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DECLARATION
FOR
"PACIFIC BAY"
(a Condominium Project)

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LEGAL DESCRIPTION

THIS DECLARATION is made on the day and year hereinafter written by WAYNE SCHRIER, JON G. WAYNE AND TERESA L. WAYNE and CURTIS J. McBRIDE ("**Declarant**"), with reference to the following:

RECITALS

A. Declarant is the Owner of the real property located in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A", attached hereto and by this reference made a part hereof ("**Property**" or "**Condominium Property**").

B. Declarant desires to establish certain covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the use and management of the Property as a residential community called PACIFIC BAY ("**Community**"); and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the quality of life for the Owners and occupants thereof.

C. Declarant has or intends to improve the Property by developing thereon four (4) low-rise residential units. The Community shall be developed as a Condominium Common Interest Development ("**Project**" or "**Condominium Project**"), pursuant to the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code Section 1351 et seq), whereby Declarant will subdivide the residential units into "Living Units" in a single phase.

D. In addition to the Living Units, the Condominium Project will consist of "**Common Area**", consisting of (but not limited to): a Condominium Building, walkways, lighting and landscaped areas.

E. Declarant has or will hereafter file a **Condominium Plan** with the Office of the County Recorder of San Diego County, California, covering the Condominium Property.

F. Declarant will cause or has caused the incorporation of the PACIFIC BAY AT PACIFIC BEACH DRIVE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("**Association**"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), for the purpose of exercising the powers and functions set forth herein. The Association shall act as the management body for the Community, and shall be responsible for the operation, maintenance and control of the Common Area. By virtue of owning a Living Unit in the Project, each Owner shall also have a membership in the Association, which membership shall be appurtenant to and pass with title to the Living Unit.

G. Each Owner of a Condominium shall receive title to (i) a separate interest in space called a Living Unit, (ii) an appurtenant undivided four (4) fractional interest in the Common Area, and (iii) the exclusive right to use any "Exclusive Use Common Area" appurtenant to such Owner's Living Unit as shown on the Condominium Plan and described herein.

H. Declarant deems it desirable to subject the Property in accordance with a common plan to certain covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Property for the benefit of Declarant and any and all present and future Owners of the Property or any portion thereof.

NOW, THEREFORE, Declarant hereby certifies and declares that all of the Property is, and shall be, held, conveyed, transferred, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the limitations, covenants, conditions, restrictions and easements hereinafter set forth, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the subdivision, protection, maintenance, improvement, sale and lease of the Property, or any portion thereof. All of the limitations, covenants, conditions, restrictions and easements set forth herein are equitable servitudes and shall run with the land and shall be binding upon all parties having any right, title or interest in the Property, or any part thereof, their heirs, successive Owners and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successive owners and each Owner and his or her respective successors-in-interest, and may be enforced by any Owner or by the Association.

ARTICLE 1. - DEFINITIONS

1.1. ARTICLES.

"Articles" shall mean and refer to the Articles of Incorporation, including such amendments thereto as may from time to time be made.

1.2. ASSOCIATION.

"Association" shall mean and refer to **PACIFIC BAY AT PACIFIC BEACH DRIVE HOMEOWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation, incorporated under the Nonprofit Mutual Benefit Laws of the State of California, its successors and assigns.

1.3. BOARD.

"Board" shall mean and refer to the Board of Directors of the Association.

1.4. BYLAWS.

"Bylaws" shall mean and refer to the Bylaws of the Association, including such amendments thereto as may from time to time be adopted.

1.5. CITY.

"City" shall mean and refer to the City of **San Diego**, a municipal corporation located in the County of **San Diego**, State of California.

1.6. COMMON AREA.

"Common Area" shall mean and refer to all of the real property and all improvements thereon, except the separate interests in space called Living Units. The Common Area shall be owned by the Owners of Living Units as tenants-in-common in equal share, one (1) for each Living Unit.

1.7. COMMON EXPENSES.

"Common Expenses" shall mean and refer to the actual and estimated costs and expenses incurred or to be incurred by the Association for operating the Condominium Property and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the Condominium Documents. Common expenses may include, but not be limited to, costs of water utilities sub-metered to and benefiting the individual Owners and their Units, to the extent such services are paid for by the Association.

1.8. COMMUNITY.

"Community" shall mean and refer to all of the Property which is, from time to time, subject to this Declaration.

1.9. CONDOMINIUM.

"Condominium" shall mean and refer to an estate in the Condominium Property, or portions thereof, as defined in California Civil Code Section 1351(f), and shall consist of an undivided interest as tenant-in-common in the portion of real property coupled with a separate interest in space called a Living Unit, together with any Exclusive Use Common Area conveyed appurtenant thereto.

1.10. CONDOMINIUM BUILDING.

"Condominium Building" shall mean any building structure located on the Property.

1.11. CONDOMINIUM DOCUMENTS and/or PROJECT DOCUMENTS.

"Condominium Documents and/or Project Documents" means and includes this Declaration and any Exhibits attached hereto, any Supplementary Declaration or Declaration of Annexation, the Condominium Plan, Articles of Incorporation, Bylaws, and any Rules and Regulations established from time to time by the Board or any Committee of the Board, including any amendments to the aforescribed documents as may from time to time be made.

1.12. CONDOMINIUM PLAN.

"Condominium Plan" shall mean and refer to a plan, as it may from time to time be amended, consisting of (1) a description or survey map of the Project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of the Project, as built or to be built, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to California Civil Code Section 1351(e), signed and acknowledged by the record owner of fee title to the Property included in the Project.

1.13. COUNTY.

"County" shall mean and refer to the County of San Diego, California.

1.14. DECLARANT.

"Declarant" shall mean and refer to WAYNE SCHRIER, JON G. WAYNE AND TERESA L. WAYNE and CURTIS J. McBRIDE, their successors and assigns, if such successors or assigns should acquire all of its interest in the Project for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Project, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure of sale.

1.15. DECLARATION.

"Declaration" shall mean and refer to this Declaration recorded with the Office of the County Recorder of San Diego County, California, covering the Condominium Property, including such amendments thereto as may from time to time be recorded.

1.16. ELIGIBLE INSURER OR GUARANTOR.

"Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or Bylaws of the Association. Such notice must contain the unit number or the unit address of the secured Condominium.

1.17. ELIGIBLE MORTGAGE HOLDER.

"Eligible Mortgage Holder" shall mean and refer to the holder of a first mortgage or deed of trust on a Condominium, who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association. Such notice must contain the unit number or the unit address of the secured Condominium.

1.18. EXCLUSIVE USE COMMON AREA.

"Exclusive Use Common Area" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner of a separate interest in space called a Living Unit and is appurtenant to that Living Unit bearing the same numerical designation, and is shown and identified on the Condominium Plan as:

- "B" denoting Balcony Exclusive Use Common Areas
- "P" denoting Patio Exclusive Use Common Areas
- "S" denoting Storage Exclusive Use Common Areas
- "G" denoting Garage Exclusive Use Common Areas

"Exclusive Use Common Area" shall also mean and refer to internal and external telephone wiring, water heater (and plumbing therefor), lighting, shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors, door and window frames and hardware incident thereto, screens and windows or other fixtures, if any of the foregoing are designed to serve a single Living Unit, but located outside the boundaries of such Living Unit.

There are four (4) Garages described on the Condominium Plan. Each Garage is an Exclusive Use Common Area for the exclusive use of the Living Unit designated and shown in the Condominium Plan. The Article herein entitled **"Responsibilities of Maintenance"** designates the responsibility for the maintenance and repair of Garage Exclusive Use Common Areas.

1.19. FHLMC.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation, including any successors thereto.

1.20. FNMA.

"FNMA" shall mean and refer to the Federal National Mortgage Association, including any successors thereto.

1.21. FIRST MORTGAGE.

"First Mortgage" shall mean and refer to a First Deed of Trust as well as a First Mortgage.

1.22. FIRST MORTGAGEE.

"First Mortgagee" shall mean and refer to the Mortgagee of a First Mortgage.

1.23. INSTITUTIONAL MORTGAGEE.

"Institutional Mortgagee" shall mean and refer to a First Mortgagee which is (i) a bank, savings and loan association, insurance or mortgage company or other entity or institution chartered under federal and/or state law; (ii) an insurer or governmental guarantor of a First Mortgage; (iii) any Federal or state agency; (iv) the State of California as the vendor under an installment land sales contract covering a Condominium; or (v) any other institution specified by the Board in a recorded instrument, who is the Mortgagee of a Mortgage or the beneficiary of a Deed of Trust encumbering a Residential Lot.

1.24. LIVING UNIT, UNIT, CONDOMINIUM UNIT, LIVING AREA.

"Living Unit, Unit, Condominium Unit or Living Area" shall mean and refer to the residential separate interests in space in the Condominium Project which are not owned in common with the other Owners of other separate interests in the Project. Living Units are shown and described on the Condominium Plan, and are numbered L-1 through L-4, inclusive.

1.25. MAP; PARCEL MAP.

"Map" or "Parcel Map" shall mean and refer to that certain Parcel Map filed in Office of the County Recorder of San Diego County, as more particularly described in Exhibit "A".

1.26. MEMBER.

"Member" shall mean and refer to a person entitled to membership in the Association as provided within this Declaration and the Project Documents.

1.27. MORTGAGE.

"Mortgage" shall mean and refer to a deed of trust as well as a mortgage encumbering a Condominium.

1.28. MORTGAGEE.

"Mortgagee" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.29. MORTGAGOR.

"Mortgagor" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

1.30. NON-EXCLUSIVE USE COMMON AREA.

"Non-Exclusive Use Common Area" shall mean and refer to all Common Area except the Exclusive Use Common Area.

1.31. OWNER.

"Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a Condominium, including contract buyers but excluding those having such interest merely as security for the performance of an obligation.

1.32. PERSON.

"Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property.

1.33. PROJECT; CONDOMINIUM PROJECT.

"Project or Condominium Project" shall mean and refer to the Property, including all Condominiums and all structures and improvements erected or to be erected thereon.

1.34. PROPERTY; CONDOMINIUM PROPERTY.

"Property or Condominium Property" shall mean and refer to that certain real property located in the City of **San Diego**, County of **San Diego**, California, more particularly described in **Exhibit "A"** hereto.

1.35. RETAIL BUYER.

"Retail Buyer" shall mean and refer to a Person who purchases a Condominium Unit from Declarant under the authority of a Public Report for purposes of ownership and use thereof.

1.36. RULES.

"Rules" shall mean and refer to any Rules and Regulations adopted by the Board pursuant to the section herein entitled **"Rules and Regulations"** in the **"Rights of Owners, Board and Association"** Article herein.

ARTICLE 2. - MEMBERSHIP, VOTING, FIRST MEETING

2.1. MEMBERSHIP IN GENERAL.

Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser. The transfer of title to a Condominium or the sale of a Condominium and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant thereto to the transferee. As a Member of the Association, each Owner is obligated to promptly, fully and faithfully comply with and conform to the Articles, this Declaration, the Bylaws and the Rules adopted thereunder from time to time by the Board and officers of the Association.

2.2. CLASSES OF VOTING RIGHTS.

The Association shall have two (2) classes of voting membership:

2.2.1. CLASS A.

Each Member, other than the Declarant, shall be a Class A member. Class A membership entitles the holder to one (1) vote for each Condominium of which he or she is record owner. If a Condominium is owned by more than one person, each such person shall be a Member of the Association, but there shall be no more than one (1) vote for each Condominium.

2.2.2. CLASS B.

The Declarant is a Class B Member. Class B membership entitles the holder to three (3) votes for each Condominium of which the Declarant is record owner.

The Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

- (a) When the total outstanding votes held by the Class A Members are equal to or greater than the total outstanding votes held by the Class B Member; or
- (b) Two (2) years following the sale of the first Condominium.

2.3. COMMENCEMENT OF VOTING RIGHTS.

An Owner's right to vote, including Declarant, shall not vest until Assessments have been levied upon such Owner's separate interest as provided in

this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the Articles and Bylaws.

2.4. APPROVAL OF MEMBERS.

Unless specifically provided for otherwise, any provision of the Condominium Documents requiring the vote or written assent of the Association voting power shall be deemed satisfied by the following:

2.4.1. VOTE OF MAJORITY.

The vote of the majority at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members, unless a provision of this Declaration requires a special meeting only; provided, however that such majority must include the specified number of all Members entitled to vote at such meeting and not such a majority of a quorum of those Members present;

2.4.2. WRITING.

A writing or writings signed by a majority of the voting power; or

2.4.3. COMBINATION OF VOTES AND WRITING.

A combination of votes and written assent, provided that Members shall not change their vote or written assent after it is cast or delivered and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute a majority.

