

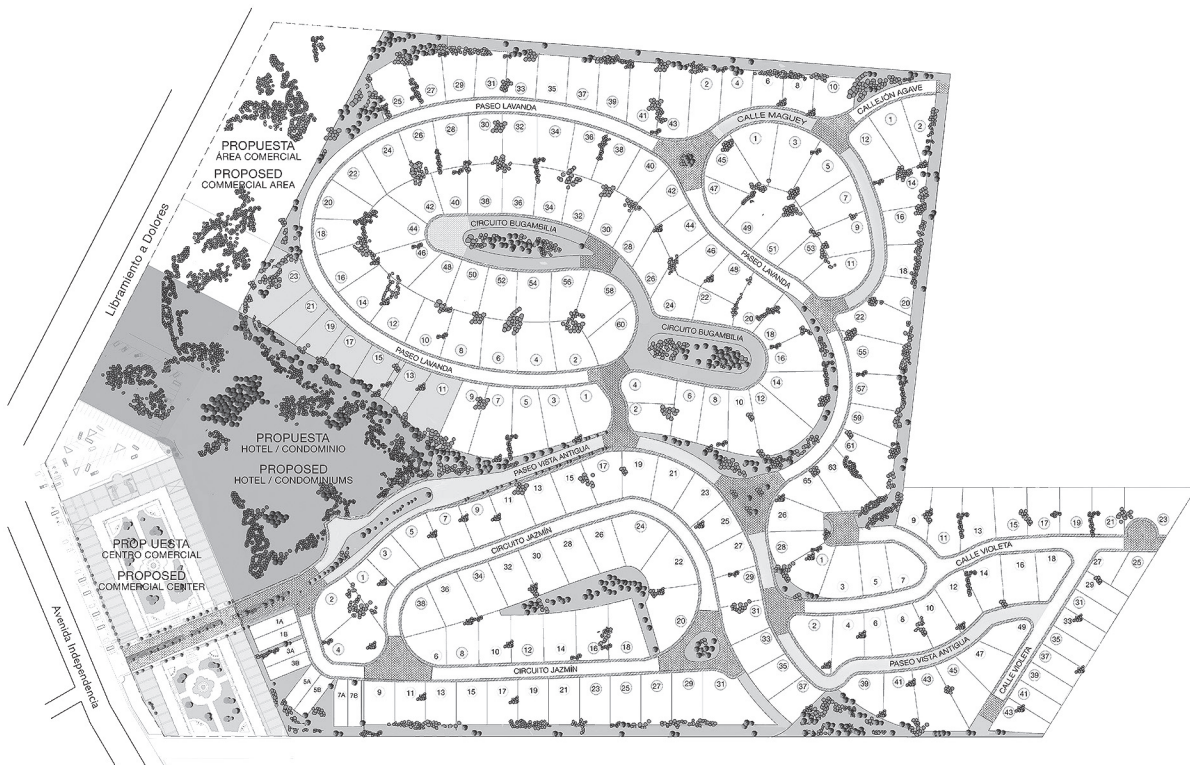
VISTA
ANTIGUA



16th-century views. 21st-century living.

RULES AND REGULATIONS

“VISTA ANTIGUA” CONDOMINIUM



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INTRODUCTION

These are the rules and regulations for the development known as Vista Antigua in the City of San Miguel de Allende, Guanajuato, Mexico.

Vista Antigua Property Owners Association, A.C is a civil association created under Mexican Law with the purpose of taking care, maintaining and improving the common areas in the Condominium known as "Vista Antigua". The association was formed by the members who own Lots in "Vista Antigua" (hereinafter referred to as "Vista Antigua" or the "Association").

The purpose of the architectural guidelines is to provide a high level of design quality, compatibility and appropriateness for what will be built. The architectural guidelines are to address only the fundamentals of the design issues involved and are intended to be beneficial to architects and builders and to the community at large.

We are committed to the process of making "Vista Antigua" an extraordinary San Miguel community. We believe these architectural guidelines and rules and regulations will provide a sustainable high quality of life and will ensure the increasing investment value of the homeowners.



SECTION I

GENERAL STIPULATIONS

1.1 Roof Restrictions. No exterior antenna, aerial or satellite dish receiver, water tank, gas tank, air handling equipment or solar panel shall be erected or maintained, except by **Developer**, without the prior written approval of the Architectural Committee. Notwithstanding the foregoing, the Architectural Committee shall not unreasonably withhold its consent for such items if they are hidden from view from any street within the Development and, if at all possible, from all other lots.

1.2 General Signage Standards. Only "For Sale" signs are allowed and all signs visible from the roadway must be no larger than 1 x 1 meter and must be approved in advance by the Architectural Committee. An easement on, over and across the Common Properties is hereby retained by **Developer** for the placement of project signs, project monuments, directional signs, and marketing signs.

1.3 Rubbish and Debris. No rubbish or debris of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise from any Lot. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view. All refuse, garbage and trash shall be collected, at the expense of Owner, by the service provider chosen by the Association. In the event the Owner shall fail or refuse to keep, or cause to be kept, such Owner's Lot or any Improvements thereon free from rubbish or debris of any kind, and such failure or refusal shall continue for seven (7) days after delivery of written notice thereof, then the Association may remove or correct the problem at the expense of the Owner and levy an appropriate fine.

1.4 Noise. No exterior speakers, horns, whistles, bells, construction radios or other sound devices (other than security devices used exclusively for security or public safety purposes) shall be located, used or placed on any Lots such that it becomes or will become excessively loud at the property line of adjoining Lots. No noise or other nuisance shall be permitted to exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other portion of the Condominium or to its occupants. The purpose of this restriction is to permit outside speakers for audio transmission only at a volume that can be heard within close proximity of such speakers but to prohibit excessively loud noise to interfere with the use and enjoyment of adjoining Lots.

1.5 Construction of Improvements. No Improvements shall hereafter be constructed upon any of the Condominium without the prior written approval of the Plans and Specifications for the Improvement(s) by the Architectural Committee. Anything herein to the contrary notwithstanding, in the case of single family residences constructed on any Lot the Architectural Review Committee, in its sole discretion, may limit its review to a review



of exterior elevations and roof designs, and upon the Architectural Committee's approval of such specific plans and elevations, residences may be constructed consistent with the approved plans and elevations without the requirement of further review or approval by the Architectural Committee. The Association may adopt fines or special assessments in the event any Owner does not strictly comply with any requirements imposed by the Architectural Committee pursuant to the Design Guidelines within the time specified.

1.6 Repair of Buildings. All Improvements upon any of the Lots shall be kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof.

1.7 Alteration or Removal of Improvements. Any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any Improvement, shall be performed only with the prior written approval of the Architectural Committee.

1.8 Roofing Materials. All roofing material shall be subject to the approval of the Architectural Committee. No shiny or reflective surfaces are allowed.

1.9 Underground Utility Lines. No utility lines, including but not limited to, wires or other devices for the communication or transmission of telephone or electric current or power, cable television or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of a Lot unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on buildings or other Improvements as approved in writing by the Architectural Committee; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or other Improvements which have been previously approved in writing by the Architectural Committee. The duration of any temporary overhead use allowed hereunder shall not exceed one (1) year without the consent of the Architectural Committee.

