

Restated Declaration of Covenants, Conditions, and Restrictions of Los Paseos Association

TABLE OF CONTENTS

RECITALS 1

ARTICLE I 2

1. Definitions 2

 1.1 Alley 2

 1.2 Architectural Committee 2

 1.3 Articles 2

 1.4 Assessment 2

 1.5 Association 2

 1.6 Association Rules 2

 1.7 Board of Directors 2

 1.8 Bylaws 2

 1.9 City 2

 1.10 Common Area 2

 1.11 Common Expense 2

 1.12 Common Facilities 3

 1.13 County 3

 1.14 Declarant 3

 1.15 Declaration 3

 1.16 Governing Documents 3

 1.17 Improvement 3

 1.18 Lot 3

 1.19 Member 3

 1.20 Mortgage 3

 1.21 Owner 3

 1.22 Owner of Record 3

 1.23 Party Wall 3

 1.24 Properties 3

 1.25 Regular Assessment 4

 1.26 Residence 4

 1.27 Single Family Residential Use 4

 1.28 Special Assessment 4

 1.29 Special Individual Assessment 4

 1.30 Subdivision Map 4

ARTICLE II 4

2. Property Rights and Obligations of Owners 4

 2.2.1 Owners' Nonexclusive Easements of Enjoyment 4

 2.2 Persons Subject to Governing Documents 5

 2.3 Delegation of Use 5

 2.4 Obligations of Owners 6

ARTICLE III 7

3. Owners Association 7

 3.1 Association Membership 7

 3.2 One Class of Membership 7

 3.3 Voting Rights of Members 7

 3.4 Assessments 8

 3.5 Transfer of Memberships 8

3.6	<u>Powers and Authority of the Association</u>	8
3.7	<u>Association Rules</u>	8
3.8	<u>Breach of Rules or Restrictions</u>	9
3.9	<u>Limitation on Liability of Association's Directors and Officers</u>	9
ARTICLE IV		10
4.	<u>Assessments</u>	10
4.1	<u>Assessments Generally</u>	10
4.2	<u>Regular Assessments</u>	10
4.3	<u>Special Assessments</u>	12
4.4	<u>Special Individual Assessments</u>	12
4.5	<u>Purpose and Reasonableness of Assessments</u>	13
4.6	<u>Exemption of Certain of the Properties From Assessments</u>	13
4.7	<u>Notice and Procedure for Member Approval Pursuant to Sections 4.2 and 4.3</u>	13
4.8	<u>Maintenance of Assessment Funds</u>	13
4.9	<u>Collection of Assessments; Enforcement of Liens</u>	14
4.10	<u>Transfer of Lot By Sale or Foreclosure</u>	16
4.11	<u>Priorities</u>	17
4.12	<u>Unallocated Taxes</u>	17
4.13	<u>Waiver of Exemptions</u>	17
ARTICLE V.....		17
5.	<u>Architectural Modifications</u>	17
5.1	<u>Improvements in General; Establishment of Architectural Committee</u>	17
5.2	<u>Appointment of Architectural Committee</u>	17
5.3	<u>Submission of Plans; Action by Board or Committee</u>	18
5.4	<u>Architectural Rules</u>	18
5.6	<u>Variances</u>	18
5.7	<u>Estoppel Certificate</u>	18
ARTICLE VI		18
6.	<u>Use of Properties and Restrictions</u>	18
6.1	<u>Single Family Residential Use</u>	18
6.2	<u>Conveyance of Lots</u>	19
6.3	<u>Common Areas</u>	19
6.4	<u>Temporary Structures</u>	19
6.5	<u>Household Pets</u>	19
6.6	<u>Signs</u>	20
6.7	<u>Business Activities</u>	20
6.8	<u>Garbage</u>	20
6.9	<u>Storage</u>	20
6.10	<u>Clotheslines</u>	20
6.11	<u>Antennas and Similar Devices</u>	21
6.12	<u>Burning</u>	21
6.13	<u>Diseases and Pests</u>	21
6.14	<u>Parking and Vehicle Restrictions</u>	21

6.15	<u>Use and Maintenance of Alley</u>	21
6.16	<u>Children</u>	22
6.17	<u>Activities Affecting Insurance</u>	22
6.18	<u>Restriction On Further Subdivision And Severability</u>	22
6.19	<u>Variances</u>	22
6.20	<u>Enforcement of Property Use Restrictions</u>	22
ARTICLE VII		22
7.	<u>Maintenance Responsibilities</u>	22
7.1	<u>Common Area</u>	22
7.2	<u>Owner Maintenance Responsibilities</u>	22
7.3	<u>Recovery Of Costs Of Certain Repairs And Maintenance</u>	22
7.4	<u>Cooperative Maintenance Obligations</u>	23
ARTICLE VIII		23
8.	<u>Easements</u>	23
8.1	<u>Encroachment Easements</u>	23
8.2	<u>Blanket Utility Easement</u>	23
8.3	<u>Maintenance Easements</u>	23
8.4	<u>Boundary Changes</u>	23
8.5	<u>Other Easements</u>	23
8.6	<u>Priority of Easements</u>	23
ARTICLE IX		23
9.	<u>Insurance</u>	23
9.1	<u>Types of Insurance Coverage</u>	23
9.2	<u>Coverage Not Available</u>	24
9.3	<u>Copies of Policies</u>	25
9.4	<u>Individual Fire Insurance On Lot Improvements</u>	25
9.5	<u>Trustee</u>	25
9.6	<u>Adjustment of Losses</u>	25
ARTICLE X		25
10.	<u>Damage or Destruction</u>	25
10.1	<u>Common Facilities</u>	25
10.2	<u>Common Facilities; Sufficient Insurance Proceeds</u>	25
10.3	<u>Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding \$5000</u>	25
10.4	<u>Damage or Destruction of Residences</u>	25
ARTICLE XI		26
11.	<u>Condemnation</u>	26
11.1	<u>Association As Trustee For Owner</u>	26
ARTICLE XII		26
12.	<u>Breach and Default</u>	26
12.1	<u>Remedy at Law Inadequate</u>	26

12.2	<u>Nuisance</u>	26
12.3	<u>Costs and Attorneys' Fees</u>	26
12.4	<u>Cumulative Remedies</u>	26
12.5	<u>Failure Not a Waiver</u>	26
12.6	<u>Rights and Remedies of the Association</u>	26
12.7	<u>Court Actions</u>	28
ARTICLE XIII		29
13.	<u>Protection of Mortgagees</u>	29
ARTICLE XIV		29
14.	<u>Notices</u>	29
14.1	<u>Mailing Addresses</u>	29
14.2	<u>Personal Service Upon Co-Owners and Others</u>	30
14.3	<u>Deposit in United States Mails</u>	30
ARTICLE XV		30
15.	<u>No Public Rights In The Properties</u>	30
ARTICLE XVI		30
16.	<u>Amendment of Declaration</u>	30
16.1	<u>Amendment In General</u>	30
16.2	<u>Effective Date Of Amendment</u>	30
16.3	<u>Reliance On Amendments</u>	30
ARTICLE XVII		30
17.	<u>General Provisions</u>	30
17.1	<u>Term</u>	30
17.2	<u>Construction Of Declaration</u>	31

**RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF LOS PASEOS ASSOCIATION**

The certain Declarations of Covenants, Conditions, and Restrictions for Los Paseos Association, executed by Paseos Homes Joint Venture, a partnership ("Declarant"), and recorded on: (1) November 20, 1968, in Book 8341, page 234, File 3523499, of the Official Records of Santa Clara County, California as modified by that modification recorded on May 12, 1969, in Book 8530, page 332, File 3615868, of the Official Records of Santa Clara County, California, and (2) June 29, 1970, in Book ____, page ____, File ____, of the Official Records of Santa Clara County, California (collectively, the "Original Declaration"), which affects all of the Properties described and commonly known as Los Paseos Association, are hereby consolidated into this single Declaration conveying all the Properties and are hereby amended and restated in its entirety to read as follows:

RECITALS

1. Declarant was the original owner of that certain real property ("Properties") located in the City of San Jose, County of Santa Clara, State of California, which is more particularly described as follows:

Lots 19 to 274 inclusive of Tract No. 4513 in the County of Santa Clara, State of California, per map filed in Book 240 pages 33, 34 and 35 of Maps, Records of said County; and

Lots 275 through 310 inclusive, of Tract No. 4219 in the County of Santa Clara, State of California, per map filed in Book 269, Page 8 of Maps, recorded June 10, 1970, Records of said County.

2. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

3. It was the further intention of the Declarant to sell and convey residential Lots improved by residences originally constructed by Declarant to the Owners, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties as a "planned development" as that term is defined in Section 1351(k) of the California Civil Code. Finally, it was the intention of Declarant that the "Common Areas" and "Common Facilities" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

4. On _____, 19__, __ percent of the Owners of Lots within the Properties voted to consolidate and restate the Original Declarations, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of said Owners to replace the Original Declaration, in their entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declarations was achieved, is attested by the execution of this First Restated Declaration by duly authorized officers of the Association, as required by California Civil Code Section 1355(a). As so amended and restated, the easements, covenants,

restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

Definitions

Section 1. "Alley" means the strip of land approximately 20 feet in width running behind 84 through 128 Bernal Road and behind 6804 and 6898 Avenida Rotella and more particularly described as follows:

Beginning at the Southwesterly common corner for Lots 275 and 293, on the Northeasterly line of Via Del Oro, as shown on the Map first above referred to; thence from said point of beginning and along the line dividing Lots 275 thru 292 from Lots 293 thru 310, as shown on the Map above referred to, N. 26° 27' 00" E. 1121.06 feet to the Northeasterly common corner for Lots 292 and 310 on the Southwesterly line of Via Serena, as shown on the Map first above referred to, and the terminus of the line described herein, the Southwesterly terminus of said 20.00 feet easement is to terminate on the Northeasterly line of said Via Del Oro and the Northeasterly terminus of said 20.00 foot easement is to terminate on the Southwesterly line of said Via Serena.

Section 2. "Architectural Committee" means a committee created in accordance with Article V of this Declaration.

Section 3. "Articles" means the Articles of Incorporation of the Los Paseos Association, which are filed in the Office of the California Secretary of State, as such Articles may be amended from time to time.

Section 4. "Assessment" means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Lot in accordance with the provisions of Article IV of this Declaration.

Section 5. "Association" means the Los Paseos Association, a California nonprofit corporation (originally formed pursuant to the General Nonprofit Corporation Law of the State of California), its successors and assigns. The Association is an "association" as defined in California Civil Code Section 1351(a).

Section 6. "Association Rules" means the rules, regulations and policies adopted by the Board of Directors of the Association, pursuant to Article III, Section 3.7 of this Declaration, as the same may be in effect from time to time.

Section 7. "Board of Directors" or "Board" means the Board of Directors of the Association.

