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members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by these Restrictions. The Committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise. The members of the Community Architectural Committee shall be entitled to reimbursement for reasonable expenses incurred by them in the performance of any Community Architectural Committee function.

8.5 COMMUNITY ARCHITECTURAL COMMITTEE GUIDELINES: The Architectural Committee may, from time to time adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Community Architectural Committee Rules and Guidelines." Said Rules shall interpret and implement the provisions hereof by setting forth the standards and procedures for Community Architectural Committee review and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Community; provided, however, that said Rules shall not be in derogation of the minimum standards required by this Community Declaration.

8.6 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Any Owner, proposing to perform any work of any kind whatever which requires the prior approval of the Community Architectural Committee under this Declaration, shall apply to such Committee for approval by notifying the Community Architectural Committee of the nature of the proposed work in writing and furnishing such information as the Committee may require, including but not limited to (1) a plot plan of the Lot, showing the location of all existing and proposed improvements; (2) floor plans; (3) elevation drawings; (4) a description of exterior materials and colors; and (5) the Owner's proposed construction schedule. The Community Architectural Committee may require that the application for approval in connection with any improvement to be constructed be accompanied by a reasonable fee. In the event that the Community deems that outside consultants are necessary to review plans or otherwise inspect the proposed improvements.

8.7 MERCHANT BUILDERS AND NON-RESIDENTIAL OWNERS: Merchant Builders and Owners of property in the Community Commercial Areas, Membership Recreation Facilities and Golf Course, School Areas and Church Sites shall be exempt from the provisions hereof except as follows:

A. **Merchant Builders:** For any Lots or Units acquired by a Merchant Builder, the design for the structural improvement on which has not been approved in writing by Declarant within fifteen (15) years after recordation of this Community Declaration, any design or substantial modification of such

design for such structural improvements shall be subject to the provisions of this Article VIII.

B. Non-Residential Owners: For any property in the Non-Residential Area, the design for the structural improvements on which has not been approved in writing by Declarant within fifteen (15) years after recordation of this Community Declaration, any design or substantial modification of such design for such structural improvements shall be subject to the provisions of this Article VIII.

C. For any such exempt property, the Owner thereof shall comply with such Architectural Review Standards as the Declarant may establish pursuant to its specific agreements and conveyances regarding any such property.

8.8 BASIS FOR APPROVAL OF IMPROVEMENTS: The Community Architectural Committee shall grant the requested approval only if the Community Architectural Committee shall find that the plans and specifications conform to this Declaration, and to the Community Architectural Committee Rules in effect at the time such plans were submitted to such Committee and that the proposed improvements would be compatible with the standards of the Community and the purposes of this Declaration as to quality of workmanship and materials, and as to location with respect to topography and finished grade elevations. All approvals given under this Article shall be in writing; provided, however, that any request for approval which has not been rejected within thirty (30) days from the date of submission thereto to the Architectural Committee shall be deemed approved.

8.9 PROCEEDING WITH WORK: Upon receipt of approval from the Community Architectural Committee, the Owner shall, as soon as practicable, satisfy all conditions hereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to be, in all cases, within one year from the date of such approval. If the Owner shall fail to comply with this Paragraph, any approval given shall be deemed revoked unless the Community Architectural Committee, upon written request of the Owner made prior to the expiration of said one-year period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted. The Owner shall in any event complete the construction, reconstruction, refinishing, or alteration of any such improvement within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emer-

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gencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If Owner fails to comply with this Paragraph, the Community Architectural Committee shall notify the Community Board of such failure, and the Board shall proceed in accordance with the provisions of Paragraph 8.9 below as though the failure to complete the improvement were a non-compliance with approved plans.

8.10 INSPECTION AND CORRECTION OF WORK: Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any construction or reconstruction or the alteration or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Community Architectural Committee.

B. Within sixty (60) days thereafter the Community Architectural Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Community Architectural Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) days period, specifying particulars of non-compliance, and shall require the Owner to remedy such non-compliance.

C. If upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Architectural Committee shall notify the Community Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Community Architectural Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, the Community Architectural Committee and, in the discretion of the Board, to any other interested party.

D. At the hearing, the Owner, the Community Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance

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exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board ruling. If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expense are not promptly repaid by the Owner to the Community Association, the Community Board shall levy a Special Benefit Assessment.

E. If for any reason the Community Architectural Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

8.11 PRELIMINARY APPROVAL: Any Owner proposing to construct improvements requiring the prior approval of the Community Architectural Committee may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Community Architectural Committee Rules. The purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as follows:

A. Within thirty (30) days after proper application for preliminary approval, the Community Architectural Committee shall consider and act upon such request. The Community Architectural Committee shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. Failure of the Community Architectural Committee to act within said thirty (30) day period shall constitute an approval. In granting or denying approval, the Community Architectural Committee may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.

B. Any preliminary approval granted by the Community Architectural Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provisions of the

preliminary approval, and is otherwise acceptable under the terms of these Restrictions, shall be approved by the Community Architectural Committee.

C. In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

8.12 WAIVER: The approval by the Community Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

8.13 ESTOPPEL CERTIFICATE: Within thirty (30) days after written demand is delivered to the Community Architectural Committee by any Owner, and upon payment to the Community Association of a reasonable fee (as fixed from time to time by the Community Association), the Community Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Unit of said Owner) that as of the date thereof either: (a) all improvements made and other work done upon or within said Unit comply with this Declaration, or (b) such improvements or work do not so comply in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Unit through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, Declarant and all Owners and such persons deriving any interest through them.

8.14 LIABILITY: Neither the Community Architectural Committee nor any member thereof shall be liable to the Community Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval or any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (c) the development of any property within the Community, or (d) the execution and filing of an estoppel certificate pursuant to Section 8.12, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Community Architectural Committee, or any member thereof, may but is not required to, consult with or hear the



views of any member of the Community Association with respect to any plans, drawings, specifications or any other proposal submitted to the Community Architectural Committee.

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ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

9.1 COMMUNITY COMMON AREA: In the event of partial or total destruction of improvements upon the Community Common Area, it shall be the duty of the Community Association to restore and repair the same to its former condition as promptly as practical, as herein set forth:

A. If the cost of repairing or rebuilding the Community Common Area facilities does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than ten percent (10%) of the cost of reconstruction:

(1) All insurance proceeds shall be paid to a commercial bank or trust company designated by the Community Board to be held for the benefit of the Community Association and the Community Owners and their mortgagees, as their interests shall appear.

(2) The Community Board shall levy a Reconstruction Community Assessment against the Owners in the Community in the same manner as provided in Article IV, equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which sums shall be payable into the fund held by the insurance trustee. The Community Board may advance the amount of the Reconstruction Community Assessment to the insurance trustee from Community Association general funds or reserves.

(3) When the amount held by the insurance trustee is sufficient to pay the costs of repair and reconstruction, the Community Board shall thereupon contract for the repair or reconstruction of the improvements, paying the cost of such work from the amount held by the insurance trustee, said repair or reconstruction to be for the purpose of returning the improvements substantially to their appearance and condition immediately prior to the casualty.

(4) The Community Association may rebuild such damaged or destroyed common facilities in a different manner, or in different locations on the Community Common Area, provided that such Community Board action shall require consent of eighty percent (80%) of the Community Board. If the Community Board cannot reach such an eighty percent (80%) decision, any such change shall require the vote or written assent of the Neighborhood Boards representing at least fifty-one percent (51%)

of the Community Voting Rights, and the written consent of fifty-one percent (51%) of the Mortgagees. In any event, if such changed plans require additional capital so as to constitute a Capital Improvement Community Assessment, the written assent of the Neighborhood Boards representing at least fifty-one percent (51%) of the Community Voting Rights must be obtained if so required by Article IV.

B. If the cost of such repairing or rebuilding exceed the amount of available insurance by more than ten percent (10%) of the cost of reconstruction, then all insurance proceeds shall be deposited as provided in Subparagraph A(1) above and the Community Board shall require a determination by written assent or vote of the Neighborhood Boards representing at least sixty percent (60%) of the Community Voting Rights as to whether a Reconstruction Community Assessment equal to the difference between available insurance proceeds and the cost of such repairing or rebuilding shall be levied. If the Community members determine not to levy such assessment then the Community Board shall use the insurance proceeds available to make such restoration or repair as reasonably possible or to clear the site of the damaged premises and render the same safe and attractive. Any insurance proceeds remaining thereafter shall be distributed to the Owners in the Community and their respective mortgagees in accordance to the then fair market value of the respective properties within the Community determined by an independent appraisal made by a qualified real estate appraiser selected by the Community Board.

