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FIDELITY NATIONAL TITLE
INSURANCE COMPANY

By Martine Carter
Title Officer

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

for

SANTORINI WEST CONDOMINIUMS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

for

SANTORINI WEST CONDOMINIUMS

SANTORINI WEST LIMITED PARTNERSHIP, a California limited partnership, referred to below as "Declarant", is the owner of that certain real property located in the City of San Diego, County of San Diego, State of California, more particularly described as follows:

LOTS 6, 7 AND 8, BLOCK 22, OF BIRD ROCK ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 1083, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, JANUARY 27, 1908, LYING WESTERLY OF THE WESTERLY LINE OF THE ALLEY IN SAID BLOCK AS SHOWN ON SAID MAP.

EXCEPTING THEREFROM THE WESTERLY 10 FEET OF SAID LOTS AS DEEDED TO THE CITY OF SAN DIEGO FOR STREET PURPOSES, BY DEED OF ABSTRACT TITLE AND TRUST COMPANY, A CORPORATION, DATED JULY 29, 1908, AND RECORDED AUGUST 14, 1908 IN BOOK 446, PAGE 105 OF DEEDS.

Declarant hereby desires and intends, in connection with the creation of a Condominium Project ("Project") upon said Property, to impose on said Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Condominiums in the Project, and their future Owners, as follows:

ARTICLE 1

PROJECT DECLARATION

Declarant hereby declares that said Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the easements, liens and the following covenants, conditions, restrictions and provisions, all of which are hereby declared and agreed to run with the land and to be in furtherance of a plan for the improvement and sale of said Property and the Project, and are hereby established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of said Property and the Project.

Declarant intends to develop the Property as a Common Interest Development Condominium project, pursuant to the provisions of the Davis-Stirling Common Interest Development Act (Cal. Civil Code Section 1350, et. seq.).

All of the easements, liens, covenants, conditions, restrictions and provisions set forth in this Declaration are equitable servitudes and shall run with the title to said real

property and shall be binding upon all parties having or acquiring any right, title or interest thereto, and shall be for the benefit of and be binding upon each Owner and future Owners of any portion of the Property, their successors and assigns.

This Declaration is created to benefit the Project and Owners, to establish covenants, conditions and restrictions regarding the use and operation of the Project, and to provide an organization to carry out and enforce the provisions of such covenants, conditions and restrictions.

ARTICLE 2

NON-PROFIT CORPORATION

Declarant has deemed it desirable for the efficient preservation of the value, desirability and attractiveness of said Property, pursuant to the provisions of this Declaration, to create a non-profit corporation to which shall be delegated and assigned the powers of maintaining and administering the Common Area and facilities thereon, and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessment and charge hereinafter created and referred to; and **SANTORINI WEST CONDOMINIUM ASSOCIATION**, a non-profit mutual benefit corporation, has been incorporated under the Non-Profit Mutual Benefit Corporation laws of the State of California for the purpose of exercising the powers and functions aforesaid. Upon the conveyance of the first Unit in the Project to a Class A Member, the Association shall be vested with and shall assume management and control of the Common Area and common facilities.

ARTICLE 3

DEFINITIONS

3.1 **Architectural Control Committee** shall mean the Committee established pursuant to the Declaration for the purpose of approval and control of architecture and design standards established for the Project.

3.2 **Association** shall mean **SANTORINI WEST CONDOMINIUM ASSOCIATION**, a non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Corporation laws of the State of California, its successors and assigns.

3.3 **Board** shall mean the Board of Directors of the Association.

3.4 **By-Laws** shall mean the By-Laws of the Association as they may from time to time be amended.

3.5 **Common Area** shall mean the entire Project excepting all Units therein granted or reserved and shall include all real property owned by the Association or over which the Association has an easement for the benefit of the Owners.

3.6 **Condominium** shall mean an estate in real property consisting of an undivided interest in common in a portion of a parcel of real property together with a

separate interest in space in a Unit, the boundaries of which are described as a Unit on the recorded Condominium Plan.

3.7 **Condominium Plan** shall mean the Condominium Plan recorded in the Office of the San Diego County Recorder on the __ day of _____, 199_, as File/Page No. _ recorded concurrently herewith, and such amendments thereto as may from time to time be recorded.

3.8 **Declarant** shall mean **SANTORINI WEST LIMITED PARTNERSHIP**, a California limited partnership, its successors and assigns.

3.9 **Exclusive Use Common Area** shall mean a portion of the Common Area which is reserved for the exclusive use and enjoyment of a designated Unit, and appurtenant to such Unit as shown on the Condominium Plan as "Exclusive Use Common Area" the balcony and/or patio and parking area and storage area, if any, bearing the same number as such unit and the deed conveying such Unit.

3.10 **Lender** shall mean every person, firm, corporation, government agency or financial institution who is the Mortgagee of a Mortgage or beneficiary of a deed of trust encumbering a Unit in the Project.

3.11 **Member** shall mean every person or entity who holds membership in the Association.

3.12 **Mortgage** shall mean a First Mortgage or Deed of Trust which encumbers any one (1) or more Units, and shall include any First Mortgage or Deed of Trust securing an obligation of Declarant or an Owner, and encumbering all or any part of the Property.

3.13 **Owner** shall mean a record owner of fee simple title, or long-term lease hold interest of record, to any Unit or other parcel of property in the Project, whether held by one (1) or more persons or entities, and shall include Declarant unless the context expressly provides otherwise. A contract purchaser under a recorded installment land sales contract shall be included as an Owner but those merely having an interest in the Property as security for performance of an obligation shall not be Owners.

3.14 **Project** shall mean the entire parcel of real property divided or to be divided into Condominiums, including all structures thereon.

3.15 **Project Documents** shall mean the Articles, By-Laws, Declaration and Rules for the Project.

3.16 **Unit** shall mean the elements of a Condominium which are not owned in common with the Owners of other Condominiums in the Project and consist of the Living Unit and Parking Area as shown on the Condominium Plan.

ARTICLE 4

DESCRIPTION OF CONDOMINIUM

The incidents of the Condominiums in the Project include the following:

4.1 **Units.** There are thirteen (13) Units in the Project. The Units are designated and described in the Condominium Plan recorded in the Office of the County Recorder of San Diego County, California, on the __ day of _____, 199_, as File No. recorded concurrently her and any amended plans. Each Unit has appurtenant thereto the Exclusive Use Common with Area balcony and/or patio, and parking area shown on the Condominium Plan and bearing the same number as the Unit.

4.2 **Boundaries of Units.** The boundaries of each Unit are the interior surfaces of the perimeter walls, floors, ceilings, windows, doors and other dimensions, as shown on the Condominium Plan. The vertical dimensions of all Units are the relative distances between floors and ceilings.

4.3 **Unit Encroachment.** The physical boundaries of the Units as described or constructed, or of any Unit reconstructed in substantial accordance with the original plans, shall be conclusively presumed to be the boundaries rather than any metes and bounds description expressed in any deed or plan. In the event any portion of the Common Area encroaches upon any Unit or any Unit encroaches upon the Common Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of the portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist, so long as the encroachment exists.

4.4 **Easement for Units.** A non-exclusive easement for ingress, egress, support and utility purposes through the Common Area is appurtenant to each Unit and the Common Area is subject to such easements.

4.5 **Common Area.** The Common Area consists of the entire Project and is owned by the Owners of the Units as tenants-in-common, in equal undivided interests, one (1) for each Unit.

ARTICLE 5

PARTITION OF PROJECT

5.1 **Right to Partition.** An action may be brought by one (1) or more of the Owner(s) for partition thereof by sale of the entire Project, or otherwise in accordance with law, as if the Owners of all of the Condominiums in the Project were tenants in common in the Project in the same proportion as their interests in the Common Area; provided, however, a partition, or judicial sale in lieu of partition, shall be made only upon the showing that:

(a) Three (3) years after damage to or destruction of the Project which renders a material part of it unfit for its use prior thereto, the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction; or

(b) Three-fourths (3/4) or more of the Project has been destroyed or substantially damaged, and Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project; or

(c) The Project has been in existence in excess of fifty (50) years, it is obsolete and uneconomic, and Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, provided that the consent of the San Diego City Council, if then required by law so to do, be obtained. The component elements comprising a Condominium shall not be severable nor separately transferred until the expiration of sixty (60) years from the date of this Declaration, nor shall such component elements be partitioned except pursuant to a partition made in accordance with the foregoing provisions of this Article. The foregoing shall not be deemed to prevent partition of a co-tenancy in a Condominium. Notwithstanding anything to the contrary herein contained, no Unit in the Project may be partitioned or subdivided without the prior written approval of the Lender as to such Unit.

5.2 Distribution of Partition Proceeds. In the event of sale of the entire Project as herein provided, the proceeds of sale shall be distributed to the Owners based upon the fair market value of each Condominium as compared to the value of all other Condominiums as established by an independent appraisal conducted by an M.A.I. appraiser selected by the Board.