1.10 Drainage. There shall be no interference with the established drainage patterns over any of the Condominium, except by the **Developer**, unless adequate provision is made for proper drainage to a street or to Common Areas. All roof drainage shall be channeled thru drain spouts and all sloped roofs must have gutters. All drainage plans must be approved by the Architectural Committee.

1.11 Hazardous Activities. No activities shall be conducted on the Condominium and no Improvements constructed on the Condominium which are or might be unsafe or hazardous to any person or property. No open fires shall be lighted or permitted except:

- (i) Within safe, contained, and well-protected fireplaces, fire pits or chimneys;
- (ii) Within contained barbecue units while attended and in use for cooking purposes;



(iii) In compliance with ordinances, regulations and permit requirements of local governmental authorities. It is prohibited to burn trash or construction debris on any lot.

1.12 Temporary Structures. No tent, shack or other temporary building, Improvement or structure shall be placed upon the Condominium without the prior written approval of the Architectural Committee; provided, however, those temporary structures necessary for storage of tools and equipment and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of Architectural Committee. Such approval shall include the nature, size, duration and location of such structure.

All construction sites shall be vacated (with the exception of not more than two watchmen) after working hours. No workmen are allowed to live on construction sites.

1.13 Ecological Criteria. Vista Antigua has been designed observing the environment and has to comply with the ecological guidelines established in this rules and regulations.

All construction will observe the architectural style of the historic area of San Miguel de Alende.

All construction must avoid obstructing the rainwater drainage and natural run off of the property and allow the natural infiltration of water into the ground, especially during the rainy season.

Homeowners are responsible for the removal of all construction waste material. For domestic waste all homeowners must practice a program of solid waste management including separating organic and inorganic waste for separate pick up. Homeowners must also instigate water and energy conservation systems whenever possible.

All vegetation in the condominium, including green areas and individual lots, should be done with native plant species. The following species are recommended:

Fruit Trees: tejocote, ciruelo, vides, sarciguiles, manzano, membrillo, zarzamora, olivo, pera, chabacano, garambullo, nopal tunero, peron, granado, durazno, higo. (Mexican hawthorn, prune, grapevine, sarciguiles, apple tree, quince, blackberry, olives, pears, apricot, garambullo, prickly pear cactus, perón, pomegranate, peach, fig.)

Plants for gardens: sábila, geranio, cactáceas, romero, jaras, tepozan, camelina, granjero, piracanto, zarzamora, casahuate, pingüico. (aloe vera, geranium, cactus, rosemary, rockrose, butterfly bush, camelina, granjero, piracanto, blackberry, casahuate, pinguica.)

Scented plants: romero, perejil, albahaca, cebollino, orégano, tomillo, cedral, toronjil, es-tragón, hierbabuena, mejorana, laurel, salvia, manzanilla, cilantro, epazote, eneldo, menta. (Rosemary, parsley, basil, chives, oregano, thyme, cedral, mexican hyssop, tarragon, peppermint, marjoram, bay leaf, sage, chamomile, coriander, wormseed, dill, mint.)



Grass: Quicuyo.

A minimum of 10% (ten percent) of each lot should be allocated to green space and trees should be located so their roots don't damage the sidewalks, the water drainage or the utility systems.

It is the responsibility of all homeowners to maintain the green space and the vegetation of their lots in first class condition.

All homeowners must implement water and energy conservation systems.

Until trash pick up at individual lots is instigated there will be common trash containers identified by colors according to the four R's- reutilize, recycle, reduce and recover - to promote environmental management.

SECTION II

2.1 Mining and Drilling. No portion of the Condominium shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth. No water wells or septic tanks are permitted.

2.2 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Architectural Committee shall be permitted to remain on any Lot so as to be visible from any other portion of the Condominium or public or private thoroughfares. Without limiting the generality of the foregoing, trailers, graders, trucks other than pickups, boats, tractors, campers, wagons, busses, motorcycles, motor scooters, and garden maintenance equipment shall be kept at all times, except when in actual use, in enclosed structures or screened from view and no repair or maintenance work shall be done on any of the foregoing, or on any automobile (other than minor emergency repairs), except in enclosed garages or other structures. Each single family residential structure constructed on a Lot shall have garage space sufficient to house at least two (2) automobiles unless a one (1) car garage is approved by the Architectural Committee. Owners shall not keep more than two (2) automobiles in such manner as to be visible from any other portion of the Condominium for any period in excess of forty-eight (48) hours unless approved in advance by the Architectural Committee. No automobiles may be parked for more than 48 hours on any roadway within the Condominium and no RV, trailer, boat or other vehicle may be parked overnight on any roadway. No lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept stored or allowed to accumulate on any portion of the Condominium except within enclosed structures or appropriately screened from view from public or private thoroughfares and adjacent properties.



2.3 Mobile Homes, Travel Trailers and Recreational Vehicles. Travel trailers, watercraft or other recreational vehicles may be stored on a Lot only within an enclosed garage which has been integrated into the design of the home and stored to the extent that they are not visible from any Lot or any street.

2.4 Fences and Walls. The design, construction, materials and specifications of fences and walls shall be subject to the prior written approval of the Architectural Committee. The Architectural Committee may, in its discretion, prohibit the construction of any proposed fence or wall, or specify the materials of which any proposed fence or wall must be constructed, or require that any proposed fence or wall be partially screened by vegetation. Chain link fences are specifically prohibited. Fence and wall maintenance shall be the responsibility of the Owner and all damage shall be repaired within thirty (30) calendar days of written notification by the Association. It shall be a violation of this provision to maintain a fence or wall in such a manner as to allow (i) any portion of a fence or wall to lean so that it's axis is more than five (5) degrees out of vertical alignment, (ii) missing, loose, or damaged stone or wood rails, (iii) symbols, writings, and other graffiti, and (iv) broken or loose wires.

2.5 Animals - Household Pets. No animals, including pigs, pot bellied pigs, hogs, swine, pigeons, poultry, fowl, wild animals, horses, cattle, sheep, goats or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained or cared for in the Condominium. All other animals shall require the prior written consent of the Architectural Committee. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic pets will be allowed on any portion of the Condominium other than within the Lot unless confined to a leash. No animal may be stabled, maintained, kept, cared for or boarded for hire or remuneration on the Condominium and no kennels or breeding operation will be allowed. No animal shall be allowed to run at large and all animals shall be kept within enclosed or fenced areas which must be clean, sanitary and reasonably free of refuse, insects and waste at all times. Such enclosed or fenced area shall be constructed in accordance with plans approved by the Architectural Committee, shall be of reasonable design and construction to adequately contain such animals in accordance with the provisions hereof. All animal waste within Common Areas shall be the responsibility of the Owner of the animal and shall be immediately picked up for disposal. Animals are not allowed to be kept on roof tops. The Homeowners Association may establish a more rigorous policy for the control of animals and instigate a system of fines for violations of the policy.

2.6 Maintenance of Lawns and Planting. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on such Owner's Lot and any Greenbelt located between such Owner's Lot and a street in a clean, attractive manner and free of trash and other unsightly material and in compliance with the Design Guidelines.