9.2 NEIGHBORHOOD COMMON AREA AND LOTS: In the event of partial or total damage or destruction of Neighborhood Common Area or any Lot or Unit therein, the responsible Neighborhood Association or Owner shall either:

A. Diligently commence to rebuild the same if the insurance proceeds and other funds available to the Neighborhood Association or Owner are sufficient to pay the costs of such rebuilding; or

B. If there are not sufficient funds to rebuild, clear and level the Lot or Unit, removing all wreckage, foundations, slabs, debris and remains of the building or buildings therefrom and leaving the same in a level, clean and landscaped condition.

Upon reconstruction, the building shall be rebuilt substantially in accordance with the original plans and specifications therefor; provided, however, that the exterior appearance thereof shall substantially resemble the appearance in form and color prior to such damage and destruction. Notwithstanding the foregoing, however, the Owner of such damaged

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building may reconstruct or repair the same in accordance with new or changed plans or specifications with the prior written approval of the Community Architectural Committee. The Neighborhood Restrictions shall provide procedures and standards for repair or reconstruction of damaged or destroyed property within such Neighborhood including special reconstruction assessments for repair of Neighborhood Common Area so damaged or destroyed.

9.3 NON-RESIDENTIAL IMPROVEMENTS: If any improvements in a Non-Residential Area are destroyed or damaged, the Owner thereof shall cause said damage or destruction to be repaired or reconstructed as promptly as is reasonable, but in no event in a time period greater than one (1) year from the date of the damage. In the event such repair or reconstruction is not commenced within a reasonable time period the remnants of the damaged improvements shall be razed from the site and all unsightly evidence of such damaged improvements shall be removed therefrom and the site fenced or otherwise rendered safe and attractive. In the event the Owner does not commence said work within a reasonable time, the Community Association may bring legal proceedings to compel the Owner to perform such reconstruction or repair, and may take such steps as the Community Board deems appropriate to render the property safe to the public, any costs of which shall be levied against the Owner as a Special Benefit Assessment.

9.4 CONDEMNATION: In the event that an action in eminent domain is brought to condemn all or any portion of the Community Common Area within the Community, or a sale of all or a part thereof is made in lieu of condemnation, the Community Board shall exclusively represent all of the Community Owners in connection with the taking. The Community Board may appoint such persons as it determines appropriate as its agent or representatives in connection with such taking. The Community Board shall act in its sole discretion with respect to any awards made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the taking shall be paid to the Community Association, and used, held or distributed as reasonably deemed appropriate by the Community Board, subject to the provisions hereof.

A. Total Taking: If the taking is of the entire Community Common Area, the amount payable shall be paid to the Community Board as trustee for distribution to the Community Owners, subject to the rights of mortgagees holding mortgages covering the properties and all unpaid Community Assessments of each Owner, together with any interest charges attributable thereto. Said proceeds shall be distributed to the Community

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Owners and their respective mortgagees according to the relative values of the respective properties in the Community determined by an independent appraisal made by a qualified real estate appraiser selected by the Community Board.

B. Minor Taking: If the award is for the acquisition of only part of the Community Common Area and is less than ten percent (10%) of the value of all Community Common Area, the entire amount thereof shall be payable to the Community Board and such amount, together with any interest earned thereon, shall be held by the Community Association for the construction of capital improvements on other portions of the Community Common Area.

C. Major Taking: If the award is for the acquisition of only part of the Community Common Area, but is in excess of ten percent (10%) of the value of all Community Common Area, the Community Board in its sole discretion may retain all or any part thereof in the general funds of the Community Association for the purpose of constructing alternative facilities for those so taken, or may distribute all or any part thereof to the Community Owners, as their interests appear, subject however, to the rights of mortgagees and any unpaid assessments, in the manner set forth in Subparagraph 9.4A above.

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ARTICLE X
DEVELOPMENT RIGHTS

Declarant, the Merchant Builders and Owners of property in Non-Residential Areas shall be entitled to the development rights stated in this Article. As the completion of the construction of the Community Common Areas and Non-Residential Areas improvements of the Community and the development and marketing of the residential Lots or Units therein is essential to the establishment of the Community and the welfare of all Owners therein, nothing in the Community Declaration shall be understood or construed to:

A. Prevent Declarant, the Merchant Builders, Owners of properties in Non-Residential Areas, any of their contractors, or subcontractors, from doing within any Lot or Unit or Parcel thereof, whatever is reasonably necessary or appropriate in connection with the completion of said improvements;

B. Prevent Declarant, the Merchant Builders, or Owners of properties in Non-Residential Areas, or any of their representatives from erecting, constructing and maintaining on any part or parts of the Community, such structures as may be reasonably necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in Parcels, Lots or Units by sale, lease or otherwise; or

C. Prevent Declarant, the Merchant Builders, or Commercial Owners of properties in Non-Residential Areas, from conducting on any part of the Community, their business of completing said work and of establishing said property as a residential community and of disposing of said property in Parcels or Lots by sale, lease or otherwise; or

D. Prevent Declarant, the Merchant Builders or Owners of properties in Non-Residential Areas, from maintaining such signs within the Community, as may be necessary for the sale, lease or disposition thereof, as Declarant may deem appropriate; or

E. Prevent Declarant from filing of supplemental Declaration by Declarant as may be deemed appropriate for annexation of additional property pursuant to Paragraph 2.3 of this Community Declaration.

F. Nothing herein shall be construed as allowing Declarant to unreasonably interfere with the use of the Community Common Area by any lot or unit purchasers in the Community.

ARTICLE XI
MORTGAGEE RIGHTS

11.1 SPECIAL MORTGAGEE PROVISIONS: It is anticipated that part or all of the Lots or Units in the Community may be financed for the Owners through special agencies, such as The Federal National Mortgage Association or Federal Home Loan Mortgage Corporation. The interest of the Community Association and each of the Community members is and shall be subject to and subordinate to the rules, regulations and requirements of such governmental agencies purchasing mortgages in the Community, to the extent that their rules and regulations are approved by the California Department of Real Estate. As the requirements of such agencies are subject to change, if necessary Declarant shall execute and cause to be recorded a Supplemental Declaration, incorporating such additional covenants, conditions and restrictions as are required by such agencies, approved by the California Department of Real Estate, affecting the properties. Notwithstanding prior acquisition of title to any portion of property in the Community by the Community Association, any Neighborhood Association, or any Community Owner, such supplemental covenants, conditions and restrictions shall be binding upon all Community members, the Community Association, and all Neighborhood Associations. Declarant may execute as many such Supplemental Declarations as are required to comply with such lending agency's requirements from time to time throughout the course of sale of the Properties. Declarant may bind the Community Association and all Community Owners by written consent with such agencies.

11.2 RIGHTS OF MORTGAGEES: The first mortgagee's or trust deed beneficiaries of the Community shall be entitled to the rights and privileges set forth in this Article, subject to such changes as may be required under the terms of Paragraph 11.1

A. Notice of Default: The mortgagee or a mortgage or beneficiary of a deed of trust, and/or their successors and assigns, of a first mortgage or deed of trust on a Lot or Unit or on any other parcel of real property within the Community which mortgagee, beneficiary, successor or assigns has requested in writing to the Community Association of such notice, shall be entitled to written notification from the Community Association of any default by the mortgagor of any Lot or Unit in the performance of such mortgagor's obligations under the Community Declaration, Articles and By-Laws which is not cured within thirty (30) days.

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B. Exemption from Rights of First Refusal: Any first mortgagee, or beneficiary under a first deed of trust who comes into possession of a Lot or Unit or any other parcel of real property within the Community pursuant to the remedies provided in the mortgage or foreclosure of the mortgage, or deed of trust or assignment in lieu of foreclosure shall be exempt from any right of first refusal contained herein.

C. Non-Liability for Unpaid Assessments: Any first mortgagee or beneficiary of a first deed of trust who comes into possession of a Lot or Unit or any other parcel of real property within the Community pursuant to foreclosure of the mortgage or deed of trust shall take the property free and clear of any claims for unpaid assessments or charges against the mortgaged property which accrue prior to the time such holder comes into possession of the mortgaged property, except for claims for a prorata share of such assessments or charges to all Lots or Units including the mortgaged Lot or Unit.