2.5. FIRST MEETING OF THE ASSOCIATION.

The first regular meeting of the Association shall be held no later than (i) forty-five (45) days after the close of escrow for the sale of three-quarters (3/4) of the Condominiums in the Project, or (ii) no later than six (6) months after the close of escrow for the sale of the first Condominium in the Project, whichever comes first. Thereafter, regular meetings and special meetings of the Association shall be held in accordance with provisions of the Bylaws. At the first meeting, the Members shall elect the Board of Directors. Election to and removal from the Board shall be by secret written ballot with cumulative voting, as more particularly described in the Bylaws.

2.6. CLASS A MEMBERS' SELECTION OF ASSOCIATION DIRECTORS.

In any election of Directors, commencing on the first regular annual meeting scheduled after the first Condominium is sold to an Owner, other than Declarant, so long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, not less than *twenty percent (20%)* of the Directors shall have been elected solely by the votes of Class A Members, other than

the Declarant. Such Class A elected representative may be removed prior to the expiration of his term of office only by a vote of at least a simple majority of the Members, excluding the Declarant.

2.7. NO PERSONAL LIABILITY OF BOARD MEMBERS.

In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Association which acts on behalf of and as representative of the Owners, and no Member thereof shall be individually or personally liable or obligated for performance of such duties or responsibilities unless he fails to act in good faith.

2.8. MAJORITY VOTE; ARBITRATION.

Unless specifically provided for otherwise, any provision of this Declaration requiring a decision, vote or written assent by the Owners shall be determined by a majority of the Owners. In the event of a deadlock between or among the Owners (for example, in such situation where two owners each own 2 of the Units respectively or the four owners are divided equally), the matter shall be submitted to a neutral arbitrator selected by the Owners. The arbitrator shall submit a written decision to the Board within ten (10) days thereafter. In the event the Owners are unable to agree upon a single arbitrator, each Owner shall select an neutral arbitrator. The arbitrators so selected shall meet and select a third arbitrator, and the two individually Owner-selected arbitrators shall be dismissed. The third arbitrator shall then consider and determine the matter submitted by the Owners. Such arbitrator shall submit a written decision to the Owners within twenty (20) days after having received the matter. All expenses of arbitration shall be expenses of and paid for by the Owners. The decision of the arbitrator shall be final, conclusive and binding upon the Owners and may be enforced in accordance with the provisions of Title 9 of the Code of Civil Procedure of the State of California, as it may from time to time be amended.

ARTICLE 3. - RIGHTS OF OWNERS, BOARD AND ASSOCIATION

3.1. RIGHTS OF OWNERS.

Owners, and, to the extent permitted by such Owner, his family, guests, invitees, lessees, and contract purchasers who reside in such Owner's Condominium, shall have the following rights and limitations:

3.1.1. RIGHT OF ACCESS AND USE OF CONDOMINIUM.

The right of access over the Common Area for ingress to and egress from such Owner's Condominium, and of enjoyment and full use of such Condominium, which right shall be appurtenant to and shall pass with title to the Owner's Condominium, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an owner to comply with provisions of the Condominium Documents or duly-enacted rules of operation for

Common Areas and facilities thereon, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

3.1.2. RIGHT TO THE USE OF COMMON AREA.

The right of ingress and egress and of enjoyment in, to and over the Common Area, which shall be appurtenant to and shall pass with title to the Condominium, subject to the limitations and restrictions of the Condominium Documents.

3.1.3. RIGHT TO NOTICE AND HEARING.

The right to receive notice and an opportunity to be heard orally or in writing, as set forth in Section 7341 of the California Corporations Code (or any successor statute or law), prior to a decision by the Board to impose monetary penalties, a temporary suspension of an Owner's right as a Member of the Association, or other appropriate discipline for failure to comply with the Condominium Documents as described more fully in the Section entitled "*Penalties Against Members*" herein.

3.1.4. DELEGATION OF USE.

Any Owner may delegate his right of enjoyment to the Common Area to his tenants or contract purchasers who reside on his Condominium; provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor his family shall be entitled to use the Common Area by reason of ownership of the Condominium during the period of delegation. Guests of any Owner may use the Common Area only in accordance with the Rules adopted by the Board.

3.2. RIGHTS OF BOARD.

The Board shall have the following rights:

3.2.1. RULES AND REGULATIONS.

The right to establish uniform rules and regulations pertaining to the use of the Common Area not inconsistent with the provisions of this Declaration, and to amend the same from time to time relating to the use of the Common Area and other facilities situated thereon by Owners and by their tenants or guests, including the right to reasonably limit the number of guests using the Common Area and any facilities thereon, and the conduct of such persons with respect to automobile parking, outside storage of bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the Community or offend or cause inconvenience or danger to persons residing or visiting therein. Such Rules may provide that the Owner of a Condominium whose occupant leaves property on the Common Area in violation of the Rules may be

assessed (after appropriate notice and an opportunity for a hearing before the Board as set forth herein) an amount to cover the expense incurred by the Association in removing such property and storing or disposing thereof.

3.2.2. PENALTIES AGAINST MEMBERS.

The right to impose the following penalties against Members:

(a) **Suspension** of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period of time during which the assessment on a Member's Condominium remains unpaid;

(b) **Suspension** of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period not to exceed thirty (30) days for any infraction of the Association's Rules;

Suspension may include the suspension of the right of a Member to the use of any recreational facilities on the Common Area; however, no such suspension shall affect the rights of such Member to access to his Condominium, except by judgment of a court or a decision arising out of arbitration or on account of foreclosure or sale under a power of sale for failure of the member to pay assessments duly levied by the Association.

(c) **Levying of monetary penalties** against an individual Member as a disciplinary measure for failure of a Member to comply with provisions of the Project Documents, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in the repair of damage to Common Areas and facilities for which the Member was allegedly responsible, or in bringing the Member and his Condominium in compliance with the Project Documents. Provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

(d) It is provided, however, that the provisions of the preceding paragraph expressly do not apply to charges imposed against a Member consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments as more fully described in this Declaration.

3.2.3. NOTICE AND HEARING.

As set forth in Section 7341 of the California Corporations Code (or any successor statute or law), no suspension or monetary penalty shall be effective unless a Member receives fifteen (15) days' prior written notice of the proposed action and the reasons therefor and is given an opportunity to be either heard orally or in writing before the Board not less than five (5) days before the proposed effective date of the action. The notice required hereby may be given by any method reasonably calculated to provide actual notice in

accordance with the notice provisions described in the Article herein entitled **"General Provisions"**.

3.2.4. RIGHT TO ENTER CONDOMINIUM.

For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration and the other Condominium Documents, the Association's agents or employees shall have the right at reasonable hours to enter into any Condominium or upon any portion of the Common Area (including any Exclusive Use Common Area). Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association. For other than emergency repairs, oral notification of such proposed entry shall be given to the occupancy of the Condominium at least twenty-four (24) hours in advance; in the event such oral notification is not established, the notification of the proposed entry shall be made in accordance with the "Notice" provisions contained in the Section hereinafter entitled "Notice." Each Owner of a Condominium Unit hereby grants authority to the Association, its agents and employees to effect notification of proposed entry to the occupant of such Owner's Condominium Unit without prior, concurrent or subsequent notice to such Owner. In the case of an emergency, the right of entry shall be immediate, with no notice required. For the purpose herein, "emergency" is defined as an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

3.2.5. ACCESS TO COMMON AREA.

The right of Association access, ingress and egress over the Common Area and the right of installation and use of utilities thereon for the benefit of the Community.

ARTICLE 4. - ASSESSMENTS

4.1. COVENANT FOR ASSESSMENTS.

The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

- (a) **Regular Assessments**, which shall include an adequate reserve fund for long-term or periodic maintenance, repair and replacement of the Common Area; and,
- (b) **Special Assessments** which shall be established and collected as hereinafter provided.

All assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on the Condominium Unit and shall be a continuing lien upon the Unit against which each such assessment is made, the

lien to become effective upon recordation of a **Notice of Delinquent Assessment**, as provided in this Article. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

4.2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project and for the improvement and maintenance of the Common Area for the common good of the Project. Should the Association sub-meter the water supplied to individual Units, assessments may include the costs of such sub-metered water to and benefiting the individual Owners and their Units, to the extent such services are paid for by the Association. The Association shall have the right to bill the cost for any sub-metered water utility to the respective Owners as part of the Regular Assessment of such Owners' Units, which, if unpaid, may become a lien on such respective Owners' Units in accordance with the provisions contained therefor in this Declaration.

4.3. RATE OF ASSESSMENTS.

Regular Assessments and Special Assessments (other than those Special Assessments levied for the rebuilding or major repair of the structural common areas) shall be levied at a uniform rate for all Condominium Units and may be collected on a monthly basis, or otherwise, as determined by the Board.

4.4. SPECIAL ASSESSMENTS.

If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, replacement of or new capital improvements on the Common Area, the Board shall determine the approximate amount necessary to defray such expenses and, except as provided in the **"Limitations on Assessments"** Section hereinbelow, said amount shall become a Special Assessment. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Special Assessments shall be levied on the same basis as Regular Assessments, provided that a Special Assessment against Owners to raise funds for the **rebuilding or major repair** of the structural Common Area of the Project shall be levied on the basis of the ratio of the square footage of the floor area of the Living Unit to be assessed to the total square footage of floor area of all Living Units to be assessed.

4.5. SINGLE BENEFIT ASSESSMENT.

The Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Declaration that will benefit less than all of the Owners, and which will be assessed only against the Condominiums of those Owners so benefitting.

(a) Except as provided in the paragraph immediately below, such Single Benefit Assessments may be imposed only by a vote of at least fifty-one percent (51%) of the Owners of the Condominiums benefitted by the Single Benefit Assessment.

(b) Whenever the Association performs any service or accomplishes any item of repair or maintenance which is the duty of an Owner to accomplish, but which has not been accomplished by such Owner, or whenever the Association determines to preempt the performance of a specific Owner of a given act of maintenance or repair, the Association shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Association, to the Owner for whom such work was done, and shall include such additional cost as a Single Benefit Assessment for such Owner(s).

Each Single Benefit Assessment shall be segregated in the Financial Accounts solely to the Condominiums which derive the benefit therefrom. In the event that the Association obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment.

4.6. INDIVIDUAL ASSESSMENTS.

The Association may also impose a Individual Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Condominium into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws and the Association Rules and Regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing, as more fully described in the section in the **"Rights of Owners, Board and Association"** Article entitled **"Notice and Hearing"**; provided, however, that except to the extent such Individual Assessment is to reimburse the Association for the cost of collecting those assessments described in the Section hereinbefore entitled **"Covenant For Assessments,"** the Individual Assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner which is or was in non-compliance.

4.7. CONDOMINIUMS NOT SUBJECT TO ASSESSMENTS.

If for any reason whatsoever one or more Condominiums is not required to pay assessments (e.g. a Condominium owned by the Association by virtue of the Association having acquired such Condominiums through foreclosure), such assessments shall be deemed to be common expenses collectible from all of the

remaining Condominium Owners in the same proportion as each Condominium now bears to the others, less the number of Condominiums owned or not assessed by the Association. If profits are derived from the rental or sale of any Condominium owned by the Association which ownership resulted in an increase of assessments paid by the remaining Condominium Owners for additional common expenses thereby incurred, such Owners shall have reimbursed to them any or all of the excess assessments paid by them on such equitable terms and conditions as shall be determined by the Board.

4.8. LIMITATIONS ON ASSESSMENTS.

(a) The Board of Directors of the Association shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Annual increases in Regular Assessments for any fiscal year, as authorized by subsection (b) immediately hereinafter, shall not be imposed unless the Board has prepared and distributed the proforma operating budget described in the *"Financial"* Section of the *Bylaws*, in accordance with the provisions of Civil Code Section 1365(a) as it may from time to time be amended, with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(b) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the Board of Directors of the Association may not impose, except as provided herein, a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the Association's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. These provisions, however, shall not limit assessment increases necessary for the following *"emergency situations:"*

(1) An extraordinary expense required by an order of a court;

(2) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Association is responsible where a threat to personal safety is discovered;

(3) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget described in the *"Financial"* Section of the *Bylaws*, in accordance with Civil Code Section 1365. Provided, however, that prior to the imposition or collection of

an assessment under this paragraph, 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, and the resolution shall be distributed to the members with the Notice of Assessment.

(c) For purposes of this Section, "quorum" is defined as more than fifty percent (50%) of the Owners (including the Declarant) of the Association.

(d) Any action authorized under this Section shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting.

4.9. NOTICE OF ASSESSMENT INCREASE.

The Board shall provide notice by first-class mail to the Owners of any increase in Regular or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

4.10. REDUCTION OR ABATEMENT OF REGULAR ASSESSMENTS.

In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may either reduce the amount of the Regular Assessments or may abate collection of Regular Assessments as it deems appropriate. Nothing in this Section shall require the Board either to abate or reduce the Regular Assessments. The foregoing notwithstanding, neither an abatement nor a reduction in Regular Assessments shall be permitted so long as Declarant is possessed with or controls a majority of the total voting power of the Association or the Board.