ARTICLE 6

ASSOCIATION AND BOARD OF DIRECTORS

6.1 Powers of Association. The Association shall have all of the powers of a non-profit mutual benefit corporation organized under the laws of the State of California in operating for the benefit of the Owners subject only to the limitations expressly set forth in the Project Documents. The Association shall have the power to do any and all acts which are authorized, required or permitted under this Declaration and to undertake any and all acts which may be reasonable and necessary for, or incidental to the exercise of any express powers granted the Association for the peace, health, comfort, safety, or general welfare of the Project.

6.2 Association and Board of Directors. Any duty, obligation or authority vested or required to be performed and any power or privilege which may be exercised by the Association pursuant to this Declaration shall be performed or exercised only by the Board or its authorized delegates, agents and servants, and any power, duty, obligation or authority vested or conferred on the Board by this Declaration shall be deemed a power, duty, obligation or authority of the Association.

6.3 Membership. Every person or entity who is a record Owner of a Condominium in the Project as set forth herein, including a contract purchaser under a recorded contract of sale, shall be a Member of the Association.

6.3.1 Classes of Membership. There shall be two (2) classes of Members known as "Class A" Members and "Class B" Members.

Class A Members. Class A Members shall be all those persons and entities entitled to membership as provided herein other than the Declarant.

Class B Members. Class B Membership shall be held by the Declarant.

6.3.2 Termination of Class B Membership. Class B Membership for a Unit shall be converted to Class A Membership upon the conveyance of such Unit to a person or persons entitled to be Class A Members and, thereafter, such Class B Membership shall forever cease to exist. All remaining Class B Memberships shall be converted to Class A Membership and, thereafter, such Class B Memberships shall forever cease to exist upon whichever of the following first occurs:

(a) The total outstanding votes held by Class A Members equal the total outstanding votes held by the Class B Member.

(b) A prescribed date which is not later than the second anniversary of the original issuance of the subdivision public report for the Project.

6.4 Persons Entitled to Vote. There shall be one (1) person designated as "Voting Owner" for each Condominium, who shall be designated by the Owner by notice to the Association. The designation shall be by written notice given by the Owner to the Association. The designation as to any Condominium, shall be revokable at any time by actual notice to the Association of the death or judicially declared incompetency of the Owner, or by a written notice of the revocation to the Association by the Owner. Such power of designation and revocation may be exercised by the guardian of the Owner's estate or by his conservator or in the case of a minor having no guardian, by the parent entitled to his custody, or during the administration of the Owner's estate, by his executor or administrator if his Condominium is subject to administration in his estate. If no such designation is made as to a Condominium, or where a designation has been made, the voting owner shall be the Owner. "Owner" as referred to in this Article shall be deemed to mean the record owner of a Condominium as reflected in the Official Records of the San Diego County Recorder. In the event as to any Condominium there is more than one (1) Owner, the power of designation and revocation, and the right to vote in the absence of a current designation, must be exercised by a majority of such Owners. In the event there are two (2) Owners and no current designation of one (1) as voting owner has been made, the Owner appearing at the meeting shall have the right to vote in the absence of the other, but if both are present at the meeting, there must be unanimity between them in order to have a vote. Class A Membership shall be entitled to one (1) vote for each Condominium which shall be exercised in accordance with the foregoing. Class B Membership shall be entitled to three (3) votes for each Condominium. Except where cumulative voting is authorized, a voting owner shall be entitled to cast one (1) vote or three (3) votes, as the case may be, on such matters as Members are authorized to vote upon, provided, however, that the right to cast a vote at any such election shall not vest as to any Condominium until such Condominium has been subjected to levy of assessments by the Association.

6.5 Vote Required. Notwithstanding anything to the contrary contained in this Declaration, any provision of this Declaration or the By-Laws calling for or requiring membership approval of action to be taken by the Association, except actions taken or to be taken pursuant to Article 18 [Damage and Destruction] of this Declaration, shall require the affirmative vote or written consent of the prescribed percentage of each class of membership, during the period of time there are two (2) outstanding classes of membership. If there is no longer any Class B Membership and the Declarant holds only Class A

Membership, any provision of this Declaration, and of the By-Laws, except action taken to enforce any completion bond by the Declarant and any Amendments to the Project Documents, excluding the vote of the Declarant, the same shall be read as requiring the affirmative or written consent of the prescribed percentage of the total voting power of the Association and of the prescribed percentage of the total voting power of the Class A Members other than the Declarant.

6.6 Transfer. The membership held by any Owner shall not be transferred, pledged, or alienated in any way except upon the sale or encumbrance of such Condominium, and then only to the purchaser or deed of trust holder of such Condominium. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association.

6.7 Application of Provisions. The terms and provisions set forth in this Declaration are binding upon all Owners, and all Members in the Association and are not exclusive, as both the Member and the Condominium shall, in addition, be subject to the terms and provisions of the Articles of Incorporation and the By-Laws of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the Condominium. Ownership of such Condominium shall be the sole qualification for membership. The Declarant shall hold a membership as to any Condominium that has not been conveyed.

6.8 Meetings of Association. The first meeting of the Association shall be held within forty-five (45) days after the close of escrows for the sale of fifty-one percent (51%) of the Condominiums in the Project, but in any event not later than six (6) months after the close of escrow for the sale of the first condominium in the Project, whichever first occurs. Thereafter, regular meetings and special meetings of the Association and of its Board shall be called, held and conducted in the manner provided in the By-Laws. At the first regular meeting of the Association the Members shall elect a Board as provided in the By-Laws to replace the original Board. The Board shall give written notice, and each Lender shall be permitted to designate a representative to attend all such meetings.

6.9 Notices. Any notice permitted or required to be delivered as provided in this Declaration may be delivered either personally or by mail. If delivery is made by mail, such notice shall be deemed to have been delivered to a person twenty-four (24) hours after a copy of it was deposited in the United States mail, postage prepaid, certified or registered, addressed to such person at the address given by him to the Association for the purpose of such service of notice, or at the address of the Condominium owned or represented by such person, if no other address has been given to the Association. Such address may be changed from time to time by written notice delivered to the Association in accordance with the foregoing.

ARTICLE 7

POWERS, DUTIES AND LIMITATIONS OF BOARD OF DIRECTORS.

7.1 Powers and Duties. The powers and duties of the Board shall include, but not be limited to, the following:

7.1.1 Enforcement. Enforce applicable provisions of the Project Documents.

7.1.2 Taxes and Assessments. Payment of taxes and assessments, if any, levied or assessed against the Owned Common Area, or against any Unit if resulting in a lien against the Common Area and any other lien or encumbrance which affects the Common Area, including but not limited to, mechanic's liens. Such taxes, assessments, liens or encumbrances which shall be paid by the Board from the Project Funds, however, shall not include any levied or assessed against, or which affects, merely the interest of one (1) or more (but less than all) of the Units and not the interest of all the Owners in the Common Area; the Board shall levy an enforcement assessment against any Unit for the amount of any such tax, assessment, lien or encumbrance which applies specifically to such Unit to the extent the amount is separately determinable.

7.1.3 Insurance. Contract for casualty, liability, and other insurance on behalf of the Association and as required herein. So long as FNMA and/or FHLMC holds a Mortgage or beneficial interest in a trust deed encumbering a Unit, or owns a Unit in the Project, the Association shall continuously maintain in effect at least the insurance and fidelity bond coverage provided for in Article 8 [Insurance], except to the extent that such requirements may have been waived in writing by FNMA and/or FHLMC. The Association shall continuously maintain in effect such casualty, flood and liability insurance policies and fidelity bond meeting the requirements as established by FNMA and/or FHLMC, as set forth in the FNMA and/or FHLMC Servicer's Guide, or otherwise. The Board shall review all insurance policies required by Article 8 [Insurance] on at least an annual basis to assure full insurance protection at all times. Nothing herein shall require the Board to provide casualty or liability insurance for the Owners or the Units or structures thereon.

7.1.4 Payment from Project Funds. Provide and pay for from the Project Funds any and all goods and/or services for the Common Area, facilities, and interests for the Association to fulfill any duty or responsibility of the Association imposed by this Declaration, or as may be imposed by law, subject to the limitations set forth in Article 7.2 [Limitations].

7.1.5 Delegation of Powers. Delegate its powers to committees, officers, or employees of the Association as expressly authorized by the Project Documents.

7.1.6 Legal and Accounting. Legal and accounting services necessary or proper for the operation of the Project or the facilities or for the enforcement of this Declaration.

7.1.7 Rules. Formation of rules for the operation of the Project, the Common Area, and facilities owned or controlled by the Association.

7.1.8 Discipline. Initiate and execute disciplinary proceedings against Members and Owners for violations of provisions of the By-Laws and this Declaration and Rules and Regulations in accordance with the procedures set forth in said Project Documents.

7.1.9 Entry By the Board. 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, the Association's agents or employees shall have the right to enter upon any Unit or upon any portion of the Common Area to effect emergency repairs. For other than emergency repairs, the Association's agents or employees shall have the right to enter any Unit or upon any portion of the Common Area to effect repairs, improvements, replacements or maintenance which the Association, after approval of two-thirds (2/3) vote of the Board, reasonably deems necessary. 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. Further, such entry for other than emergency repairs shall be made only after not less than three (3) days notice has been given to the Owner.