D. Mortgagee's Approval: Unless at least seventy-five percent (75%) of the first mortgagees of Lots or Units or other parcels of real property within the Community, based upon one (1) vote for each mortgage on Lots or Units owned, and a percentage vote for non-subdivided acreage based on the ratio of acres subject to the mortgage to total number of acres subject to the Community Declaration, have given their prior written approval, the Community Association shall not be entitled to:

(1) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon or interests therein which are owned, directly or indirectly, by the Community Association for the benefit of the Lots or Units and the Owners thereof. The granting of easements for public utilities or other public purposes consistent with the intended use of such property by the Community Association and Lot Owners shall not be deemed a transfer within meaning of this clause.

(2) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner.

(3) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to architectural design, exterior appearance, or the exterior maintenance of Lots or Units, the maintenance of party walls or common fences and driveways or the upkeep of lawns, plantings or other landscaping in the Community.

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(4) Fail to maintain fire and extended coverage insurance on insurable common property owned by the Community Association 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.

(5) Use hazard insurance proceeds for losses to any common property and improvements owned by the Community Association for other than the repair, replacement or reconstruction of such property and improvements.

(6) Amend the provisions of this Community Declarations regarding the rights and benefits of mortgagees.

E. Examination of Records: First mortgagees shall have the right to examine the books and records of the Community Association.

F. Insurance Proceeds and Condemnation Awards: No provision of the Community Declaration or the Articles shall give any Owner, or any other party, priority over any rights of the first mortgagees of Lots or Units pursuant to their mortgagees in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for losses to or a taking of common property of the Community, owned by the Community Association or otherwise.

G. Management Agreements: Any agreement for professional management of the Community shall provide that the management contract may be terminated for cause on a maximum of ninety (90) days written notice and the term of any such contract shall not exceed three (3) years.

H. Notice of Losses: The Community Association shall give any Mortgagee who so requests in writing, notice in writing of any loss to, or taking of, the common elements of the Community if such loss or taking exceeds TEN THOUSAND DOLLARS (\$10,000.00).

I. Payment of Taxes and Insurance: First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Community common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property and first mortgagees making such payments shall be owed immediately reimbursement therefor from the Community Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all such first mortgagees duly executed by the Community Association.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 AMENDMENTS: The covenants and restrictions of this Community Declaration shall run with and bind the land, for a term of fifty-five (55) years from the date this Community Declaration is recorded, after which time they shall be automatically extended for successive period of ten (10) years. After said term of this Community Declaration may be terminated by the written assent of seventy-five percent (75%) of the Community Owners. Subject to the provisions of Article XI, this Community Declaration may be amended by the vote or written consent of fifty-one percent (51%) of the Owners in the Community, and fifty-one percent (51%) of the Owners in the Community, excluding any votes of Merchant Builders and the Declarant; the amendment shall become effective upon recordation of an instrument reflecting such change, duly certified and executed by the President and Secretary of the Community Association. Provided, however, that in no event may Declarant's rights be terminated, altered or amended without Declarant's written consent.

12.2 SUPPLEMENTAL COMMUNITY RESTRICTIONS: In addition to the Supplemental Community Restrictions herein provided for, Declarant reserves the right to record and impose a Supplementary Community Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to each additional increment, containing such complementary additions and modifications of these Community Restrictions as may be necessary to reflect and protect the different character, if any, of the annexed increment and as is not in conflict with the scheme of this Community Declaration. In no event, however, shall any such Supplementary Community Declaration revoke, modify, or add to the Community Declaration herein established as to the property in the Community previously made subject hereto except as otherwise herein provided.

12.3 CONSTRUCTION OF PROVISIONS: The provisions of this Declaration shall be liberally construed to effect is purposes of creating a uniform plan for the development and operation of the the Community as a master planned development. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

12.4 BINDING: This Declaration shall be for the benefit of and be binding upon all Owners, or Lots, Units or Parcels in the Community, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers,

lessees, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

12.5 SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

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

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal on this 29th day of September, 1980.

GENSTAR DEVELOPMENT INC.,
a New York corporation
(PENASQUITOS PROPERTIES DIVISION)

By Philip J. Sussman
Senior Vice President

By William O. Wood
Assistant Secretary

TO 1948 CA (18-74)

(Corporation)

STATE OF CALIFORNIA }
COUNTY OF San Diego } ss.

On September 29, 1980 before me, the undersigned, a Notary Public in and for said State, personally appeared Neil D. Gascon

known to me to be the Senior Vice President, and William O. Wood

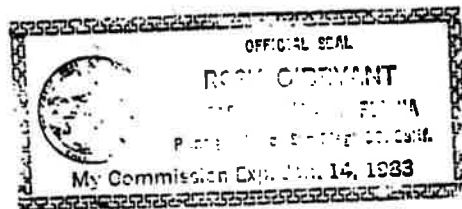
known to me to be Assistant Secretary of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature _____
Rosy O'Bryant

& REGALIA

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ONE KAISER PLAZA
OAKLAND CALIF 94612
TEL (415) 465-3800



(This area for official notarial seal)

EXHIBIT A
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BERNARDO HEIGHTS

Lots 23 through 32 inclusive, of BERNARDO HEIGHTS UNIT NO. 5,
in the City of San Diego, County of San Diego, State of
California, according to Map thereof No. 9610, filed in the
Office of the County Recorder of said San Diego County,
April 4, 1980.

EXHIBIT B
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BERNARDO HEIGHTS

Parcel A:

1. Lots 1 through 10, inclusive, of Bernardo Heights Unit No. 1, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9559, filed in the office of the Recorder of San Diego County, February 20, 1980.

2. Lots 1 through 7, inclusive, of Bernardo Heights Unit No. 2, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9562, filed in the office of the Recorder of San Diego County, February 20, 1980.

3. Lots 1 through 71, inclusive, and Lot 76 of Bernardo Heights Unit No. 3, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9573, filed in office of the Recorder of San Diego County, February 25, 1980.

4. Lots 1 through 6, inclusive, of Bernardo Heights Unit No. 4, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9609, filed in the office of the Recorder of San Diego County, April 4, 1980.

5. Lots 1 through 22, inclusive, and lots 33 through 78, inclusive, of Bernardo Heights Unit No. 5, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9610, filed in the office of the Recorder of San Diego County, April 4, 1980.

6. Lots 1 through 95, inclusive, of Bernardo Heights Unit No. 6, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9647, filed in the office of the Recorder of San Diego County, April 28, 1980.

7. Lots 1 through 7, inclusive, of Bernardo Heights Unit No. 7, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9706, filed in the office of the Recorder of San Diego County, July 1, 1980.

8. Lots 1 through 59, inclusive, of Bernardo Heights Unit No. 8, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9716, filed in the office of the Recorder of San Diego County, July 1, 1980.