4.11. NO OFFSETS.

All assessments shall be payable in the amount specified by the Board and no offsets against such amount shall be permitted for any reason, including, without limitation (i) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Area or any Improvements located therein; or, (iii) any construction or maintenance performed pursuant to the Section entitled "Assumption of Maintenance Obligations" of the Article entitled RESPONSIBILITIES OF MAINTENANCE herein, shall in any way postpone assessments or entitle a Member to claim any such offset or reduction.

4.12. COMMENCEMENT OF ASSESSMENTS; DUE DATES.

The Regular Assessments provided for herein shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium to an individual Owner. The first Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year. The Board shall determine and fix the amount of the

Regular Assessment against each Condominium at least thirty (30) days in advance of each Regular Assessment period. Written notice of the Regular Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

4.13. FAILURE TO FIX ASSESSMENTS.

The omission by the Board to fix the assessments hereunder before the expiration of any year, for that or the next year, shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration or a release of the Owner from the obligation to pay the assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the proceeding year shall continue until a new assessment is fixed.

4.14. MERGER OF TOWN UNITS.

Any Owner who acquires fee title to two (2) or more adjoining Units and then merges such Units through into one living area, shall nonetheless be responsible for the Assessments levied against each such Unit(s).

4.15. LATE PENALTIES; INTEREST ON ASSESSMENTS.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, and shall bear interest on all sums including the delinquent assessment, reasonable costs for collection and late penalties at an annual percentage not exceeding twelve percent (12%) commencing thirty (30) days after the assessment becomes due, or at the maximum legal rate as defined in the California Civil Code Section 1366, or any successor statute or law.

4.16. EFFECT OF NON-PAYMENT OF ASSESSMENTS.

Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a **Notice of Delinquent Assessment** as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorneys' fees), late penalties and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien, if by nonjudicial foreclosure as provided below. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association. Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice,

together with the costs (including attorneys' fees), late penalties and interest accruing thereon, shall be and become a lien upon the Condominium described therein, which lien shall also secure all costs (including attorney's fees), late penalties and interest accruing thereon. In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium together with all costs (including attorneys' fees), late charges and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and release of such lien.

4.17. FORECLOSURE PROCEEDINGS.

Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1367 of the California Civil Code, or any successor statute or law, and to that end, the right to enforce the lien by sale is hereby conferred upon the Association and its trustee designated in the Notice of Delinquent Assessment, or a trustee substituted pursuant to California Civil Code Section 2934a. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, costs, late penalties and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

4.18. PRIORITY OF THE LIEN.

When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any First Mortgage of record. Sale or transfer of any Condominium shall not affect the assessment lien. However, the transfer of any Condominium pursuant to a "power-of-sale" or judicial foreclosure of a First Mortgage shall extinguish the lien of or obligation for such assessments as to payments which became due prior to the foreclosure transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

4.19. WAIVER OF EXEMPTIONS.

Each Owner, to the extent permitted by law, waives, to the extent any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment thereof becomes delinquent, or any lien is imposed.

4.20. TAXATION OF ASSOCIATION.

In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the individual Condominiums, said taxes shall be added to the annual assessments, and, if necessary, a special assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

4.21. PERSONAL LIABILITY OF OWNER.

No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Condominium owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Condominium.

4.22. FINANCIAL ACCOUNTS.

The Board shall establish one or more accounts ("Financial Accounts"), into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration and the Bylaws. The Financial Accounts shall be established as savings and/or checking accounts at any banking or savings institution insured by the Federal Deposit Insurance Corporation or similar Federal insuring agency. Aggregate deposits held in any single bank or savings institution shall not exceed the contemporary limit of Federal Deposit Insurance coverage available. The Financial Accounts may include:

- (a) An Operating Account for current Common Expenses of the Association;
- (b) A Reserve Account for capital improvements, replacements, painting and repairs of the Common Area; and
- (c) Any Other Accounts that the Board may establish to the extent necessary under the provisions of this Declaration.

Except for purposes of transfer of funds upon receipt or disbursement thereof, the Board shall not commingle any amounts deposited into any of the Financial Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Financial Accounts by the Declarant so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by this Declaration or the Bylaws.

4.23. USE OF RESERVE FUNDS.

Notwithstanding anything contained in this Declaration to the contrary, the reserve accounts maintained by the Association (including any capital accounts maintained pursuant to the above Section entitled "**Financial Accounts**") shall be used exclusively for periodic maintenance, improvement, painting, replacement, repair and rebuilding of Non-Exclusive Use Common Area improvements for the common good of the Project for a purpose expressly specified herein, for capital improvement on the Project, and for taxes and insurance. Any other use of such reserves shall require the vote or written assent of at least seventy-five percent (75%) of the voting power of the Association.

4.24. VOTING REQUIREMENT FOR CERTAIN ACTIONS.

Notwithstanding anything contained in this Declaration to the contrary, the following actions shall require the vote or written assent of at least seventy-five percent (75%) of the voting power of the Association: (i) any Special Assessment for a purpose other than to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Non-Exclusive Use Common Area (including fixtures and personal property related thereto) or for any unallocated taxes, (ii) a name change for the Project, (iii) the commencement of any litigation or arbitration in the name of the Association (except for matters less than \$10,000 principal at issue), (iv) the sale or encumbrance of any property owned by the Association, or (v) the annexation of any new property to the Association and/or this Declaration.

ARTICLE 5. - USE RESTRICTIONS

5.1. USE OF CONDOMINIUMS.

Each Condominium shall be improved, used and occupied for private, single-family dwelling purposes only; provided, however, Declarant may use any of the Living Units and Exclusive Use Common Areas owned or leased by Declarant as model homes and sales offices during that time period described in the section entitled "**Declarant Exemption**" in the Article herein entitled "**General Provisions**."

5.2. BUSINESS OR COMMERCIAL ACTIVITY.

No business of any kind shall be permitted or conducted in any of the Living Units. Owners may, however, without external evidence, (i) maintain their personal professional library, (ii) keep personal business or professional records, or (iii) handle his or her personal business, professional calls or correspondence from said premises.

5.3. LEASE OF CONDOMINIUMS.

Each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration and all other Project Documents; and that the failure to comply with the provisions of these Project Documents shall be a default of the lease. A copy of this Declaration shall be made available by the Owner to each tenant or lessee. No Owner shall lease his Condominium for a period of less than seven (7) days. Any lease agreement shall be for the Condominium Unit and shall include any Garage Exclusive Use Common Area, and no such agreement shall allow the lessee to forfeit the use of such Garage or any portion thereof.

5.4. INSURABILITY.

No Living Unit, Exclusive Use Common Area or improvements situated thereon shall be occupied or used for any purpose or in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof.

5.5. PETS.

Except as otherwise provided more stringently in the zoning ordinances of the City, an Owner may keep and maintain in his Condominium domesticated pets such as dogs, cats or other usual and ordinary household pets, not to exceed **two (2)** in number, the maximum aggregate weight of which shall be as may be permitted by the Association Rules, provided, however, any pet which may have already been on the premises prior to the adoption of a weight limit Rule and which pet or pets exceed such aggregate weight, shall be exempt from such Rule for the lifetime of such pet or pets; and birds (excluding poultry and birds of prey), not to exceed **four (4)** in number; provided that the above are not kept, maintained or bred for any commercial purposes. An Owner may keep and maintain any number of aquarium-type fish.

The foregoing notwithstanding, no pets may be kept on the Property which result in a nuisance, an annoyance or are obnoxious to other Owners or occupants. No pets shall be allowed on the Common Area except as may be permitted by the Association Rules, if any. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. The Association, Declarant or any Owner may cause any unleashed dog found within the Common Area to be removed to a pound or animal shelter under the appropriate governmental jurisdiction by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the dog. **No dog whose barking or other conduct disturbs other Owners or occupants shall be permitted to remain on the Property.** Owners shall prevent their pets from soiling all portions of the Common Area where other persons customarily walk and shall promptly clean up any mess left by their pets.

5.6. INTERFERENCE WITH OTHER OCCUPANTS.

No Living Unit or Exclusive Use Common Area shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Unit nor on the Common Area.

5.7. SIGNS.

No signs, placards, decals or other similar objects, shall be erected or displayed to the public view or from within any Living Unit or the Common Area without the written approval of the Board; provided however, each Owner shall have the right to erect or display one (1) sign reasonably located, in plain view of the public (within a six (6) foot square area in the southwest corner of the Project) and of reasonable dimensions and design not to exceed six (6) square feet in area, advertising the following: (i) that the Condominium is for sale, lease or exchange by the Owner or the Owner's agent, (ii) directions to the Condominium, (iii) the Owner's or agent's name, and (iv) the Owner's or agent's address and telephone number. Customary window dressings placed in observance of national or religious holidays, or security system window signs not to exceed sixty-four inches (64") square in size, shall not be considered signs for purposes of this Section. Any of the foregoing notwithstanding, all signs shall conform with applicable local governmental ordinances.

Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right, during the time period described in the section entitled "**Declarant Exemption**" in the Article herein entitled "**General Provisions**", to install and maintain such signs, poles and advertisements as it deems appropriate in connection with its sales, financing, or construction program for the sale to the public of Condominiums, provided such signs shall comply with the local zoning ordinances, that all City approvals therefor shall be obtained and that they do not unusually interfere with the right of use and quiet enjoyment of the Owners and occupants.

5.8. EXTERIOR LIGHTING.

Any exterior lighting installed on Common Area shall either be indirect, shielded or of such controlled focus and intensity as to prevent glare on surrounding properties and unreasonable disturbance to occupants of other Condominiums.

5.9. ANTENNAS, SATELLITE DISHES.

No external "Citizens Band" (C.B.), amateur radio, microwave transmission antennas, satellite dishes or other similar electronic receiving or broadcasting devices shall be installed or maintained on the Condominium Property without the prior written consent of the Board. The foregoing notwithstanding, AM/FM radio and/or television antennas located within the interior of a Living Unit shall be permitted, provided it is not visible from

any street or from anywhere else in the Project. Nothing herein stated is intended to obligate Declarant or the Board to install a master antenna system.

5.10. MASTS & POLES.

No masts or poles may be constructed, installed or maintained on the Property for any purpose whatsoever without the prior written consent of the Board and necessary approvals and permits from the appropriate local governmental agency. The foregoing notwithstanding, nothing herein shall be construed to prevent any Person that would otherwise have a legal right to display the Flag of the United States of America from his Condominium from exercising that right, subject to reasonable restrictions imposed by the appropriate local jurisdiction as to the time, place and manner of placement or display of such Flag, when necessary for the preservation of the public's health, safety or order; provided, however, no restrictions solely to promote aesthetic considerations may be imposed.

5.11. REMODELING THE COMMON AREA.

Except as otherwise specifically provided herein, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape or adorn any part or parcel of the Common Area without the written consent of the Board.

5.12. OFFENSIVE ACTIVITIES AND CONDITIONS.

No noxious or offensive activity shall be carried on in any Condominium or on the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance, other than that which may result from construction or repair of improvements made at the instructions of the Board or Declarant. Nothing shall be done to any Condominium, or in, on, or to the Common Areas, which would impair the structural integrity of any structure located on the Property. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board.

5.13. GARBAGE AND REFUSE DISPOSAL.

All rubbish, trash and garbage shall be regularly removed from Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers designed for such purpose. The Board may require, pursuant to its Rules, that all garbage and other wastes be segregated and such segregated elements be separately packaged (for example, all cans, glass, paper products and other items of trash be segregated from each other and separately packaged for pickup and disposal by a garbage and waste disposal company or a department of any governmental agency having jurisdiction over the Project). All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition.

5.14. FENCES; WALLS.

No fences or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of improvements on the Property or as approved by the Board.

5.15. CLOTHES LINES.

No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes anywhere in the Project, except in such areas which may be approved by the Board.

5.16. BALCONIES, PATIOS; STORAGE.

Balcony and Patio Exclusive Use Common Areas may be used for placement of lawn/patio style furniture, barbecues and other usual patio equipment and furniture (where the base of such furniture or equipment comes in contact with the Balcony flooring, it must be suitably padded to protect the Balcony flooring); provided, however, no *potted plants* or other objects may be placed upon or over any balcony railing above an area where someone or something may be injured or damaged in the event such potted plants or objects should fall down. Nor shall any *potted plants, carpet or other flooring material* be placed upon or attached to the Balcony flooring. Potted plants may be placed on the wood deck Patio areas. An Owner shall not allow any water to run off any Balcony onto the Common Area. *Fireplace wood* may also be stored, provided it shall be kept in a container which may be sealed so to mitigate the infestation of termites and other pests, screened and concealed from view of other Condominiums, the Common Area, public and private streets. Balconies or Patios may not be used for storage purposes. No draping of towels, carpets, laundry or other articles over railings or walls shall be allowed. The foregoing notwithstanding, the Board shall, in accordance with its Rules and the *"Architectural and Design Control"* Article herein, have the ultimate authority to establish, determine, approve and/or disapprove such rules and regulations affecting the placement, storage and nature of items permitted on Balconies and Patios.