7.1.10 Common Area Maintenance. Manage, operate, maintain, repair and replace the Common Area and any other property and interests owned by the Association, and to acquire, maintain, and replace such furnishings and equipment as the Board shall determine proper.

7.1.11 Project Assessments and Funds. Establish the Project Funds, determine, levy, collect, and enforce all Project Assessments, and cause to be prepared all budgets and financial statements.

7.1.12 Maintenance of Units. Maintenance and repair of any Unit if such maintenance or repair is necessary in the discretion of the Board to preserve or protect the Common Area or another Unit from damage, destruction, or unusual depreciation, and if the Owner (as to which such maintenance or repair is necessary) shall have failed or refused to perform the maintenance or repair within a reasonable time after delivery to him by the Board of written notice of demand for the maintenance or repair, the Board shall levy a special assessment against the Unit of which such Unit is a part for the cost of any such maintenance or repair paid for by the Board in accordance with the foregoing.

7.1.13 Utilities. Provide and pay for all utility services necessary or desirable for the benefit of the Common Area, including, but not limited to, water, gas, electricity, telephone, refuse collection and sewage disposal.

7.1.14 Management. Services of a person or firm to manage the Project and services of such other personnel as the Board shall deem necessary or proper for the operation of the Project.

Notwithstanding any provisions to the contrary in this Declaration, no agreement for the services of a person or firm to manage the Project shall exceed a term of one (1) year and any such agreement shall provide for termination by either party, without cause, and without payment of a termination fee on ninety (90) days or less written notice.

7.1.15 Furnishing Documents. Make available to any prospective purchaser of a Unit, any Owner of a Unit, any first Mortgagee and the holders, insurers and guarantors of the first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, the rules governing the Unit and all other books, records and financial statements of the Association. In addition to the foregoing the Board shall, within ten (10) days of the receipt of a written request therefor, furnish to an Owner copies of the foregoing documents and shall further furnish to such Owner the items specified in Civil

Code Section 1368. The Board may charge a fee for this service which shall not exceed the reasonable cost to prepare and reproduce the requested documents.

7.1.16 Utility Access. Permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development and operation of the Project.

7.1.17 Power of Attorney. The Board is hereby granted an irrevocable power of attorney to sell the Common Area for the benefit of all the Owners thereof when the partition of the Owners' interest in said Common Area may be had pursuant to Article 5 [Partition of Project]. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Project by any two (2) Members of the Board who are hereby authorized to record a Certificate of Exercise in the Office of the County Recorder of San Diego County, which Certificate shall be conclusive evidence hereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Administrator of Veterans Affairs, an Officer of the United States of America

7.2 Limitations. The Board shall be prohibited from taking any of the following actions, except with the vote or written consent of a majority of the total voting power of the Association, and a majority of the voting power of the Association, excluding the voting power held or controlled by the Declarant.

7.2.1 Contracts. Entering into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

(a) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(b) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(c) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation of the insured.

(d) Agreements for cable television services and equipment or satellite dish television services and equipment or agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

7.2.2 Capital Improvements. Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

7.2.3 Sale of Property. Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

7.2.4 Compensation. Paying compensation to Directors or to Officers of the Association for services performed in the conduct of the Association's business provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association.

7.2.5 Hazard Insurance Proceeds. Unless seventy-five percent (75%) of the Lenders holding first deeds of trust or mortgage liens on the Units have given their prior written approval, the Board shall not use hazard insurance proceeds for losses to any Property for other than the repair, replacement, or reconstruction of such Property.

7.2.6 Claims. Bring any action or commence litigation for any claim involving more than Ten Thousand Dollars (\$10,000.00).

ARTICLE 8

INSURANCE

8.1 Insurance. The Board shall obtain and maintain in force the following policies of insurance for the Common Area:

8.2 Property Insurance. A "master" or "blanket" policy of property insurance in an amount equal to 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 the Common Area and all structures located thereon, with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability From Operation of Building Laws Endorsement" or the equivalent, such insurance to afford protection against at least the following:

(a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm and water damage; and

(b) Such other risks as shall customarily be covered with respect to improvements similar in construction, location and use.

8.3 Liability Insurance. A comprehensive policy of public liability insurance covering all of the Common Area with a "Severability of Interest Endorsement" or equivalent coverage which would preclude the company from denying the claim of an Owner because of the negligent acts of the Association or another Owner, with limits of not less than One Million Dollars (\$1,000,000.00) covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable: garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to improvements similar in construction, location and use.

8.4 Required Provisions. All such property and liability insurance shall be subject to the following provisions and limitations:

(a) The named insured under any such policies shall be the Association or their authorized representative, including any trustee with which such Association may enter into any Insurance Trust Agreement, or any successor trustee, each of which shall be herein elsewhere referred to as the "Insurance Trustee" who shall have exclusive authority to negotiate losses under said policies;

(b) In no event shall the insurance coverage obtained and maintained pursuant to the requirement of this Article be brought into contribution with insurance purchased by Owners, or their Lenders;

(c) Such policies shall provide that coverage shall not be prejudiced by (i) any act or neglect of the Owners when such act or neglect is not within the control of the Association; or (ii) by failure of the Association to comply with any warranty or condition with regard to any portion of the Project over which the Association has no control; and (iii) making a cash settlement, such option shall not be exercisable without the prior written approval of the Association (or any Insurance Trustee) or when in conflict with the provisions of any Insurance Trust Agreement to which the Association may be a party, or any requirement of law.

8.5 Fidelity Coverage. The Association shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of Officers, Directors, trustees and employees of such Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

(a) All such fidelity bonds shall name the Association as an obligee;

(b) Such fidelity bonds shall be written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or a management agent at any given time during the term of the fidelity bond. However, the bond shall not be less than a sum equal to three (3) months' aggregate Project Assessments on all Units plus reserves;

(c) Such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(d) Such bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' prior written notice to Lenders.

8.6 Worker's Compensation. A policy of workmen's compensation insurance to the extent necessary to comply with applicable laws.

8.7 **Other Insurance.** Such other policy or policies of insurance which the Board deems necessary and proper for the operation of the Project and the protection of the interests of the Owners.

8.8 **Unit Owner Insurance.** Each Unit Owner shall contract and pay for casualty, liability, and other insurance for the protection of the contents of his Unit and personal property in such amount as the Owner thereof deems reasonable.

8.9 **FNMA/FHLMC Requirements.** So long as FNMA and/or FHLMC holds a Mortgage or beneficial interest in a trust deed encumbering a Condominium or owns a Condominium the Board shall continuously maintain in effect at least such casualty, flood and liability insurance policies meeting the requirements as established by FNMA and/or FHLMC for Condominiums, as set forth in the FNMA and/or FHLMC Servicer's Guide, or otherwise.

ARTICLE 9

RULES AND REGULATIONS

The Board shall have the right, from time to time, to adopt reasonable rules and regulations not inconsistent with the provisions of this Declaration governing the use of the Common Area, by the Owners of the Units and their occupants and guests, and to the conduct of such persons thereon, including rules relating to pets and animals, and any other activities as to which such conduct might adversely affect the Project or its appearance or might offend, inconvenience or endanger the Owners or their occupants and guests. A copy of the rules and regulations shall be delivered to the Owner of each Unit. The rules and regulations shall be binding upon the Owners, their occupants and guests, and shall be enforceable to the same extent as if they were specifically set forth as provisions of this Declaration.

ARTICLE 10

BOOKS AND RECORDS

The Board shall keep and maintain complete and accurate membership register and books of account relative to its operation of the Project and the books and records shall be available for inspection by any Owner as provided in the By-Laws. The Board shall cause an independent audit to be made annually of such books and records by a certified public accountant, and a copy of each audit, including a statement of income and disbursements, shall be delivered to each Owner within sixty (60) days after the close of the fiscal year adopted by the Board for the Project as set forth in the By-Laws. Any Owner may at any reasonable time, at his own cost and expense, cause an audit or inspection to be made of the books and records by an accountant or other representative duly authorized by him.

ARTICLE 11

COVENANTS FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

11.1 **Creation of Lien and Personal Obligation of Project Assessments.** The Declarant for each Condominium Unit owned by it within the Project hereby covenants and

agrees to pay, and each Owner, except the Association, whether or not it shall be so expressed in any deed or other conveyance, is hereby deemed to covenant and agree to pay Project Assessments established and collected from time to time as hereinafter provided. Such Project Assessments, together with such interest thereon and costs of collection therefor, as hereinafter provided, shall be a charge on the Condominium Unit and the personal obligation of the Owner of the Condominium Unit at the time the Project Assessment fell due. The personal obligation for delinquent Project Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. The Owner of a Condominium Unit may not exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Area or abandonment of his Condominium Unit.