Section 8. "Bylaws" means the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 9. "City" means San Jose and its various departments, divisions, employees and representatives.

Section 10. "Common Area" means all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area owned by the Association at the time of the recordation of this Declaration is described as follows:

Lots 19 to 274 inclusive of Tract No. 4513 in the County of Santa Clara, State of California, per map filed in Book 240 pages 33, 34 and 35 of Maps, Records of said County.

Lots 275 through 310 inclusive, of Tract No. 4219 in the County of Santa Clara, State of California, per map filed in Book 269, Page 8 of Maps, recorded June 10, 1970, Records of said County.

Section 11. "Common Expense" means any use of Common Funds authorized by Article IV hereof and Article IX of the Bylaws and includes, without limitation: (a) All expenses or charges incurred by or on behalf of the Association for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area and Common Facilities that the Association is obligated to maintain or replace, and for non-payment of any Assessments, and (d) the use of such funds to defray the costs and expenses incurred by the Association in the performance of its functions or in the proper discharge of the responsibilities of the Board as provided in the Governing Documents.

Section 12. "Common Facilities" means the swimming pool and apron area, pool storage and pump house, pool furniture, Club House, tennis courts, cabana, volleyball court and Paseo path, as shown on the Subdivision Map, trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located within the Common Area.

Section 13. "County" means the County of Santa Clara, State of California, and its various departments, divisions, employees and representatives.

Section 14. "Declarant" means the original developer of the Properties, namely Paseos Homes Joint Venture, a partnership.

Section 15. "Declaration" means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the documents referenced in the Preamble to this Declaration together with all amendments and annexations thereto, adopted prior to adoption of this Declaration.

Section 16. "Governing Documents" is a collective term that means and refers to this Declaration, the Articles, the Bylaws, and the Association Rules.

Section 17. "Improvement" includes, without limitation, the construction, installation, alteration, painting or remodeling of any buildings, walls, decks, fences, landscaping, landscape structures, skylights, solar heating equipment, antennas, utility lines, or any structure of any kind. In no event shall the term "Improvement" be interpreted to include projects which are restricted to the interior of any Residence.

Section 18. "Lot" means any parcel of real property designated by a number on the Subdivision Map for any portion of the Properties, excluding the Common Area. When appropriate within the context of this Declaration, the term "Lot" shall also include the Residence and other improvements constructed or to be constructed on a Lot.

Section 19. "Member" means every person or entity who holds a membership in the Association and whose rights as a Member are not suspended.

Section 20. "Mortgage" means any security device encumbering all or any portion of the Properties, including any deed of trust. "Mortgagee" shall refer to a beneficiary under a deed of trust as well as a mortgagee in the conventional sense.

Section 21. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Lot. The term "Owner" shall include, except where the context otherwise requires, the family, guests, tenants and invitees of an Owner.

Section 22. "Owner of Record" and "Member of the Association" include an Owner and mean any person, firm, corporation or other entity in which title to a Lot is vested as shown by the official records of the Office of the County Recorder.

Section 23. "Party Wall" shall mean any wall of a residence or garage located on a property line dividing any

Lots, which wall is commonly used by any such Lot and the adjoining Lot.

Section 24. "Properties" means all parcels of real property (Common Area and Lots) herein before described, together with all buildings, structures, utilities, Common Facilities, and other improvements located or hereafter constructed or installed thereon, and all appurtenances thereto.

Section 25. "Regular Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Article IV, Section 2 hereof.

Section 26. "Residence" means a private, single family dwelling constructed on a Lot.

Section 27. "Single Family Residential Use" means occupation and use of a Residence for single family dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning or other applicable laws or governmental regulations limiting the number of persons who may occupy single family residential dwellings.

Section 28. "Special Assessment" means an Assessment levied on an Owner and his or her Lot in accordance with Article IV, Section 3 hereof.

Section 29. "Special Individual Assessment" means an Assessment made against an Owner and his or her Lot in accordance with Article IV, Section 4 hereof.

Section 30. "Subdivision Map" means the map for any phase of development within the Properties referenced in Recital "A" of this Declaration.

ARTICLE II Property Rights and Obligations of Owners

Section 1. Owners' Nonexclusive Easements of Enjoyment. Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Areas within the Properties, including ingress and egress to and from his or her Lot, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following rights and restrictions:

(a) The right of the Association to charge reasonable admission and other fees to guests or to limit the number of guests of Members who may use any recreational Common Facilities.

(b) The right of the Association to adopt Association Rules as provided in Article III, Section 7 hereof, regulating the use and enjoyment of the Properties for the benefit and well-being of the Owners in common, and, in the event of the breach of such rules or any provision of any Governing Document by any Owner or Tenant, to temporarily suspend the voting rights or to impose appropriate discipline, or both, subject to compliance with the due process requirements of Article XII, Section 6, and Article II, Section 3, respectively.

(c) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the common area and common facilities upon approval of a 2/3 vote of Owners; provided, however, that any such indebtedness shall be considered an expense of the Association for purposes of the Special Assessment provisions of Article IV, Section 3 hereof.

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by at least two-thirds of the voting power of the Members, and their first Mortgagees consenting to such dedication or transfer has been recorded. Furthermore, no dedication shall be permitted that impairs the ingress and egress to any Lot.

Said instrument may be executed in counterparts so long as each counterpart is in recordable form.

(e) The appurtenant Residence and the non-exclusive easements granted herein shall be subordinate to and shall not interfere with these exclusive easements.

(f) The right of the Association and Owners (or their representatives) of adjoining Lots of entry upon and access to slopes and drainage ways located upon a Lot when such access is essential for the maintenance or stabilization of slopes or drainage, or both, on such adjoining Lots, provided requests for entry are made in advance and that entry is at a time convenient to the Owner whose Lot is being entered upon. In case of emergency the right of entry shall be immediate.

Section 2. Persons Subject to Governing Documents. All present and future Owners, tenants and occupants of Lots within the Properties shall be subject to, and shall comply with, each and every provision of the Governing Documents, as the same or any of them shall be amended from time to time, unless a particular provision is specifically restricted in its application to one or more of such classes of persons (i.e., Owners, tenants, invitees, etc.). The acceptance of a deed to any Lot, the entering into a lease, sublease or contract of sale with respect to any Lot, or the occupancy of any Residence shall constitute the consent and agreement of such Owner, tenant or occupant that each and all of the provisions of this Declaration, as the same or any of them may be amended from time to time, shall be binding upon said person and that said person will observe and comply with the Governing Documents.

Section 3. Delegation of Use.

(a) Delegation Of Use And Leasing Of Residences. Any Owner may delegate such Owner's rights to use and enjoy the Common Area and Common Facilities to members of the Owner's family or to such Owner's tenants, lessees or contract purchasers who reside in the Owner's Residence, provided that any rental or lease may only be to a single family for Single Family Residential Use. The word "tenant" as used in this Section 3 shall include and be applicable to any renter, lessee or other person having occupancy rights to an Owner's lot, whether by way of a lease, a rental agreement, a tenancy at will or at sufferance, or an occupier under a contract of sale.

(b) Discipline of Lessees; Exercise of Eviction Authority. Subject to subparagraph (c) below, in the event that any tenant fails to honor the provisions of any Governing Document, the Association shall be entitled to take such corrective action as it deems necessary or appropriate under the circumstances, which may include initiation of an eviction proceeding in accordance with subparagraph (c) below, suspension of the tenant's privileges to use any recreational Common Facilities, and/or the imposition of fines and penalties against the Owner or tenant.

Whether or not such right is stated in any rental or lease agreement, every Owner who rents or leases his or her Residence automatically grants to the Association the right to determine a tenant's default under the Governing Documents and of terminating the tenancy and evicting the tenant for such default. If the Board takes such eviction action, either in its own name or in the Owner's name, the Owner shall be responsible for all costs thereof, including reasonable attorney's fees, and shall reimburse the Association upon demand for the entire amount of such costs. If the Owner refuses to make such reimbursement, the sums shall constitute a Special Individual Assessment as defined in Article IV, Section 4 below, for which a lien may be imposed against the Owner's Lot. The Association's right to maintain an eviction action hereunder is derived from Sections 1165 and 383 of the California Code of Civil Procedure, and shall only arise if the tenant's or lessee's conduct involves damage to or destruction of Common Areas or Common Facilities, or constitutes a nuisance or unreasonable interference with the quiet enjoyment of other residents.

Any fine or penalty levied pursuant to this Section shall be considered a Special Individual Assessment as defined in Article IV, Section 4, below. If a Special Individual Assessment is imposed as a result of the conduct of a tenant, the tenant agrees to be personally obligated for the payment of such assessments in the event the Owner-lessor fails to pay the assessments prior to the delinquency date. This provision, however, shall not be construed to release the Owner from any obligation, including the obligation to pay any duly imposed Special Individual Assessments, for which such Owner would otherwise be responsible. Any tenant charged with a violation of the Governing Documents is

entitled to the same notice and hearing rights to which the Owner is entitled as provided in subparagraph (c) below. Any Owner who shall lease his or her Residence shall be responsible for assuring compliance with the Governing Documents by the tenant.

(c) Due Process Requirements For Disciplinary Action. Except for circumstances in which immediate corrective action is necessary to prevent damage or destruction to the Properties or to preserve the rights of quiet enjoyment of other Owners, the Association shall have no right to initiate disciplinary action against an Owner-lessor (or the Owner's tenant) on account of the misconduct of the Owner's tenant unless and until the following conditions have been satisfied: (i) The Owner has received written notice from the Board detailing the nature of the tenant's alleged infraction or misconduct and advising the Owner of his or her right to a hearing on the matter in the event the Owner believes that remedial or disciplinary action is unwarranted or unnecessary; (ii) the Owner has been given a reasonable opportunity to take corrective action on a voluntary basis or to appear at a hearing, if one is requested by the Owner; and (iii) the Owner has failed to prevent or correct the tenant's objectionable actions or misconduct. Any hearing requested hereunder shall be conducted in accordance with Article XII, Section 6 hereof.

(d) Security Deposit. Through its rule-making power described in Article III, Section 7 hereof, the Board of Directors is hereby authorized and empowered to establish and implement an Association security deposit procedure to protect the Association, the Common Area and Common Facilities from negligence, damage and/or destruction caused by the tenants, of any Owner, their families and guests. Said security deposit, if required, shall be payable by the owner and shall be fixed in an amount not to exceed the greater of \$250 or one month's Regular Assessment, and shall be held by the Association in a separate security deposit fund in the name of the Association. Within two weeks following receipt of notice from the Owner-lessor that the Residence is no longer being occupied by a tenant, the Association shall (1) furnish the Owner with an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security, and (2) shall then return any remaining portion of the security to the Owner.