5.17. WINDOW COVERINGS.

All drapes, curtains, window coverings, shutters or blinds visible from the Common Area or public areas shall be beige or white in color or so lined. Other colors, materials and patterns may be used, provided they are approved by the Board. No window shall ever be covered with paint or aluminum foil; provided, however, non-reflective solar films shall be permitted, but may only be applied to the interior surface of the windows.

5.18. CAR MAINTENANCE AND POWER EQUIPMENT.

No car maintenance, servicing, repairing, assembling, disassembling, modifying, restoring, other than emergency work, shall be permitted in the Community, except with prior written approval of the Board for minor repairs only. The length of time allowed for emergency or approved minor repair work shall be determined by the Board through its Rules and Regulations. The foregoing notwithstanding, no emergency or repair work shall be permitted in any continuous period of forty-eight (48) hours.

Power tools may be used within the Community so long as such use is not for commercial purposes and does not constitute a nuisance as described hereinbefore in the Section entitled "Offensive Activities and Conditions." The Board may establish reasonable rules concerning the use of such power tools as necessary. In establishing such rules, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

5.19. USE OF COMMON AREA.

Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(a) Affording vehicular passage, parking, and pedestrian movement within the Condominium Property, including access to the Living Units;

(b) Recreational use by the Owners and occupants of Living Units in the Condominium Property and their guests, subject to rules established by the Board;

(c) Beautification of the Common Area and providing privacy to the residents of the Condominium Property through landscaping and such other means as the Board shall deem appropriate;

(d) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions and for such fees as may from time to time be determined by the Board; and,

(e) As Exclusive Use Common Areas to be used in the manner herein-after described. Nothing herein contained shall be deemed to allow persons other than the Owner of a Unit to which an Exclusive Use Common Area is appurtenant (or his tenants and licensees) to the enjoyment and use thereof.

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by

fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

5.20. EXCLUSIVE USE LICENSES.

The Board shall have the right to allow one or more Owners to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

5.21. LIABILITY FOR DAMAGE TO COMMON AREA.

Each Owner shall be legally liable to the Association for all damages to the Common Area or to any improvements thereof or thereto, including but not limited to the buildings, facilities and landscaping, caused by such Owner, his licensee or any occupant of such Owner's Living Unit, as such liability may be determined under California law. Each Owner, by acceptance of his deed, agrees for himself and for his family, guests, tenants and invitees, to indemnify each and every other Owner, and to hold each Owner, and to hold each Owner harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the Living Unit of that particular Owner and within any Exclusive Use Common Area appurtenant to the Owner's Unit, unless the injury or damage occurred by reason of the negligence of any other Owner. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of his Unit, and shall, after written notice and an opportunity for a hearing as provided in the Section entitled **"Penalties Against Members"**, pay the fines and penalties assessed pursuant hereto, the Bylaws or the Rules and Regulations for any violation by his guests, lessees and occupants of his Living Unit.

5.22. INTERIOR OF CONDOMINIUMS; MODIFICATIONS; HANDICAPPED ACCESS.

Subject to the provisions of this Declaration, applicable provisions of law and Civil Code Section 1360, as it may from time to time be amended, each Owner shall have the right, at his sole cost and expense:

(a) To make any improvement or alteration within the boundaries of his Living Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Area;

(b) To maintain, repair, repaint, paper, panel, plaster, tile and finish the interior surfaces of the ceiling, floors, window frames, trim, door frames and perimeter walls of the Unit and the surfaces of the bearing walls and partitions located within the Unit and to substitute new finished surfaces

in place of those existing on said ceiling, floors, walls, and doors of said Unit;

(c) To modify his Living Unit to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the Living Unit for the purposes of this Section if the Unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted herein is subject to the following conditions:

(1) The modifications shall be consistent with applicable building code requirements;

(2) The modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or aesthetics;

(3) Modifications external to the Living Unit shall not prevent reasonable passage by other residents, and shall be removed by the Owner when the Condominium is no longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf, or physically disabled.

(4) Any Owner who wishes to modify his Living Unit pursuant to this Section, shall comply with the provisions of the **"Architectural And Design Control"** Article hereafter regarding the review and approval by the Board of such modifications, which approval shall not be unreasonably withheld.

5.23. MERGING UNITS.

The Owner two or more Living Units may, with the consent of the Board or its delegated Architectural Committee (which consent shall not be unreasonably withheld), construct, at his expense, and in accordance with detailed plans approved by the Board or its delegated committee, merge such Units through into one living area. The Owner who has connected the Units in such manner shall have an easement for ingress, egress and passage through that portion of the Common Area which has been pierced in the process of constructing said merger. Said easement shall exist only for so long as the Units are merged into one Unit. Such easement shall automatically be terminated and the Units completely reconstructed to their original as-built condition at such time that the Owner of such Units sells, transfers or conveys any one (1) of the Units comprising such merged Unit, in which case, reconstruction of the Common Area shall be accomplished, at such Owner's expense, prior to the recordation of the deed or instrument of transfer.

No bearing walls shall be removed, altered or damaged in the course of such construction. No modifications to any portion of the Common Area shall be made which affect the structural integrity of the Project or impair any other Owner's reasonable use of such Common Area, or the utilities that may be located therein, or the value of the Project. All costs and expenses of such modifications, and subsequent restoration of said modifications shall be borne

by the Owner of the Units so merged. At the request of the Board, after approval of the proposed modifications by the Board and prior to commencement of work, the Owner making such modifications shall post a bond or bonds in an amount acceptable to the Board to protect the Association and the Project against liens and to insure completion of the work. In merging Units, an Owner shall have such reasonable access to other Units that he does not own as may be required to accomplish the modifications approved by the Board or its delegated committee. Such modifications shall not, however, change the status of Units which shall continue to be treated legally as separate Units, each required to pay its separate assessment.

5.24. EXCLUSIVE USE COMMON AREAS.

Each Exclusive Use Common Area shall be (i) appurtenant to the Unit with which the Exclusive Use Common Area is conveyed, and (ii) used only for the purposes set forth in this Declaration. The right to so use an Exclusive Use Common Area shall be exercisable only by the Owner of the Condominium appurtenant thereto and/or said Owner's tenants and licensees. Conveyance of a Condominium shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer all rights thereto to the vested Owner of the Condominium. Any license thereto shall be terminated upon such conveyance. No Exclusive Use Common Area nor any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from the Condominium to which it is appurtenant. Each Exclusive Use Common Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Article or the **"Architectural And Design Control"** Article hereafter. Except as provided in this Section and in the **"Interior of Condominiums; Modifications; Handicapped Access"** Section above, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Common Area or any other part of the Common Area without the prior written consent of the Board in accordance with the provisions of the **"Architectural And Design Control"** Article herein.

5.25. VEHICLE RESTRICTIONS.

No trailer, recreational vehicle, camper, camper shells which are higher than the respective cab or wider or longer than the factory bed, mobile home, motor home, house car, commercial vehicle, trucks, boats, boat trailers, inoperable automobile, or similar equipment shall be permitted to remain upon any area within the Project, unless such above-described vehicle can be completely enclosed within the Unit Owners garage with the garage door completely closed (if a garage door does not exist, one will have to be installed at the Unit Owners sole expense); provided, however, vehicles used for immediate purposes of moving or the delivery of goods to a resident or the Association shall be permitted. Commercial vehicles shall not include automobiles or standard size vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No unlicensed, noisy or smoky vehicle shall be operated in the Project.

5.26. PARKING; STORAGE.

Garages shall be used to park automobiles, motorcycles, standard sized pickup trucks or standard sized vans; provided that such vehicles may be fully enclosed or contained therein without modifications being required to the existing garage door or Condominium Building structure, and such vehicles to the contrary shall not be permitted in the Project. No owners or their tenants shall park more vehicles in the Project at any one time than the number of vehicles that their respective garages were designed to accommodate. Garages shall be kept available and usable for the parking of Owners' or tenants' vehicles at all times and no garage shall be converted into any use (such as for storage purposes only) that would prevent its use as parking space for the number of vehicles the garage was designed to contain. Except for purposes of ingress or egress, all Garage doors shall remain closed; provided, however, garage doors may remain open during any one day for a period of no more than one (1) hour of cumulative time. The Board may establish rules and regulations from time to time for the operation and parking of vehicles in the Common Areas and such activities related thereto.

5.27. TOWING.

Any vehicle parked within the Project may be removed as provided for in this Section in accordance with the provisions of *California Vehicle Code Section 22658.2* and it may from time to time be amended.

Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for use by handicapped persons or in a manner which interferes with any entrance to or exit from the Project or any Condominium Unit, parking space, garage or driveway located thereon.

The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

ARTICLE 6. - ARCHITECTURAL AND DESIGN CONTROL**6.1. GENERAL.**

The powers and duties set forth in this Article shall be vested in, and exercised by the Board of Directors of the Association.

6.2. RESTRICTED ACTIVITY.

No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, landscaping, improvement or structure of any kind, or exterior alteration shall be commenced, erected, placed, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto.

6.3. PLAN SUBMISSION; REVIEW.

Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements or alterations shall be submitted to the Board for approval as to quality of workmanship, design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. In the event the Board fails to approve or disapprove plans and specifications within **thirty (30)** days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

6.4. EXEMPTED FROM REVIEW.

No permission or approval shall be required to repaint in accordance with Declarant's original color scheme or as previously approved by the Board, or to rebuild in accordance with plans and specifications previously approved by the Board or its committee. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his Living Unit any color desired, or to improve or alter any improvements within the interior boundaries of the Owner's Living Unit provided such improvement or alteration does not impair the structural integrity of any Common Area, the utilities, or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including bearing walls). The provisions of this Article shall not apply to the initial construction by Declarant of the Project improvements, and the Board shall have no authority or right to approve or disapprove thereof.

6.5. DUTIES.

It shall be the duty of the Board to consider and act upon any and all proposals or plans submitted to it pursuant to this Declaration and any Architectural Standards adopted by the Board, to insure that any improvements constructed on the Property by anyone other than Declarant conform herewith, to perform other duties delegated to it by Association within the time periods set forth herein, and to carry out all other duties which may be imposed upon it by this Declaration. The Board, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction or improvements on the Property or any portion thereof. The Board shall have the right, upon reasonable notice, to inspect any and all improvements made by an Owner. The Board shall have a duty to keep and maintain a record of all action from time to time taken by the Board at all meetings or otherwise.

6.6. COMPENSATION.

Board members shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder. Provided, however, a Board member may receive compensation in the event he or she renders services in a professional capacity in connection with architectural review, subject to the unanimous approval by the other members of the Board.

6.7. FEE FOR REVIEW.

The Board shall have the right to establish a fee for the review and approval of plans and specifications which must be submitted to the Board pursuant to the provisions of this Article or the Bylaws, which shall be reasonably related to the duties performed and to cover any expense incurred in obtaining professional review assistance from licensed engineers, architects or contractors.

6.8. ARCHITECTURAL STANDARDS.

The Board may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "*Architectural Standards*." Said Standards shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Board review and guidelines for architectural design, landscaping, color schemes exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said Architectural Standards shall not be in derogation of the standards required by this Declaration.

6.9. ESTOPPEL CERTIFICATE.

Within thirty days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time pursuant to the section hereinabove entitled "*Fee for Review*"), the Board shall provide the Owner with an estoppel certificate certifying that as of the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchase from the Owner, or from anyone deriving any interest in said Condominium through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and Owners and such persons deriving any interest through them.

6.10. LIABILITY.

The Board shall not be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct; provided, however, that such Board member has acted in good faith on the basis of such information as may be possessed by him.

6.11. ENFORCEMENT.

In the event of a violation of any of the provisions of this Article, by any Owner including, without limitation, failure of any Owner to comply with the written directive or order from the Board, the Board shall have the right and authority to enforce, pursuant to the **"Enforcement" Article** hereinafter, the performance of the subject matter of such directive, including, if necessary, the right to enter the Condominium where a violation of these restrictions exists and perform remedial work, and the cost of such performance shall be charged to the Owner of the Condominium in question. Such costs shall be due within five (5) days after receipt of written demand therefor, and shall bear interest at the maximum rate allowed by law. Said costs may be recovered by the Board together with such interest and reasonable attorney's fees and costs in an action at law against such Owner.