11.2 Project Funds. The Association shall establish and maintain a Maintenance Fund into which the Board shall deposit Regular Assessments. The Association shall establish and maintain such other funds as the Board deems appropriate for deposit and disbursement of other Project Assessments. All of said funds are generally referred to herein as the Project Funds. The Board shall establish and collect all Project Assessments and where necessary enforce the liens therefor as provided in this Article.

11.3 Purpose of Project Assessments. The Project Assessments shall be used exclusively to promote the health, safety and welfare of the Owners of the Project and for the improvements, maintenance and operation of the Common Area.

11.4 Nature of Project Assessments. The Board shall establish the following Project Assessments, each of which shall be used only for the purposes specified in this Article.

11.4.1 Regular Assessments. The Board shall prepare or cause to be prepared for each fiscal year a Budget of the total operating expenses of the Association. Said Budget shall contain estimates of all expenses of the Association determined on the basis of the actual services to be undertaken by the Association and the projected operating costs therefor. The Budget shall include reserves for major repairs and a reserve for unpaid Project Assessments, which constitute the maintenance fund (including a reasonable provision for contingencies and adequate reserves for replacements, less the expected surplus from the prior year's fund). The Budget for the initial fiscal year shall be prorated for the balance of the year remaining. The estimated amount required for the maintenance fund shall constitute the aggregate regular assessment which shall be assessed to and be paid by the Condominium Owners equally.

11.4.2 Budget. The Board shall prepare or cause to be prepared for each fiscal year a Budget of the total operating expenses of the Association. Said Budget shall contain estimates of all expenses of the Association determined on the basis of the actual services to be undertaken by the Association and the projected operating costs therefor. The Budget shall include reserves for major repairs and a reserve for unpaid Project Assessments. The Budget shall be completed not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of each fiscal year. The Budget for the initial fiscal year shall be prorated for the balance of the year remaining.

11.4.3 Increases in Assessments. The Project Assessment for any given year shall not be more than twenty percent (20%) greater per Condominium Unit than the

Regular Assessment per Condominium Unit for the immediately preceding fiscal year, without the approval or written consent of Owners constituting a quorum, casting a majority of the votes at a meeting or election duly called, noticed and conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. The foregoing provisions do not limit assessment increases for emergency situations as follows:

- (a) An extraordinary expense by an order of a Court;
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered;
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget. However, prior to the imposition or collection of such assessment, 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.

The Board may fix the annual regular assessment at an amount not in excess of the maximum.

11.4.4 Reconstruction Assessments. Reconstruction Assessments may be levied by the Board under the conditions and in the manner specified in Article 18 [Damage, Destruction and Condemnation of Common Area].

11.4.5 Capital Improvement Assessments. Capital Improvement Assessments may be levied by the Association in any fiscal year, applicable to that year only for the purpose of defraying in whole or in part the cost of any construction of a capital improvement on the Common Area; provided that any Capital Improvement Assessment aggregating in excess of five percent (5%) of the gross of all other Project Assessments budgeted for the fiscal year shall have the vote or written consent of at least fifty-one percent (51%) of the total voting power of the Association and a majority of the voting power of the Association excluding votes held or controlled by Declarant. Capital Improvement Project Assessments shall be assessed and shall be allocated to Owners in the same manner as Regular Assessments.

11.4.6 Special Assessments. Special Assessments may be levied at any time during any fiscal year if the Regular Assessments prove inadequate for any reason, including nonpayment of any Owner's share thereof or to defray the cost of any action or undertaking on behalf of the Association. No such Special Assessments shall exceed five percent (5%) of the gross expenses budgeted by the Association for the fiscal year without the vote or written consent of Owners constituting a quorum, casting a majority of the votes at a meeting or election duly called, noticed and conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. Special Assessments shall be allocated in the same manner as Regular Assessments.

11.4.7 Monetary Penalties. A monetary penalty imposed by the Association as a disciplinary measure for failure of an Owner to comply with the Declaration, By-Laws and/or Rules, or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Owner was allegedly responsible or in bringing the Owner and his Condominium Unit into compliance therewith, shall not be levied or enforced as a Project Assessment nor shall the same become a lien against such Owner's Condominium Unit enforceable by sale as provided in Article 11.7.2 [Foreclosure of Lien on Condominium Unit].

11.5 Allocation of Project Assessments to Condominium Units. All Project Assessments shall be allocated to each Condominium Unit in the Project, except a Monetary Penalty. A Monetary Penalty shall be allocated directly to the individual Condominium Unit(s).

Regular Assessments shall be allocated and assessed to each Condominium Unit in accordance with the following: All estimated charges included in the Budget for fire and liability insurance, domestic water for the Units, and reserves for painting and repair and replacement of the roofs, shall be assessed to the Units in the proportion computed as follows:

The total livable space of all Units as shown on the Condominium Plan is 18,064 square feet (hereinafter "TLS"). The variable monthly cost, described above and as set forth in the Budget for the year, shall be divided by the TLS. The quotient derived therefrom shall be the variance factor. The variance factor shall then be multiplied by the total livable space of each Unit to obtain the variable assessment to be assessed to that Unit. The total livable space for each Unit is as follows:

<u>Unit No. as Shown on The Condominium Plan</u>	<u>Approximate Total Livable Space (Square Feet)</u>
01	1071
02	1684
03	1335
04	1093
05	1509
06	1552
07	1262
08	1752
09	1558
10	1194
11	1435
12	1261
13	1356

All other estimated charges included in the Budget shall be assessed to the Condominium Owners equally.

11.6 Levy of Project Assessments. Project Assessments shall be levied and commence according to the following procedures:

11.6.1 Commencement of Regular Assessments. The Regular Assessments provided for herein shall commence as to all Condominium Units covered by this Declaration on the first day of the month following the conveyance of the first Condominium Unit to an Owner. The first Regular Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall determine and fix the amount of the Regular Assessment against each Condominium Unit annually at least thirty (30) days in advance of each Regular Assessment period.

11.6.2 Payment of Regular Assessments. Unless expressly provided otherwise by the Board, each Regular Assessment shall be payable in twelve (12) equal monthly installments, of which the first installment shall be due and payable on the first day of the first month of each fiscal year.

11.6.3 Commencement and Payment of Other Assessments. All other assessments shall be fixed at such times as the Board deems appropriate. The Members and Owners shall be given reasonable notice thereof. The due dates for payment of such other Project Assessments shall be established by the Board.

11.6.4 Certificate of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an Officer of the Association setting forth whether the Project Assessments on a specified Condominium Unit have been paid.

11.6.5 No Offsets. All Project Assessments shall be payable in the amounts specified by the particular Project Assessment and no offsets against such amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties.

11.6.6 Assessment Rolls. The Association shall maintain and revise annually an Assessment Roll reflecting the name and address of each Owner, and other data necessary to levy the Project Assessments.

11.6.7 Transfer of Property. After transfer or sale of a Condominium Unit in the Project, the selling Owner or Owners shall not be liable for any Project Assessment levied on the Condominium Unit after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. The selling Owner shall remain responsible for all assessments and charges levied on the Condominium Unit prior to any such transfer.

11.7 Effect of Non-Payment of Project Assessments and Remedies of Association. Any Project Assessment not paid within fifteen (15) days after the due date shall be delinquent, and shall incur a late payment in the amount of Ten Dollars (\$10.00) or ten percent (10%) of the delinquent assessment, whichever is greater. In addition, the Association shall be entitled to recover its reasonable costs incurred in collecting delinquent assessments, including reasonable attorney's fees and interest at the rate of twelve percent (12%) per annum on all such unpaid delinquent assessments, costs and fees commencing thirty (30) days after the assessment becomes due.

11.7.1 Action Against Owner. Any Project Assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium Unit from the time the Project Assessment is due. At any time after any assessment levied by the Association affecting a Condominium Unit has become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a notice of delinquency and establish a lien as to such Condominium Unit, which notice shall state the amount of the assessment, collection costs, attorney's fees, late charges and interest which have accrued thereon, the amount of any charges and interest which have accrued thereon, the amount of any assessments relating to such Condominium Unit which is due and payable although not delinquent, and a description of the Condominium Unit with the name of the record or reputed Owner of such Condominium Unit. Said lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium Unit following such recording, and all costs (including attorneys' fees), late charges and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium Unit 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. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association. In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium Unit 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.

11.7.2 Foreclosure of Lien on Condominium Unit. Within thirty (30) days after the delinquency of any Project Assessment, the Association shall give a notice to the defaulting Owner which said notice shall state the date of the delinquency, the amount of the delinquency, the interest charge for such delinquency, the reasonable cost of collection and make a demand for payment thereof. If such delinquency and interest is not paid within ten (10) days after delivery of such notice, the Association may elect to file a claim of lien against the Condominium Unit of such delinquent Owner. Such claim of lien shall state (a) the name of the delinquent Owner or reputed Owner; (b) a description of the Condominium Unit against which the claim is made; (c) the amount claimed to be due and owing; (d) that the claim of lien is made by the Association pursuant to the terms of this Declaration; (e) the name and address of the Trustee authorized by the Association to enforce the lien by sale; and (f) that a lien is claimed against said described Condominium Unit in an amount equal to the amount of the stated delinquency, plus interest and reasonable costs of collection. Any such claim of lien shall be signed and acknowledged by an authorized Officer of the Association, and shall be recorded in the Office of the Recorder of the County of San Diego, State of California. Each delinquency may constitute a separate basis for a claim of lien.