(e) Recoverable Costs And Expenses. In the event of (i) damage to, or destruction of, Common Areas or Common Facilities by a tenant or the Owner of a leased Residence; (ii) the imposition of a fine or penalty against an Owner-lessor as a result of any act or omission of the Owner's tenant; or (iii) expenses incurred by the Association in the successful prosecution of an eviction proceeding pursuant to subparagraph (b), above, the Association shall be entitled to apply the security deposit to the Recoverable Costs and Expenses. The Owner-lessor shall thereupon immediately reimburse the security deposit fund in an amount equal to the sums thus applied. Upon termination of the tenancy and notification to the Association of such termination, the security deposit, or the balance thereof, shall be refunded to the Owner without interest. As a condition to the Association's right to apply security deposit funds in the manner provided above, the Association must give the Owner-lessor the notice and hearing rights specified in subparagraph (c) above.

Section 4. Obligations Of Owners. Owners of Lots within the Properties shall be subject to the following:

(a) Owner's Duty To Notify Association Of Tenants And Contract Purchasers. Each Owner shall notify the Secretary of the Association or the Association's property manager, if any, of the names of any contract purchaser or tenant of the Owner's Lot. Each Owner, contract purchaser or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner, contract purchaser or tenant has delegated any rights to use and enjoy the Properties and the relationship that each such person bears to the Owner, contract purchaser or tenant.

(b) Contract Purchasers. A contract seller of a Lot must delegate his or her voting rights as a Member of the Association and seller's right to use and enjoy the Common Area and Common Facilities to any contract purchaser in possession of the property subject to the contract of sale. Notwithstanding the foregoing, the contract seller shall remain liable for any default in the payment of Assessments by the contract purchaser until title to the property sold has been transferred to the purchaser.

(c) Notification Regarding Governing Documents.

(i) As more particularly provided in the California Civil Code Section 1368, as soon as practicable before transfer of title or the execution of a real property sales contract with respect to any Lot, the Owner thereof must give the prospective purchaser (A) a current copy of the Governing Documents; (B) the Association's most current financial statement; (C) a true statement in writing from the Association ("delinquency statement") as to the amount of any delinquent Assessments, together with information relating to late charges, attorneys' fees, interest, and reasonable costs of collection which, as of the date the statement is issued, are or may become a lien on the Lot being sold; (D) a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Regular and Special Assessments (if any) and fees; and (E) a notice of any change in the Association's current Regular and Special Assessments and fees that have been approved by the Board but that have not become due and payable as of the date that the information is provided.

(ii) The Association shall, within 10 days of the mailing or delivery of a request for the information described in subparagraph (c)(i), above, provide the Owner with a copy of the current Governing Documents, together with the delinquency statement referred to in the immediately preceding paragraph. The Association shall be entitled to impose a fee for providing the Governing Documents and delinquency statement equal to (but not more than) the reasonable cost of preparing and reproducing the requested materials. In addition, the Association may impose a reasonable fee to cover its actual costs incurred to change its records in connection with a change of ownership of a Lot.

(d) Payment Of Assessments And Compliance With Rules. Each Owner shall pay when due each Regular, Special and Special Individual Assessment levied against the Owner and his or her Lot and shall observe, comply with and abide by any and all rules and regulations set forth in, or promulgated by the Association pursuant to, any Governing Document for the purpose of protecting the interests of all Owners or protecting the Common Area and Common Facilities.

(e) Discharge Of Assessment Liens. Each Owner shall promptly discharge any Assessment lien that may hereafter become a charge against his or her Lot.

(f) Joint Ownership Of Lots. In the event of Joint ownership of any Lot, the obligations and liabilities of the multiple Owners under the Governing Documents shall be joint and several. Without limiting the foregoing, this subparagraph (f) shall apply to all obligations, duties and responsibilities of Owners as set forth in this Declaration, including, without limitation, the payment of all Assessments.

(g) Prohibition On Avoidance Of Obligations. No Owner, by non-use of the Common Area or Common Facilities, abandonment of the Owner's Lot or otherwise may avoid the burdens and obligations imposed on such Owner by the Governing Documents, including, without limitation, the payment of Assessments levied against the Owner and his or her Lot pursuant to this Declaration.

(h) Termination Of Obligations. Upon the conveyance, sale, assignment or other transfer of a Lot to a new Owner, the transferor-Owner shall not be liable for any Assessments levied with respect to such Lot which become due after the date of recording of the deed evidencing said transfer and, upon such recording, all Association membership rights possessed by the transferor by virtue of the ownership of said Lot shall cease.

ARTICLE III Owners Association

Section 1. Association Membership. Every Owner of a Lot shall be a Member of the Association. Each Owner shall hold one membership in the Association for each Lot owned and the membership shall be appurtenant to such Lot. Ownership of a Lot or interest in it shall be the sole qualification for membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership in all Lots in the Properties ceases, at which time his or her membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members until such time as the security holder comes into title to the Lot through foreclosure or deed in lieu thereof.

Section 2. One Class Of Membership. The Association shall have one class of voting membership and the rights, duties, obligations and privileges of the Members shall be as set forth in the Governing Documents.

Section 3. Voting Rights Of Members. Each Member of the Association shall be entitled to one vote for each Lot owned by said Member. When more than one person holds an interest in any Lot, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Lot. Voting rights may be temporarily suspended pursuant to Article XII, Section 6 hereof.

Section 4. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within the Properties and to enforce payment of such Assessments in accordance with Article IV of this Declaration.

Section 5. Transfer Of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Lot to which it is appurtenant and then only to the purchaser. In the case of a sale, membership passes automatically the purchaser upon recording of a deed evidencing transfer of title to the Lot. In the case of an encumbrance of such Lot, a Mortgagee does not have membership rights until he or she becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to Article II, Section 3 hereof do not thereby become Members, although the tenant and Members of the tenant's family shall at all times be subject to the provisions of all Governing Documents. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 6. Powers And Authority Of The Association.

(a) Powers Generally. The Association shall have the responsibility of owning, managing and maintaining the Common Areas and Common Facilities and discharging the other duties and responsibilities imposed on the Association by the Governing Documents. In the discharge of such responsibilities and duties, the Association shall have all of the powers of a nonprofit mutual benefit corporation organized under the laws of the State of California in the ownership and management of its properties and the discharge of its responsibilities hereunder for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth by law or in the Governing Documents. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of the Governing Documents, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. Specific powers of the Association and the limitations thereon are as set forth in the Bylaws.

(b) Association's Limited Right Of Entry. The Association, and/or its agents shall have the right only in the event of an emergency or as required by the Davis-Stirling Act or other applicable law, to enter any Lot to perform the Association's obligations under this Declaration, including (i) any obligations with respect to construction, maintenance and repair of adjacent Common Facilities; or (ii) to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property or the Owners in common.

The Association's rights of entry under this subparagraph (b) shall be immediate in case of an emergency originating in or threatening the Lot where entry is required, or any adjoining Lots or Common Area, and the Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

In all non-emergency situations, the Association or its agents shall furnish the Owner or his or her lessee with at least 72 hours' written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing within the Residence located on the Lot. In no event shall the Association's right of entry, as conferred hereunder, be construed to permit the Association or its agents to enter any Residence without the Owner's prior

permission.

Section 7. Association Rules.

(a) Rule-Making Power. The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend rules and regulations of general application to the Owners of Lots within the Properties. Such rules may concern, but need not be limited to (i) matters pertaining to the maintenance, repair, management and use of the Common Area and Common Facilities by Owners, their tenants, guests and invitees or any other person(s) who have rights of use and enjoyment of such Common Area and Common Facilities; (ii) architectural control and the rules of the Architectural Committee under Article V, Section 5 hereof; (iii) the conduct of disciplinary proceedings in accordance with Article XII, Section 6 hereof; (iv) regulation of parking, pet ownership and other matters subject to regulation and restriction under Article VI hereof; (v) collection and disposal of refuse; (vi) minimum standards for the maintenance of landscaping or other improvements on any Lot and (vii) any other subject or matter within the jurisdiction of the Association as provided in the Governing Documents.

Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of the other Governing Documents or the rights, preferences and privileges of Members thereunder. In the event of any material conflict between any Association Rule and any provision of the other Governing Documents, the conflicting provisions contained in the other Governing Documents shall be deemed to prevail.

(b) Distribution Of Rules. A copy of the Association Rules, including the Los Paseos pool rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. A copy of the Association Rules shall also be available for inspection during normal business hours at the principal office of the Association.

(c) Adoption And Amendment Of Rules. Association Rules may be adopted or amended from time to time by majority vote of the Board, provided, however, that no Association Rules or amendments thereto shall be adopted by the Board until at least 30 days after the proposed rule or rule amendment has been (i) published in the Association newsletter, if any, or otherwise communicated to the Owners in writing and (ii) posted in the Association's principal office. The notice describing the proposed rule or amendment shall also set forth the date, time and location of an open Board meeting at which action on the proposal is scheduled to be taken.

Any duly adopted rule or amendment to the Rules shall become effective immediately following the date of adoption thereof by the Board, or at such later date as the Board may deem appropriate. Any duly adopted rule or rule amendment shall be distributed to all Owners by mail within 30 days after adoption.

Section 8. Breach Of Rules Or Restrictions. Any breach of the Association Rules or of any other Governing Document provision shall give rise to the rights and remedies set forth in Article XII, Section 6 hereunder.

Section 9. Limitation On Liability Of Association's Directors And Officers.

(a) Claims Regarding Breach of Duty. No director or officer of the Association (collectively and individually referred to as the "Released Party") shall be personally liable to any of the Association's Members, or to any other person, for any error or omission in the discharge of their duties and responsibilities or for their failure to provide any service required hereunder or under the Bylaws, provided that such Released Party has, upon the basis of such information as may be possessed by the Released Party, acted in good faith, in a manner that such person believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Without limiting the generality of the foregoing, this standard of care and limitation of liability shall extend to such matters as the establishment of the Association's annual financial budget, the funding of Association capital

replacement and reserve accounts, repair and maintenance of Common Areas and Common Facilities and enforcement of the Governing Documents.

(b) Other Claims Involving Tortious Acts And Property Damage. No person who suffers bodily injury (including, without limitation, emotional distress or wrongful death) as a result of the tortious act or omission of a volunteer member of the Board or volunteer officer of the Association shall recover damages from such Board member or officer if all of the following conditions are satisfied.

- (i) The Board member or officer is an Owner of no more than two Lots;
- (ii) The act or omission was performed within the scope of the volunteer Board member's or officer's Association duties;
- (iii) The act or omission was performed in good faith;
- (iv) The act or omission was not willful, wanton, or grossly negligent;
- (v) The Association maintained and had in effect at the time the act or omission occurred and the time a claim was made one or more policies of insurance that include coverage for general liability of the Association and individual liability of the officers and directors of the Association for negligent acts or omissions in their official capacities, with minimum coverage for both types of insurance being not less than \$1,000,000.