2.7 Construction Activities. Notwithstanding any provision herein to the contrary, this provision shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Developer) upon any Lot within the Condominium. Specifically, no such construction



activities shall be deemed to constitute a nuisance or a violation of this provision by reason of noise, dust, presence of vehicles or construction machinery or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Committee, provided that such waiver shall be only for the reasonable period of such construction. The Architectural Committee is also empowered in the event of a dispute to set a reasonable schedule including days of the week and times for the performance of construction activities. All owners are required to furnish latrines or other sanitary facilities for their construction workers during the building process.

2.8 Compliance with Provisions of the Vista Antigua Rules and Restrictions.

Each Owner shall comply strictly with the provisions of the Vista Antigua Restrictions as the same may be amended from time to time. Failure to comply with any of the Restrictions shall constitute a violation of this provision, and shall give rise to a cause of action to recover sums due for fines, penalties, Assessments, damages or injunctive relief or both, asserted by the Board on behalf of the Association or by an aggrieved Owner.

2.9 Construction in Place. All dwellings constructed on the Condominium shall be built in place on the applicable Lot and the use of prefabricated materials shall be allowed only with the prior written approval of the Architectural Committee.

2.10 Setback Requirements. There are no setback requirements for the individual lots, other than those required by the city such as setback requirements for windows.

2.11 Rentals. Nothing in the provision shall prevent the rental of any entire Lot and the Improvements thereon, by the Owner thereof provided, however, that the Owner shall not rent to more than one rental party at a time (no B and B's allowed) and shall require that the tenant comply at all times with the terms, provisions and conditions set forth in this provision and the Design Guidelines and any other rule or regulation applicable to the Condominium. The Association reserves the right to require an Owner to submit to the Association a copy of any lease agreement.

When the Owner of a Lot wants to sell, donate, rent or make any legal transaction that implies to grant the use or the enjoyment of the Lot and Common Areas, he must include a clause in the contract that establishes that the contractor will be bound to the Rules and Regulations of the Condominium. Owners will be responsible for the acts of people renting or using their properties and Common Areas in the Condominium.

2.12 No Warranty of Enforceability. While Developer has no reason to believe that any of the restrictive covenants or other terms and provisions contained in these Rules and Regulations are or may be invalid or unenforceable for any reason or to any extent, Developer makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms or provisions shall assume all



risks of the validity and enforceability thereof and, by acquiring the Lot agrees to hold **Developer** harmless there from.

2.13 Commencement and Completion of Improvements. All Improvements (including the primary residence, driveways, approved outbuildings, landscaping, fences or any structure subject of an approved submission of Plans and Specifications) shall be diligently pursued with significant progress every 60 (sixty) days and completed in accordance with the approved Plans and Specifications not later than twenty four (24) months from the commencement of construction. Commencement of construction shall be deemed to have occurred when batter boards are placed for the pouring of a foundation for the primary residence.

If a lot does not have a completed home of at least 130 square meters ready for occupancy within seven (7) years of the date when the first deed was issued for that lot, the Association will have the right, but not the obligation, to repurchase the lot at the price shown in the original deed plus the national inflation rate. One, and only one, subsequent purchaser shall have an additional three (3) years to complete construction provided the resale occurs within seven (7) years of the original closing date.

2.14 Specific Remedies for Breach of Section 2.13. All owners are advised that strict compliance with Section 2.13 is required unless the Architectural Committee, in its sole discretion, grants an extension. In addition to the other remedies available in this Rules and Regulations or at law, the Architectural Committee and the **Developer**, independently, shall have the following rights and remedies:

(A) In the event an Owner defaults under the provisions of Section 2.13 hereof, such Owner agrees to pay the sum of \$50,000.00 pesos (fifty thousand pesos) for each month the Owner is not in compliance with Section 2.13 as stipulated liquidated damages, and not as a penalty.

The remedies set forth herein are cumulative and not exclusive and the **Developer** or the Association may pursue any other right or remedy set forth herein or otherwise available at law or in equity.

2.15 View Obstructions. Each Owner acknowledges that any construction or installation of or on any Lot may impair the view of such Owner and hereby consents to such impairment. Each Owner acknowledges that there are no guaranteed views within the Condominium, and no Owner is assured the existence or unobstructed continuation of any particular view.

2.16 Height Restriction. The heights of all improvements on a lot are determined from the highest point on an adjacent street. The maximum height of any structure is 8.5 meters but, in order to preserve the views of adjacent lots, some lots are restricted to a height of 5 meters and some to a height of 6 meters. The Architectural Committee will provide the information on the lots that have this restriction.



2.17 Greenbelt or Amenity Areas. No private construction of any kind may take place on the Greenbelt or Amenity Areas. Should the Architectural Committee determine that private construction has taken place on Greenbelt, Amenity and/or Common Areas they have the right to remove such construction and to charge the offending owner three times the cost of removal plus a fine.

2.18 Subdivision. It is strictly forbidden that any lot be subdivided.

SECTION III

USE RESTRICTIONS

3.1 General. Each Lot shall be improved and used for single family residential use only, except for Common Areas including Greenbelt or Amenity Areas. No business use of individual lots is allowed except that **Developer** may use up to two lots for sales offices. Greenbelt or Amenity Areas may, subject to the approval of **Developer**, be improved and used for active and passive recreational purposes for the primary benefit of Owners and occupants of portions of the Development; provided, however that, as to any specific area, **Developer** may, in its sole and absolute discretion, permit other improvements and uses.

3.2 Common Areas. No land within the Common Properties shall be improved, used or occupied, except in such manner as shall have been approved by **Developer**, in its sole and absolute discretion. **Developer** may, by written instrument, delegate its right to grant such approval to the Board of the Association. Access to any of the Common Areas may be limited to persons currently paying Assessments, fees and other charges. The Architectural Committee and **Developer** reserve the right to promulgate use restrictions and rules for the Common Areas, to lease the Common Areas for private events and establish such rules, regulations, terms, conditions and provisions and fees as the **Developer** and the Architectural Committee determine in their sole discretion. No portion of the Common Areas shall be used for parties, weddings, rallies or other large gatherings without the prior written consent of the Architectural Committee or the Association. The Association and the Architectural Committee reserve the right to charge reasonable fees and impose reasonable conditions upon such use of the Common Properties.

3.3 Recreational Improvements. Any proposed construction of recreational improvements within the Common Areas shall be subject to approval by the Architectural Committee or the **Developer**.



SECTION IV

VISTA ANTIGUA PROPERTY OWNERS ASSOCIATION A.C.

4.1 Organization. Developer shall, at such time as Developer deems appropriate or upon the sale of 70% of the Lots, cause the formation and incorporation of a Civil Association (A.C.) as a non-profit corporation under the laws of the State of Guanajuato. The Association shall be created for the purposes, charged with the duties, governed by the provisions and vested with the powers prescribed by law or set forth in the Bylaws of the A.C. Bylaws shall not be amended or otherwise changed or interpreted so as to be inconsistent with this provision.