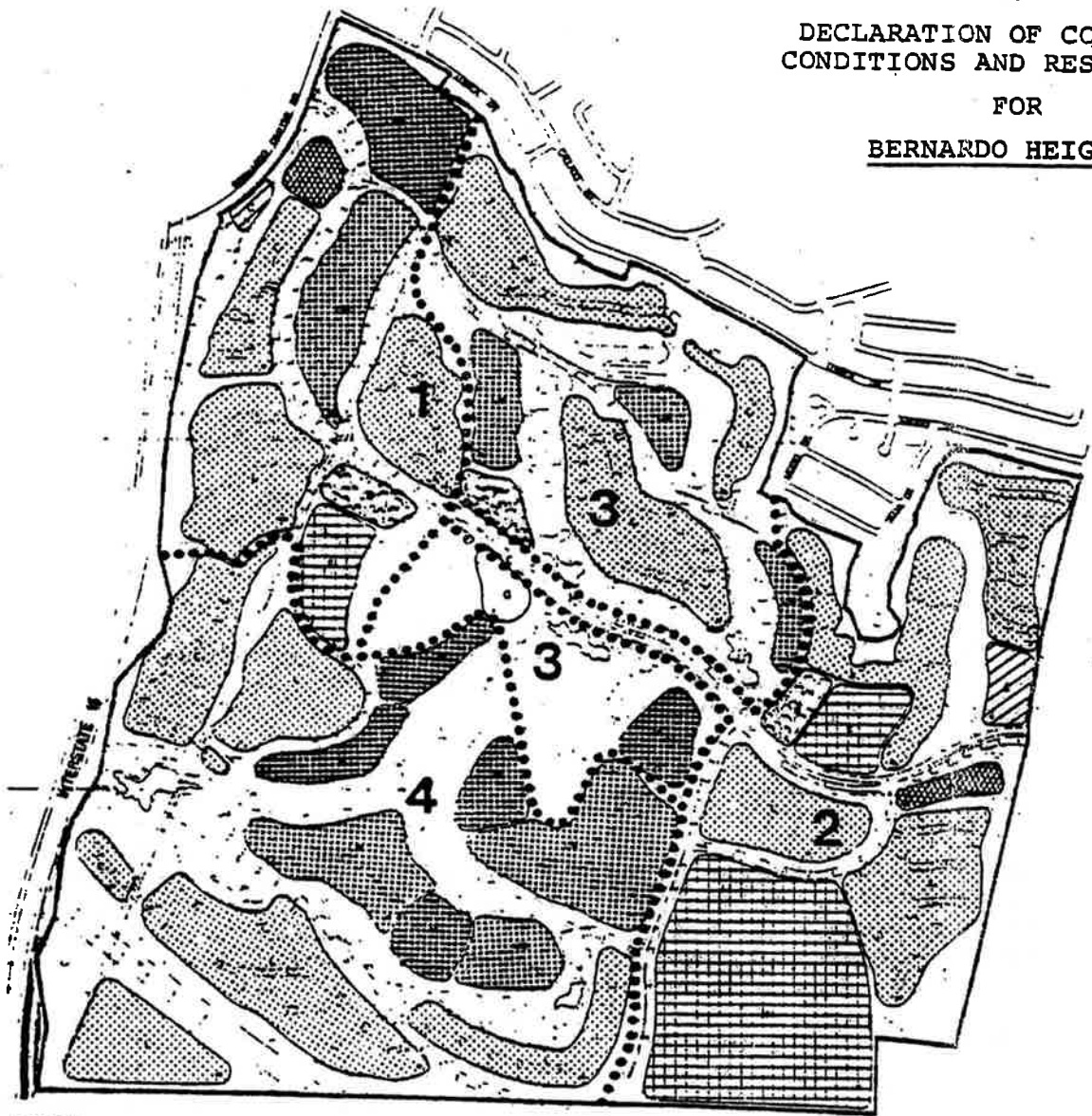
9. Lots 1 through 83, inclusive, of Bernardo Heights Unit No. 9, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9717, filed in the office of the Recorder of San Diego County, July 1, 1980.









Parcel B:

Parcels 1, 2, 3 and 4 of Parcel Map No. 8071, filed in the Office of the County Recorder of San Diego County, November 20, 1978, as File No. 78-501-250 of Official Records, EXCEPTING the lands described in Parcel A above.

CONCEPT PLAN

EXHIBIT C
 TO
 DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS
 FOR
BERNARDO HEIGHTS



- | | | | |
|---|--------------------------------|---|--------------------------|
|  | Low Density Residential |  | School |
|  | Low-Medium Density Residential |  | Commercial |
|  | Medium Density Residential |  | Recreation/Tennis Courts |
|  | Church |  | Golf Course/Open Space |

HIGH COUNTRY EAST

A Planned Community by Broadmoor Homes Inc.

(Now called BERNARDO HEIGHTS)

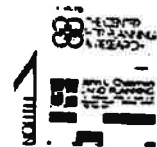


EXHIBIT D
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
BERNARDO HEIGHTS
DEFINITIONS

The terms defined in this Exhibit D to the Community Declaration shall have the meanings specified below:

1. "Annexation" shall mean the process by which additional real property may be made subject to the Declaration and included in the Community as specified in Article II of the Community Declarations.

2. "Church Sites" shall mean those areas designated on the Community Concept Plan as Church Sites and which are restricted by Supplemental Restrictions for use as religious facilities.

3. "City" shall mean the City of San Diego, a municipal corporation.

4. "Community" shall mean all of the real property subject to these Community Declaration, and all of the improvements thereon. Initially the Community shall consist only of the real property described on Exhibit "A". Additional real property may become part of the Community only by Annexation.

5. "Community Articles" shall mean the Articles of Incorporation for the Community Association.

6. "Community Architectural Committee" shall mean the Committee established pursuant to Article VIII hereof, which shall perform the functions specified in said Article VIII.

7. "Community Assessments" shall mean the assessments levied by the Community Association pursuant to Article IV of the Community Declaration.

8. "Community Association" shall mean THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS, a California non-profit mutual benefit corporation or any successor entity charged with the

duties, obligations and powers of said Community Association.

9. "Community Board" shall mean the Board of Directors of the Community Association established under Paragraph 3.6 and elected and acting pursuant to the Community Declaration, the Community Articles and the Community By-Laws.

10. "Community By-Laws" shall mean the By-Laws for the Community Association duly adopted by the Community Board.

11. "Community Commercial Area" shall mean any area designated on the Community Concept Plan as for commercial or retail use and which property is restricted by a Supplemental Restriction to such commercial and retail activities generally associated with and located in a commercial shopping center.

12. "Community Common Area" shall mean all real property in which the Community Association owns an interest for the common use and benefit of the Community members, their lessees, guests, invitees or patrons as more particularly specified in Paragraph 2.2. The Community Common Area may include interest held by lease or easement as well as estates in fee.

13. "Community Concept Plan" shall mean Exhibit "C" attached to this Community Declaration, consisting of the Concept Plan dated May 15, 1978 and approved August 17, 1978 by the Planning Commission of the City pursuant to Resolution No. 1514, as said Concept Plan may be amended from time to time with the approval of the City.

14. "Community Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for THE COMMUNITY OF BERNARDO HEIGHTS.

15. "Community Director" shall mean the representatives elected to the Community Board pursuant to Section 3.5 hereof.

16. "Community Member" shall mean the Neighborhood Association or other entity holding membership in the Community Association pursuant to Section 3.2 hereof.

17. "Community Recreation Facilities" shall mean those recreation facilities situated within the Community Common Area which are designated on the Community Concept Plan as Community Recreation Facilities established for use by all Owners in the Community.

18. "Community Rules" shall mean the rules and regulations adopted by the Community Board as provided in Paragraph 3.8 of the Community Declaration.

19. "Community Voting Rights" shall mean the number and allocation of votes to Lots or Units or unsubdivided property in the Community as specified in Section 3.4, subparagraphs A, B and C of the Community Declaration.

20. "Declarant" shall mean and refer to GENSTAR DEVELOPMENT INC., a New York corporation (PENASQUITOS PROPERTIES DIVISION). "Declarant" shall include those successors and assigns of GENSTAR DEVELOPMENT INC. which acquire all or part of the interests in the real property described on Exhibit "A" and Exhibit "B" for purposes of development of the Community, and which are expressly named as successor Declarant in a document recorded by Declarant assigning the rights and duties of Declarant to such successor Declarant. Successor Declarant shall additionally be deemed to include the beneficiary of any deed of trust securing an obligation from Declarant encumbering all or any part of the property described on Exhibits "A" and "B", which beneficiary has acquired any such property by foreclosure, power of sale or conveyance in lieu of such foreclosure or sale.

21. "Lot" shall mean any improved or unimproved lot or parcel shown on any recorded Subdivision Map or Parcel Map within the boundaries of the Community.

22. "Membership Recreational Facilities and Golf Course Area" shall mean those areas designated on the Community Concept Plan as recreation facilities and golf course areas which are to be established as privately operated facilities not owned or operated by the Community Association.

23. "Merchant Builders" shall mean and refer to a person or entity which acquires all or a portion of property in the Community for development as a Neighborhood, all as more particularly specified in Article VIII of the Community Declaration.

24. "Mortgage" shall mean a first mortgage or deed of trust which encumbers any one or more Lots, Units or other parcels of real property in the Community, and shall include any first mortgage or deed of trust securing an obligation of Declarant and encumbering all or any part of the property on Exhibits "A" and "B".

25. "Mortgagee" shall mean the holder of a mortgage or the beneficiary of a deed of trust defined as a Mortgage hereunder.