The payment of actual expenses incurred by a Board member or officer in the execution of that person's Association duties shall not affect that person's status as a volunteer Board member or officer for the purposes of this section. However, any director or officer who receives direct or indirect compensation from the Declarant or from a financial institution that acquired a Lot within the Properties as the result of a judicial or nonjudicial foreclosure proceeding is not a volunteer.

The provisions of this subparagraph (b) are intended to reflect the protections accorded to volunteer directors and officers of community associations under Civil Code §1365.7. In the event that Civil Code section is amended or superseded by another, similar provision of the California statutes, this subparagraph (b) shall be deemed amended, without the necessity of further Member approval, to correspond to the amended or successor Civil Code provision.

ARTICLE IV Assessments

Section 1. Assessments Generally.

(a) Covenant To Pay Assessments. Each Owner of one or more Lots, by acceptance of a deed or other conveyance therefor (whether or not it shall be so expressed in such deed or conveyance), covenants and agrees to pay to the Association (i) Regular Assessments, (ii) Special Assessments, and (iii) Special Individual Assessments. Each such Assessment shall be established and collected as hereinafter provided.

(b) Extent Of Owner's Personal Obligation For Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the Person who was the Owner of the Lot at the time the Assessment was levied. Each Owner who acquires title to a Lot (whether at judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot so purchased which become due and payable after the date of such sale, and shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. Any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed.

(c) Creation Of Assessment Lien. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Any lien for unpaid Assessments created pursuant to the

provisions of this article may be subject to foreclosure as provided in Article IV, Section 9(b) hereof.

(d) No Avoidance Of Assessment Obligations. No Owner may exempt himself or herself from personal liability for Assessments duly levied by the Association, nor release the Lot or other property owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area or any facilities thereon or by abandonment or non-use of his or her Lot or any other portion of the Properties.

Section 2. Regular Assessments.

(a) Preparation Of Annual Budget: Establishment Of Regular Assessments. Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the Common Facilities) by preparing and distributing to all Association Members a pro forma operating budget complying with Civil Code §1365.

(b) Establishment Of Regular Assessment By Board Or Membership Approval Requirements. The total annual expenses estimated in the Association's budget (less projected income from sources other than assessments) shall become the aggregate Regular Assessment for the next succeeding fiscal year, provided that, except as provided in subparagraph (a) above, and subparagraph (c) below, the Board of Directors may not impose a Regular Assessment that is more than 20 percent greater than the Regular Assessment for the Association's immediately preceding fiscal year without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association (see article IV, section 7, below).

(c) Assessments To Address Emergency Situations. The requirement of a membership vote to approve Regular Assessment increases in excess of 20 percent of the previous year's Regular Assessment shall not apply to assessment increases necessary to address emergency situations. For purposes of this subparagraph (c), an emergency situation is any of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain where a threat to personal safety is discovered.

(iii) An extraordinary expense necessary to repair or maintain the Common Areas, Common Facilities or any portion of the separate interests which the Association is obligated to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to subparagraph (a) above; provided that, prior to the imposition or collection of an assessment under this subparagraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Board's resolution shall be distributed to the Members together with the notice of assessment.

(d) Allocation Of Regular Assessment. The total estimated Common Expenses, determined in accordance with subparagraph (a), above, shall be allocated among, assessed against, and charged to each Owner according to the ratio of the number of Lots within the Properties owned by the assessed Owner to the total number of Lots subject to Assessments so that each Lot bears an equal share of the total Regular Assessment.

(e) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment Roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his or her authorized representative for any purpose reasonably related to the Owner's interest as a property Owner or as a Member of the Association. The Assessment Roll (which may be maintained in the form of a computer printout) shall show for

each Lot the name and address of the Owner of Record, all Regular, Special and Special Individual Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which have been paid or remain unpaid. The Assessment Roll shall be conclusive upon the Association and the Owner of such Lot as to the amount of indebtedness appearing thereon as of the date of such statement, in favor of all persons who rely on same in good faith.

(f) Mailing Notice Of Assessment. The Board of Directors shall mail to each Owner at the street address of the Owner's Lot, or at such other address as the Owner may from time to time designate in writing to the Association, a statement of the amount of the Regular Assessment for the next succeeding fiscal year not less than 30 nor more than 60 days before the Assessment becomes due.

(g) Failure To Make Estimate. If, for any reason, the Board of Directors fails to make an estimate of the Common Expenses for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Article IV, Section 3 for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic Assessment shall be payable on the regular payment dates established by the Association.

Section 3. Special Assessments.

(a) Purposes For Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b) below, the Board of Directors shall have the authority to levy Special Assessments against the Owners and their Lots for the following purposes:

(i) Regular Assessment Insufficient In Amount. If, at any time the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, then the Board of Directors shall levy and collect a Special Assessment applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and the discharge of its obligations hereunder. The Board's assessment authority pursuant to this Section shall be subject to membership approval requirements under the circumstances described in Section 2 above.

(b) Special Assessments Requiring Membership Approval. No such Special Assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for the fiscal year in which the Special Assessment(s) is levied shall be made without the vote or written assent of Members, constituting a quorum, casting a majority of the votes at a meeting or election of the Association; provided that, this membership approval requirement shall not apply to any Special Assessment levied to address "emergency situations" as defined in this Article IV, Section 2(c).

(c) Allocation And Payment Of Special Assessments. When levied by the Board or approved by the Members as provided above, any Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Article IV, Section 2(d), above. The Special Assessment so levied shall be recorded on the Association's Assessment Roll, and notice thereof shall be mailed to each Owner.

Special Assessments for purposes described in this Section shall be due as a separate debt of the Owner and a lien against his or her Lot, and shall be payable to the Association either all at once or in equal monthly installments, as the Board of Directors shall direct, during the remainder of the then current fiscal year.

Section 4. Special Individual Assessments.

(a) Circumstances Giving Rise To Special Individual Assessments. In addition to the Special Assessments levied against all Owners in accordance with Section 3, above, the Board of Directors may impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, provided

that no such Special Individual Assessments may be imposed against an Owner until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article XII, Section 6 hereof, and if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for Special Individual Assessments include the following:

(i) Damage To Common Area Or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(ii) Expenses Incurred In Gaining Member Compliance. In the event that the Association incurs any costs or expenses, to accomplish (A) the payment of delinquent Assessments, (B) any repair maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (C) to otherwise bring the Owner and/or his or her Lot into compliance with any provision of the Governing Documents, the amount incurred by the Association (including title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as a Special Individual Assessment.

(iii) Required Maintenance On Lots. As more particularly provided in Article III, Section 6(b) (and without limiting the generality of that subparagraph), if any Lot is maintained so as to become a nuisance, fire or safety hazard for any reason, including without limitation, the accumulation of trash, junk automobiles or improper weed or vegetation control, the Association shall have the right to enter said Lot, correct the offensive or hazardous condition and recover the cost of such action through imposition of a Special Individual Assessment against the offending Owner.

(b) Levy Of Special Individual Assessment And Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described herein, and subject to the conditions imposed in this Section, such Special Individual Assessment shall be recorded on the Association's Assessment Roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 5. Purpose And Reasonableness Of Assessments. Each Assessment made in accordance with the provisions of this Declaration is hereby declared and agreed to be for use exclusively (a) to promote the recreation, health, safety and welfare of individuals residing within the Properties; (b) to promote the enjoyment and use of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees; and (c) to provide for the repair, maintenance, replacement and protection of the Common Area and Common Facilities. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created hereby) of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns, provided that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 6. Exemption Of Certain Of The Properties From Assessments. The following real property subject to this Declaration shall, unless devoted to use as a residential dwelling, be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority;
- (b) The Common Area and Common Facilities; and
- (c) Any Lot owned by the Association.

Section 7. Notice And Procedure For Member Approval Pursuant To Sections 2 And 3. In the event that Member approval is required in connection with any increase or imposition of Assessments pursuant to Sections 2 and 3 of this Article IV, approval of the requisite percentage of the Members shall be solicited either (1) by written ballot conducted in accordance with Corporations Code Section 7513 and the Restated Bylaws of the Association, or (2) at a meeting of the Members called for that purpose, duly noticed in accordance with the Restated Bylaws. The quorum required for such membership action shall be a majority of the Members.

Section 8. Maintenance Of Assessment Funds.

(a) Bank Accounts. All sums received or collected by the Association from Assessments, together with any interest or late charges thereon, shall be promptly deposited in one or more insured checking savings or money market accounts in a bank or savings and loan association selected by the Board of Directors which has offices located within the State of California. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board, and such officers or agent of the Association as the Board shall designate, shall have exclusive control of said account(s) and investments and shall be responsible to the Owners for the maintenance at all times of accurate record thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code Section 1365.5. To preclude a multiplicity of bank accounts, the proceeds of all Assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various Assessment fund accounts maintained of the books of the Association as provided in subparagraph (b), below.

(b) Separate Accounts: Commingling Of Funds. Except as provide below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such fund shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget, if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the amount required to accomplish the purpose for which such Assessment was levied, such surplus may, in the Board's discretion, be returned proportionately to the contributors thereof, reallocated among the Association's reserve accounts if any such account is underfunded in the Board's opinion, or credited proportionately on account of the Owners' future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall maintain a separate accounting of all funds received by it in payment of each Assessment and of all disbursements made therefrom, provided that receipts and disbursements of Special Assessments made pursuant to this Section shall be accounted for together with the receipt and disbursements of Regular Assessments, and separate liability accounts shall be maintained for each capital improvement for which reserve funds for replacement are allocated.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association, or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

Section 9. Collection Of Assessments; Enforcement Of Liens.

(a) Delinquent Assessments. If any payment of a Regular Assessment, Special Assessment or Special Individual Assessment assessed to any Owner is not paid within 15 days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Board's election, bear interest at the maximum rate allowed by law beginning 30 days after the due date until the same is paid. In addition to the accrual of interest, the Board of Directors is authorized and empowered to promulgate a schedule of reasonable late charges for any delinquent Assessments, subject to the limitations imposed by California Civil Code Section 1366 or a comparable superseding statute.

(b) Effect Of Nonpayment Of Assessments.

(i) Creation And Imposition Of A Lien For Delinquent Assessments. As more particularly provided in California Civil Code Section 1367 or a comparable superseding statute, the amount of any delinquent Regular or Special, or Special Individual Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of the County, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this Article IV and California Civil Code Section 1366, (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied, (C) the name of the Owner of Record of such Lot, (D) the name and address of the Association, and (E) the name and address of the trustee authorized by the Association to enforce the lien by sale. Any payments toward the sum specified in the Notice of Delinquent Assessment shall first be applied to the principal owed, and after the principal owed is paid in full, the payments shall be applied to interest or collection expenses. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. The Notice of Delinquent Assessment shall be mailed in the manner set forth in Civil Code §2924(b), or any comparable superseding statute, to all record Owners of the Owner's interest in the Lot against which the Assessments and other sums are levied no later than 10 calendar days after recordation. However, before the Association shall record a Notice of Delinquent Assessment as set forth in this section, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges of the Owner, including items on the statement which indicate the principal owed, any late charges, the method of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection.