4.2 Membership. Every person or entity who is a record Owner of a Lot shall be a Member of the above mentioned Association. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of any obligation. Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to Assessment by the Association. Ownership of such Lot shall be the sole qualification for Membership. Any Mortgagee or lien holder, who acquired title to any Lot which is a part of the Development through judicial or non-judicial foreclosure, shall be a Member of the Association.

4.3 Voting Rights. The Association shall have one vote per member. Members shall be all Owners, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds such interest in any Lot, all such persons can be Members. The vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one (1) vote be cast with respect to any Lot.

4.4 Powers and Authority of the Association. The Association shall have the powers of a non-profit corporation, subject only to such limitations upon the exercise of such power as are expressly set forth in the A.C. Bylaws. It shall further have the power 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 granted to it by the laws of the State of Guanajuato.

4.5 Maintenance and Landscape Authority. The Association shall maintain all streets and roadways within the Development, which have been completed. In addition, the Association shall be authorized to landscape, maintain and repair all access easements, rights-of-way, median strips, sidewalks, paths, trails, and other areas of the Condominium, as appropriate. All signage, plant materials and improvements, except Developer's, used in said median or boulevard areas must be approved by the Architectural Committee.

4.6 Infrastructure. The Developer will provide the Association the basic infrastructure for the development including street lighting, sewer, water and telephone lines, paved streets and sidewalks and the Association will have the responsibility and liability of



operating, maintaining and repairing this infrastructure including the cost of electricity to operate the lighting.

4.7 Common Areas. Subject to and in accordance with this provision, the Association, acting through the Board, shall have the following duties and powers:

(A) Ownership and Maintenance. To accept, own, operate and maintain all Greenbelt, Amenity Areas or other Common Areas, together with all improvements of whatever kind and for whatever purpose which may be located in said area; and to accept, own, operate and maintain all other Common Areas and to maintain in good repair and condition all common lands and improvements. The Association shall also renew and/or maintain any and all permits and/or licenses for the operation, maintenance and repair of all Greenbelt, Amenity Areas or Common Areas. Such maintenance shall include but not be limited to mowing, watering and removal of rubbish or debris of any kind.

(B) Construction. To construct, maintain, repair and replace, included but not limited to: landscape improvements, water mains, electrical lines, roads, sidewalks and irrigation systems.

(C) Assessments. To pay all real and personal property taxes and other taxes and assessments levied upon or with respect to any property owned by or leased to the Association, to the extent that such taxes and assessments are not levied directly upon the Members of the Association. The Association shall have all rights granted by law to contest the legality and the amount of such taxes and assessments.

(D) Insurance. To take out and maintain current a policy of liability insurance coverage insuring Developer and the Association and covering accidental bodily injury and/or death caused by the use and enjoyment of the Common Areas, as well as casualty coverage on all real and personal property of the Condominium, if and in such amounts as the Board shall deem appropriate.

(E) Rules and Regulations. To promulgate rules and regulations regarding the use of the Common Areas, including, but not limited to, prohibiting certain uses, setting rental fees for other uses and proposing a reservation or scheduling process for certain uses of the Common Areas.

4.8 Community Security. The Developer and the Association hope that the security gates and private streets concept will discourage undesired and unauthorized vehicular and pedestrian traffic within the Development and foster a higher degree of peace and tranquility. Although Developer and the Association reasonably believe that the existence of controlled access points may discourage the commission of criminal acts (e.g., burglary, theft, etc.) within the Condominium, nevertheless, neither Developer nor the Association warrant or guarantee that such acts will not be attempted or actually occur within the Condominium.



Each Owner, Member and resident of the Condominium expressly understand covenants and agrees with **Developer** and the Association as follows:

(A) **No Liability.** Neither **Developer** nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each Owner, Member and resident of the Condominium.

(B) **Maintain Insurance.** Each Owner, Member and resident of the Condominium shall consult with reputable insurance industry representatives to select, purchase, obtain, and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory, if any, to each Owner and resident covering his or her real and personal property.

(C) **Release of Claims.** Each Owner and resident of the Condominium releases **Developer** and the Association and their respective agents, attorneys, employees, officers, Directors, and partners from any liability, claims, causes of action or damages of any kind or character whatsoever arising out of or related (directly or indirectly) to any and all aspects of the Condominium.

4.9 Private Streets. The entry gates, streets, and sidewalks within the Development are private and constitute a portion of the Common Areas which are subject to the jurisdiction of and administration by the Association. There is a specific gate in the Condominium that will be used by the constructors or builders so they will avoid at all times using other gates. In addition to the incorporation of any applicable state traffic law regarding said private streets, the Board is specifically authorized to recommend, adopt, implement, and enforce rules, regulations, mechanisms, and procedures governing use of the entry gates and streets, covering items such as (but not necessarily limited to):

(A) Identification and entry programs for Members, their respective immediate families, their guests, and vehicles owned or driven by any of them;

(B) Speed limits; designated parking areas, restricted parking areas, and no-parking areas;

(C) Signs and graphics to provide announcements to unauthorized persons concerning potential criminal trespass matters;

(D) A "fines" system through which the Association can levy and collect fines from its Members and its Members' guests, invitees and contractors for violations of the applicable rules and regulations;

(E) Disclaimers of liability for any and all matters or occurrences on or related to the Common Properties.



4.10 Rules of the Board of Directors. All Members, residents and their families, tenants and guests shall abide by any rules and regulations adopted by the Board. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies.

4.11 Indemnification. THE ASSOCIATION SHALL INDEMNIFY ANY PERSON WHO WAS OR IS A PARTY, OR IS THREATENED TO BE MADE A PARTY TO ANY THREATENED, PENDING OR COMPLETED ACTION, SUIT OR PROCEEDING, WHETHER CIVIL, CRIMINAL, ADMINISTRATIVE OR INVESTIGATIVE BY REASON OF THE FACT THAT HE IS OR WAS THE **Developer** HEREIN OR A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE ASSOCIATION AGAINST EXPENSES, INCLUDING ATTORNEYS' FEES, REASONABLY INCURRED BY HIM IN CONNECTION WITH SUCH ACTION, SUIT OR PROCEEDING UNLESS IT IS FOUND AND DETERMINED BY THE BOARD OR A COURT THAT HE / SHE:

(1) ACTED IN BAD FAITH AND IN A MANNER HE REASONABLY BELIEVED NOT TO BE IN, OR OPPOSED TO, THE BEST INTERESTS OF THE ASSOCIATION, AND

(2) WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE HIS CONDUCT WAS UNLAWFUL. THE TERMINATION OF ANY ACTION, SUIT OR PROCEEDING BY SETTLEMENT, OR UPON A PLEA OF NOLO CONTENDERE OR ITS EQUIVALENT, SHALL NOT OF ITSELF CREATE A PRESUMPTION THAT THE PERSON DID NOT ACT IN GOOD FAITH OR IN A MANNER WHICH HE REASONABLY BELIEVED TO BE IN, OR NOT OPPOSED TO, THE BEST INTERESTS OF THE ASSOCIATION, AND WITH RESPECT TO ANY CRIMINAL ACTION OR PROCEEDING, HAD REASONABLE CAUSE TO BELIEVE THAT HIS CONDUCT WAS UNLAWFUL.