6.12. NON-COMPLIANCE WITH LAWS.

Neither the Association nor the Board shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Board or any defect in any conditions or requirements they may have imposed with respect thereto.

6.13. APPROVAL BY GOVERNMENTAL JURISDICTION.

Prior to commencing any alteration or improvements approved by the Board, the Owner shall comply with all appropriate governmental jurisdiction laws and regulations. Approval by the Board shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction. The Association shall not be obligated to enforce the provisions of this Section. An Owner's failure to obtain such governmental approval may subject such Owner to certain penalties imposed by the governmental entity, notwithstanding the approval of Board, which penalties shall be the responsibility of such Owner.

ARTICLE 7. - RESPONSIBILITIES OF MAINTENANCE

7.1. GENERAL.

The Association and all Owners are hereby required to maintain the areas described in this Article. For purposes of this Article "**maintenance**" shall include, without limitation, the painting, weatherproofing and cleaning of the items set forth below to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Project and to protect the values thereof. The Board shall have the power to determine the standards of such maintenance, which shall be, at a minimum, in conformance with maintenance standards for similar projects in the area.

7.2. OWNER RESPONSIBILITY OF LIVING UNIT.

Each Owner of a Living Unit shall be responsible for the maintenance, repair and replacement of the following items relating to such Unit:

(a) All doors used for access to, from or through the Living Unit, whether interior or exterior, glass or otherwise, and windows, including the metal frames and tracks of such doors and windows, and hardware attached thereto, door bells, screen doors and all other screens enclosing openings to the Unit; provided that painting or replacement of exterior doors shall require the prior approval of the Board.

(b) The interior of such Owner's Living Unit, including the interior surfaces; and,

(c) All appliances whether "built-in" or "free-standing" within the Living Unit.

(d) The plumbing, heating, ventilating and air-conditioning systems, if any, which service such Owner's Condominium (including air-condition compressors) whether located in the Common Area or in any Owner's Exclusive Use Common Area; chimney flues (including the periodic seasonal inspection(s) thereof for the build-up of creosote and any necessary cleaning), television cable equipment, wires and connections, telephone wiring, and all appliances, equipment and fixtures, lighting fixtures (and lightbulbs) provided all of the foregoing systems are used or operated exclusively by such Owner and not in common. Plumbing shall include all water, sewer and drainage pipes and lines serving between the points at which the same enter/exit a Living Unit and the points at which the same join other sewer and/or drainage pipes and lines serving other Units or the Common Area. The responsibility for the cost of repair or replacement of that portion of plumbing lines and/or pipes where those of individual Living Units join with those of other Units or the Common Area shall be that of the Association (in other word, regardless of who initiates a service call and subsequent repair of such "joining point," the Association shall be responsible for the ultimate cost).

7.3. OWNER RESPONSIBILITY OF EXCLUSIVE USE COMMON AREAS.

Each Owner shall be responsible for (i) general maintenance and cleaning of the interior (or inside-facing) surfaces of any appurtenant Garage, Balcony, Patio and Storage Exclusive Use Common Areas that may be appurtenant to such Owner's Unit, including any interior facing wood or stucco railings, fences, walls and Patios; and (ii) maintenance, repair and replacement of the lighting fixtures (and lightbulbs) and other fixtures, including lighting fixtures located at the front, rear or side entrances to a Living Unit, provided such fixtures and appliances are not used in common with other Owners, in which case the Association shall be responsible. Except in emergency situations, the replacement of exterior fixtures, appliances, doors and equipment shall require the prior approval of the Board. In the case of emergency replacement of the items specified above, such Owner shall take reasonable measures to conform with the overall scheme of the Project, and subsequently replace such item if directed by the Board or Committee. The Unit Owners shall be responsible for the maintenance and replacement of their individual garage doors (if any).

7.4. DAMAGE FROM WITHIN A UNIT.

Except to the extent covered by insurance carried by the Association, in the event the Board shall determine that the walls, ceilings, floors, doors, or windows or any other portion of the Common Area forming the boundaries of a Unit have been damaged from within a Unit, notwithstanding that such damage may be to the Common Area, the Owner of the Unit shall be responsible for repairing such damage in a timely manner in accordance with such rules as the Board or its delegated committee shall from time to time adopt.

7.5. OWNER'S FAILURE TO MAINTAIN; WILLFUL OR NEGLIGENT ACT.

In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, or if an Owner, or his guests, tenants, invitees or pets, cause the willful or negligent act or neglect of the same or any other area within the Project, the Board may notify the Owner of the work required and request that the same be done within a reasonable time under the specific circumstances, provided, however, that the Board shall have the right to approve the person or company who shall perform the maintenance or repairs and the method of repair. In the event the Owner fails to carry out such maintenance or repair within said time period, the Board may, following notice and a hearing as provided in the section entitled "*Notice and Hearing*" in Article herein entitled "*Rights of Owners, Board and Association*", cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

7.6. RESPONSIBILITY OF ASSOCIATION.

The Association shall be responsible for the following:

(a) The maintenance, repair and replacement of the all facilities, including utility facilities as described in the Section hereinafter entitled **"Utility Facilities,"** the Common Area including, but not limited to, walkways, lighting, metal doors of utility closets, mailboxes (excluding mailbox locks, if any), trash enclosures, landscaped and open space areas, irrigation equipment in the Non-Exclusive Use Common Areas, the building exteriors (including the painting of the exclusive use common area garage door exteriors and maintenance and replacement of the garage door accessing the subterranean garage area), bearing walls, foundations, roofs, metal flashings between roofing and chimneys and roofing vents, gutters and downspouts of all Condominium Buildings and other structures on the Property and all property that may be acquired or leased by the Association.

(b) The periodic inspection, but not less than annually, of: (i) all electrical, gas, water and cable utility controls and meters; (ii) all roofs and metal flashings for evidence of cracking, damage or exposure of underlying structures to the elements.

(c) The maintenance, repair and replacement of any fixtures (lighting or otherwise) located within the Common Area, including those located in Exclusive Use Common Areas, which are not used exclusively by one Owner;

(d) The maintenance, repair and replacement of all Common Area fences, walls and railings and any of the same which are within or delineate Exclusive Use Common Areas, but to the extent such maintenance, repair and replace is due to normal wear and tear;

(e) The periodic inspection, but not less than annually, of all Balcony Exclusive Use Common Areas for surface wear and tear and drainage conditions, for purposes of ascertaining the necessity for remedial or long-term maintenance and repair to assure the integrity of a Balcony surface, and for the repair thereof when required.

(f) The maintenance and repair of the Common Area as required to control the presence of or damage caused by **wood-destroying pests or organisms**; provided, however, the costs of temporary relocation during such maintenance or repair shall be paid by the Unit owner affected. The Association is hereby given the power to temporarily remove any Unit owner or occupant for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The Association shall give notice of the need to temporarily vacate a Unit to the record owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation. Any such notice shall be

given in accordance with the notice provisions in the Article herein entitled **"General Provisions"**, provided that an additional notice shall also be given to any occupant of the Condominium if such occupant is not the record owner.

(g) All utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district, where such systems are used to provide services to Common Area facilities;

(h) Such other areas, facilities, equipment, services or esthetic components of whatsoever nature as may from time to time be requested by the vote of at least three-quarters (3/4) of the Association membership.

The foregoing Association responsibilities are intended to be applicable only in circumstances due to normal wear and tear or the willful or negligent act or neglect of the Board or its agents, and not when due to any negligent act of an Owner, occupant, guest or invitee.

7.7. UTILITY FACILITIES.

7.7.1. OWNERS' RIGHTS AND DUTIES.

The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving and telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities, including air conditioning compressors and condensers (hereinafter referred to, collectively, as **"utility facilities"**) shall be as follows:

(a) Whenever utility facilities are installed within the Project, which utility facilities or any portion thereof lie in or on Condominiums owned by other than the Owner of a Condominium served by said utility facilities, or located within Exclusive Use Common Areas appurtenant another Condominium, such Owner shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain said utility facilities as and when necessary. Notification of such entry shall be given at least twenty-four (24) hours in advance. Such entry shall be made with as little inconvenience to the affected Owner as possible and any damage caused thereby shall be repaired by the entering Owner at his own expense. In the case of any emergency, the right of entry shall be immediate. For the purpose herein, "emergency" is defined as an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

(b) A Condominium Unit owner shall be entitled to reasonable access to the Common Areas for the purpose of maintaining the utility facilities appurtenant to such Owner's Unit and/or which serve such Unit. The access shall be subject to the consent of the Board, whose approval shall not be unreasonably withheld, and which may include reasonable conditions

of approval for any portion of such utility facilities that are located on the exterior of the Common Areas, and other conditions as the Board determines reasonable;

(c) Whenever utility facilities are installed within the Project, which utility facilities serve more than one (1) Condominium, the Owner of each Condominium served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his Condominium;

(d) In the event of a dispute between Owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties.

7.7.2. ASSOCIATION'S DUTIES.

The Association shall maintain all utility facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal, and those maintained by the Owners as described elsewhere in this Article. The Association shall pay all charges for utilities supplied to the Common Area except those metered or charged separately to the individual Condominiums.

7.8. ASSUMPTION OF MAINTENANCE OBLIGATIONS.

Declarant and its subcontractors, and the agents and employees of the same, shall have the right to come upon the Common Area to complete the construction, refurbishment or installation of any landscaping or other improvements to be installed thereupon. In the event that any of Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other improvements on any portion of the Common Area, such maintenance shall not be assumed by the Association until the termination of such contractual obligation. If there is any excess of assessments collected over actual Common Expenses incurred by the Association, caused by reason of this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

7.9. INSPECTION OBLIGATION.

7.9.1. FREQUENCY; PURPOSE.

Beginning within eighteen months following the date that Declarant first conveys a Condominium to a Retail Buyer, the Board shall cause, at a minimum, regular triennial ("Regular Inspections") of the Improvements located within the Common Area. The purpose for such inspections is to ascertain and record the status of the Improvements and the quality of the maintenance thereof for both historical continuity between successive Board of

Directors, and to assure an on-going program for the proper care and maintenance of such Improvements as originally intended by Declarant, contractor, subcontractor or manufacturer of such Improvements.

7.9.2. PROFESSIONAL SERVICES.

The Regular Inspections shall be conducted by independent, professional, qualified individuals or firms ("*Inspectors*"). Such Inspectors may include, but not be limited to, those parties who regularly conduct inspections for purposes of preparation of a "Reserve Study" as described in California Civil Code Section 1365.5.

7.9.3. SCOPE.

The Inspectors shall inspect all Improvements and component parts of the Project, including, but not limited to, structural components, parking areas, driveways and walkways, and landscaping. If Declarant or any of the contractors or subcontractors responsible for construction of any component part of the Project provide the Association with maintenance criteria, maintenance guides or manuals, or warranty requirements, the Board shall provide such information to the Inspectors, so that they may assist the Association with compliance thereof. The Association shall be responsible for meeting all requirements under such maintenance guides or manuals, maintenance criteria, or warranty requirements. The Association shall update any maintenance guide or manuals on a regular basis.

Inspectors shall provide written reports of their inspections to the Association within a reasonable time following actual inspection (subject to receipt of any ancillary information from manufacturers, vendors and current or former contractors as may be necessary in the preparation of such reports). The written reports shall identify all items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems on the Project. The Board shall report the contents of such written reports to the Members of the Association at the next meeting of the Members following receipt of such written reports and shall include such written reports in the minutes of the Association. Additionally, the Board shall keep and maintain for at least ten (10) years, all records, notes, reports and other documentation relating to all Regular Inspections, together with any Owner complaints concerning the Common Area. Subject to the provisions of the Section hereinafter entitled "*Notice to Declarant*", the Board shall promptly cause all matters identified by the Inspectors as requiring attention, to be maintained, repaired or otherwise pursued in accordance with prudent business practices with consideration to the recommendations of the Inspectors.

7.9.4. MORE FREQUENT INSPECTIONS.

If more frequent or extensive inspections are recommended by any Inspector, consultant, contractor or subcontractor employed by the Association, or pursuant to the recommendations of any maintenance guide or manual, product or manufacturer's maintenance criteria, or warranty requirement with respect to any of the Improvements or any other Common Area systems or facilities, then the Board shall implement more frequent inspections as so recommended, unless the Board determines otherwise by evidence to the contrary of such recommendations, in which case the Board shall make specific note of such contrary evidence in its meeting minutes and the resulting decision whether or not to follow such more frequent or extensive inspections.