The Association's right to impose a lien for Special Individual Assessments shall be subject to the limitations imposed by this Section.

(ii) Remedies Available To The Association To Collect Assessments. The Association may initiate a legal action against the Owner personally obligated to pay any delinquent Assessment, foreclose its lien against the Owner's Lot or accept a deed in lieu of foreclosure. After the expiration of 30 days following the recording of a Notice of Delinquent Assessment, foreclosure by the Association of its lien may be (1) by judicial foreclosure or (2) by nonjudicial foreclosure, by the trustee designated in the Notice of Delinquent Assessment or by a trustee substituted if authorized by California law. Any sale of a Lot by a trustee acting pursuant to this Section shall be conducted in accordance with California Civil Code Sections 2924 and subsections thereunder, as are applicable to the exercise of powers of sale in mortgages or deeds of trust.

(iii) Nonjudicial Foreclosure. Nonjudicial foreclosure shall be commenced by the Association by recording in the Office of the County Recorder a Notice of Default, which notice shall state all amounts which have become delinquent with respect to the Owner's Lot and the costs (including attorneys' fees), and interest that have accrued thereon, the amount of any Assessment which is due and payable although not delinquent, a legal description of the property with respect to which the delinquent Assessment is owed, and the name of the Owner of Record or reputed Owner thereof. The Notice of Default shall state the election of the Association to sell the Lot or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under California Civil Code Section 2924c and related subsections, or comparable superseding statute.

The Association shall have any rights conferred by California law to assign its rights and obligations as trustee in any nonjudicial foreclosure proceedings to the same extent as a trustee designated under a deed of trust, and for this purpose the Association shall be deemed to be the sole beneficiary of the delinquent Assessment obligation. Furthermore, in lieu of any legally authorized assignment of trusteeship, the Association shall be entitled to employ the services of a title insurance company or other responsible company authorized to serve as a trustee in nonjudicial foreclosure proceedings to act as an agent on behalf of the Association in commencing and prosecuting any nonjudicial

foreclosure hereunder.

The Association or its assignee shall mail a copy of the Notice of Default to the Owner or reputed Owner of the subject Lot at the Owner's last address appearing on the books or records of the Association, and to any person to whom the giving of a notice of default is required by applicable provisions of California Civil Code Section 2924b. Following receipt of the Association's notice, the Owner and junior encumbrances shall have reinstatement rights identical to those provided by law for trustors or mortgagors, which rights must be exercised during the period specified by law for reinstatement of obligations secured by deeds of trust.

After the lapse of such time as may then be required by law following the recording of a Notice of Default under a deed of trust, the Association or its assignee may give Notice of Sale in the manner and for the period required in the case of deeds of trust. After the giving of the Notice of Sale, the Association, or its assignee, without demand on the Owner, may sell the Lot at the time and place fixed in the Notice of Sale, at public auction to the highest bidder. At the Trustee's sale, the Trustee shall have the right to require every bidder to show evidence of his or her ability to deposit with the Trustee the full amount of his or her final bid in cash or a bank or savings and loan certified check and to require the last and highest bidder to deposit the full amount of his or her final bid in cash or a bank or savings and loan association certified check. The Association or its assignee may postpone the noticed sale by public announcement at such time and place of sale and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement.

The Association shall deliver to the purchaser at such foreclosure sale the Association's deed conveying the Lot so sold, but without covenant or warranty, express or implied. The recitals in such deeds shall be conclusive proof of the truthfulness thereof. Any person, including the Association, may bid on the subject property and purchase the same at such sale.

After deducting from the sale proceeds all costs, fees, and expenses incurred by the Association, the net proceeds shall be applied to the payment of all sums secured by the Association's lien at the time of sale, including interest, costs and attorneys' fees, and the remainder, if any, shall be disbursed to the person or persons legally entitled thereto.

(iv) Actions For Delinquent Assessments-ADR. In the event of a default in payment of any Assessment, the Association, in its name but acting for and on behalf of all other Owners, may initiate legal action, in addition to any other remedy provided herein or by law, to recover a money judgment or judgments for unpaid Assessments costs and attorneys' fees, without foreclosure or waiver of the lien securing same.

If, however, prior to the filing of a civil action by the Association against an Owner for unpaid Assessments not in excess of five thousand dollars (\$5,000) the Owner of the separate interest chooses to pay in full to the Association all of the charges listed in paragraphs (1) to (4), below, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Civil Code section 1367, then the Association shall inform the Owner that the Owner may resolve the dispute through alternative dispute resolution as set forth in Civil Code section 1354, civil action, and any other procedures to resolve the dispute that may be available through the Association.

The charges referred to in the preceding paragraph which may be paid under protest are as follows:

- (1) The amount of the assessment in dispute.
- (2) Late charges.
- (3) Interest.
- (4) All fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including attorney's fees not to exceed four hundred twenty five dollars (\$425).

The right of any Owner to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. The provisions in this subparagraph 9(b)(iv) are subject to 1366.3, or any comparable superseding statutes.

Section 10. Transfer Of Lot By Sale Or Foreclosure. The following rules shall govern the Association's rights to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

- (a) Except as provided in paragraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien duly recorded with respect to that Lot before the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.
- (b) The Association's assessment lien shall be extinguished as to all delinquent sums, late charges interest, and costs of collection incurred before the sale or transfer of a Lot under a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not under a deed-in-lieu of foreclosure). A "prior encumbrance" means any first mortgagee or other mortgage or lien recorded before the Association's assessment lien.
- (c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of that Lot (whether it be the former beneficiary of the first mortgage or other prior encumbrance, or a third party acquiring an interest in the Lot) from liability for any assessments thereafter becoming due or from the lien thereof.
- (d) Any assessments, late charges, interest, and associated costs of collection that are lost as a result of a sale or transfer covered by paragraph (b), above, shall be deemed to be a Common Expense collectible from the Owners of all of the Lots, including the person who acquires the Lot and his or her successors and assigns.
- (e) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner of the charges, interest, and associated costs of collection incurred by that prior Owner prior to the sale or transfer.
- (f) Section 10 and the following Section 11 are intended to reflect the California law concerning community association assessment lien priority in effect as of the effective date of this Declaration. In the event that the applicable California laws are revised and the statute(s) addressing assessment lien priority apply to the Association, this Section and Section 11 may be revised by action of the Board to conform to the new statutory provisions concerning this subject.

Section 11. Priorities. When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens or encumbrances recorded subsequent thereto, except (a) all taxes, bonds, Assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or deed of trust with first priority over other Mortgages or deeds of trust) made in good faith and for value, provided that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or deed of trust, or other prior encumbrance.

Section 12. Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Lots, such taxes shall be included in the Regular Assessments imposed pursuant to this Article IV, Section 2; and, if necessary, a Special Assessment may be levied against the Lots in an amount equal to such taxes to be paid in two installments, thirty days prior to the due date of each tax installment.

Section 13. Waiver Of Exemptions. Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article IV, the benefit of any homestead or exemption law of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed against the Owner's Lot.

ARTICLE V
Architectural Modifications

Section 1. Improvements In General; Establishment Of Architectural Committee. No "improvement" (as defined in Article 1, Section 19) that is visible from the street or from another Owner's Lot shall be commenced, erected or maintained within the properties, nor shall any exterior addition to or change or alteration that is visible from the street or from another Owner's Lot be made in or to any Residence or Lot, until the plans and specifications showing the nature, color, kind, shape, height (including front, side and rear elevations), materials, and location of the same shall have been submitted to and approved in writing by the Association's Board of Directors, as to quality of workmanship and materials, harmony of external design and location in relation to surrounding structures, setback lines, topography and finish grade elevation; provided that, this Section shall not apply to existing structures, which shall be deemed to be "grandfathered."

Section 2. Appointment Of Architectural Committee. The Board of Directors shall appoint an Architectural Committee to review proposed architectural modifications and make recommendations to the Board. However, the Board shall have final approval rights over all proposals. Any architectural committee appointed by the Board shall be composed of three members. Committee members appointed shall be from the membership of the Association and shall be in good standing. The term of appointment to the Architectural Committee shall be one year.

Section 3. Submission Of Plans; Action By Board Or Committee. Plans and specifications for a proposed Improvement shall be submitted to the Board, by personal delivery or certified mail to the secretary of the Association. Ordinarily, the Board should act to approve or disapprove the design and location of a proposed Improvement within 7 days. In the event the Board fails to approve or disapprove such design and location within 30 days after said plans and specifications have been submitted to it, the request shall be deemed to have been approved. Approval of the Board can contain conditions or requests for modification of particular aspects of the Owner's plan and/or specifications.

Section 4. Architectural Rules. The Board may, from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Said rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use within the Properties, provided that said rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the Declaration shall prevail.

Section 5. Variances. The Board of Directors Committee shall be entitled to allow reasonable variances with respect to this Article V or any restrictions specified in Article VI in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided that the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise apply under this Declaration, the Board must conduct a hearing on the proposed variance after giving at least 30 days' prior written notice to all Owners of Residences within 100 feet of the property for which the variance applies. The Owners receiving notice of the proposed variance shall have 20 days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the 20-day comment period has expired.

(b) The Board makes a good faith determination that (i) the requested variance does not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that it is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Residence, Common Area or Owner within the Properties.

Section 6. Estoppel Certificate. Within 30 days after written demand is delivered to the Board of Directors by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall execute an estoppel certificate, executed by any two of its members, certifying (with respect to any Residence owned by the applicant Owner) that as of the date thereof, either (i) all Improvements made and other work completed by said Owner with respect to the Residence comply with this Declaration; or (ii) that such Improvements or work do not so comply, in which event the certificate shall also identify the noncomplying Improvements or work and set forth with particularity the bases of such noncompliance. Any purchaser from the Owner, or anyone deriving any interest in said Residence through the Owner, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association, all Owners and any persons deriving any interest through them.

ARTICLE VI Use of Properties and Restrictions

Section 1. Single Family Residential Use. In addition to the restrictions established by law or Association Rules promulgated by the Board of Directors (consistent with this Declaration), the following restrictions are hereby imposed upon the use of Lots, Common Areas and other parcels within the Properties.