THE BOARD MAY PURCHASE AND MAINTAIN INSURANCE ON BEHALF OF ANY PERSON WHO IS OR WAS THE **Developer** HEREIN OR A DIRECTOR, OFFICER, COMMITTEE MEMBER, EMPLOYEE, SERVANT OR AGENT OF THE ASSOCIATION, AGAINST ANY LIABILITY ASSERTED AGAINST HIM OR INCURRED BY HIM IN ANY SUCH CAPACITY, OR ARISING OUT OF HIS STATUS AS SUCH, WHETHER OR NOT THE ASSOCIATION WOULD HAVE THE POWER TO INDEMNIFY HIM AGAINST SUCH LIABILITY HEREUNDER OR OTHERWISE. ADDITIONALLY, THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS **Developer** AND ITS PARTNERS, AGENTS AND EMPLOYEES AGAINST ANY EXPENSE OR LIABILITY, INCLUDING REASONABLE ATTORNEYS' FEES, EXPERT WITNESS OR OTHER FEES AND COSTS OF COURT INCURRED BY ANY OF THEM IN CONNECTION WITH OR ARISING OUT OF (I) THE USE OF THE PRIVATE ROADWAYS WITHIN THE CONDOMINIUM OR ANY OTHER PORTION OF THE COMMON AREAS BY ANY PARTY PRIOR TO ITS CONVEYANCE OR DEDICATION TO THE ASSOCIATION AND (II) ANY CLAIM RELATED TO THE DESIGN, MANNER OR TYPE OF CONSTRUCTION OR MAINTENANCE OF THE ROADWAYS OR OTHER IMPROVEMENTS ON OR WITHIN THE CONDOMINIUM.



SECTION V

ARCHITECTURAL COMMITTEE

5.1 Approval of Plans and Specifications. No Improvement shall be commenced, erected, constructed, placed or maintained upon any Lot nor shall any exterior addition to or change or alteration therein be made until the Plans and Specifications therefore shall have been submitted to and approved by the Architectural Committee.

5.2 Membership of Architectural Committee. The Architectural Committee shall consist of not less than one (1) and no more than five (5) voting members ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as **Developer** or its successors or assigns deems appropriate.

5.3 Actions of the Architectural Committee. The Architectural Committee may, by resolution, unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee. In the absence of such designation, the vote of a majority of all the members of the Architectural Committee taken with or without a formal meeting shall constitute an act of the Architectural Committee.

5.4 Advisory Members. The Voting Members may from time to time designate Advisory Members.

5.5 Term. Each member of the Architectural Committee shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein.

5.6 Developer's Rights of Appointment. **Developer**, its successors or assigns shall have the right to appoint and remove all members of the Architectural Committee. **Developer** may delegate this right to the Board by written instrument.

5.7 Adoption of Rules. The Architectural Committee may adopt such procedural and substantive rules, not in conflict with this provision, as it may deem necessary or proper for the performance of its duties.

5.8 Design Guidelines. The Architectural Committee hereby adopts the Design Guidelines, which may hereafter be amended from time to time, and shall supply said Design Guidelines to each Owner. All Improvements shall be constructed in accordance with the Design Guidelines, and the Architectural Committee shall have the authority to disapprove any proposed Improvements based on the restrictions set forth in the Design Guidelines. Any decision of the Architectural Committee pursuant to this Section shall be final and binding so long as it is made in good faith. In the event of a conflict between the Design Guidelines and this provision, this provision shall control. The Architectural Committee may charge Owners a reasonable fee for each set of Design Guidelines supplied to any Owner.



PRIOR TO ACQUIRING ANY INTEREST IN A LOT, EACH PROSPECTIVE PURCHASER, TRANSFEREE, MORTGAGEE, AND OWNER IS STRONGLY ENCOURAGED TO CONTACT THE ARCHITECTURAL COMMITTEE TO OBTAIN AND REVIEW THE MOST RECENT DESIGN GUIDELINES WHICH WILL CONTROL THE DEVELOPMENT.

THE DESIGN GUIDELINES MAY CONTAIN STANDARDS, REQUIREMENTS, OR LIMITATIONS IN ADDITION TO THOSE EXPRESSLY SET FORTH OR REFERRED TO IN THIS PROVISION AND MORE STRINGENT STANDARDS, REQUIREMENTS, OR LIMITATIONS THAN ANY SPECIFIC STANDARD, REQUIREMENT OR LIMITATION SET FORTH OR REFERRED TO IN THIS PROVISION.

5.9 Review of Proposed Construction. Whenever in this provision, the approval of the Architectural Committee is required, it shall consider all the Plans and Specifications for the Improvement or proposal in question and all other facts and information which, in its sole discretion, it considers relevant.

Except as otherwise specifically provided herein, prior to the commencement of any construction of any Improvement on the Condominium or any portion thereof, the Plans and Specifications therefore shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing.

The Architectural Committee may postpone the review of the Plans and Specifications until the Architectural Committee has received all information requested. In the event that the Architectural Committee fails to approve or disapprove such Plans and Specifications within thirty (30) calendar days after the receipt of all the information requested by the Architectural Committee, the Plans and Specifications shall be deemed approved without any further action required.

The Architectural Committee shall consider and act upon the Plans and Specifications submitted for its approval and perform such other duties assigned to it by this Rules and Regulations or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Committee.

The Architectural Committee's approval of any Plans or Specifications shall not be deemed approval thereof from the standpoint of structural safety, engineering soundness, or conformance with building or other codes of governmental regulatory authorities.

5.10 Variances. The Architectural Committee may grant variances from compliance with any of the provisions of these Rules and Regulations, when, in the sole and absolute discretion of the Architectural Review Committee, such variance will not impair or detract from the high quality development of the Condominium, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. The granting of such variance shall not operate to waive or amend any of the terms and provisions of these rules and regu-



lations except as to the particular Lot and in the particular instance covered by the variance. Such variance shall not be considered to establish a precedent or future waiver, modification or amendment of the terms and provisions hereof.

5.11 No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans or Specifications for any work done, proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

5.12 Work in Progress. The Architectural Committee may inspect all work in progress to ensure compliance with approved Plans and Specifications.

5.13 Address. Plans and Specifications shall be submitted to the Architectural Committee at the offices as identified within the Design Guidelines, or such other address as may be designated by **Developer**, its successors and assigns, from time to time.

5.14 Submittal and Fees. The Architectural Committee shall have the right to require a reasonable submission fee for each set of Plans and Specifications submitted for its review.

5.15 Notice of Compliance. Upon completion of any improvements or construction the Owner shall submit a Notice of Completion to the Architectural Committee. The Architectural Committee will review that all the improvements or constructions have duly complied with the approvals issued by the Architectural Committee before the construction or improvements began. If the improvements and constructions are according to the Plans and Specifications previously approved they will issue a Notice of Compliance to the Owner. The Notice shall specify that the Improvements comply with the approved Plans and Specifications on file with the Architectural Committee.

If the construction or improvements do not comply with the approved Plans and Specifications, the Architectural Committee will issue a Notice of Non Compliance that will specify the things that must be changed or modified by the Owner in order to get a Notice of Compliance and will specify a time limit for the changes to be complete. If the owner has not made the changes within the time period allowed the Architectural Committee has the authority to fine the owner for each day of delay an amount not to exceed fifteen (15%) of the estimated cost of the improvements or construction.