Upon payment of the sums specified in the notice of delinquent assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

Any such claim of lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a Mortgage under power of sale. Any such sale provided for above shall be conducted in accordance with the

provisions of Section 2924, 2924(b) and 2924(c) of the Civil Code of the State of California, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. In the event such foreclosure is by an action in Court, reasonable attorneys' fees shall be allowed. In the event the foreclosure is conducted as in the case of a mortgage under power of sale, the authorized Trustee shall be deemed to be acting as would an agent of the Lender and shall be entitled to actual expenses and such fees as may be allowed by law or as may be prevailing at the time the sale is conducted. A certificate of sale shall be executed and acknowledged by any authorized officer of the Association or by the person conducting the sale. A deed upon foreclosure shall be executed in like manner.

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

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

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

11.7.5 Delegation of Authority. Each Owner, with the exception of the Administrator of Veterans Affairs, an Officer of the United States of America, hereby vests in and irrevocably delegates to the Board the right and power to bring all actions at law or equity, and lien foreclosures, whether judicially or by power of sale, or otherwise, against any Owner for the collection of delinquent Project Assessments in accordance herewith, and hereby expressly waives any objection to the enforcement in accordance with this Declaration of the obligation to pay Project Assessments as set forth in this Declaration.

11.8 Subordination of the Lien to Mortgage. The lien of the Project Assessments provided for herein shall be subordinate to the lien of any recorded First Mortgage (meaning a mortgage or deed of trust with first priority over other mortgages). Sale or transfer of any Condominium Unit shall not affect a Project Assessment lien. However, the sale or transfer of any such Condominium Unit which is subject to any recorded First Mortgage pursuant to a decree of foreclosure, or a sale or transfer of any such Condominium Unit which is subject to any recorded First Mortgage pursuant to a decree of foreclosure, or a sale under power of sale under such First Mortgage shall extinguish the lien of such Project Assessments as to payments thereof which become due prior to such sale or transfer. Pursuant to the provisions hereof, liens shall be created on the interest of the purchaser at such foreclosure sale, to secure all Project Assessments assessed hereunder to such purchaser, as an Owner after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein. Nothing in this Article

shall be construed to release any Owner from his personal obligation to pay for any Project Assessment.

ARTICLE 12

USE OF COMMON AREA

12.1 Owner's Easement of Use. Every Owner shall have a non-exclusive right and easement for enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Unit, subject to the following:

(a) The right of the Association to enact and enforce rules and regulations affecting use of the Common Areas in furtherance of this Declaration;

(b) The right of the Declarant to grant non-exclusive easements on the Common Area for the uses and purposes set forth in this Declaration to the Owners;

(c) The rights of Owners to exclusive easements appurtenant to the various Units for encroachments on the Common Area, as originally constructed by Declarant; and

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

12.2 Permitted Uses of Common Area. The Common Area shall be used by the Owners, their occupants and guests for the common interest and benefit of the Project as provided in this Declaration. 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, its licensee(s) or any occupant of such Owner's Unit, as such liability may be determined under California law.

12.3 Alteration or Improvement of Common Area. Other than work performed by Declarant in connection with development of the Common Area, no work which in any way alters any Common Area from its natural or existing state after the date such Common Area was conveyed by Declarant to the Association shall be made by the Association or its agents. The Association shall reconstruct, replace, or refinish any improvement or portion thereof situated within the Common Area. Such work shall be in accordance with the original design, finish, or standard of construction for such improvement when such Common Area was conveyed by Declarant, or, in a different manner if approved by the Architectural Committee.

12.4 Limitations on Use of Common Area. The following restrictions on use of the Common Area shall apply:

12.4.1 Insurance; Hazard and Waste. No part of the Common Area shall be constructed so as to interfere with its use for the purposes herein 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), nor in any manner which shall increase the rate of 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. No waste will be committed on the Project.

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

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

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

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

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

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

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

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

12.4.8 Vehicles. No vehicle of any type, motorized or otherwise, shall be operated, parked or stored on the Common Area except as authorized by Rules of the

Association. No automobile or other motor vehicle shall be parked on the Common Area or in any street within the Common Area or in any street within the Project except in designated parking areas. No vehicle shall be kept or stored on the Common Area or on any street within the Project for purposes of accomplishing repairs thereto or the reconstruction thereof, except as permitted by resolution of the Board.

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

12.4.10 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to occupants and guests in possession of his Unit.

12.5 Easements and Encroachments Over Common Area. Each Owner of a Unit served by utility connections, lines or facilities, including those for water, electric, gas, sanitary sewer, telephone, drainage, and Project communication services, shall have the right and is hereby granted an easement across and through the Common Area for entry to the full extent necessary for the appropriate utility companies where such connections, lines or facilities may be located for repair, replacement and maintenance thereof pursuant to the direction of the Association. Whenever utility connections, lines, or facilities installed within the Project serve more than (1) Unit, the Owner of each Unit served thereby shall be entitled to full use and enjoyment of the portions thereof which service his Unit. Declarant hereby reserves easements over, under and through the Common Area for installation of such utility connections, lines, or facilities as shown on recorded subdivision maps for the Property in the Project

12.5.1 Development and Sales. There is hereby reserved to Declarant easements over the Common Area and the facilities located thereon for construction and sales activities all as more particularly described in Article 16 [Rights of Declarant].

Declarant further reserves a non-exclusive easement over the Common Area for the purpose of conducting sales of Units including the right of ingress, egress, the promotion of sales of unsold Units and the display of unsold Units to prospective purchasers.

12.5.2 Encroachments. Each Owner of a Unit adjacent to the Common Area shall hereby have an easement over said Common Area for use and maintenance of encroachments thereon due to settlement or shifting of buildings or other improvements, original construction errors or any other similar causes, so long as said encroachments exist. However, no such easement for encroachments shall exist if an encroachment

occurred due to the willful conduct of the Owner of a Unit. The rights and obligations of Owners in the Project shall not be otherwise altered or affected by any such encroachment.

ARTICLE 13

USE OF UNITS

The Units shall be used and occupied in accordance with the following:

13.1 Single Family Residential. Each Unit shall be used for single family residential purposes only. With the exception of a Lender in possession of a Unit following a default in a First Mortgage, and foreclosure proceedings, no Owner shall be permitted to lease his Unit for transient or hotel purposes. No Owner may lease less than the entire Unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Project Documents, and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing.

13.2 Insurance, Waste and Nuisance. No Owner shall do anything which shall increase the rates of insurance, or result in cancellation of insurance relative to the Project or any portion of it. No Owner shall commit any waste in the Common Area, nor do anything in or about or in connection with the Project which would be in violation of any statute, law, ordinance or governmental rules or regulations. No Unit shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Units, or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Unit.

13.3 Signs. No sign of any nature, except signs advertising the Unit for sale as provided in Section 712 of the Civil Code, shall be displayed to the public view on or from any Unit without the prior written approval of the Board as to size, shape, color and content; however, Declarant may, during the sales, place reasonable signs upon the Project in connection with the sale of the Units in the Project, owned by it or in which it has a security interest.

13.4 Pets. No livestock, poultry, or animals of any nature shall be raised, bred, or kept in any Condominium Unit, except not exceeding two cats in said Unit and only two dogs not exceeding thirty (30) pounds each, caged birds, or other household pets, provided that they are not kept or maintained for any commercial purposes may be allowed. Such pets shall not be allowed in the Common Area except as may be allowed by rules of the Board.

13.5 Exterior Appearance. No Owner shall alter, construct, or remove any portion of the Common Area or affix or attach anything thereto, including the roofs and the exterior surfaces of the windows and exterior walls of any Unit, without the prior written consent of the Board. Each Owner shall keep clean and in good condition and repair the windows and interior of his Unit, and shall not permit laundry or other unsightly items to extend from or hang over the windows or balcony, if any, of his Unit. All windows shall have, facing the

exterior, window treatment or casements of a white or off-white color. No window shall be covered with aluminum foil or any similar material.

13.6 Interior Appearance. Each Owner shall have the right, at his sole cost and expense, to maintain, repair, repaint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim, and perimeter walls of the Unit, and the surfaces of the bearing walls and partitions located within the Unit. Said Owners shall have the right to substitute new finished surfaces in place of those existing on said ceilings, floors, walls and doors of said Unit.

13.7 Patios and Balconies. Patios and balconies shall not be used as storage areas and shall at all times be kept in a neat and orderly condition, free of litter and debris, provided that patios and balconies may contain appropriate plants, barbecues, and patio furniture. No potted plants shall be permitted on patio or balcony walls. Each Owner shall keep the drain in his patio or balcony at all times clean and free of debris to ensure proper drainage.