26. "Neighborhood" shall mean all Lots and Units, improved or unimproved, and Neighborhood Common Area of a separate subdivision or development initially a part of property annexed into the Community and as established by a Final Subdivision Map or Final Parcel Map, Condominium Plan, Record of Survey or other such land division and by the Neighborhood Declaration stating that such property shall be a separate Neighborhood, and providing for restrictions for the governing, operation and use thereof. Neighborhoods may be established by the Declarant or Merchant Builders in increments compatible with construction and marketing requirements.

27. "Neighborhood Assessments" shall mean assessment determined pursuant to any Neighborhood Restrictions, and which are levied exclusively on the Lots or Units contained in a particular Neighborhood.

28. "Neighborhood Association" shall mean the governing body of a Neighborhood which may be created pursuant to the Neighborhood Restrictions, Articles of Incorporation or the By-Laws therefor.

29. "Neighborhood Board" shall mean the governing body of a Neighborhood which may be created pursuant to the Neighborhood Restrictions, Articles of Incorporation or the By-Laws for a Neighborhood Association.

30. "Neighborhood Common Area" shall mean the area within the boundaries of a Neighborhood owned by the Neighborhood Association or collectively by the Owners within the Neighborhood in common and restricted in whole or in part to use primarily by or for the benefit of the Owners of Lots or Units within the Neighborhood, their lessees and invitees.

31. "Neighborhood Residential Areas" shall mean those areas shown on the Community Concept Plan as property specified for residential development and use and which areas are established as Neighborhoods pursuant to Neighborhood Restrictions.

32. "Neighborhood Restrictions" shall mean the Declaration of Covenants, Conditions and Restrictions which are recorded with respect to each Neighborhood including the declarations providing for annexation of increments, if any, to a particular Neighborhood.

33. "Non-Residential Areas" shall mean all of the areas of the Community described in Section 2.2 of the Community Declaration except the Neighborhood Residential Areas.

LAW OFFICES
MILLER, STARR
& REGALIA

RAY BUILDING-SUITE 1650
ONE KASBER PLAZA
OAKLAND, CALIF 94612
TEL (415) 485-3800

34. "Owner" shall mean a record owner of fee simple title to any Lot, Unit or other Parcel of property in the Community, whether held by one or more persons or entities, and shall include Declarant and Merchant Builders unless the context expressly provides otherwise. A contract purchaser under a recorded installment land sales contract shall be included as an "Owner" but those merely having an interest in property as security for performance of an obligation shall not be "Owners."

35. "Private Streets" shall mean those streets and drives within the Community Common Areas or within Neighborhoods which are not Public Streets.

36. "Public Streets" shall mean those streets and drives within the Community which are or will be designated for dedication and acceptance as public streets by the City.

37. "School Sites" shall mean the those areas designated on the Community Concept Plan as areas to be developed for school purposes and which are restricted for such use by a Supplemental Restriction or by a public school district.

38. "Supplemental Restrictions" shall mean a Declaration of Covenants, Conditions and Restrictions or Declaration of Annexation executed and recorded by Declarant or a successor to Declarant establishing use restrictions as covenants running with the land as to any property in the Community other than Neighborhoods.

39. "Unit" shall mean any Unit which is a part of a condominium project in the Community as shown on any recorded Subdivision Map or Condominium Plan for such Condominium project.

FILE/PAGE NO. _____
BOOK 1981
RECORDED REQUEST OF
FIRST AMERICAN TITLE INS. CO.
JUL 31 4 12 PM '81
OFFICIAL RECORDS
SAN DIEGO COUNTY, CAL.
VERA L. LYLE
RECORDER

Recording Requested by:

Attorney

When Recorded Mail to:

Jenkins & Perry
A Professional Corporation
1900 Central Federal Tower
225 Broadway
San Diego, California 92101



Space Above For Recorder's Use

FIRST AMENDMENT
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

BY THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDI-
TIONS AND RESTRICTIONS, dated as of the 16th day of June, 1981,
the undersigned, constituting at least fifty-one percent (51%) of
the Owners of all of the land in The Community of Bernardo
Heights which is subject to that certain Declaration of
Covenants, Conditions and Restrictions (the "Community
Declaration") dated September 29, 1980, recorded September 30,
1980, at File/Page No. 80-319018, Official Records of San Diego
County, California, hereby amend the Community Declaration as
follows:

ARTICLE 1

Amendments

1.1 Paragraph 2.2 of the Community Declaration is deleted
in its entirety and the following Paragraph 2.2 is substituted
therefor:

2.2 LAND CLASSIFICATION: The real property
within the Community may be divided into the following
land classifications, as said classifications are
defined in Exhibit "D" and shown on the Community
Concept Plan:

- A. Neighborhood Residential Areas

FILE/PAGE NO. _____
 BOOK 1981
 RECORDED REQUEST OF
 FIRST AMERICAN TITLE INS. CO.
 JUL 31 4 12 PM '81
 OFFICIAL RECORDS
 SAN DIEGO COUNTY, CA.
 VERA L. LYLE
 RECORDER

Recording Requested by:

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When Recorded Mail to:

Jenkins & Perry
 A Professional Corporation
 1900 Central Federal Tower
 225 Broadway
 San Diego, California 92101



Space Above For Recorder's Use

FIRST AMENDMENT
 TO
 DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS

BY THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, dated as of the 16th day of June, 1981, the undersigned, constituting at least fifty-one percent (51%) of the Owners of all of the land in The Community of Bernardo Heights which is subject to that certain Declaration of Covenants, Conditions and Restrictions (the "Community Declaration") dated September 29, 1980, recorded September 30, 1980, at File/Page No. 80-319018, Official Records of San Diego County, California, hereby amend the Community Declaration as follows:

ARTICLE 1

Amendments

1.1 Paragraph 2.2 of the Community Declaration is deleted in its entirety and the following Paragraph 2.2 is substituted therefor:

2.2 LAND CLASSIFICATION: The real property within the Community may be divided into the following land classifications, as said classifications are defined in Exhibit "D" and shown on the Community Concept Plan:

- A. Neighborhood Residential Areas

- B. Neighborhood Common Areas
- C. Community Common Areas
- D. Community Commercial Areas
- E. Community Recreation Facilities
- F. Membership Recreation Facilities and
Golf Course Area
- G. School Areas
- H. Church sites
- I. Public Streets
- J. Private Streets

In the event that the nature or extent of the classification of any such property is changed by an amendment to the Community Concept Plan which is approved by the City, the classifications as established on any such amendment to the Community Concept Plan shall govern and supersede the foregoing classifications.

1.2 Subparagraph A of Paragraph 3.4 of the Community Declaration is deleted in its entirety and the following Subparagraph A is substituted therefor:

A. Votes Per Neighborhood Association:

Each Neighborhood Association shall have one (1) vote for each Lot or Unit then a part of the Neighborhood as established by the Neighborhood Declaration, except as otherwise provided in Paragraph 3.5 below with respect to the election of the Community Directors.

1.3 Subparagraph D of Paragraph 3.4 of the Community Declaration is deleted in its entirety and the following Subparagraph D is substituted therefor:

D. Voting Procedures: The votes of each Neighborhood Association shall be cast in writing at a meeting called for the purpose of such voting. The president of each Neighborhood Association shall cast the votes allocated to that particular Association. At meetings of the Community Members, in the absence of the president of any Neighborhood Association, the vice president of such Neighborhood Association shall be authorized to act at such meeting in the place of such

absent president. The manner in which any particular Neighborhood Association casts its votes on a particular issue shall be determined by the Neighborhood Board of such Neighborhood Association; provided, however, that where Lots or Units in a Neighborhood are owned by Declarant or a Merchant Builder, the president of the Neighborhood Association for such Neighborhood shall cast the votes attributable to such Lots or Units on such issue only in the manner specified by Declarant. The votes attributed to Declarant for any properties not part of a Neighborhood Association shall be cast in writing by a duly authorized representative of Declarant.