7.9.5. NOTICE TO DECLARANT.

During the first ten (10) years following the date of "substantial completion" of the Project, as such term is defined in California Code of Civil Procedure §337.15(g), the Association shall cause the Declarant, or its designee, to receive ten (10) days advance written notice of all Regular Inspections and an opportunity, without obligation to do so, to be present during such Regular Inspections, personally or through an agent, and shall provide the Declarant, or its designee, with a copy of all written reports prepared by the Inspectors. In the event, based upon such Regular Inspection or any other inspection of the Common Area, that any items are identified as requiring corrections or other matters for which the Declarant or any contractor, subcontractor, architect, materialman, or similar individual or entity could be held liable (collectively, "construction corrections"), the Association shall request in writing (a copy of which shall be delivered to Declarant or its designee), that the Declarant, or such appropriate responsible individual or entity take all necessary steps to perform such construction corrections. The party receiving such written request shall, if it elects to take action relative to such request, be given reasonable access to the Project and an opportunity to take all action and do all things necessary to effect such construction corrections.

7.9.6. SUBSEQUENT ACTIONS.

If, in the opinion of the Declarant, or other responsible individual or entity, the Board-requested construction corrections so identified are not the result of construction deficiencies relating to the original construction of the Project by Declarant and/or by any contractor, subcontractor, architect, materialman, or similar individual or entity related to the Project's original construction, or if the party receiving such notice fails to take action to remedy such situation (and following commencement of such action, fails to diligently prosecute the same to conclusion) within 120 days of the date of such written request, either party, upon 30 days' advance notice, may submit such dispute to a "Dispute Resolution Procedure" in accordance with the provisions of the Section entitled **"Dispute Resolution Procedure"** in the **"General Provisions"** Article herein.

7.10. USE OF LICENSED CONTRACTORS; WORKFORCE; PERMITS.

All work of repair or replacement required to be performed pursuant to this Article shall be performed only by reputable and experienced contractors, appropriately licensed by the State of California or other controlling governmental jurisdiction. A contractor's workforce shall be presentable at all times and all employees shall be competent and qualified, and shall be U.S. citizens, legal residents or otherwise legally approved to be in the United States. If building or other permits are required for such work, then such permits shall be obtained before the work is commenced.

ARTICLE 8. - EASEMENTS**8.1. NONEXCLUSIVE EASEMENTS.**

Each Condominium Unit Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Unit and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, as well as to the right of the Association to regulate time and manner of use, and to perform its obligations under this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Units superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Units may, but shall not be required to, set forth the easements specified in this Article.

8.2. EASEMENTS TO DECLARANT AND ASSOCIATION.

Easements over and under the Project for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded Maps of the Project, and as may be hereafter required or needed to service the Project, are hereby reserved by Declarant and its successors and assigns, and, upon the sale of the first Condominium Unit, to the Association, together with the right to grant and transfer the same.

8.3. EASEMENTS TO OTHERS.

Declarant further reserves the right to establish and/or grant over and across the Common Area such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California and the City, or any other political subdivision or public or private organization, or any public utility entity, for the purpose of constructing, erecting, operating and maintaining facilities and improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets,

walks, driveways, parkways and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Property and for the necessary attachments in connection therewith, and (iii) public and private sewers, sewage disposal systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area shall be subject to any dedication stated in the Subdivision Map for the Property of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Common Area. Said public utilities easement shall inure and run to all franchised utility companies and to the City, and shall include the right of ingress and egress over the Common Area by vehicles of the City and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City for maintenance or operation of any of the Common Area or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies or the City, of the utility facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Common Area by utility companies, the Common Area subject to the public easement shall be kept open and free from buildings and structures. The City, furthermore, is hereby granted an easement across the Common Area for ingress and egress for use by emergency vehicles of the City.

8.4. ENCROACHMENT EASEMENTS.

The Owner of each Condominium is hereby granted an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of that Owner. In the event any portion of a structure on the Condominium Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Units or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

ARTICLE 9. - INSURANCE**9.1. MASTER INSURANCE POLICY.**

The Association shall obtain and continue in effect the following insurance:

9.1.1. FIRE INSURANCE.

A master policy of fire insurance with extended coverage endorsement for the full replacement value (i.e. one hundred percent (100%)) of current "replacement cost," exclusive of land, foundation, excavation and other items normally excluded from coverage of all of the improvements within the Common Area, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement", if available; such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, costs of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as shall customarily be covered with respect to similar Common Interest Developments in the area of the Project. The form and content of such policy must be satisfactory to all institutional first trust deed lenders and shall meet the maximum standards of the various institutional first trust deed lenders whose loans encumber any of the Condominium Units.

9.1.2. PUBLIC LIABILITY INSURANCE.

A general, comprehensive public liability and property damage insurance policy with cross liability endorsement, if available, in an amount not less than **One Million Dollars (\$1,000,000)**, insuring the Association, its agents, the Declarant and the Owners and occupants of the Condominium Units and their respective family members, guests, invitees and agents against any liability incident to ownership or use of the Common Area or any other Association owned or maintained real or personal property, arising out of any single occurrence. Such coverage shall include liability for non-owned and hired automobiles and liability for property of others, and such other risks as are customarily covered with respect to similar real estate developments in the area of the Project. The general liability policy shall also include such provisions as may be required by the provisions of California Civil Code Section 1365.7, or any successor statute, to limit the monetary liability of volunteer directors and officers of the Association. The policy shall, in any event, contain a "*severability of interest*" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of wanton or grossly negligent acts or omissions of the Association or other Owners.

9.1.3. WORKERS COMPENSATION INSURANCE.

Worker's compensation insurance covering any employees of the Association to the extent required by law.

9.1.4. DIRECTORS AND OFFICERS INSURANCE.

To the extent insurance is available, Directors and officers liability insurance in an amount of not less than **One Million Dollars (\$1,000,000)** on behalf of any Director, Officer or member of a Committee of the Association (collectively, the "Agents") against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent's status as such, regardless of whether the Association would have the power to indemnify the Agent against such liability under applicable law.

9.1.5. OTHER INSURANCE.

Such other insurance as the Board in its discretion considers necessary or advisable.

9.2. COVERAGE, AMOUNT AND TERM OF INSURANCE.

The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, and notices of changes or cancellations) shall satisfy the minimum requirements imposed for this type of project by the FNMA and the FHLMC or any successor thereto. If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is reasonable for the nature of the project and its insurable assets.

Any insurance maintained by the Association shall contain "*waiver of subrogation*" as to the Association and its officers, directors and Members, the Owners and occupants of the Dwellings and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Association shall, on an annual basis, review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

All insurance policies shall provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association. Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

9.3. OWNERS INSURANCE.

No Owner shall separately insure the improvements on his Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from

the existence of such other insurance will be chargeable to the Owner who acquired other insurance. Any Owner can, however, insure his personal property against loss and obtain any personal liability insurance that he desires; in addition, any improvements made by an Owner within his Living Unit may be separately insured by the Owner. The insurance for the foregoing shall be limited to the type and nature of coverage generally known in the insurance industry as an "HO6", or the equivalent. It is not intended with respect to the individual Living Units that the Association carry (i) liability insurance covering any acts or occurrences, nor (ii) any casualty insurance covering Owners' personalty or betterments.

WARNING TO ALL OWNERS: The Association is required by this Article to maintain a general, comprehensive public liability insurance policy in an amount not less than \$1,000,000, insuring the Association, its agents, the Declarant and the Owners of the Condominium Units and their Invitees and agents against any liability incident to ownership or use of the Common Area or any other Association owned or maintained real or personal property, arising out of any single occurrence. In the event that a third party sustains injuries, the nature of which results in liability or damages in excess of the Association's insurance policy limits, the Owners of Condominium Units in the Project may be held jointly and severally liable for the excess amount. **Each Owner should consult with his or her insurance representative and or legal counsel to consider the merits of obtaining an "HO6" personal liability insurance coverage described in the paragraph immediately above.** Anything herein to the contrary notwithstanding, each Owner who accepts a deed to a Condominium Unit in the Project, agrees to hold the California Department of Real Estate, the Declarant, and the Declarant's subcontractors and agents harmless from any and all costs and liability which might arise due to any liability sustained by such Owner or Owners in the event such Owner or Owners sustain any such liability as described in this paragraph.

9.4. FAILURE TO ACQUIRE.

The Association, and its directors and officers, shall have no liability to any Owner or mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

9.5. INSPECTION OF POLICIES.

Copies of all Association insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and be open for inspection by Owners at any reasonable times.

ARTICLE 10. - DAMAGE OR DESTRUCTION; CONDEMNATION**10.1. RESTORATION OF IMPROVEMENTS.**

In the event of partial or total destruction of improvements upon the Common Area, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Board or its appointed committee, provided that the Association shall have obtained the prior consent of a majority of the voting power of the Association.

10.1.1. INSURANCE PROCEEDS ADEQUATE.

If the cost of repairing or rebuilding the Common Area does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than **fifty thousand dollars (\$50,000)**, such insurance proceeds shall be paid to a commercial bank or trust company designated by the Board, to be held for the benefit of the Association and the Owners and their Mortgagees, as their interests shall appear. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board shall levy a Special Assessment, in accordance with the provisions of the Article entitled "**Assessments**" herein, against the Owners herein equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which sums shall be payable into the fund held by the insurance trustee. The Board may advance the amount of said special assessment to the insurance trustee from Association general funds or reserve funds; provided the amount taken from reserve funds represent sums allocated therefor. The Board shall thereupon contract for the repair or reconstruction of the improvements, paying the cost of such work from the amount held by the insurance trustee, said repair or reconstruction to be for the purpose of returning the improvements substantially to their appearance and condition immediately prior to the casualty.

10.1.2. INSURANCE PROCEEDS INADEQUATE.

If the cost of such repairing or rebuilding exceeds the amount of available insurance by more than **fifty thousand dollars (\$50,000)**, then all insurance proceeds shall be deposited as provided hereinabove and the Board shall require a determination by written assent or vote of the Members in accordance with the provisions and limitations contained in the Article entitled "**Assessments**", as to whether a Special Assessment equal to the difference between available insurance proceeds and the cost of such repairing or rebuilding shall be levied. If the Members determine not to levy such Special Assessment, then the Board shall use the available insurance proceeds (a) to mitigate any hazardous conditions that may exist, (b) to make provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and (c) to comply with all other applicable requirements of governmental agencies; any deficiency in funds necessary for the foregoing may be raised by a Special Assessment in an amount

determined by the Board therefor. In the event any excess insurance proceeds remain, the Board shall distribute such proceeds among the Owners, subject to the prior rights of the Mortgagees (whose interests may be protected by insurance policies carried by the Association), in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board. In the event of a failure by the Board to agree on the selection of an appraiser, an appraiser shall be appointed by the, then, President of the San Diego County Bar Association. The apportionment of proceeds distributable between the Owner and the Mortgagee of a Unit shall be governed by the provisions of the Mortgage encumbering such Unit.

10.2. CONDEMNATION; EMINENT DOMAIN.

The Association shall represent the Condominium Owners in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Area, or part thereof. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Condominium Owners and their respective mortgagees as their interests may appear.

In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately and apportioned among the Owners by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in the above section entitled "*Insurance Proceeds Inadequate*".

In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking, and after acceptance thereof such Owner shall be divested of all interest in the Project provided such Owner vacates the Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project.

If there is a substantial taking of the Project's property (more than fifty percent (50%)), the Owners may terminate the legal status of the Project, and if necessary, bring a partition action under Civil Code Section 1359 or any successor statute, on the election to terminate by sixty-seven percent (67%) of the total voting power of the Association residing in Members other than Declarant and the approval of Eligible Mortgage Holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums

subject to Eligible Mortgage Holder Mortgages. The proceeds from the partition sale shall be distributed to the Condominium Owners and their respective mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in the above section entitled **"Insurance Proceeds Inadequate"**.

ARTICLE 11. - SEPARATION OF INTERESTS; PARTITION; POWER OF ATTORNEY

11.1. NO SEPARATION OF INTERESTS.

No Owner may sell, assign, lease or convey his interest in the Common Area separate and apart from his Living Unit nor any portion of or appurtenance to his Living Unit apart from the entire Living Unit.

11.2. PARTITION.

Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that such partition is consistent with the requirements of California Civil Code Section 1359.

11.3. POWER OF ATTORNEY.

The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when partition of the Owners' interests in said Condominium Property may be had pursuant to the Article entitled **"Damage or Destruction; Condemnation"** or the section entitled **"Partition"** hereinabove. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding an aggregate of three-quarters (3/4) of the interest in the Common Area by any two (2) Members of the Board who are hereby authorized on behalf of the Association to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE 12. - RIGHTS OF MORTGAGEES

12.1. GENERAL.

No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Any provision within the Project Documents to the contrary notwithstanding, First Mortgagees shall have the rights expressly provided in this Article.

12.2. NO RIGHT OF FIRST REFUSAL.

This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Condominium can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any first mortgagee to: (a) foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Condominium acquired by the Mortgagee.