Restrictions applicable to detached residences:

- (a) All Lots within the Properties shall be used solely for the construction of Residences whose occupancy and use shall be restricted to Single Family Residential Use as defined in Article 1, Section 29 hereof. In no event shall a Residence be occupied by more individuals than permitted by applicable law, zoning or other local government regulation.
- (b) Each lot shall be conveyed as a separately designated and legally described fee simple estate, subject to this Declaration. All Lots and the Residences and other improvements erected or placed thereon (including, without limitation, landscaping) shall at all times be maintained in such a manner as to prevent their becoming unsightly.
- (c) The vegetation and landscaping on any Lot shall be planted or maintained by the Owner or resident in such a manner as to reduce the risk of fire, prevent or retard shifting or erosion of soils, encourage the growth of indigenous ground cover and to cause the proper diversion of water into streets and natural drainage channels.
- (d) No permanent camping and no temporary structures of any kind shall be permitted on any Lot.
- (e) No improvement, including without limitation, fences, hedges, retaining walls, landscape or privacy structures shall be constructed, erected, or placed on any Lot without the prior approval of the Architectural Committee. In no event shall any fence exceed 8 feet in height and fences constructed of metal, chain link (or similar fabric or plastic appearances) shall not be permitted, provided, however, that wrought iron fences may be erected with Architectural Committee approval.
- (f) No advertising signs shall be displayed on any Lot or posted within or upon any of the Properties except that an Owner may post on his or her Lot a single "For Rent" or "For Sale" sign of reasonable dimensions and appearance as stated in the Association Policies.
- (g) No drilling, refining, quarrying or mining operations of any kind shall be permitted on any Lot.
- (h) Other than to those Lots owned by the Association, there shall be no access to any Lot on the perimeter of the Properties except from designated streets or roads within the Properties.

Section 2. Conveyance Of Lots. Each Lot shall be conveyed as a separately designated and legally described fee simple estate subject to this Declaration.

Section 3. Common Areas. The Common Areas shall be preserved as open space and used for recreational purposes and other purposes incidental and ancillary to the use of Lots. Such use shall be limited to the private use for aesthetic and recreational purposes by the Association's Members, their tenants, families and guests, subject to the provisions of the Governing Documents. No Improvement, excavation or work which in any way alters any Common Area or Common Facility from its natural or existing state on the date such Common Area or Common Facility shall be made or done except by the Association and then only in strict compliance with the provisions of this Declaration. Each Owner shall be liable to the remaining Owners for any damage to the Common Area and Common Facilities that may be sustained by reason of the negligence of that Owner, that Owner's family members, contract purchasers, tenants, guests, or invitees.

Section 4. Temporary Structures. No structure of a temporary character, trailer, mobile home, camper, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a Residence, either temporarily or permanently.

Section 5. Household Pets. The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

(a) So long as applicable City laws are complied with, a reasonable number of common household pets may be kept on each Lot; provided that, the same are not kept, bred or maintained for commercial purposes. No other animals, livestock or poultry of any kind shall be kept, bred or raised on any Lot or in any Residence.

(b) Dogs shall be allowed on the Common Area, but not in the Club House, fenced pool, basketball or tennis courts, provided they are leashed and are otherwise under the supervision and restraint of their Owners.

(c) Each person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of such pet. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their family members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(d) The Board of Directors shall have the right to establish and enforce additional rules and regulations defining a uniform and nondiscriminatory manner, what constitutes a "reasonable number" of pets depending on their size, disposition and/or maintenance requirements and imposing standards for the reasonable control and keeping of household pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents.

Section 6. Signs. No advertising signs or billboards shall be displayed on any Lot or posted within or upon any portion of the Common Area except that Owners may post on their Lots any signs required by legal proceedings and a single "For Rent", "For Lease" or "For Sale" sign of dimensions to be approved by the Board. A-frame or other directional signs of real estate brokers advertising Lots for sale or lease shall only be allowed within the Common Area or roadways within the Properties in strict compliance with applicable Association Rules. The Architectural Committee, in its discretion, shall be entitled to regulate or prevent altogether the erection and maintenance of Owner's agent's or broker's directional signs along roadways or on any Common Areas within the Properties.

Section 7. Business Activities. Except as provided herein, no business or commercial activities of any kind whatsoever shall be conducted in any Residence or out building or on any portion of any Lot that are unacceptable to the Board; provided that, in determining whether a particular business activity is acceptable, the Board shall be governed by the following standards: (a) Is the proposed business activity unreasonably offensive to other Owners in terms of the "see, hear and smell" test?; and (b) Is the proposed business activity likely to be disruptive in terms of traffic of persons and/or vehicles?

Section 8. Garbage. No rubbish, trash or garbage shall be allowed to accumulate on Owner's Lots or Common Areas. Any trash that is accumulated by an Owner outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers and facilities, which shall be located on the Owner's Lot and screened from view from any street, neighboring Lot or Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as debris generated upon vacating of premises or during the construction of modifications and Improvements) shall be removed from the Properties to a public dump or trash collection area by the Owner or tenant at his or her expense. The Association shall be entitled to impose reasonable fines and penalties for the collection of garbage and refuse disposed in a manner inconsistent with this section.

Section 9. Storage. Storage of personal property or machines on any Lot shall be entirely within enclosed storage areas where storage areas shall include fenced back yards. There shall be no woodpiles nor storage piles accumulated on top, or outside, of any enclosed storage area. There shall be no storage visible from an adjoining Lot or within six inches from a property line. The Association shall have the right to establish and maintain appropriate storage yards and storage buildings on the premises for the maintenance of materials and equipment used by the Association in connection with its planting, building, repair, maintenance and preservation of the structures, gardens and other Improvements within the Common Areas which the Association is obligated to repair and maintain.

Section 10. Clotheslines. No exterior clotheslines shall be erected or maintained, and there shall be no drying or laundering of clothes on any Lot in a manner which is visible from any neighboring Lot or the Common Area.

Section 11. Antennas and Similar Devices. Owners are entitled to maintain antennas, including satellite dishes, 36 inches in diameter or less, on their Residences or Lots, which are designed for customary television and radio broadcast reception which are not visible from the streets or common areas. In order to ensure adequate aesthetic controls and to maintain the general attractive appearance of the Properties, no Owner, resident or lessee shall, at his or her expense or otherwise, place or maintain any objects, such as masts, towers, poles, television and radio antennas, or television satellite reception dishes on or about the exterior of any building within the Properties unless in accordance with this Section or unless architectural approval is first obtained in accordance with Article V, hereof. Furthermore, no activity shall be conducted on any Lot which causes an unreasonable broadcast interference with television or radio reception on any neighboring Lot.

Section 12. Burning. There shall be no exterior fires whatsoever, except: (1) barbecue fires intended for cooking food located only upon the Owner's Lot or in Common Areas that are contained within receptacles designed for such purpose; or (2) in wood-burning fire receptacles equipped with spark arresters. Nothing in this section 12 shall be construed to permit any burning activity which is prohibited by law.

Section 13. Diseases and Pests. No Owner shall permit any thing or condition to exist on his or her Lot, which shall induce, breed, or harbor infectious plant diseases, rodents or noxious insects.

Section 14. Parking and Vehicle Restrictions. The following parking and vehicle restrictions shall apply within the Properties:

(a) Unless otherwise permitted by the Association, no vehicle or trailer shall be parked or left within the Properties other than within a garage or in a driveway, or in front of a house.

(b) Except as otherwise authorized herein, only the following vehicles ("authorized vehicles") shall be permitted to be parked by any Owner or resident within the Properties: standard passenger vehicles and pickup trucks. Boats, campers, recreational, business vehicles and non-pickup type trucks are not "authorized vehicles," and shall only be permitted within the Properties as provided in subparagraph (d), below.

(c) No motor vehicle construction, reconstruction, or repair taking longer than 48 hours shall be undertaken

outside an Owner's garage. No dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties.

(d) Campers, boats, trailers, business vehicles and non-pickup trucks are not to be parked within the Properties, other than within enclosed garages or behind fenced side yards, except for periods not to exceed 72 hours and for the purpose of loading and unloading. Parking by business vehicles for the purpose of making deliveries or service calls shall be permitted in accordance with the Association Rules.

(e) After affording an offending Owner the due process procedural rights contained in Article XII, Section 6(e), the Board shall have the authority to tow, at the Owner's expense, any vehicle parked or stored in violation of this section. The Board shall post such notices or signs within the Common Area if required by law to effectuate this towing provision.

(f) The Board shall have the authority to promulgate further reasonable rules and restrictions of uniform application regarding parking and vehicles within the properties as may be deemed prudent and appropriate; provided that, such rules and restrictions shall not be effective until they have been put in writing and distributed to each Owner.

Section 15. Use and Maintenance of Alley Owners having Lots adjacent to the Alley behind 84 through 128 Bernal Road and behind 6804 and 6898 Avenida Rotella shall not deposit, nor allow to accumulate, any rubbish, trash, or garbage in the Alley. Nor shall any Owner park any vehicle in the Alley for a period of longer than 48 hours, including, but not limited to, any car, truck, boat, trailer, motorcycle, camper or recreation vehicle, or park any vehicle in a manner which obstructs the passage of any other vehicle in the Alley.

Section 16. Children. Each Owner and resident shall be accountable to the remaining Owners and residents, their families, visitors, guests and invitees, for the conduct and behavior of their children and for any children temporarily residing in or visiting the Owner and resident, and also for any property damage caused by such children.

Section 17. Activities Affecting Insurance. Nothing shall be done or kept on any Lot or within the Common Area which will increase the rate of insurance relating thereto on any policy maintained by the Association without the prior written consent of the Association, and no Owner shall permit anything to be done or kept on his or her Lot or within the Common Area which would cause any Improvements to be uninsurable against loss by fire or casualty or which would result in the cancellation of insurance on any Residence or any part of the Common Area.

Section 18. Restriction On Subdivision And Severability. No Lot shall be subdivided nor shall less than all of any such Lot be conveyed by an Owner thereof, and no Owner of a Lot within the Properties shall be entitled to sever his or her Lot from the Common Area portion of the Properties.

Section 19. Variances. Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article VI, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration. In considering and acting upon any request for a variance, the Board shall follow the procedures set forth in Article V for the granting of architectural variances.

Section 20. Enforcement Of Property Use Restrictions. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners and tenants with the environmental standards and property use restrictions contained herein. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action, the Owner or Tenant responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent Governing Document provision(s). Such notice shall describe the noncomplying condition, request that the Owner or tenant correct the condition within a reasonable time specified in the notice, and advise the Owner or tenant of his or her hearing and/or appeal rights.

ARTICLE VII
Exterior Maintenance Responsibilities

Section 1. Common Area. The Association shall be solely responsible for all maintenance, repair, upkeep and replacement within the Common Area. No person other than the Association or its duly authorized agents shall construct reconstruct, refinish, alter or maintain any Improvement upon or shall create any excavation or fill or change the natural or existing drainage of any portion of the Common Area. In addition, no person shall remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area without express approval of the Association.

Section 2. Owner Maintenance Responsibilities. Each Owner shall be responsible for the maintenance and repair of his or her Residence and Lot.