1.4 Subparagraph E of Paragraph 3.4 of the Community Declaration is deleted in its entirety and the following Subparagraph E is substituted therefor:

E. Special Voting Procedures: Until seventy-five percent (75%) of the Lots or Units in each Neighborhood have been sold to Owners other than Declarant or a Merchant Builder, for any issue which requires the approval of a specified percentage of the Community Voting Rights (other than the election of Community Directors or any issue requiring only the approval of a majority of the Community Voting Rights at a duly held meeting of Community Members at which a quorum is present) to be approved as an action of the Community Members, it must be approved by (i) the required percentage of the Community Voting Rights and (ii) the required percentage of all votes which the presidents of all the Neighborhood Associations can cast subject to the special voting procedures described below. In casting its votes for the purposes of determining approval by the specified percentage of the votes referred to above in Clauses (i) and (ii) of the preceding sentence, each Neighborhood Association shall cast its votes in accordance with the direction of the Neighborhood Board and/or Declarant, as provided in Subparagraph D of this Paragraph 3.4; provided, however, in casting its votes for the purposes of determining approval by the specified percentage of the votes referred to above in Clause (ii) of the preceding sentence, the Neighborhood Association for each Neighborhood in which seventy-five percent (75%) of the Lots or Units have not been sold to Owners other than Declarant or a Merchant Builder shall instead observe the following special voting procedures:

(1) Such Neighborhood Association shall first inform all of the Owners in such Neighborhood of

the issue subject to the special voting procedures, and then submit such issue to the vote of the Owners in such Neighborhood (other than Declarant or a Merchant Builder) in accordance with the Bylaws of such Neighborhood Association and as permitted by law. The vote which has been cast by each of such Owners on such issue shall be separately determined by such Neighborhood Association.

(2) As so determined, the president of such Neighborhood Association shall cast its votes on such issue, excluding therefrom only those votes which are attributable to Lots or Units in such Neighborhood owned by Declarant or a Merchant Builder, in favor or against such issue (or in favor of each alternative for any such issue presenting multiple alternatives) in the same proportion as that of the votes cast by Owners in such Neighborhood in favor or against such issue (or in favor of each alternative for any such issue presenting multiple alternatives).

1.5 Subparagraph B of Paragraph 3.5 of the Community Declaration is deleted in its entirety and the following Subparagraph B is substituted therefor:

B. Procedure for Selection: The Community Directors shall be elected by the Community Members. The president of each Neighborhood Association constituting a Community Member shall cast one (1) vote for each Lot or Unit not owned by Declarant or a Merchant Builder in the Neighborhood he represents and three (3) votes for each Lot or Unit in said Neighborhood owned by Declarant or Merchant Builder. For any property in a Neighborhood which has not been divided into residential Lots pursuant to a Final Subdivision Map, the votes allocated for such property to Declarant shall be as set forth in Paragraph 3.4. Except for representatives elected by or through Declarant, the representatives on the Community Board must be an Owner within the Community, but may be an employee or officer of a corporate Owner. ✓

At least thirty (30) days prior to any election of any Community Director, the Community Association shall cause a Notice of Election to be sent to each Neighborhood Board. Each Neighborhood Board shall be entitled to nominate candidates for any open position on the Community Board by written notice to the Community Board. Except for representatives of Declarant, however, no more than one (1) Community Director from

any particular Neighborhood shall be elected or shall otherwise serve on the Community Board at the same time. Nominations shall be closed two weeks after the date of the Notice of Election from the Community Association. The Community Association shall thereupon cause a slate of nominees to be circulated to each Neighborhood Board. Each Neighborhood Board shall thereupon instruct its president, as the elector of such Neighborhood, for whom the votes of the Neighborhood shall be cast; provided, however, that where Lots or Units in a Neighborhood are owned by Declarant or a Merchant Builder, the president shall cast the votes attributable to such Lots or Units only for whom Declarant specifies. Three (3) votes shall be attributed to each Lot or Unit which Declarant or a Merchant Builder owns in such Neighborhood. For any Neighborhood, the right of such three (3) votes for each Lot or Unit shall terminate upon sale of seventy-five percent (75%) of the Lots or Units in such Neighborhood, as such Lots or Units are shown on the Community Concept Plan, to Owners other than Declarant or Merchant Builder.

In the event that a Neighborhood has not been subdivided into Lots or Units and is owned by Declarant, or a Merchant Builder, and no Neighborhood Association has been formed, then Declarant shall represent said Neighborhood at meetings convened for selection of the representatives to the Community Board and shall cast its votes for such property as allocated under Paragraph 3.4 hereof.

1.6 Paragraph 3.9 of the Community Declaration is deleted in its entirety and the following Paragraph 3.9 is substituted therefor:

3.9 ENFORCEMENT OF RESTRICTIONS AND RULES: In the event of a breach of this Community Declaration or any of the Community Rules by any Owner of property in the Community, his family, guests, employees, invitees, licensees, or tenants, the Community Board, for and on behalf of all other Owners, shall have the right to enforce the obligations of each Owner to obey and comply with this Community Declaration and the Community Rules in any manner provided by law or in equity, including, but not limited to, appropriate hiring of legal counsel, the pursuing of legal action, or suspension of the Owner's right to use the Community Recreation Facilities; provided, however, such suspension may not be for a period in excess of thirty (30) days, after notice and hearing as herein provided, for

each infraction. In addition to the other remedies herein set forth, the Community Board, by majority vote, may levy a fine against such Owner, after appropriate notice and hearing as herein provided, in a reasonable amount for each such violation and the payment of such fine may be enforced in the same manner as set forth in Article IV hereof. Prior to reaching a decision to impose any penalty provided herein for breach of any rules enacted hereunder or any covenants, conditions or restrictions contained in this Community Declaration, the Community Board shall send written notice to the Owner specifying the nature of the infraction and providing an opportunity for the Owner to a hearing before the Community Board regarding such infraction and the penalty to be imposed. Said notice shall be given at least fifteen (15) days prior to said hearing. In the event that the Community Board determines that said infraction has occurred, it may impose a penalty to become effective not less than five (5) days after said hearing. Any such determination of the Community Board shall be final. In the event legal counsel is retained or legal action is instituted by the Community Board pursuant to this Paragraph, any settlement prior to judgment or any judgment rendered in any such action shall include costs of collection, court costs, and reasonable attorneys' fees. The Community Board may establish a hearing committee and delegate thereto all of the power, authority and responsibility for holding any hearings and determinations required in this provision.

Notwithstanding anything to the contrary herein contained, neither the Community Board nor the Community Members shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Lot or Unit, including access thereto over and across the Community Common Areas, on account of such Owner's failure to comply with the provisions of this Community Declaration, the Community By-Laws or any rules adopted by the Community Board or the Community Association relating to the operation of the Community Common Area or Community Recreation Facilities, except when such loss or forfeiture is the result of a judgment of a court or a decision arising out of arbitration or on account of a foreclosure or under the power of sale herein granted for failure of the Owner to pay the assessments levied pursuant to the provisions hereof.

1.7 Subparagraph A of Paragraph 4.6 of the Community Declaration is deleted in its entirety and the following Subparagraph A is substituted therefor:

A. Commencement of Regular Community Assessments: Regular Community Assessments shall commence as to all Lots or Units located within the property described in Exhibit A attached hereto on the first day of the month following the closing of the first sale of any such Lot or Unit located within said property to an Owner other than Declarant or a Merchant Builder. As to any property which is annexed into the Community pursuant to a Declaration of Annexation, the Regular Community Assessment shall commence as to all of such annexed property upon the first day of the first month following the closing of the sale of the first Lot or Unit in such annexed property.

1.8 Paragraph 6.1 of the Community Declaration is deleted in its entirety and the following Paragraph 6.1 is substituted therefor:

6.1 NEIGHBORHOOD RESTRICTIONS: Each residential Neighborhood shall have Neighborhood Restrictions which shall specify the procedures for operation and management of the Neighborhood and establish the uses permitted and prohibited regarding the Lots and/or Units and the Neighborhood Common Area. The Neighborhood Restrictions shall be established by the Merchant Builder of the Neighborhood prior to the sale of the first Lot or Unit in the Neighborhood and shall be subject to review and approval by Declarant to assure consistence and compatability with the standards and procedures of the Community Restrictions. There shall be no amendment of the provisions in any such Neighborhood Restrictions, except with the written consent of the Community Board and, until ten (10) years after the date of recordation of this Community Declaration, of Declarant. The Owner of each Lot or Unit shall comply with the provisions of the Neighborhood Restrictions applicable thereto, including, without limitation, the provisions pertaining to maintenance and landscaping. A Neighborhood Association shall be established for each Neighborhood. Every Community Director shall have the absolute right at any reasonable time to inspect all books, records and documents of a Neighborhood Association, and to make at his or her expense extracts and copies of such documents.