13.8 Garage Doors. No garage door of any Unit shall remain open except for purposes of ingress and egress.

13.9 Power Equipment. No power equipment, hobby shop or automotive overhaul or maintenance work in the absence of any emergency, shall be permitted in any Unit or in the Common Area, except with the prior written approval of the Board. Such approval shall not unreasonably be withheld. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

13.10 Antennae. There shall be no outside television or radio antennae, satellite dishes, masts, poles or flag poles constructed, installed or maintained on the Condominium Property for any purpose whatsoever without the prior written consent of the Board other than those originally provided by Declarant.

ARTICLE 14

OWNER OBLIGATIONS

14.1 Owner Maintenance of Unit. Each Owner of a Condominium shall be responsible for the maintenance and repair of the glass doors and windows enclosing his Unit, the interior of his Unit, and all appliances, whether "built-in" or freestanding, within the Unit, the interior surfaces of the Unit, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems serving his Unit and located within the outside perimeter of the exterior bearing walls thereof, including television cable equipment and connections, and all appliances and equipment located in said Unit. Each Owner shall also be responsible for the maintenance and repair of the interior surfaces of fence railings, doors and windows, and shall make repairs in such manner as shall be deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and protect the value thereof. The Association shall maintain and repair all Exclusive Use Common Area.

14.2 Owner's Grant of Easement (Entry). Each Owner hereby grants easements to other Owners to enter onto each Condominium, and/or to have utility companies enter on to Condominiums to repair the plumbing, heating and electrical systems located thereon, subject to the limitations on entry into any Unit set forth in Article 7.1.10 [Entry by the Board].

14.3 Separation of Interest. No Owner may sell, assign, lease or convey (i) his interest in the Common Area separate and apart from his Unit, nor (ii) his interest in any Exclusive Use Common Area separate and apart from his interest in the Common Area appurtenant to his Unit.

14.4 Leased Units. An Owner shall lease or rent his Unit only in accordance with the provisions of Article 13.1 [Use of Units]; (i) all leases or rental agreements shall be required to be in writing; (ii) the Lessee, renter or occupant shall promise in said Agreement to comply with all the covenants, conditions and restrictions contained in this Declaration and with any rules adopted by the Board.

14.5 Owner Improvements or Modifications. Except as provided in this Article, no Owner shall have the right to make any exterior alterations to his Unit. Any Owner may, at his sole cost and expense, make such improvements or modifications to the interior or exterior of his Unit as are authorized in Civil Code Section 1360. Any Owner who intends to make such authorized changes shall first submit complete plans and specifications to the Architectural Control Committee for review to determine whether the modifications comply with the provisions of Civil Code Section 1360. Unless, within thirty (30) days after the receipt of such request to make a modification or improvement, the Architectural Control Committee approves or disapproves such request the request will be deemed approved. If the Architectural Control Committee disapproves the request it shall give notice in writing to the Owner setting forth the reasons for the disapproval. All such authorized exterior improvements shall be performed in a good and workmanlike manner promptly and diligently pursued to completion and completed free and clear of the liens and claims of all mechanics and materialmen. The Owner shall comply with and obtain all required governmental consents and building permits.

ARTICLE 15

ARCHITECTURAL CONTROL

15.1 Number of Members and Term of Architectural Control Committee Appointed by Declarant. The Board shall exercise all the powers and duties set forth in this Article as the Architectural Control Committee. Notwithstanding the foregoing, the Board may elect to act as the Architectural Control Committee in which case the Board shall establish an Architectural Control Committee as hereafter provided to exercise the powers

and duties set forth in this Article. The Architectural Control Committee shall consist of not less than three (3) nor more than five (5) members as may be fixed from time to time by resolution of the Board. The Declarant shall have the right to appoint all of the members of the Architectural Control Committee and their replacements until the first anniversary of the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the Project ("Anniversary Date"). After the Anniversary Date, the Declarant shall have the right to appoint a majority of the members of the Architectural Control Committee until ninety percent (90%) or more of the Condominium Units have been conveyed, or until the fifth anniversary of the date of the original issuance by the California Department of Real Estate of the Final Subdivision Public Report for the Project (the "Fifth Anniversary Date"), whichever shall first occur. After the Anniversary Date, the Board shall appoint all of the members of the Architectural Control Committee not appointed by the Declarant. After ninety percent (90%) or more of the Condominium Units have been conveyed or after the Fifth Anniversary Date, whichever shall first occur, the Board shall appoint all of the members of the Architectural Control Committee. Those appointed to the Architectural Control Committee by the Board shall be members; the Declarant, however, need not appoint Members to the Architectural Control Committee. Notwithstanding the above, the Declarant may, at its sole option, transfer its right to appointment as described above to the Board by written notice thereof at any time prior to the Fifth Anniversary Date.

15.2 Architectural Approval Required. No building, fence, balcony, screen, patio, patio cover, tent, awning, improvement or structure of any kind shall be commenced, erected, painted or maintained upon any part of the Project, nor shall any alteration or improvement of any kind be made thereto, until: (a) the same has been approved in writing by the Architectural Control Committee as set forth in this Article; and (b) any required governmental permits have been obtained as to the same.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, and the like shall be submitted in writing to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Architectural Control Committee.

No landscaping of patios visible from the street or from the Common Area whether involving the use of natural plants, grass, trees, or shrubs, or the use of synthetic materials, or of concrete, rock, or similar materials, shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee.

15.3 Failure to Approve or Disapprove Plans and Specifications. In the event the Architectural Control Committee, or its representatives designated in accordance with Article 15.8 [Variances] hereinbelow, fails to either approve or disapprove such plans and specifications within forty-five (45) days after the same have been submitted to it, it shall be conclusively presumed that the Architectural Control Committee has approved such plans and specifications.

15.4 Appeal. Any person dissatisfied with a decision of the Architectural Control Committee may appeal that decision to the Board. Such appeal shall be filed with the Secretary of the Board, in writing, not later than ten (10) days after written notice to the Owners of the Committee's decision. The statement shall set forth the reasons for the appeal. Within thirty (30) days after receipt of a timely appeal, the Board shall hear and render its decision sustaining or denying the appeal and shall state its decision in writing. The Board shall adopt reasonable rules for hearing and deciding appeals.

15.5 No Liability. Plans and specifications are not approved for engineering design, soils suitability, drainage or set backs and by approving such plans and specifications, neither Declarant, the Association, the Architectural Control Committee or the Members or designated representatives or agents thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of Property affected by this Declaration by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans and specifications. Every Owner who submits plans and specifications to the Architectural Control Committee for approval agrees, by submission of such plans and specifications, and every Owner of any property agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Control Committee or any of the Members or designated representatives or agents thereof to recover any such damages.

15.6 Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained herein, after the expiration of (a) one [1] year from the date of issuance of a building permit by municipal or other government authority for any improvements or (b) one [1] year from the date of commencement of construction of any improvements, said improvements shall, in favor of purchasers and encumbrancers, in good faith and for value, be deemed to be in compliance with all provisions of this Article 15 [Architectural Control], unless actual notice of such noncompliance or noncompletion executed by the Architectural Control Committee or its designated representatives or agents, shall appear of record in the office of the County Recorder of San Diego County, or unless legal proceedings shall have been instituted to enforce such compliance or completion.

15.7 Rules and Regulations. The Architectural Control Committee may from time to time, in its sole discretion, adopt, amend and repeal reasonable rules, regulations and guidelines interpreting and implementing the provisions hereof and establishing reasonable architectural and design standards.

15.8 Variances. Where circumstances such as topography, location of property lines, location of trees, configuration of Condominium Units, or other matters require, the Architectural Control Committee, by the vote or written consent of a majority of the members thereof, may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under the jurisdiction of such committee, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan of improvement and development.

15.9 Appointment and Designation. The Architectural Control Committee may from time to time, by a majority of the members thereof, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of said Architectural Control Committee in all matters delegated.

15.10 Local Ordinances. Notwithstanding anything to the contrary set forth or implied in this Declaration, the Owner of a Condominium Unit upon which improvements subject to this Article are to be constructed shall be responsible for complying fully with all local building and zoning ordinances.

15.11 Declarant Exemption. Any building, structure, improvement, grading, fence, wall or landscaping erected or installed by the Declarant as part of the Project shall not be subject to the architectural control provisions provided herein.

ARTICLE 16

RIGHTS OF DECLARANT

16.1 Non-Exclusive Easement for Sales. Notwithstanding any of the foregoing restrictions, Declarant, its successors, assigns, agents and representatives, shall have the right to the non-exclusive use of the Common Area for maintaining a sales complex, including the exclusive use of the sales facility, together with sales models, signs, parking areas and other displays and exhibits to be used for the Sale of the Condominiums; said use shall be for a period of not more than three (3) years, or until all Units are sold, whichever is less, provided, however, that no such use by Declarant or its agents or representatives shall otherwise restrict the Members of their use and enjoyment of the Common Area.