Section 3. Recovery Of Costs Of Certain Repairs And Maintenance.

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Article IV, Section 4 hereof.

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Article III Section 6(b) to enter the Owner's Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing in accordance with Article XII, Section 6, hereof. The cost of such maintenance or repair(s) shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Article IV, Section 4 hereof.

Section 4. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

ARTICLE VIII

Easements

Section 1. Encroachment Easements. If any portion of the Common Area encroaches on any Lot or if any portion of a Lot encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Lots and the Common Area are made subject to such easements. If any Residence is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains and, all Lots and the Common Area are made subject to such easements. The streets within the Properties shall be subject to an emergency vehicle access easement and public right-of-way easement, as shown upon and described by the Subdivision Map.

Section 2. Blanket Utility Easement. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones, drainage and electricity and the master television antenna or cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and

maintain the necessary equipment and underground facilities on the Common Area. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as initially designed and approved by the Declarant or thereafter approved by the Association's Board of Directors. The easements provided for in this Section shall in no way effect any other recorded easement on the Properties.

Section 3. Maintenance Easements. An easement is hereby granted to each Owner to cross over any Lot adjacent to such Owner's own Lot in order to paint, repair or maintain a common wall.

Section 4. Boundary Changes. An easement shall exist for use and maintenance as Common Area over any portion of a Lot which, because of a change in the boundary of a private structure, including a fence, wall or patio, at the time of original construction by the Declarant, lies between that boundary and a Lot line abutting the Common Area.

Section 5. Other Easements. Each Lot and its Owner, and the Association as to the Common Area, are hereby declared to be subject to all the easements, dedications and rights-of-way granted or reserved in, on, over and under the Properties and each Lot and Common Area as shown on the Subdivision Map.

Section 6. Priority of Easements. Wherever easements granted to the County are, in whole or in part, coterminous with any other easements, the easements of the County shall have and are hereby granted priority over said other easements in all respects.

ARTICLE IX Insurance

Section 1. Types Of Insurance Coverage. The Association shall purchase, obtain and maintain, with the premiums therefor being paid out of Common Funds, the following types of insurance, if and to the extent such insurance, with the coverages described below, is available at a reasonable premium cost:

(a) Fire and Casualty Insurance. A policy of fire and casualty insurance naming as parties insured the Association and any Mortgagee of the Common Area, and containing the standard extended coverage and replacement cost endorsements and such other or special endorsements as will afford protection and insure, for the full insurable, current replacement cost (excluding foundations and excavation, but without deduction for depreciation) as determined annually by the insurance carrier, all Common Facilities and the personal property of the Association for or against the following:

- (i) Loss or damage by fire or other risks covered by the standard extended coverage endorsement;
- (ii) Loss or damage from theft, vandalism or malicious mischief;
- (iii) Such other risks, perils or coverage as the Board of Directors may determine.

Such policy or the endorsement made a part thereof shall, to the extent available, provide that the insurer issuing the policy agrees to abide by the decision of the Association made in accordance with the provisions of Article X of this Declaration as to whether or not to repair, reconstruct or restore all or any damaged or destroyed portion of the Common Facilities.

Depending on the nature of the insured property and the requirements, if any, imposed by institutional Mortgagees having an interest in such property, the policies maintained by the Association pursuant to this section shall contain an agreed amount endorsement or its equivalent, in increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or the equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a clause to permit cash settlements for full insurable value in case of partial destruction. The policies required hereunder shall provide amounts or coverage as shall be determined by the Board and shall name as insured the Association, all Owners and all Mortgagees as their respective interests may appear. The policies may contain a loss payable endorsement in favor of the trustee described in Section 5 below.

(b) Public Liability And Property Damage Insurance. The Association shall obtain and maintain a policy of comprehensive public liability and property damage insurance naming as parties insured the Association, each member of the Association Board of Directors, any manager, the Owners and occupants of Lots, and such other persons as the Board may determine. The policy will insure each named party against any liability incident to the ownership and use of the Common Area and the Recreation Area and any other Association-owned or maintained real or personal property and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$3 million covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

(c) Additional Insurance And Bonds. The Association may also purchase with Common Funds such additional insurance and bonds as it may, from time to time, determine to be necessary or desirable, including, without limiting the generality of this section, demolition insurance, flood insurance and workers' compensation insurance. The Board shall also purchase and maintain fidelity bonds or insurance in an amount not less than 100 percent of each year's estimated annual operating expenses and reserves and shall contain an endorsement of any person who may serve without compensation. The Board shall purchase and maintain such insurance on personal property owned by the Association and any other insurance, including directors and officers liability insurance, that it deems necessary or desirable or that is required by any institutional First Mortgagee.

Section 2. Coverage Not Available. In the event any insurance policy, or any endorsement thereof, required by Section 1 is for any reason not available, then the Association shall obtain such other or substitute policy or endorsement as may be available which provides, as nearly as possible, the coverage described above. The Board shall notify the Owners of any material adverse changes in the Association's insurance coverage.

Section 3. Copies of Policies. Copies of all insurance policies (or certificates thereof showing the premiums thereon have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

Section 4. Individual Fire Insurance On Lot Improvements. Each Owner shall obtain and maintain, at his or her own expense, fire and casualty coverage as may be required by the Owner's individual Mortgagee or, if no Mortgagee encumbers a lot, fire and casualty coverage as may be determined by the Board, with respect to damage or destruction to improvements on the Owner's Lot. all such individually carried insurance shall also contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and any institutional First Mortgagee of such Lot.

Section 5. Trustee. All insurance proceeds payable under this Article IX, Section 1 may, in the discretion of the Board of Directors, be paid to a trustee to be held and expended for the benefit of the Owners, Mortgagee, and others, as their respective interests shall appear. Said trustee shall be a commercial bank or other institution with trust powers within the County that agrees in writing to accept such trust. If repair or reconstruction is authorized pursuant to Article X, below, the Association and any duly appointed trustee shall have the duty to contract for such work.

Section 6. Adjustment Of Losses. The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to this Article IX. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insured.

ARTICLE X

Damage or Destruction

Section 1. Common Facilities. Bids and Determination of Available Insurance Proceeds. In the event any Common Facilities are ever damaged or destroyed, then, and in such event, as soon as practicable thereafter the Board of Directors shall (a) obtain bids from at least two reputable, licensed contractors, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Facilities to substantially the same condition as they existed prior to the damage and the itemized price asked for such work, and (b) determine that amount of all insurance proceeds available to the Association for the purpose of effecting such repair, reconstruction and restoration.

Section 2. Common Facilities; Sufficient Insurance Proceeds. Subject to the provisions of this Article X, if, in the event of damage to or destruction of an portion of any Common Facility, the insurance proceeds available to the Association are sufficient to cover the costs of repair, reconstruction and restoration, then the Association may cause such facilities to be repaired, reconstruction and restored to substantially the same condition in which they existed prior to the loss.

Section 3. Common Facilities; Insurance Proceeds Insufficient in an Amount Exceeding \$5,000. In the event that any Common Facility is totally or substantially damaged or destroyed; or, if in the event of damage to or destruction of only a portion of the Common Facilities, the insurance proceeds available to the Association are insufficient to cover the estimated cost of repair in an amount exceeding \$5,000, then the Owners entitled to vote 75 percent of the voting power of the membership of the Association shall determine whether (a) to repair, reconstruct and restore the damaged or destroyed Common Facilities, and specially assess all Owners for such additional funds as may be needed for such purpose, or (b) not to repair, reconstruct or restore the damaged or destroyed Common Facilities but rather to utilize the insurance proceeds available for such reconstruction, together with any other sums otherwise available to the Association for such purpose, to demolish and remove the damaged or destroyed improvements from the Common Area and to level and landscape the sites thereof and apply any balance of such proceeds and/or funds as the Members holding such voting power and their First Mortgages may determine.

Section 4. Damage or Destruction of Residences. In the event of damage or destruction by fire or other casualty affecting a Residence, the Owner thereof shall, within six months thereafter, either:

(a) Diligently commence to rebuild the Residence in accordance with the terms hereof, including, without limitation, the architectural review provisions of Article V hereof; or

(b) Clear and level the Lot, removing all wreckage, debris and remains of the Residence therefrom and leaving the same in a level, clean condition.

ARTICLE XI Condemnation

Section 1. Association As Trustee For Owner. If all or part of the Common Area shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages for or on account of the taking of the Common Area, exclusive of compensation for consequential damages to certain affected Lots or Parcels, shall be payable to the Association as trustee for all Owners and Mortgagees according to the loss or damages to their respective interest in the Common Area. The Association, acting through its Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation, settlement and litigation of the issues with respect to the taking and compensation affecting the Common Area. Each Owner hereby designates and appoints the Association as his or her attorney-in-fact for such purposes.

ARTICLE XII Breach and Default

Section 1. Remedy At Law Inadequate. Except for the nonpayment of any Assessment, it is hereby expressly Restated CC&Rs of Los Paseos Association

declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration are inadequate and that the failure of any Owner, tenant, occupant or user of any Lot, or any portion of the Common Area or Common Facilities, to comply with any provision of the Governing Documents may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

Section 2. Nuisance. Without limiting the generality of the foregoing Section, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

Section 3. Costs And Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the court may award to any party in any such action such attorneys' fees and other costs as the court deems just and reasonable.

Section 4. Cumulative Remedies. The respective rights and remedies provided by this Declaration or by law shall be cumulative and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

Section 5. Failure Not A Waiver. The failure of any Owner, the Board of Directors, the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants or easements, rights, rights-of-way, liens, charges, or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 6. Rights And Remedies Of The Association.

(a) Rights Generally. In the event of a breach or violation of any Association Rule or of any of the restrictions contained in any Governing Document by an Owner, his or her family, or the Owner's guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, may enforce the obligations of each Owner to obey such Rules, covenants, or restrictions through the use of such remedies as are deemed appropriate by the Board and available in law or in equity, including but not limited to the hiring of legal counsel, the imposition of fines and monetary penalties, the pursuit of legal action, or the suspension of the Owner's voting rights as a Member of the Association; provided that the Association's right to undertake disciplinary action against its Members shall be subject to the conditions set forth in this Section. The initiation of legal action shall be subject to Section 8, below.

The decision of whether it is appropriate or necessary for the Association to initiate enforcement or disciplinary action in any particular instance shall be within the sole discretion of the Association's Board or its duly authorized enforcement committee. If the Association declines to take action in any instance, any Owner shall have such rights of enforcement as may exist by virtue of California Civil Code §1354 or otherwise by law.

(b) Schedule Of Fines. The Board may implement a schedule of reasonable fines and penalties for particular offenses that are common or recurring; in nature and for which a uniform fine schedule is appropriate (such as fines for late payment of Assessments or illegally parked vehicles).