12.3. UNPAID DUES OR CHARGES.

Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Condominiums including such acquirer, his successors and assigns. Should such acquirer fail to pay its share of common expenses, assessments or other charges when due, the Board may file for a Notice of Delinquent Assessment in accordance with the provisions therefor contained in the Section entitled "*Effect of Non-Payment of Assessments*" herein.

12.4. ACTION REQUIRING MORTGAGEE APPROVAL.

Provided that the mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, except as provided by statute in case of condemnation or substantial loss to the Condominiums or Common Area of the Project, unless at least two-thirds of the first Mortgagees (based upon one (1) vote for each first Mortgage owned), or Owners (other than the Declarant) of the individual Condominiums have given their prior written approval, the Association may not:

(a) Seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plan or this Declaration, or change, waive or abandon any scheme of regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Area;

(b) Change the pro rata interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of the Common Area appurtenant to each Unit;

(c) Partition or subdivide any Condominium;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Common Area shall not be deemed a transfer within the meaning of this clause;

(e) Use hazard insurance proceeds for losses to any portion of the Condominium Property for other than the repairs, replacement or reconstruction of the Condominium Property, except as may be provided by statute or upon substantial loss to the Units or Common Area, respectively; or

(f) Fail to maintain fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurance value thereof, based on current replacement cost.

12.5. PRIORITY OF INSURANCE PROCEEDS DISTRIBUTION.

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other condominium constituent documents shall give a Condominium Unit Owner, or any other party, priority over any rights of the first mortgagee or beneficiary of the condominium unit pursuant to its mortgage or deed of trust in the case of a distribution to such unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

12.6. NOTIFICATION TO MORTGAGEE.

Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any Eligible Mortgage Holder or Eligible Insurer will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

(b) Any default in the performance by an Owner of any obligation under the Condominium Documents not cured within sixty (60) days;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or,

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in the Bylaws or in this Declaration.

12.7. AGREEMENT FOR MANAGEMENT.

Any management agreement of the Project, or any portion thereof, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, or fewer, written notice and shall have a term of not more than two (2) years, renewable with the consent of the Association and the management agent. The Board shall not terminate professional management of the and assume self-management, when professional management had been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Dwellings;

12.8. MORTGAGEES FURNISHING INFORMATION.

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

12.9. OWNERS FURNISHING INFORMATION.

Each Owner, within ten (10) days after the close of escrow for the purchase of his or her Condominium Unit, shall notify the Association in writing of the name and address of his or her First Mortgagee, and thereafter, each Owner shall promptly notify the Association of any changes of name or address for his or her First Mortgagee.

12.10. NON-CURABLE BREACH.

Any Mortgagee who acquires title to a Condominium by foreclosure or by deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. A "breach", as used herein, shall not apply to any lien of or obligation for assessments owed to the Association which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

12.11. LOAN TO FACILITATE.

Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article.

12.12. FINANCIAL STATEMENT.

Any First Mortgagee shall be entitled, on written request therefor, to have the Association provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

12.13. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION.

Neither the Association nor Owners may elect to terminate the legal status of the Property for reasons other than substantial destruction or condemnation of the Property as provided herein, without the written consent of Eligible Mortgage Holders who represent at least two-thirds of the mortgaged Condominiums.

ARTICLE 13. - AMENDMENT/RE-RECORDING OF CONDOMINIUM PLAN

13.1. GENERAL.

Subject to the restrictions and limitations set forth in this Article, Declarant reserves the right, at any time or at different times for so long as Declarant holds a fee interest in the Property, and thereafter to the Association, to amend or re-record the Condominium Plan of the Project in order (i) to cause the Condominium Plan to comply with the Condominium Buildings and Units as actually built, (ii) to adjust the boundary or delineation lines of any Exclusive Use Common Area, so to conform with actual physical attributes or constraints of the land or buildings that were not contemplated originally, and/or (iii) to correct any errors in the original plan. The determination of whether the Condominium Plan is to be an amendment to or a re-recording of the Condominium Plan, shall be by determination of the Declarant so long as Declarant holds a fee interest in the Property, and thereafter to the Association at such time that Declarant no longer holds a fee interest in the Property, subject to any limitations or conditions that may exist by law, by the insuring title insurance company and/or by the requirements of the San Diego County Recorder.

13.2. POWER OF ATTORNEY.

Each Owner, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a *Power of Attorney* coupled with an interest to Declarant as his Attorney-In-Fact, and thereafter to the Association, by its President and Secretary, at such time that Declarant no longer holds a fee interest in the Property, to effect the amendment or re-recording of the Condominium Plan or Plans for the Project in accordance with the limitations and requirements set forth in this Article, and in connection therewith, the following shall be operative:

(a) Such amendment or re-recording shall be subject to the laws of the State of California in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project in effect on the date of recordation of this Declaration and as there-

after enacted or amended, or which may be required or permitted by any title insurer or the San Diego County Recorder, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state or local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(b) Declarant, so long as Declarant holds a fee interest in the Property (references to "Declarant" hereafter in this Article shall automatically mean ***"for so long as Declarant holds a fee interest in the Property and thereafter to the Association, provided, however, that the Association shall not be obligated to take such actions as may only be required by statute or regulation to be taken by Declarant"***), shall, if required, make application for any property reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with any federal, state or local statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the public and, in connection therewith to preform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein;

(c) Declarant shall deliver any reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(d) Declarant shall prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any registration or any application for any permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as hereafter enacted or amended by any federal, state or local governmental entities and authorities, and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(e) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deeds, waivers, releases, reconveyance or other documentation that may be permitted or required to clear title to any Separate Interest, whether constructed or to be constructed, in the Project; and

(f) To do any and all things necessary or desirable under the circumstances to effect and accomplish the amendment or re-recording of the Condominium Plan.

13.3. RESTRICTIONS AND LIMITATIONS.

The rights of Declarant, or the Association, as the case may be, set forth in this Article shall and are hereby made subject to the following additional restrictions and limitations:

(a) In no event shall the amended or corrected Condominium Plan provide for less than or more than four (4) Units.

(b) With the exception of the revisions authorized by subsections (a) through (f), inclusive, of the above Section, the amendment of the Condominium Plan that is made so to reflect a Condominium Building or Unit therein as actually built that is the subject of an Agreement of Sale or is owned by an Owner or Owners other than Declarant, unless the purchaser or Owner of such a Living Unit shall consent to such amended Condominium Plan in writing.

13.4. INDEMNIFICATION OF OWNERS ON EXERCISE OF POWER OF ATTORNEY.

Declarant shall indemnify and hold each Owner harmless from all liabilities, including attorney's fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the Power of Attorney set forth in the Section herein entitled "*Power of Attorney*."

13.5. ENCUMBRANCES TO TAKE SUBJECT TO POWER OF ATTORNEY.

The acceptance or creation of any Mortgage, whether voluntary or involuntary, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in the Section in this Article entitled "*Power of Attorney*".

13.6. EFFECT ON ASSESSMENTS LIENS.

The amendment to or re-recording of the Condominium Plan in accordance with the provisions of this Article shall not alter or affect the amounts of any Regular or Special Assessments which were due from any Owner prior to such recording or liens thereof; provided, however, that all liens previously created under this Declaration shall, upon the recording of any amendment to or re-recording of the Condominium Plan, be reconveyed and released to each Condominium, other than the Condominium which was originally the subject of such lien, depicted on such amendment to the Condominium Plan.

ARTICLE 14. - ENFORCEMENT**14.1. RIGHT TO ENFORCE.**

The Association or the Declarant shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Each Owner of a Condominium shall have a right of action against the Association for failure to comply with the provisions of the Declaration, the Bylaws, or with the decisions of the Association which are made pursuant to authority granted the Association under this Declaration or the other Project Documents.

14.2. NUISANCE.

The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by the Association or any Member. Each remedy provided by this Declaration shall be cumulative and not exclusive.

14.3. FAILURE TO ENFORCE.

Failure by the Association or Declarant to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

14.4. VIOLATION OF LAW.

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Condominium within the Project is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures herein set forth.

ARTICLE 15. - GENERAL PROVISIONS**15.1. SEVERABILITY.**

Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

15.2. AMENDMENTS.

Prior to close of escrow on the sale of the first Condominium in the Property, Declarant may amend this Declaration at any time. Except as may be in accordance with the provisions of California Civil Code Sections 1355 and 1368 or any amendment or successor statute thereto, during the period of time

after the sale of the first Condominium, and prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of **seventy-five percent (75%)** of the total voting power of the Association. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of (i) **seventy-five percent (75%)** of the total voting power of the Association, and (ii) **seventy-five percent (75%)** of the voting power of the members of the Association other than Declarant. **However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.** Any such amendment shall become effective upon the recording with the Office of the County Recorder of San Diego County, California of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the Office of the County Recorder of San Diego County, California. No material amendment may be made to this Declaration without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units which are subject to mortgages held by such Eligible Mortgage Holders.

"Material amendment" shall mean any amendment to provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;
- (b) Assessments, assessment liens, or the priority of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of the Common Area;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Areas, or rights to their use;
- (f) Redefinition of the boundaries of any Condominium Unit;
- (g) Convertibility of Condominium Units into Common Areas or visa versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;

- (i) Insurance or fidelity bond coverage;
- (j) Leasing of Condominium Units;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his or her Condominium Unit;
- (l) Any decision by the Board to establish self-management when professional management had been required previously by the Project Documents or by an Eligible Mortgage Holder;
- (m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit Mortgage Holders, insurers or guarantors.

An addition or amendment to this document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

An Eligible Mortgage Holder or Eligible Insurer who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

15.3. DECLARANT APPROVAL.

Notwithstanding anything contained in this Declaration to the contrary, for a period of five (5) years from the date of conveyance of the first Condominium to a purchaser, in order to assure, and in furtherance of, the general plan established herein by Declarant for the proper protection, maintenance and improvement of the Property or any portion thereof, any amendment of the Articles herein entitled **"Assessments"** and **"Responsibilities of Maintenance,"** the Section hereinafter entitled **"Dispute Resolution Procedures"** or this Section entitled **"Declarant Approval,"** shall require the written approval of the Declarant; provided, however, the foregoing written approval shall not be required if such amendment is made pursuant to an amendment of or new statutory law. The foregoing notwithstanding, a copy of the proposed amendment(s) to such Sections or Articles shall be given to the Declarant in accordance with the notice procedure described in the Section entitled **"Notice"** hereinafter. If no written disapproval from Declarant is received by the Association within sixty (60) days following the date notice is deemed to have been given, then the approval of Declarant shall be deemed

given for the proposed amendment(s), and the Association may proceed as if written approval was obtained with respect to such amendment(s).

15.4. EXTENSION OF DECLARATION.

Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2055, after which date they shall automatically be extended for successive periods of ten (10) years, unless a majority of the Owners have executed and recorded at any time within six (6) months prior to December 31, 2055, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for the conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2055, or at the end of any such ten (10) year period.

15.5. ANNEXATION.

Upon approval in writing of the Association, pursuant to three-quarters (3/4) majority of the voting power of its Members, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation, which shall extend the scheme of this Declaration to such property.

15.6. DECLARANT EXEMPTION.

Declarant is undertaking the work of development of residential Condominium dwellings, a Common Area and incidental improvements upon the Condominium Property. The completion of that work and the sale, rental or other disposal of the Condominium dwellings is essential to the establishment and welfare of the Project as a residential community. In order that such work may be completed and the Condominium Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Condominium Property whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Condominium Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Condominium Property as a residential community and disposing of the same by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Condominium Property its business of completing said work, and of establishing a plan of Condominium ownership and of disposing of the Condominiums by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of the Condominium Property as may be necessary for the sale, lease or disposition thereof, provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Unit or the Common Area.

The rights of Declarant provided in paragraphs (a) through (d) above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners thereof, or three (3) years from the date of sale of the first Condominium in the Project, whichever shall first occur.

Declarant, in exercising his rights under this section will not unreasonably interfere with the use of the Common Area by any Purchaser.

So long as Declarant, its successors and assigns owns one or more of the Condominiums established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration.

15.7. TERMINATION OF ANY RESPONSIBILITY OF DECLARANT.

In the event Declarant shall convey all of its rights, title and interest in and to the property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

15.8. OWNER'S COMPLIANCE.

Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns. Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

15.9. NOTICE.

In each instance in which notice is to be given to the Owner of a Condominium Unit, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one or two or more co-Owners of the Unit, or to any general partner of a partnership owning such Unit, shall be deemed delivered to all of the co-Owners or to the Partnership, as the case may be, and personal delivery of the notice to any officer or agent for the

service of process of a corporation owning such Unit shall be deemed delivered to the corporation, or such notice may be delivered by United States Mail certified, or registered, postage prepaid, return receipt requested, addressed to the Owner of such Unit at the most recent address furnished by such Owner to the Secretary of the Board, or, if no such address shall have been furnished then to the street (or Post Office Box) address of such Unit, and any notice so deposited in the mail within San Diego County, California, shall be deemed delivered seventy-two (72) hours after such deposit.