SECTION VI

FUNDS AND ASSESSMENTS

6.1 Assessments.

(A) Assessments established by the Board pursuant to these provisions shall be levied in a uniform basis against any Lot within the Condominium. The Common Areas shall not be subject to Assessments.

(B) Unpaid Assessments, interests and the costs of collection will be charged to the Owner of the Lot against which the Assessment fell due, and shall become a lien against the Lot and all Improvements thereon. The Association may enforce payment of such Assessments in accordance with the provisions of this Section.

(C) When the obligation to pay an Assessment first arises after the beginning of the year or other period for which the Assessment was levied, the Assessment shall be prorated as of the date when such obligation first arose to the duration of the year Assessment or other period remaining after such date. Such prorating shall be calculated on a day to day basis.

6.2 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made to perform the functions of the Association under these rules and regulations. The funds of the Association must be used solely for purposes authorized by these rules and regulations and its amendments.

6.3 Regular Annual Assessments. Prior to the beginning of each fiscal year (January 1st to December 31st), the Board shall estimate the expenses to be incurred by the Association during such year in performing its functions under the Vista Antigua Rules and Restrictions, including but not limited to, the cost of all maintenance, the cost of providing street lighting, the cost of enforcing the Rules and Regulations, a reasonable provision for contingencies, a reserve fund for road maintenance, an appropriate replacement reserves less any expected income and any surplus from the prior year's fund. Assessments sufficient to pay such estimated net expenses shall then be levied as herein provided, and the level of Assessments set by the Board shall be final and binding so long as it is made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any individual Assessment, the Association may at any time, and from time to time, levy further Assessments in the same manner as aforesaid. All such regular Assessments shall be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in either annual, semi-annual, quarterly or monthly installments on or before the due date as set by the Board, or in such other manner as the Board may designate in its sole and absolute discretion.

6.4 Special Assessments. In addition to the regular annual Assessments provided for above, the Board may levy special Assessments whenever in the Board's opinion



such special Assessments are necessary to enable the Board to carry out the functions of the Association. The amount of any special Assessments shall be at the reasonable discretion of the Board and all such special Assessments shall be due and payable to the Association within thirty (30) calendar days of the date of written notice of such special Assessment.

6.5 Owner's Personal Obligation for Payment of Assessments. The regular and special Assessments, and any fines and penalties provided herein, shall be the personal and individual debt of the Owner of the Lot covered by such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, fine or penalty, the Owner of the Lot shall be obligated to pay interest on the amount of the Assessment from the due date at a percentage rate equivalent to the twenty-eight (28) day TIIE (Tasa de Interés Interbancario de Equilibrio de 28 días), as published by the Official Gazette of Mexico for the period under consideration, plus ten percent (10%), together with all costs and expenses of collection, including attorneys' fees.

6.6 Unpaid Assessments. All unpaid assessments plus interests, as provided in Section 6.5 hereof and the cost of collection, including attorneys' fees as herein provided, will become a charge to the Lot Owner. Such debt will bind the Lot Owner, heirs, devisees, personal representatives, successors, attorneys in fact or assigns. The Association has the right to start a lawsuit against the Owner personally obligated to pay the Assessment or to use any other legal resources granted by law.

SECTION VII

EASEMENTS

7.1 Reserved Easements. All dedications, limitations, restrictions and reservations shown on a plot and all grants and dedications of easements, rights-of-way, restrictions and related rights made by **Developer** prior to the Condominium becoming subject to these Rules and Regulations, are incorporated herein by reference and made part of these Rules and Regulations for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of **Developer** conveying any part of the Condominium.

Developer reserves the right to make changes and additions to the easements and rights-of-way for the purpose of most efficiently and economically developing the Condominium and other Lots in the Development. Further, **Developer** reserves the right, without the approval of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for access, ingress and egress for public utilities purposes (including, without limitation, gas, water, cable, electricity, telephone and drainage), in favor of any person or entity, along and on either or both sides of any Lot.



Further, **Developer**, for the benefit of the Condominium hereby reserves a general utility and drainage easements over, under or across all streets and the Common Areas (as the same may change from time to time).

An easement over the Common Areas shown on any recorded plot is hereby retained by the **Developer**, its successors and assigns or designees, for the benefit of the Condominium. **Developer** reserves the right to drill water wells on any portion of the Common Areas to provide for irrigation of the Common Areas or for use in connection with the community water system.

The **Developer** has contracted with Santa Olivia de San Miguel S. de R.L. de C.V., titleholder of the property located in front of the Condominium along Avenida Independencia, for a right-of-way which will provide access to the entire Condominium. The right-of-way, which provides the principal entrance to the Vista Antigua Condominium, has been established in the following manner:

SURFACE AREA OF 1,119.35 M2 AND THE FOLLOWING METES AND BOUNDS:

TO THE NORTHWEST.- 70.5 METERS ABUTTING RESERVED AREA, PROPERTY OF SANTA OLIVIA DE SAN MIGUEL S. DE R.L DE C.V;

TO THE SOUTHEAST.- 69.98 METERS ABUTTING RESERVED AREA, PROPERTY OF SANTA OLIVIA DE SAN MIGUEL S. DE R.L DE C.V;

TO THE NORTHEAST.- 15.41 METERS ABUTTING THE DEVELOPMENT IN CONDOMINIUM VISTA ANTIGUA, AND;

TO THE SOUTHWEST.- 16.57 METERS ABUTTING AVENIDA INDEPENDENCIA.

Four lots in the Condominium have specific water utility easements which prohibit construction on top of the water pipes and drainage. Lot 2B (Circuito Jazmín No. 3B) has a utility easement of 4.11 square meters. Lot 3 (Circuito Bugambilia No. 26) has a utility easement of 67.08 square meters. Lot 3A (Circuito Jazmín No. 5A) has a utility easement of 4.02 square meters. Lot 42 (Paseo Lavanda No. 44) has a utility easement of 70.56 square meters. No constructions can be erected on such water utility easements to avoid any damages in the water pipes that will provide water to the Condominium.

7.2 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the easement areas affecting the Condominium for ingress and egress in connection with installing, replacing, repairing, maintaining and extending all utilities, including, but not limited to, water, sewer, gas, cable, television, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines or other utility facilities or appurtenances thereto, on, across and under the Condominium, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Improvement. Notwithstand-



ing any provision contained in this section, no sewer, electrical lines, water lines or other utilities or appurtenances thereto may be relocated on the Condominium until approved by **Developer** or the Architectural Committee. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the plot, and to trim overhanging trees and shrubs located on portions of the Condominium abutting such easements.

7.3 Drainage Easements. Each Owner covenants to provide easements for drainage and water flow, as necessary because of contours of land and the arrangement of Improvements.

7.4 Surface Areas. Each Owner shall maintain the surface area of all easements located within his Lot and all Improvements located therein except for such improvements for which a public authority or utility company is responsible.

7.5 Title to Easement and Appurtenances Not Conveyed. Title to any Lot conveyed by **Developer** by contract, deed or other conveyance shall not be held or construed in any event to include the title to any roadways or Common Areas.