(c) Definition Of "Violation." A violation of the Governing Documents shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board may include one component for the violation and, according to the Board's discretion, a per diem component for so long as the detrimental effect continues. Similar violations on different days shall justify cumulative

imposition of disciplinary measures. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance occurring within the Common Area at the cost of the responsible Owner.

(d) Limitations Of Disciplinary Rights.

(i) Loss Of Rights: Forfeitures. The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his or her Lot due to the failure by the Owner (or his or her family members, tenants, guests or invitees) to comply with any provision of the Governing Documents or of any duly enacted Association Rule except where the loss or forfeiture is the result of the judgment of a court of competent jurisdiction, a decision arising out of arbitration or a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments levied by the Association, or where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association or the imposition of monetary penalties for failure to pay Assessments or otherwise comply with any Governing Documents so long as the Association's actions satisfy the due process requirements of subparagraphs (e), (f) and (g) below.

(e) Hearings. No penalty or temporary suspension of rights shall be imposed pursuant to this article unless (1) the Owner alleged to be in violation is given at least 15 days prior notice of the proposed penalty or temporary suspension and (2) is given an opportunity to be heard before the Board of Directors or appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least 5 days before the effective date of the proposed disciplinary action.

Notwithstanding the foregoing, under circumstances involving conduct that constitutes (i) an immediate and unreasonable infringement of, or threat to, the safety or quiet enjoyment of neighboring Owners; (ii) a traffic or fire hazard; (iii) a threat of material damage to, or destruction of, the Common Area or Common Facilities; or (iv) a violation of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether a violation has occurred (such as late payment of Assessments or parking violations), the Board of Directors or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the offending Owner (which request must be received by the Association, in writing, within five days following the Association's disciplinary action), or on its own initiative, conduct a hearing as soon thereafter as reasonably possible.

If the Association acts on its own initiative to schedule a hearing, a notice of the date, time and location of the hearing shall accompany the notice of disciplinary action. If the accused Owner desires a hearing, a written request therefor shall be delivered to the Association no later than five days following the date when the fine is levied. The hearing shall be held no more than 15 days following the date of the disciplinary action or 15 days following receipt of the accused Owner's request for a hearing, whichever is later. Under such circumstances, any fine or other disciplinary action shall be held in abeyance and shall only become effective if affirmed at the hearing.

(f) Notices. Any notice required by this article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice, provided that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

(g) Rules Regarding Disciplinary Proceedings. The Board shall be entitled to adopt rules that further elaborate and refine the procedures for conducting disciplinary proceedings. Such rules, when approved and adopted by the Board, shall become a part of the Association Rules and shall provide for notices and procedures satisfying the alternative dispute resolution requirements of Civil Code §1354 or comparable superseding statute.

Section 7. Court Actions [Arbitration/Mediation].

(a) Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon

approval of the Board. Before initiating any court action seeking declaratory or injunctive relief to interpret or enforce the governing documents (including either of those actions coupled with a claim for monetary damages not in excess of \$5,000), the Association shall first comply with the provisions of Civil Code §1354, or comparable superseding statute, relating to alternative dispute resolution.

The mediation procedures described in paragraph (b), below, are intended to satisfy the Civil Code alternative dispute resolution requirements and all notices issued and procedure followed in the mediation process shall comply with the specific requirements imposed by Civil Code §1354.

(b) Before instituting any judicial action, arbitration, or other proceeding arising out of any Owner's or resident's failure or alleged failure to comply with any provision of Section 2.3 (Delegation of Use), Article V (Architectural Modifications), or Article VI (Use of Properties and Restrictions), the Association or Owner who desires to initiate such action ("Complaining Party") must make a good faith attempt to mediate the dispute pursuant to this paragraph. The Complaining Party shall send the other party (the "Responding Party") written notice of the nature of the dispute, the facts giving rise to its claim and its desire to mediate (the "Mediation Notice"). Should either party commence a judicial action, arbitration, or other proceeding without sending a Mediation Notice, the Responding Party shall be entitled to stay the action and request a Mediation Notice from the Complaining Party. The Mediation Notice shall name a mediator. The Complaining Party shall be obligated to pay any fee to initiate mediation, but the cost of mediation, including any attorneys' fees, shall ultimately be borne as determined by the parties if the mediation results in a settlement of the dispute. If the Responding Party does not agree with the complaining Party's choice of a mediator, the parties shall ask that the American Arbitration Association pick a mediator from its panel within ten (10) days from the Responding Party's receipt of the Mediation Notice. Within thirty (30) days after the mediator is chosen, the parties shall schedule and attend a mediation and attempt in good faith to resolve their dispute. If the mediation does not resolve the dispute or if the Responding Party refuses to attend, the Complaining Party shall be free to commence litigation. The requirements of this paragraph shall not apply under circumstances where the Complaining Party is entitled to a temporary restraining order or preliminary injunction in order to avoid irreparable harm or injury.

(c) If the Association and an owner are unsuccessful at resolving any failure or alleged failure by the owner or by the owner's tenant to comply with any provision of Section 2.3 ("Delegation of Use"), Article V ("Architectural Modifications"), or Article VII ("Use of Properties and Restrictions"), the dispute shall be submitted to, and conclusively determined by, binding arbitration in accordance with this subparagraph (c), provided, however, that the provisions of this subparagraph shall not preclude any party from seeking injunctive or other provisional or equitable relief in order to preserve the status quo of the parties pending resolution of the dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that party's arbitration rights.

The arbitrators shall be selected by the parties from individuals affiliated with the Judicial Arbitration and Mediation Service, Inc.. The arbitration shall be conducted in Santa Clara County, California.

The parties shall submit to the arbitration all written, documentary, or other evidence and oral testimony as is reasonably necessary for a proper resolution of the dispute. Copies of all written submittals shall be provided to the arbitrator(s) and both parties. The arbitrator(s) shall conduct such hearings as (s)he/they consider necessary, may require the submission of briefs or points and authorities and may submit written questions to the parties. The parties shall respond to such questions in writing. If a question is addressed to less than all of the parties, copies of the question and the answer thereto shall be served on the other parties.

At the hearing, any relevant evidence may be presented by any party and the formal rules of evidence applicable to judicial proceedings shall not govern. Evidence shall be admitted or excluded in the sole discretion of the arbitrator(s).

Except as provided above, the arbitration procedures set forth in the California Arbitration Act Statutes (CCP §§1282-1294.2) shall apply to the arbitration.

The arbitration shall proceed with due dispatch and a decision shall be rendered within 90 days after appointment of the arbitrator(s). The arbitrator(s)' decision shall be in writing and in a form sufficient for entry of a judgment in a court of competent jurisdiction in the State of California. Any decision of the arbitrator(s) shall be subject to the limitations set forth in the immediately succeeding paragraph.

The arbitrator(s)' decision shall pertain, and shall be limited to the granting of damages not to exceed any party's actual out-of-pocket expenses and the costs of undertaking any repairs, maintenance or reconstruction relating to the dispute and the award of any injunction or other equitable relief. In no event shall the arbitrator(s)' award include any component for punitive or exemplary damages. Costs of the arbitration proceeding shall be borne as determined by the arbitrator(s).

ARTICLE XIII Protection Of Mortgagees

(a) The lien created hereunder upon the Lots shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage or deed of trust (meaning a mortgage or deed of trust with first priority over other mortgages or deeds of trust) upon such interest made in good faith and for value; provided however, that after the foreclosure of any such mortgage or deed of trust, the lien thereof shall attach to the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special, assessed hereunder to such purchaser as an owner after the date of such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage or deed of trust recorded prior to recordation of such amendment who does not join in the execution thereof.

(c) Any subordination agreement executed by a majority of the Board, the benefits of (a) and (b) above may be extended to mortgages or deeds of trust not otherwise entitled thereto.

ARTICLE XIV Notices

Section 1. Mailing Addresses. Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

If to any Owner: To the street address of his or her Lot or to such mail, facsimile or e-mail other address as he or she may from time to time designate in writing to the Association; provided that, the Association may select the most convenient address given by an Owner.

If to the Association: 7047 Via Ramada, San Jose, California 95139 at the principal office of the Association (or to such other address as the Association may from time to time designate in writing to the Owners).

Section 2. Personal Service Upon Co-Owners And Others. Personal service of a notice or demand to one of the co-Owners of any Lot, to any general partner of a partnership which is the Owner of Record of the Lot, or to any officer or agent for service of process of a corporation which is the Owner of Record of the Lot shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

Section 3. Deposit In United States Mails. All notices and demands served by mail shall be by first-class or certified mail, with postage prepaid, and shall be deemed delivered three days after deposit in the United States mail in Santa Clara County, California.

ARTICLE XV

No Public Rights In The Properties

Section 1. Nothing contained in this Declaration shall be deemed to be a gift or a dedication of all or any portion of the Properties to the general public or for any public use or purpose whatsoever.

ARTICLE XVI Amendment Of Declaration

Section 1. Amendment In General. This Declaration may be amended or revoked in any respect by the vote or assent by written ballot of not less than 51% of all Owners. Notwithstanding the foregoing, the percentage of the Owners necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

With respect to any vote hereunder, the Association shall be entitled to accept the vote of any Owner of Record of a Lot as the vote of all Owners of Record of such Lot, unless the Association receives more than one vote from said co-Owners, in which case the vote of a majority of the co-owners shall bind all.

Section 2. Effective Date Of Amendment. The amendment will be effective upon the recording in the Office of the Recorder of Santa Clara County a Certificate of Amendment, duly executed and certified by the President and Secretary of the Association setting forth in full the amendment so approved and that the approval requirements of Section 1, above, have been duly met. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or Mortgage recorded prior to the recording of such amendment. If the consent or approval of any Mortgagee or other entity is required under this Declaration to amend or revoke any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained.

Section 3. Reliance On Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

ARTICLE XVII General Provisions

Section 1. Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges and equitable servitudes contained in this Declaration shall run with, and shall benefit and burden the Lots and the Common Area as herein provided, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors, and its officers and agents, and their respective successors in interest, for the term of 60 years from the date of the recording of this Declaration, after which time the same shall be automatically extended for successive periods of 10 years each unless, within 6 months prior to the expiration of the initial 60-year term or any such 10-year extension period, a recordable written instrument, approved by 51% of all Owners terminating the effectiveness of this Declaration shall be filed for recording in the Office of the County Recorder of Santa Clara County, California.

Section 2. Construction Of Declaration.

(a) Restrictions Construed Together. All of the covenants, conditions, and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) Restrictions Severable. Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions, and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) Singular Includes Plural. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) Captions. All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) Exhibits. All exhibits to which reference is made herein are deemed to be incorporated herein by reference, whether or not actually attached.

Dated: _____, 1998.

Los Paseos Association

By: _____
(President)

By: _____
(Secretary)