16.2 Non-Exclusive Easement for Construction. Declarant, its successors, assigns, agents and representatives shall have the right to the non-exclusive use of the Common Area during the construction of the Condominium Project, and the improvement of said property to park or place thereon portable offices or any vehicle, trailer, or structure used as a temporary office or facility by Declarant or its successors, assigns, agents or representatives, provided, however, that no such use by Declarant or its successors, assigns, agents or representatives shall otherwise restrict the Members in their use and enjoyment of the Common Area.

ARTICLE 17

DAMAGE AND DESTRUCTION OF UNITS

In the event of damage or destruction to any Condominium Unit, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefore; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new

or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved.

ARTICLE 18

DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA

18.1 Damage and Destruction. If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five thousand dollars (\$5,000.00), the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor;

(b) If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five thousand dollars (\$5,000.00), and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area elect to repair or restore the Project, then the Board shall contract as provided in (a) above. If said Owners elect not to repair or restore, then all insurance proceeds shall be paid to the account of the Association, to be held for the benefit of the Owners and their Mortgagees, and shall be distributed by the Association among Owners of the Units and their respective mortgagees proportionally based upon the fair market value of each Unit as compared to all other Units in the Project at the time of the destruction as determined by an independent appraisal conducted by an M.A.I. appraiser selected by the Board;

(c) Anything in the immediately preceding paragraph to the contrary notwithstanding, the Board shall contract for such repair or rebuilding of the Common Area which consists of building(s) containing Units (or portions therefor and/or improvements thereto) if fifty percent (50%) or more of the Owners owning Units in said building(s) agree to the repair or restoration of said building(s);

(d) If a bid to repair or rebuild is accepted, the Board shall levy a reconstruction assessment upon the Units directly affected on the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units to be assessed to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

18.2 Eminent Domain

(a) The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Project.

(b) In the event of a taking, the Board shall, subject to the right of all Mortgagees who have requested the right to join the Board in the proceedings, represent all of the Members in an action to recover all awards. No Member shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Article. The Board is further empowered, subject to the limitations herein, as the sole representative of the Members, in all respects of condemnation proceedings not specifically covered herein.

(c) In the event of a taking, the Board shall distribute the award forthcoming from the taking authority according to the provisions of this Article after deducting therefrom fees and expenses related to the condemnation proceeding including, without limitation, fees for attorneys and appraisers and court costs. In the event that the taking is by judgment of condemnation and said judgment apportions the award among the Owners and their respective Lenders, the Board shall distribute the amount remaining after such deductions among such Owners and Mortgagees on the allocation basis set forth in such judgment. In the event that the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among the Owners in the Project and their respective Mortgagees based upon the fair market value of all other Condominiums affected by such taking as established by an independent appraisal conducted by an M.A.I. appraiser selected by the Board. The determination of the Board as to the degree each Condominium has been affected by the taking shall be final and binding on all Owners and Mortgagees. In no event shall any portion of such award be distributed by the Board to an Owner and/or the Mortgagees of his Condominium in a total amount greater than the portion allocated hereunder to such Condominium.

(d) Upon a taking which renders more than seventy-five percent (75%) of the Condominiums in any Project incapable of being restored to at least ninety-five percent (95%) of their floor area and substantially their condition prior to the taking, the right of any Owner within such Project to partition through legal action as described in Article 5 [Partition of Project] shall forthwith revive. The determination as to whether Condominiums partially taken are capable of being so restored shall be made by the Board, whose decision shall be final and binding on all Owners and Mortgagees.

(e) If any Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Unit or all the Mortgagees in the case of the Common Area, shall be entitled to timely written notice of any such proceeding or proposed acquisition, and notwithstanding anything to the contrary herein contained, no Owner of a Unit or other party shall be entitled to priority over such Mortgagee or Mortgagees with respect to the distribution to such Unit of the proceeds of any award or settlement.

18.3 Insurance. The Association shall obtain and continue in effect, a master policy of insurance (covering Real Property and improvements, and personal property owned by the Association) and liability insurance (including fire for full extended coverage, vandalism, malicious mischief, public liability, fidelity bond covering officers and employees, and employees of any manager or managing agency) naming the Association as obligee

and be written in an amount equal to at least the estimated maximum of funds, including reserves, in the custody of the Association or a management agent at any given time during the term of each bond. However, the bond shall not be less than a sum equal to three (3) months' aggregate assessments on all Condominiums plus reserve funds. In addition, the Association shall obtain and continue in effect, if necessary, workmen's compensation coverage in form and amounts satisfactory to the Board, but without prejudice to the right of the Owner of a Condominium to obtain individual condominium insurance.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association, and the portion of such payments necessary for the insurance premiums shall be held in a separate account of the Association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due.

ARTICLE 19

ENFORCEMENT

19.1 Equitable Servitudes. The provisions of this Declaration shall be deemed covenants, conditions and restrictions and equitable servitudes, which may be enforced by any Condominium Owner or the Board, and which shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a multiple residential Condominium Project. In the event of a default in the performance of any of the provisions of the Project Documents or the failure of any Owner to comply with the Project Documents, such default or failure may be resolved by all appropriate legal proceedings including, but not limited to, injunction, abatement of nuisance and damage.

19.2 Disciplinary Action. In addition to any other means of enforcement provided by this Declaration, the Board shall have the right to suspend the voting rights of any Owner for any period during which any assessment against his Unit remains unpaid and delinquent for a period not exceeding thirty (30) days or for a monetary penalty not exceeding Fifty Dollars (\$50.00), for any single infraction of the rules and regulations of the Board for any breach of this Declaration, provided that any suspension of such voting rights or monetary penalty shall be made only after hearing by the Board upon fifteen (15) days' notice given in the manner prescribed in Article 6.8 [Notices] of this Declaration. Said notice shall state the exact violation of rules for which discipline is proposed and the facts supporting the violation. The Member shall have the right to be heard orally and/or in writing and to be represented by counsel. The decision of the Board shall not become effective until five (5) days after the completion of the hearing. Notwithstanding the foregoing, neither the Board or the Association shall have the power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of his Condominium by reason of any breach of the Project Documents except upon the judgment of a court of competent jurisdiction or through an award of arbitration or on account of a foreclosure or a sale under a power of sale for failure of such Owner to pay assessments levied by the Association.

The Board shall give notice to the Lender holding the first Deed of Trust or Mortgage on the Unit of any default by the Owner in the performance of such Owner's obligation under the Project Documents which is not cured within thirty (30) days.

19.3 **Waiver.** Failure to enforce any provision of this Declaration or any waiver of any breach shall not constitute a waiver of that or any other provision or any future breach, or of the future right to enforce that or any other provision.

ARTICLE 20

RIGHTS OF LENDERS

Any Owner may encumber his Condominium by Deed of Trust or Mortgage. The beneficiary of the Deed of Trust or the Mortgagee of a Mortgage is referred to in this Article as a "Lender". A breach of any of the provisions of this Declaration shall not affect or impair the lien or charge of any bona fide Deed of Trust or Mortgage made in good faith and for value encumbering any of the Condominiums. A Lender who acquires by foreclosure shall not be obligated to cure any breach of this Declaration, which is not practical or feasible to cure. It is intended that any loan to facilitate the resale of any Condominium after foreclosure is a loan made in good faith and for value and entitled to all of the rights and protection afforded to other Lenders. All liens created by this Declaration, including, but not limited to, any regular or special assessments for the payment of money, shall be subordinate to the lien created by any such bona fide First Deed of Trust or First Mortgage Lien to any Lender. Any Lender who comes into possession of a Unit pursuant to the remedies provided in the First Mortgage or First Deed of Trust other than by Deed In Lieu of Foreclosure, shall take the Unit free of any claims for unpaid assessments or charges against such Unit which accrue prior to the time such Lender comes into possession of the Unit. It is specifically understood, however, that a Lender is liable for all such assessments during the actual period of time the Lender holds title to a Condominium. This liability for assessments on the part of the Lender is on a pro rata basis with the pro rata period commencing on the date the Lender acquires title and ending upon resale or other transfer by the Lender, whereupon the liability will attach to the transferee. No amendment to this Declaration shall affect any Lender to the extent it defeats the Lender's then priority position with respect to its lien or which would convert the Lender's loan to an illegal status under such governmental regulations then applicable to the Lender involved, unless the approval in writing of any such Lender is obtained. Any amendment to this Declaration adopted in accordance with Article 22.2 [Amendments] shall affect all Lenders; provided that unless sixty-six and two-thirds percent (66 2/3%) of the Lenders holding First Deeds of Trust or Mortgage liens on the Units have given their prior written approval, the Owners shall not be entitled to:

(a) Change the pro rata interest or obligations of any Unit for purposes of levying assessments and charges, allocating distributions of hazard insurance proceeds or condemnation awards, and determining shares of the common elements and proceeds of the Project;

(b) Except as provided in Article 5 [Partition of Project] this Declaration, by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements of the Project; nor

(c) Make amendment to this Declaration or to the By-Laws of the Association, which would change the percentage interest of the Owners in the Project, or to amend Article 7.1.15 [Management] of this Declaration, relating to termination of professional management, or Article 7.2.5 [Hazard Insurance Proceeds] relating to the proceeds of hazard insurance.