1.9 Paragraph 8.6 of the Community Declaration is deleted in its entirety and the following Paragraph 8.6 is substituted therefor:

8.6 APPLICATION FOR APPROVAL OF IMPROVEMENTS:

Any Owner, proposing to perform any work of any kind whatever which requires the prior approval of the Community Architectural Committee under this Community Declaration, shall apply to such Committee for approval by notifying the Community Architectural Committee of the nature of the proposed work in writing and furnishing such information as said Committee may require, including but not limited to (1) a plot plan of the Lot or Unit, showing the location of all existing and proposed improvements; (2) floor plans; (3) elevation drawings; (4) a description of exterior materials and colors; and (5) the Owner's proposed construction schedule. The Community Architectural Committee may require that the application for approval in connection with any improvement to be constructed be accompanied by a reasonable fee and/or deposit.

1.10 In Paragraph 8.9 of the Community Declaration, the reference in the last sentence thereof to "Paragraph 8.9" is corrected to refer instead to "Paragraph 8.10."

1.11 Paragraph 12.1 of the Community Declaration is deleted in its entirety and the following Paragraph 12.1 is substituted therefor:

12.1 AMENDMENTS: The covenants, conditions and restrictions of this Community Declaration shall run with and bind the land for a term of fifty-five (55) years from the date this Community Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. After said initial term, this Community Declaration may be terminated by the written assent of seventy-five percent (75%) of all of the Owners in the Community. Subject to the provisions of Article XI, and prior to the closing of the first sale of any Lot or Unit in the Community to an Owner other than Declarant or a Merchant Builder, any amendment of this Community Declaration shall become effective only upon recordation of an instrument reflecting such amendment, duly executed and acknowledged by Declarant and fifty-one percent (51%) of all Merchant Builders owning land in the Community. Subject to the provisions of Article XI, and after the closing of the first sale of any Lot or Unit in the Community to an Owner other than Declarant or a Merchant Builder, this Community Declaration may be amended only by the vote or written consent of (1) fifty-one percent (51%) of all of the Owners in the Community and (2) fifty-one percent (51%)

of all of the Owners in the Community other than Declarant and all Merchant Builders. After the closing of the first sale of any Lot or Unit in the Community to an Owner other than Declarant or Merchant Builder, any amendment of this Community Declaration shall become effective only upon recordation of an instrument reflecting such amendment, duly certified and executed by the president and secretary of the Community Association; for the purpose of recording such instrument, the president and secretary of the Community Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument. Notwithstanding anything contained herein to the contrary, in no event may any of Declarant's rights under the Community Articles, Community By-Laws or this Community Declaration be terminated, altered or amended without Declarant's prior written consent.

1.12 In Paragraph 9 of Exhibit D to the Community Declaration, the reference to "Paragraph 3.6" is corrected to refer instead to "Paragraph 3.5."

1.13 Paragraph 12 of Exhibit D to the Community Declaration is deleted in its entirety and the following Paragraph 12 is substituted therefor:

12. "Community Common Area" shall mean all real property in which the Community Association owns an interest for the common use and benefit of the Community Members, their lessees, guests, invitees or patrons. The Community Common Area may include interest held by lease or easement as well as estates in fee.

1.14 Paragraph 19 of Exhibit D to the Community Declaration is deleted in its entirety and the following Paragraph 19 is substituted therefor:

19. "Community Voting Rights" shall mean the total number of votes allocated to Lots, Units and unsubdivided property in the Community as specified in Paragraph 3.4, Subparagraphs A, B and C of the Community Declaration.

1.15 Each and every reference to "Lot" in Subparagraph D of Paragraph 4.6, Subparagraph B of Paragraph 6.2, Clauses (1) and (2) of Subparagraph D of Paragraph 11.2, and Subparagraph F of Paragraph 11.2 of the Community Declaration is corrected to refer instead to "Lot or Unit."

1.16 Each and every reference to "Lots" in Subparagraph B of Paragraph 3.5, Clause (5) of Subparagraph H of Paragraph 3.7, and Subparagraph C of Paragraph 10.1 of the Community Declaration is corrected to refer instead to "Lots or Units."

1.17 Each and every reference to "Unit" in Subparagraph A of Paragraph 8.2 and Paragraph 8.13 of the Community Declaration is corrected to refer instead to "Lot or Unit."

ARTICLE 2

Confirmation

2.1 The Community Declaration, as amended by this First Amendment to Declaration of Covenants, Conditions and Restrictions, is hereby confirmed.

IN WITNESS WHEREOF, this First Amendment to Declaration of Covenants, Conditions and Restrictions has been executed in San Diego, California, as of the date set forth at the beginning hereof.

Dated: July __, 1981

GENSTAR DEVELOPMENT INC.,
a New York corporation
(Genstar Penasquitos Division)

By William O. Wood
VICE President

By Frank D. Pankratz
Asst. Secretary

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On July 31, 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared William O. Wood, known to me to be the Vice President, and Frank D. Pankratz, known to me to be the Asst. Secretary, of GENSTAR DEVELOPMENT INC. (Genstar Penasquitos Division), and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.



Rosy O'Beyant
Notary Public in and for said
County and State

Dated: July 14, 1981, 1981

GENSTAR DEVELOPMENT INC.,
a New York corporation
(Broadmoor Homes Division)

By [Signature]
Wyn Pope, Vice President

By [Signature]
Jenny L. Harding, Authorized Agent

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On July 14, 1981, before me, the undersigned, a Notary
Public in and for said County and State, personally appeared
Wyn Pope, known to me to be the Vice President, and
Jenny L. Harding, known to me to be the Authorized Agent, of
GENSTAR DEVELOPMENT INC. (Broadmoor Homes Division), and
acknowledged to me that such corporation executed the within
instrument pursuant to its bylaws or a resolution of its Board of
Directors.

WITNESS my hand and official seal.



Kathleen P. Hammock
Notary Public in and for said
County and State

Dated: July 22, 1981

RBD, INC.,
a California corporation

BY Richard Green
~~President~~
Agent

BY _____
Secretary

STATE OF ^{Arizona} CALIFORNIA)
^{Mesa}) SS
COUNTY OF ~~SAN DIEGO~~)

On 22nd Jul, 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard Green, known to me to be the the President, and _____, known to me to be the _____ Secretary, of RBD, INC., and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

My Commission Expires Sept. 20, 1982

Catherine Shelley Weston
Notary Public in and for said
County and State

Dated: 7/22, 1981

UDC DEVELOPMENT COMPANY,
a California corporation

By [Signature]
 President

By _____
_____ Secretary

Arizona
STATE OF ~~CALIFORNIA~~)
Maricopa) SS
COUNTY OF ~~SAN DIEGO~~)

On 22nd Jul. 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared [Signature], known to me to be the Vice President, and _____, known to me to be the _____ Secretary, of UDC DEVELOPMENT COMPANY, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

[Signature]
Notary Public in and for said
County and State

My Commission Expires Sept. 20, 1983

Dated: July 2, 1981

BH UNIT NO. 3
a Joint Venture

By CHRISTOPHER HOMES DEVELOPMENT,
a general partnership,
Joint Venturer

By Christopher Homes Inc., a
general partner

By Christopher C. Gibbs
Christopher C. Gibbs,
President

By PROVIDENT CAPITAL CORPORATION,
a California corporation,
Joint Venturer

By Jeffrey S. Nelson
vice President

By Patricia J. Yirai
Secretary

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On July 2, 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Christopher C. Gibbs, known to me to be the President of CHRISTOPHER HOMES, the corporation that executed the within instrument and known to me to be the person who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the partners of Christopher Homes Development, said partnership being known to me to be one of its joint venturers of BH UNIT NO. 3, the joint venture that executed the within instrument, and acknowledged to me that such corporation executed the same as such joint venturer pursuant to its bylaws or a resolution of its Board of Directors and that such joint venture executed the same.

WITNESS my hand and official seal.

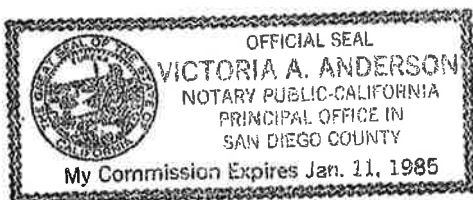


Carla S. Smith
Notary Public in and for said
County and State

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On July 6, 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jeffrey S. Nelson, known to me to be the Vice President, and Patricia R. Hirai, known to me to be the Secretary of PROVIDENT CAPITAL CORPORATION, the corporation that executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the joint venturers of BH UNIT NO. 3, the venture that executed the within instrument, and acknowledged to me that such corporation executed the same as such joint venturer pursuant to its bylaws or a resolution of its Board of Directors and that such joint venture executed the same.