7.6 Greenbelt or Amenity Areas. Each Owner has the use and enjoyment in and to all Greenbelt or Common Areas, subject to the following provisions:

(A) The right of the Association to suspend the Owner's voting rights and right to use the Greenbelt or Common Areas for any period, during which any Assessment or fine against such Owner's Lot remains unpaid, and for any period during which the Owner is in violation of the rules and regulations of the Association;

(B) The right of the Association to dedicate or transfer all or any part of the Greenbelt or Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be approved by a majority vote of the Members;

(C) The right of the Association to make reasonable rules and regulations regarding the use of the Greenbelt or Common Areas and any facilities thereon; and

(D) The right of the Association to contract for services with third parties on the terms that the Association may determine.

SECTION VIII

GENERAL PROVISIONS

8.1 Term. These Rules and Regulations, including all of the covenants, conditions, and restrictions hereof, will be valid unless amended or extinguished by a written instrument executed by the **Developer**, Owners and/or Association.



8.2 Non-liability of Board and Architectural Committee Members. Neither **Developer**, the Architectural Committee, nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of **Developer's**, the Architectural Committee's or the Board's respective duties under this Rules and Regulations unless due to the willful misconduct or bad faith of **Developer**, the Architectural Committee or its members or the Board or its members.

8.3 Amendments.

By Developer. These Rules and Regulations may be amended by **Developer** acting alone without the necessity of notice to or the approval of the Association or any Members, to correct typographical and grammatical errors, and ambiguities.

By Owners. These Rules and regulations may be amended by an instrument executed and acknowledged by the President and Secretary of the Association, setting forth the amendment and certifying that such amendment has been approved by the Members entitled to cast at least seventy percent (70%) of the number of votes entitled to be cast.

8.4 Notices. Notices must be hand delivered, faxed, couriered, mailed or e-mailed to the address of record for each Owner and/or Member. Members are responsible for providing the Association with notice of any change in their address.

8.5 Interpretation. The provisions of this Rules and Regulations shall be liberally construed to effectuate the purposes of creating a plan for the development and operation of the Condominium and promotion and effectuating the fundamental concepts of the Condominium set forth in these Rules and Regulations.

8.6 Mergers and Consolidations. The Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that the merger, consolidation or annexation shall have the consent (in writing or at a meeting duly called for such purpose) of those Members entitled to cast not less than seventy percent (70%) of the votes of the Association.

8.7 Exemption of Developer. Notwithstanding any provision in these Rules and Regulations, neither **Developer** nor any of **Developer's** activities shall in any way be subject to the control of or under the jurisdiction of the Architectural Committee. Without limiting the generality of the preceding sentence, these Rules and Regulations shall not prevent or limit the right of **Developer** to excavate and grade, to construct and alter drainage patterns and facilities to construct any and all other types of improvements anywhere within the Condominium, however, the construction of sales and leasing offices and the posting of signs advertising the sale and leasing of Lots by **Developer** shall be limited to Lots owned by **Developer** and the Common Areas.



8.8 Assignment by Developer. Notwithstanding any provision in these Rules and Regulations, **Developer** may assign, in whole or in part, any of its privileges, exemptions, rights and duties under these Rules and Regulations to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

8.9 Enforcement and Non-waiver.

(A) Right of Enforcement. Any Owner, the **Developer**, and/or the Board will have the right to enforce all the provisions in the Vista Antigua Rules and Regulations. All claims, demands, disputes, differences, controversies and misunderstandings arising under, out of, in connection with or in relation to these Rules and Regulations shall be submitted to mediation and if necessary to a court's decision.

(B) Non-waiver. The failure to enforce any provision of the Vista Antigua Rules and Regulations at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said restrictions.

(C) Liens. The Association shall have the right, when appropriate in its judgment, to claim a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with these Rules and Regulations.

8.10 Construction.

(A) Restrictions Severable. The provisions of the Vista Antigua Rules and Regulations 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 or portion thereof.

(B) Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

(C) Captions. All captions and titles used in these Rules and Regulations are intended solely for convenience of reference and shall not enlarge, limit or otherwise effect what is set forth in any of the paragraphs or sections.

8.11 Disclaimer by Developer. EXCEPT AS SPECIFICALLY STATED HEREIN, **Developer** HAS NOT MADE, DOES NOT MAKE AND DISCLAIMS ANY WARRANTY, GUARANTEE, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, CONCERNING:

(A) THE NATURE AND CONDITION OF THE CONDOMINIUM, INCLUDING BUT NOT LIMITED TO THE WATER, SOIL, GEOLOGY AND THE SUITABILITY THEREOF, AND OF THE CONDOMINIUM, FOR ANY AND ALL ACTIVITIES AND USES WHICH OWNER MAY

ELECT TO CONDUCT THEREON OR ANY IMPROVEMENTS ANY OWNER MAY ELECT TO CONSTRUCT THEREON, EXPENSES TO BE INCURRED WITH RESPECT THERETO, OR ANY OBLIGATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE SAME;

(B) THE MANNER OF CONSTRUCTION AND CONDITION OF ANY OF THE IMPROVEMENTS ON COMMON AREAS CONSTRUCTED BY **Developer**; AND

(C) THE DESIGNATION OR LOCATION OF GREENBELT OR COMMON AREAS OR THE TYPE OR NATURE OF ANY AMENITIES OR IMPROVEMENTS THAT COULD BE CONSTRUCTED THEREON OTHER THAN ANY AMENITIES OR IMPROVEMENTS SHOWN ON ANY RECORDED PLOT.

Developer SPECIFICALLY RETAINS THE RIGHT, BUT NOT THE OBLIGATION, TO USE OTHER PHASES OF THE DEVELOPMENT FOR COMMERCIAL USES, RESIDENTIAL USES OR RECREATIONAL USES.

SECTION IX

COMMON AREA DISPUTE RESOLUTION

9.1 **Defined Terms.** As used in this section, the following terms shall have the meaning set forth below:

(A) **"Alleged Defect"** means any alleged defect or deficiency in the planning, design, engineering, grading, construction or development of the Common Areas.

(B) **"Bound Parties"** means:

(i) The **Developer**

(ii) All Owners, or lessees of Owner

(iii) Association, members and Board

(iv) Any contractor or subcontractor, architect, engineer, consultant or other person who performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of the Common Properties or the Lots and who agrees in writing to be bound by the provisions of this Section

(C) **"Claim"** means:

- (i) Any claim or cause of action arising out of or related in any way to the planning, design, engineering, grading, construction or development of the Common Areas and/or the Lots, or any other part of the Condominium, including, without limitation, any claim or cause of action that the Common Areas or the Lots are defective or that the **Developer**, its limited partners, agents, contractors, employees, subcontractors, architects, attorneys, engineers or consultants were negligent in the planning, design, engineering, grading, construction or development thereof, or
- (ii) Any claim or cause of action against the **Developer** or any employee, agent, attorney, director, member, limited partner or officer of **Developer** arising out of or in any way related to the development of the Condominium or the management or operation of the Association, including, without limitation, any claim for negligence, fraud, intentional misconduct or breach of fiduciary duty.
- (iii) Any claim or cause of action against the Association and/or Lot owner.