In addition to the foregoing, the consent of fifty-one percent (51%) of the Lenders holding First Deeds of Trust or Mortgage liens on the Units shall be required to add or amend any material provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting;
- (b) Assessments, assessment liens, or subordination of such liens;
- (c) Reserves for maintenance, repair, and replacement of the Common Area;
- (d) Insurance or Fidelity Bonds;
- (e) Rights to use of the Common Area;
- (f) Responsibility for maintenance and repair of the several portions of the Project;
- (g) Expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project;
- (h) Boundaries of any Unit;
- (i) The interests in Common Area;
- (j) Convertibility of Units into Common Area or of Common Area into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit;
- (m) Any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insurers or guarantors of First Mortgages on Units.

An addition or amendment to this Declaration shall not be considered material if it is for the purposes of correcting technical errors or for clarification only. Any Lender who receives a written request to approve additions or amendments who does not respond within thirty (30) days, shall be deemed to have approved such addition or amendment.

Because of its financial interest in the Project, a Lender may appear at meetings of the voting owners and of the Board to present objections if violations of this Declaration have not been remedied. A Lender is authorized to furnish information to the Board concerning the status of any loan encumbering a Condominium. All applicable fire and extended coverage insurance policies shall contain loss payable clauses naming the Lenders who encumber Condominiums by Deed of Trust or Mortgage, as their interest may appear.

ARTICLE 21

GENERAL PROVISIONS

21.1 **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.

21.2 **Amendments.** This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Board after approval of the amendment at a meeting of the voting owners duly called for such purpose. The approval of the amendment shall require the affirmative vote or written consent of (i) at least seventy-five percent (75%) of the Class A Members; and (ii) at least seventy-five percent (75%) of Class B Members. If a two (2) class voting structure is no longer in effect because of the conversion of Class B votes to Class A votes, any amendment of this Declaration shall require the affirmative vote or written consent of (i) at least seventy-five percent (75%) of the total voting power of the Association; and (ii) at least fifty-one percent (51%) of the voting power of the Association, excluding those votes held or controlled by the Declarant. Notwithstanding the foregoing, the percentage of a quorum or of the voting power of the Association or of Members other than the Declarant necessary to amend a specific clause or provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under the clause or provision. The amendment shall become effective upon the recordation in the Office of the County Recorder of San Diego County, California; but no such amendment shall affect the right of the Holder of any mortgage or deed of trust recorded prior to the recordation of the amendment, unless approved in accordance with Article 20 [Rights of Lenders].

21.3 **Attorneys' Fees.** In the event an attorney is engaged by the Board for the enforcement or defense of any of the provisions of this Declaration, then the Board shall be entitled to recover from the adverse party to the controversy a reasonable sum for attorney's fees so incurred and the costs incurred and such costs and attorney's fees shall constitute a lien on the Condominium.

21.4 Interpretation Conflicts. As used in this Declaration, the masculine gender shall include the feminine and the singular number shall include the plural, as the context may require. The titles or headings of the Articles of this Declaration are not a part of it and shall have no effect upon the interpretation of any of its provisions.

In the case of any conflict with the Articles and/or the By-Laws and this Declaration, the Declaration shall control.

21.5 Binding on Successors. The provisions of this Declaration shall bind and run with the property and shall inure to the benefit of, and be binding upon, the heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, successors in interest, purchasers, lessees, encumbrancers, donees, grantees, mortgagees, lienors, and assigns of and from each Owner, and each person having or acquiring any right, title or interest in the Project or any portion of it.

21.6 Duration of Restrictions. This Declaration shall terminate and its provisions shall be of no further effect upon the expiration of sixty (60) years from the date of the recordation of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this instrument the day and year first hereinabove written.

"Declarant"

SANTORINI WEST LIMITED PARTNERSHIP
a California Limited Partnership

DATED May 14, 1991

By: [Signature]

Acknowledgment by Corporation which is General Partner)

STATE OF CALIFORNIA }
COUNTY OF San Diego } ss.

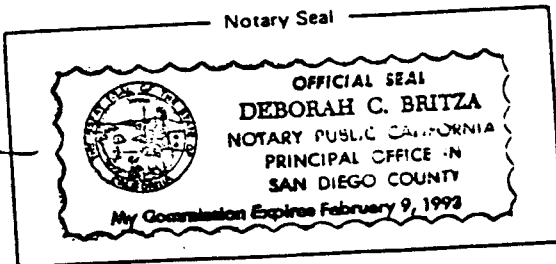
On this 15th day of May, in the year 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brian Sorokin

Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President

and/or _____ or on behalf of the Corporation therein named and on behalf of the Partnership; and acknowledged that the Corporation executed and the Partnership executed the instrument.

WITNESS my hand and official seal.

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



SUBORDINATION AGREEMENT

CALIFORNIA COMMERCE BANK, beneficiary under that certain Deed of Trust dated the 25 day of May, 1990, and recorded the 10th day of July, 1990 with the Office of the County Recorder of San Diego County, California, as File No. 90-371727, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate and inferior to the Declaration of Restrictions to which this Subordination Agreement is attached.

CALIFORNIA COMMERCE BANK

By: 

David Pepper, Vice President

By: _____

STATE OF CALIFORNIA)
County of San Diego) ss.

(Corporation Acknowledgment)

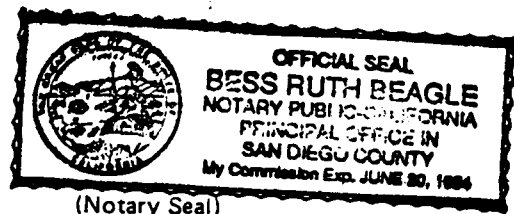
On this 13th day of May, in the year 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared David Pepper

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President or on behalf of the corporation therein named, and acknowledged to me that such corporation executed it.

WITNESS my hand and official seal.


Notary Public in and for said County and State.

FD-1F



WHEN RECORDED..RETURN TO:
BRAMKO ENTERPRISES
125 PIERRE WAY, SUITE A
EL CAJON, CA
ATTN: BRIAN SOROKIN

ORDER NO. 9006421-S

This document is certified to be true and correct

copy of the original document recorded 5.17.91
as instrument No. 91-0234284 in the office

of the county Recorder of San Diego County.

FIDELITY NATIONAL TITLE
INSURANCE COMPANY

Martin's Cardin / dsm
Title Officer

CERTIFICATE
UNDER CALIFORNIA CIVIL CODE
SECTION 1351

WE, the undersigned, being the record owner of, and record holder of security interest in the real property described in the documents hereinafter mentioned, do hereby certify that:

WE hereby consent to the recordation of the plan of condominium, pursuant to Chapter 1, Title 6, Part 4, Division Second, California Civil Code, consisting of:

(1) The description or survey map of the surface of the land included within the project, as such description or survey map is set forth upon or constituted by the subdivision of:

Lots 6, 7 and 8 in Block 22 of BIRD ROCK ADDITION, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 1083 filed in the Office of the County Recorder of San Diego County, January 27, 1908, lying Westerly of the Westerly line of the alley in said Block as shown on said Map.

EXCEPTING THEREFROM the Westerly 10 feet of said Lots as deeded to the City of San Diego, for street purposes by Deed of Abstract Title and Trust Company, a corporation, dated July 29, 1908, and recorded August 14, 1908 in Book 446, Page 105 of Deeds,

which subdivision map is hereby by reference incorporated herein.

(2) The diagrammatic floor plans of the building or buildings built or to be built on said land, as said diagrammatic floor plans are attached to this Certificate, which diagrammatic floor plans are hereby by reference incorporated herein; and

(3) This Certificate

DATED: May 14, 1991



STATE OF CALIFORNIA)
) ss.
 County of San Diego)

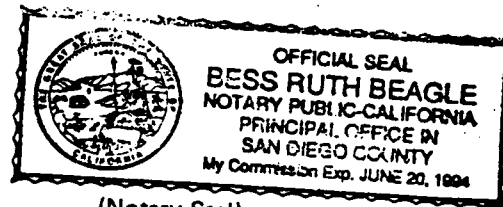
(Corporation Acknowledgment)

On this 14th day of May, in the year 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared David Pepper

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President or on behalf of the corporation therein named, and acknowledged to me that such corporation executed it.

WITNESS my hand and official seal.

Bess Ruth Beagle
 Notary Public in and for said County and State.



(Notary Seal)

FD-1F



Acknowledgment by Corporation which is General Partner)

STATE OF CALIFORNIA
 COUNTY OF San Diego } ss.

On this 15th day of May, in the year 1991, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Brian Sorokin

Personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President

and/or _____ or on behalf of the Corporation therein named and on behalf of the Partnership; and acknowledged that the Corporation executed and the Partnership executed the instrument.

WITNESS my hand and official seal.

Deborah C. Britza
 Notary Public in and for said County and State