WITNESS my hand and official seal.



Victoria A. Anderson
Notary Public in and for said
County and State

Dated: June 22, 1981

AKINS COMPANY VENTURE NO. 4,
a California Limited Partnership

By THE AKINS COMPANY,
a California corporation

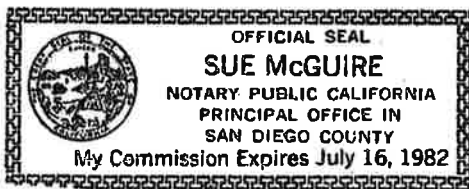
By *Bruce K. Akins*
BRUCE K. AKINS President

By *Patrick G. Hayes*
PATRICK G. HAYES
EXECUTIVE VICE PRESIDENT/

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On June 22, 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Bruce K. Akins, known to me to be the --- President, and Patrick G. Hayes, known to me to be the Exec. Vice-Pres. of THE AKINS COMPANY, the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the partners of AKINS COMPANY VENTURE NO. 4, the limited partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner pursuant to its bylaws or a resolution of its Board of Directors and that such partnership executed the same.

WITNESS my hand and official seal.



Sue McGuire
Notary Public in and for said
County and State

Dated: June 16, 1981

PONDEROSA HOMES,
a California General Partnership

By

George R. Putnam



STATE OF CALIFORNIA)
) SS
COUNTY OF ORANGE)

On June 16, 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared George R. Putnam, known to me to be the duly authorized agent of the partnership that executed the within instrument and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.



Billie N. Frank
Notary Public in and for said
County and State

CONSENT TO FIRST AMENDMENT
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

Pursuant to Article XI of the aforesaid Community Declaration, the undersigned, constituting at least seventy-five percent (75%) of all of the holder(s) of first real property mortgages and deeds of trust encumbering the land which is subject to said Community Declaration, do hereby consent to the execution and recordation of the foregoing First Amendment to Declaration of Covenants, Conditions and Restrictions.

Dated: June 18, 1981

WELLS FARGO BANK, N.A.,
a national banking association

By R. F. Will
VIC - President

By [Signature]
Secretary

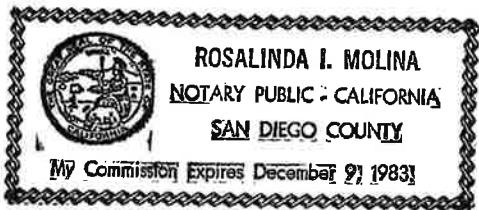
Beneficiary under Deeds of Trust
recorded March 31, 1981, File/Page
Nos. 81-096696, 81-096697 and
81-096698, Official Records of San
Diego County, California

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On June 18, 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Richard F Williams, known to me to be the Vice President, and B. Nuno, known to me to be the Ass't Secretary, of WELLS FARGO BANK, N.A., the national banking association described in and that executed the within foregoing instrument and also known to me to be the persons who executed said instrument on behalf of said national banking association and acknowledged to me that such national banking association executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

Rosalinda I. Molina
Notary Public in and for said
County and State



600 B STREET, SUITE 204
SAN DIEGO, CA 92101

Dated: June 22, 1981

FIRST INTERSTATE BANK OF CALIFORNIA
(formerly United California Bank)
a California corporation

By J. E. Barrett
Vice President

BY Sonia H. Rache
Asst. Secretary

Beneficiary under Deeds of Trust
recorded December 15, 1977, File/
Page No. 77-517399 and recorded
January 30, 1981, File/Page No.
81-30370, Official Records of San
Diego County, California

STATE OF CALIFORNIA)
) ORANGE) SS
COUNTY OF SAN DIEGO)

On June 22, 1981, before me, the undersigned, a Notary
Public in and for said County and State, personally appeared
J. E. Barrett, known to me to be the Vice President, and
Sonia H. Rache, known to me to be the Asst. Secretary, of
FIRST INTERSTATE BANK (formerly United California Bank), and
acknowledged to me that such corporation executed the within
instrument pursuant to its bylaws or a resolution of its Board of
Directors.

WITNESS my hand and official seal.



[Signature]
Notary Public in and for said
County and State

Dated: 6/16/ 1981

CROCKER NATIONAL BANK,
a national banking association

BY Karen G. Caldwell
ASSISTANT VICE President

BY Rebecca Marshall
CONSTRUCTION FINANCE OFFICER Secretary

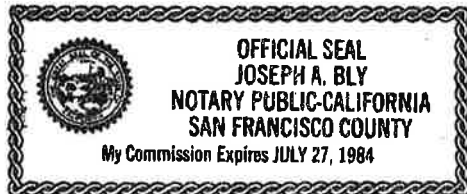
Beneficiary under Deeds of Trust
recorded September 30, 1980, File/
Page Nos. 80-319022 and 80-319023,
Official Records of San Diego
County, California

STATE OF CALIFORNIA
~~SAN FRANCISCO~~) SS
COUNTY OF ~~SAN DIEGO~~)

On JUNE 16, 1981, before me, the undersigned, a Notary
Public in and for said County and State, personally appeared
KAREN G. CALDWELL, known to me to be the ASST VICE President, and
REBECCA MARSHALL, known to me to be the OFFICER Secretary, of
CROCKER NATIONAL BANK, the national banking association described
in and that executed the within foregoing instrument and also
known to me to be the persons who executed said instrument on
behalf of said national banking association and acknowledged to
me that such national banking association executed the within
instrument pursuant to its bylaws or a resolution of its Board of
Directors.

WITNESS my hand and official seal.

Joseph A. Bly
Notary Public in and for said
County and State



Dated: July 31, 1981

AMERICAL INSTRUMENT CORPORATION,
a corporation
By: Genstar Development Inc.
Attorney in Fact

BY William O. Wood
Vice PRESIDENT

BY Frank D. Pankratz
Asst SECRETARY

Beneficiary under Deed of Trust recorded
December 29, 1979 as File No. 79-561807
by Assignment recorded December 30, 1980
as File No. 80-437356 Official Records of
San Diego County, California

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On July 31, 1981, before me, a Notary Public in and for said County and State, personally appeared William O. Wood and Frank D. Pankratz, known to me to be the Vice President and Assistant Secretary, respectively, of Genstar Development Inc., a corporation, whose name is subscribed to the within instrument as the attorney-in-fact for Americal Instrument Corporation, the corporation that executed the within instrument, said persons being known to me to be the persons who executed the within instrument on behalf of Genstar Development Inc., a corporation, as the attorney-in-fact of Americal Instrument Corporation, a corporation, and acknowledged to me that Genstar Development Inc., a corporation, executed the within instrument as attorney-in-fact, that they subscribed the name of Americal Instrument Corporation, a corporation, as the principal and the name of Genstar Development Inc., a corporation, as attorney-in-fact and further acknowledged to me that such corporation executed the same as such attorney-in-fact and that such corporation executed the same.

WITNESS my hand and official seal.

Rosy O'Bryant
Notary Public in and for said
County and State



Dated: July 21, 1981

UNION BANK,
a California corporation

BY Jeffery D. McCormack
Jeffery D. McCormack, Assistant Vice President

BY Michael Vaca
Michael Vaca, Assistant Vice President

Beneficiary under Deeds of Trust recorded
February 24, 1981 as File No. 81-054865,
May 1, 1981 as File Nos. 81-133899 and 81-
133900, Official Records of San Diego County,
California

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On July 21, 1981, before me, the undersigned, a Notary Public
in and for said County and State, personally appeared Jeffery D. McCormack,
known to me to be the A.V. President, and Michael Vaca, known to
me to be the AVP Secretary, of UNION BANK, the California corporation
described in and that executed the within foregoing instrument and also known
to me to be the persons who executed said instrument on behalf of said national
banking association and acknowledged to me that such national banking association
executed the within instrument pursuant to its bylaws or a resolution of its
Board of Directors.

WITNESS my hand and official seal.

Micki J. Shepherd
Notary Public in and for said County and
State Micki J. Shepherd