9.2 Agreement to Resolve Certain Disputes Without Litigation. All Bound Parties agree that all Claims shall be resolved in accordance with the dispute resolution procedures set forth in this section.

9.3 Notice of Claim. Any Bound Party who contends or alleges to have a Claim (a "Claimant") against any other Bound Party (a "Respondent") shall notify each Respondent in writing of the Claim (the "Claim Notice"), stating plainly and concisely:

- (A) The nature of Claim, including, date, time, location, persons involved, and Respondent's role in the Claim;
- (B) The factual and legal basis of the Claim; and
- (C) What Claimant wants Respondent to do or not do to resolve the Claim.

In the event the Claimant is the Association and the Claim involves an Alleged Defect, the Association must provide written notice to all Members prior to delivering a Claim Notice to a Bound Party or initiating any legal action, cause of action or proceeding against any Bound Party which notice shall (at a minimum) include:

- (A) A description of the Claim;
- (B) A description of the attempts of **Developer** or any other Bound Party to correct such Alleged Defect and the opportunities provided to **Developer** or any other Bound Party to correct such Alleged Defect;
- (C) A certification from a professional engineer that such Alleged Defect exists along with a description of the scope of work necessary to cure such Alleged Defect and a resume of such engineer;



- (D) The estimated cost to repair such Alleged Defect;
- (E) The name and professional background of the attorney retained by the Association to pursue the Claim and a description of the relationship between such attorney and member(s) of the Board of Directors (if any);
- (F) A description of the fee arrangement between such attorney and the Association;
- (G) The estimated attorneys' fees and expert fees and costs necessary to pursue the Claim and the source of the funds which will be used to pay such fees and expenses;
- (H) The estimated time necessary to conclude the action; and
- (I) An affirmative statement from the Board of Directors that the action is in the best interests of the Association and its Members. If the Alleged Defect is alleged to be the result of an act or omission of a person licensed by the State (a "Licensed Professional"), then the Claim Notice from the Association must be accompanied by an affidavit from a Licensed Professional in the same discipline as the Licensed Professional alleged to be responsible for the Alleged Defect. The affidavit must contain the information required to be contained in a preliminary expert opinion affidavit submitted pursuant to the State Rules of Civil Procedure.

9.4 Mediation. The Claimant and the Respondent shall negotiate in good faith in an attempt to resolve the claim. If the Parties do not resolve the Claim through negotiation within ninety (90) calendar days after the date of the Claim Notice or within such longer period as may be agreed upon by the Parties ("Termination of Negotiations"), Claimant shall have thirty (30) additional calendar days within which to submit the Claim to such other independent mediation service selected by mutual agreement of the Claimant and the Respondent. If Claimant does not submit the Claim to mediation within thirty (30) calendar days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim. If the Parties do not settle the Claim within thirty (30) calendar days after submission of the matter to the mediation process, or within such time as determine reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation Notice"). The Termination of Mediation Notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

9.5 Right to Inspect, Repair and/or Replace. Following the receipt by a Bound Party of a Claim Notice with respect to an Alleged Defect, the Bound Party and its employees, agents, contractors, subcontractors and consultants shall have the right, upon reasonable notice to Claimant and during normal business hours, with previous authorization, to enter onto or into, as applicable, the Common Areas and any Lot for the purposes of inspecting and/or conducting testing to determine the validity of the Claim and, if deemed necessary by the Bound Party, to correct, repair and/or replace the Alleged Defect. In

conducting such inspection, testing, repairs and/or replacement, the Bound Party shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances. Nothing set forth in this Section shall be construed to impose any obligation on any Bound Party to inspect, test, repair, or replace any item or Alleged Defect for which the Bound Party is not otherwise obligated under applicable law or any warranty provided by **Developer** or any other Bound Party in connection with the sale of the Lots. The right of a Bound Party and its employees, agents, attorneys, contractors and consultants to enter, inspect, test, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Bound Party. In no event shall any statutes of limitation be tolled during the period in which a Bound Party conducts any inspection, testing, repair or replacement of any Alleged Defects.

9.6 Use of Funds. Any judgment, award or settlement received by a Claimant in connection with a Claim involving an Alleged Defect shall first be used to correct and or repair such Alleged Defect or to reimburse the Claimant for any costs actually incurred by such Claimant in correcting and/or repairing the Alleged Defect. Any excess funds remaining after repair of such Alleged Defect shall be paid into the Association's reserve fund.

9.7 Approval of Litigation. The Association shall not deliver a Claim Notice to any Bound Party or commence any legal action or proceeding or incur legal expenses (including without limitation, attorneys' fees) in connection with any Claim without the written approval of Owners entitled to cast more than sixty percent (60%) of the owners voting at a duly called meeting, excluding the votes of any Owner who would be a defendant in such proceedings. The Association must pay for any such legal action or mediation proceeding with monies that are specifically collected for such purposes and may not borrow money or use reserve funds or other monies collected for specific Association obligations other than legal fees. In the event that the Association commences any legal action proceeding involving a Claim, all Owners must notify prospective purchasers of their Lot of such legal action and must provide such prospective purchasers with a copy of the notice received from the Association.

9.8 Conflicts. In the event of any conflict between this Section and any other provision of these Rules and Regulations or Design Guidelines, this Section shall control.

9.9 Acceptance. BY ACQUIRING A LOT, EACH OWNER, FOR HIMSELF, HIS HEIRS, TENANTS, CONTRACTORS, INVITEES, GUESTS, PERSONAL REPRESENTATIVES, SUCCESSORS, TRANSFEREES AND ASSIGNS, AGREES TO HAVE ANY CLAIM (AS DEFINED HEREIN) RESOLVED ACCORDING TO THE PROVISIONS OF THIS SECTION AND WAIVES THE RIGHT TO PURSUE **Developer** OR OTHER BOUND PARTY IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION. THE ASSOCIATION, EACH LOT OWNER, AND **Developer**, ACKNOWLEDGE THAT BY AGREEING TO RESOLVE ALL CLAIMS AS PROVIDED IN THIS SECTION, THEY ARE GIVING UP THEIR RESPECTIVE RIGHTS TO HAVE SUCH CLAIM TRIED BEFORE A JUDGE. THE ASSOCIATION, EACH LOT OWNER, AND **Devel-**



oper, FURTHER WAIVE THEIR RESPECTIVE RIGHTS TO AN AWARD OF PUNITIVE AND CONSEQUENTIAL DAMAGES RELATING TO A CLAIM. BY ACCEPTANCE OF A DEED OR BY ACQUIRING A LOT, EACH OWNER VOLUNTARILY ACKNOWLEDGES THAT HE, SHE OR IT IS GIVING UP ANY RIGHTS HE, SHE OR IT MAY POSSESS TO PUNITIVE, EXEMPLARY, AND CONSEQUENTIAL DAMAGES OR THE RIGHT TO A TRIAL BEFORE A JUDGE RELATING TO A CLAIM.

IN WITNESS WHEREOF, **Developer** has executed this Rules and Regulations as of this the _____ day of October, 2007.