15.10. REPORTS TO PROSPECTIVE PURCHASERS; ESTOPPEL CERTIFICATE.

In accordance with California Civil Code Section 1368, or any successor statute or law, the Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following to the prospective purchaser:

(a) A copy of the Declaration, Bylaws, Articles and Association Rules, if any;

(b) A copy of the most recent financial reports as required by the Bylaws;

(c) A certificate signed by an authorized representative of the Association as to the amount of any assessments levied upon the Owner's interest in his Condominium which are unpaid on the date of the Statement. The certificate shall also include information on late charges, interest and costs of collection which, as of the date of the certificate, are or may be made a lien upon the Owner's Condominium, pursuant to California Civil Code Section 1367, or any successor statute or law. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

(d) Any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board, but have not become due and payable as of the date these disclosures are provided.

Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Condominium with a copy of the items specified hereinabove. The Association may charge a fee for this service, as well as a fee or assessment to change its records in connection with the transfer of title to a Condominium Unit. Any fees or assessments contained in this Section shall not exceed the reasonable costs to prepare and reproduce the requested items or the actual costs to change records.

15.11. NOTIFICATION OF SALE OR CONVEYANCE.

Concurrently with the consummation of the sale or other conveyance of any Condominium Unit where the transferee becomes an Owner of the Unit, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale or conveyance. Such notification shall set forth the name of the transferee and his Mortgagee and transferor, the common address of the Unit purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale or conveyance. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the Association's manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed given and given in accordance with the provisions of the Section herein entitled "**Notice**".

15.12. DISPUTE RESOLUTION PROCEDURES.

In the event of any claim or dispute ("**Claim**") between the Declarant, any of its successors or assigns, agents, officers or employees, on the one hand, and any Owner or Owners, and/or the Association, on the other hand, relating to this Declaration, the use or condition of the Project, or construction and/or installation of any Improvements located thereon, including claims or disputes relating to alleged required construction corrections to Improvements within the Project or to a Condominium Unit, the following alternative dispute resolution procedures shall be conducted prior to the institution by either party of any legal action or proceeding.

15.12.1. NOTICE OF GRIEVANCE DISPUTE.

The party or parties making a Claim ("**Claimant**") shall notify the other party or parties of such Claim, in writing, which notice shall describe the nature of the Claim and the proposed remedy ("**Claim Notice**").

15.12.2. RIGHT TO INSPECT.

Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, the notified party or parties shall promptly respond with an investigation, inspection, meeting, discussion, or other action which such party or parties shall deem in the exercise of their reasonable judgment, to be reasonably appropriate under the circumstances. Reasonably appropriate action shall include, without limitation, reasonably prompt communication with the Claimant or Claimants and a proposed course of action to resolve the Claim, provided that such Claim is not unmeritorious or made in bad faith, in which case a denial of the Claim with a statement of reasons supporting such denial shall be deemed to be an adequate response. The Declarant and the Declarant's representatives shall have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. All parties involved in the matter shall negotiate in a good faith

attempt to resolve the Claim amicably. If Declarant elects to take any corrective action, Declarant and Declarant's representatives and agents shall be provided full access to the Project to take and complete the corrective action.

15.12.3. RESOLUTION OF DISPUTES.

If the parties are unable to resolve the Claim pursuant to the procedure described in the previous paragraph, prior to the commencement of any litigation in any court of competent jurisdiction, the parties shall meet ("First Meeting") to negotiate in good faith regarding the submission of the Claim to alternative dispute resolution. Such parties may participate in the First Meeting personally or with, by or through their attorneys or other authorized representatives. At or in connection with such First Meeting, the parties shall consider and discuss methods of alternative dispute resolution, such as mediation, conciliation, arbitration, mini-trial, appointment of a hired judge to adjudicate the issues, and/or other methods of dispute resolutions or limitations of factual and legal issues, including, but not limited to, litigation in courts of appropriate jurisdiction with or without the use of techniques to assist in simplifying, presenting or resolving the issues between the parties. Any and all communications by and between the parties, whether written or oral, which are generated by the parties or their attorneys or other representatives in an effort to settle the dispute, shall be deemed to be communications undertaken in the course of effecting a settlement or compromise, and such communications shall not be admissible as an admission on the part of any party or such attorney or representative, or utilized for such purpose in any action or proceeding.

15.12.4. AGREEMENT AND RESOLUTION.

In the event that the parties agree to a method of alternative dispute resolution, all parties shall negotiate in good faith to attempt a resolution of the Claim under the agreed upon method of alternative dispute resolution. All parties shall cooperate in good faith to ensure that all necessary and appropriate parties (e.g. contractors, sub-contractors, architects, materialmen, brokers or any other person or entity involved in the planning, development or construction of the Project or any component part thereof) are included in the alternative dispute resolution procedure. Neither party shall be required to participate in the alternative dispute resolution procedure if that party has made a good faith determination that all necessary and appropriate parties will not participate in the procedure. It is the intent of this provision that all necessary and appropriate parties participate in a single dispute resolution procedure so that the use of two or more forums to resolve the dispute is avoided.

15.12.5. NON-AGREEMENT.

If the Claim is not resolved (a) after attempting alternative dispute resolution, (b) because a party elects not to participate in the alternative dispute resolution procedure because all necessary and appropriate parties will not participate, or (c) because the parties fail to come to an agreement as to a method of alternative dispute resolution within fifteen (15) days from the First Meeting, any party may bring an action in any court of competent jurisdiction to resolve the Claim.

15.12.6. FORBEARANCE ON COMMENCEMENT OF LITIGATION.

The Association and each Owner covenants that each shall forbear from commencing any litigation against the Declarant, without complying with the procedures described above. If any party breaches the foregoing covenant, any other party may obtain an appropriate order compelling the breaching party to comply with the procedures described hereinabove and to stay any proceedings commenced in violation of the requirements described herein, pending compliance with the provisions hereinabove.

15.12.7. INAPPLICABILITY OF PROVISIONS.

The provisions of this Section shall not apply (1) to the filing or foreclosure of a lien levied by the Association for nonpayment of assessments, (2) to the filing of an action in a court of competent jurisdiction to enforce such lien and/or collect such assessments, (3) to an action or proceeding to abate a nuisance and/or to effect the repair or maintenance of any element of the Common Area, or a Condominium Unit where an immediate threat to personal safety or of further property damage is involved, or (4) to any dispute arising with a prospective purchaser which concerns or affects the close of escrow or matters concerning the close of escrow for the purchase of any Unit, and a prospective purchaser shall not be deemed to be an Owner for any of the purposes of this Section.

15.12.8. LIMITATION ON ATTORNEYS' FEES.

Nothing in this Section shall be deemed to create any liability of any party or parties covered by this Section or by any other provision of this Declaration for the attorney's fees of any other party, and with the sole exception of those costs of collection and/or attorneys' fees specified in the Davis-Stirling Common Interest Development Act (Civil Code Sections 1350 through 1373, inclusive), as it existed on the date of recordation of this Declaration, no attorneys' fees are permitted by or under this Declaration.

15.13. ASSOCIATION CLAIMS.

In order to assure sufficient funds to effect proper construction, reconstruction, repair or replacement of Improvements within the Project, in any litigation, mediation, conciliation, settlement, administrative proceeding, arbitration or any other form of dispute resolution (hereafter collectively

"Proceeding") for a dispute, controversy or claim by the Association against any contractor, subcontractor, architect, materialman, or other person or entity involved in the planning, development or construction of the Project or any component part thereof, including Declarant, pertaining to the planning, development, construction or reconstruction of the Project or any component part thereof, not less than ninety percent (90%) of the amount actually awarded, if any, as a result of such Proceeding must be utilized by the Association, solely and exclusively, for the construction, reconstruction, repair or replacement of the Project.

15.14. GOVERNING DOCUMENTS.

In the event of a conflict between this Declaration and any other Project Document, the provisions of this Declaration shall control.

15.15. SINGULAR INCLUDES PLURAL.

Whenever the context of this Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

15.16. LIBERAL CONSTRUCTION.

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Project. The titles or headings of the Articles or Sections of this Declaration have been inserted for convenience and reference only and shall not be considered or referred to in resolving questions or interpretation or construction.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on 12th day of March, 1993.

DECLARANT:

Wayne Schrier
WAYNE SCHRIER

Jon G. Wayne
JON G. WAYNE

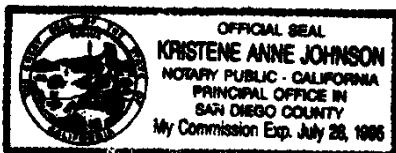
Teresa L. Wayne
TERESA L. WAYNE

Curtis J. McBride
CURTIS J. McBRIDE

STATE OF CALIFORNIA

COUNTY OF San Diego

} ss.



On this 12th day of March, in the year 1993, before me, the undersigned, a Notary Public in and for said State, personally appeared Wayne Schrier

_____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person XX whose name _____ subscribed to the within instrument, and acknowledged to me that XX executed it in his authorized capacity, and that by his signature on the instrument the person, or the entity WITNESS my hand and official seal. upon behalf of which the person acted, executed the instrument.

Kristene Anne Johnson / California

Notary Public in and for said State.

STATE OF CALIFORNIA

COUNTY OF San Diego

} ss.

728

On this 12th day of March, in the year 1993,
before me, the undersigned, a Notary Public in and for said State, personally appeared
Jon G. Wayne



Kristene Anne Johnson

ACKNOWLEDGMENT—General—Wolcotts Form 233CA—Rev. 5-82
©1982 WOLCOTTS, INC. (price class 8-2)

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person XX whose name _____
subscribed to the within instrument, and acknowledged to me that he XX
executed it, in his authorized capacity, and that by his
signature on the instrument the person, or the entity
WITNESS my hand and official seal, upon behalf of which the person
acted, executed the instrument.

Kristene Anne Johnson / California

Notary Public in and for said State.

STATE OF CALIFORNIA

COUNTY OF San Diego

} ss.

On this 12th day of March, in the year 1993,
before me, the undersigned, a Notary Public in and for said State, personally appeared
Teresa L. Wayne



Kristene Anne Johnson

ACKNOWLEDGMENT—General—Wolcotts Form 233CA—Rev. 5-82
©1982 WOLCOTTS, INC. (price class 8-2)

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person XX whose name _____
subscribed to the within instrument, and acknowledged to me that he XX
executed it, in her authorized capacity, and that by her
signature on the instrument the person, or the entity
WITNESS my hand and official seal, upon behalf of which the person
acted, executed the instrument.

Kristene Anne Johnson / California

Notary Public in and for said State.

STATE OF CALIFORNIA

COUNTY OF San Diego

} ss.

On this 12th day of March, in the year 1993,
before me, the undersigned, a Notary Public in and for said State, personally appeared
Curtis J. McBride



Kristene Anne Johnson

ACKNOWLEDGMENT—General—Wolcotts Form 233CA—Rev. 5-82
©1982 WOLCOTTS, INC. (price class 8-2)

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person XX whose name _____
subscribed to the within instrument, and acknowledged to me that he XX
executed it, in his authorized capacity, and that by his
signature on the instrument the person, or the entity
WITNESS my hand and official seal, upon behalf of which the person
acted, executed the instrument.

Kristene Anne Johnson / California

Notary Public in and for said State.

EXHIBIT "A"

PROJECT LEGAL DESCRIPTION:

Lots 25 and 26 in Block 299 of PACIFIC BEACH, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 946, filed in the Office of the County Recorder of San Diego County, April 17, 1905.

SUBORDINATION AGREEMENT

THE BANK OF SAN DIEGO, being the beneficiary under that certain Deed of Trust dated April 14, 1992 and recorded April 17, 1992 as File/Page No. 92-0223809 of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to the Declaration to which this Subordination Agreement is attached.

DATED: 3-15-93

THE BANK OF SAN DIEGO

By:

Betty Dominguez
Betty Dominguez, Vice President

State of California

} SS.

Title or Type of Document: _____

Number of Pages _____ Date of Document _____

Signer(s) Other than named below _____

County of San Diego

On March 15, 1993 before me, Eloisa Castaneda,
Notary Public, personally appeared BETTY A DOMINGUEZ,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

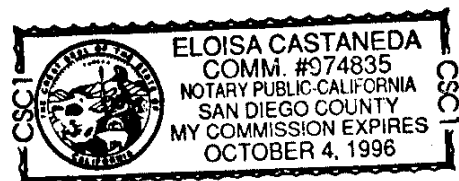
Signature

Eloisa Castaneda

(Seal)

Eloisa Castaneda

FD-1 (Revised 11/92)



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INSURANCE COMPANY

