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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions is made this 8th day of November, 1999, by SILZAN CO. INC., A CALIFORNIA CORPORATION AND MARTIN GAHWILER (hereinafter referred to as "Declarant").

W I T N E S S E T H

Declarant is the owner of all that certain real property located in the City of Hermosa Beach, County of Los Angeles, State of California, commonly known as 301 - 307 2nd Street, and more particularly described as follows:

Parcel 1 of Parcel Map No. 25212, in the City of Hermosa Beach, County of Los Angeles, State of California, as per map filed in Book 291, Pages 3 and 4 of Parcel Maps, in the office of the County Recorder of said County.

WHEREAS, it is the desire and intention of Declarant to sell and convey portions of said property which have been divided into condominiums pursuant to a Condominium Plan recorded or to be recorded in the office of the County Recorder of said County, and to impose upon all portions of said property mutually beneficial restrictions under the general plan of improvement made for the benefit of all portions of said property and for the benefit of all future owners of any portions of said property; and

NOW, THEREFORE, Declarant hereby declares that all of said property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, restrictions, limitations, reservations, liens, and charges hereinafter set forth, all of which are declared and agreed to be in furtherance of a plan for the improvement and sale of portions of said property as condominiums, established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of said property and every portion thereof and expressly and exclusively made for the benefit and use of said property and of each and every person or entity who now owns or in the future may own any portion or portions of said property. Said covenants, conditions and restrictions are expressly intended to and shall run with the land and shall inure to the benefit of and be binding upon all parties having or acquiring any right, title, or interest in all or any portion of said property and their respective successors and assigns. This Declaration is made pursuant to Sections 1353 and 1354 of the California Civil Code.

JK-00640-2/1/99

1. DEFINITIONS

1.1 "Association" shall mean an unincorporated Association consisting of all Owners of Condominiums in the Project, and known as 2ND STREET TOWNHOMES HOMEOWNERS ASSOCIATION.

1.2 "Bylaws" shall mean the Bylaws of the Association.

1.3 "Common Area" shall mean the entire Project excepting all Units therein granted or reserved.

1.4 "Condominium" shall mean the entire estate in the Project, consisting of an undivided equal interest in the Common Area and ownership of a separate interest in a Unit.

1.5 "Condominium Plan" shall mean a plan prepared and executed by Declarant pursuant to Section 783 and Sections 1350 through 1359, inclusive, of the California Civil Code, in respect to the Project and recorded in the Office of the County Recorder of Los Angeles County.

1.6 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as it may be amended, changed, or modified from time to time.

1.7 "Member" shall mean a Member of the Association.

1.8 "Mortgage" shall mean a deed of trust as well as a mortgage.

1.9 "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust as well as a mortgage.

1.10 "Owner" or "Owners" shall mean the record holder of fee title or the buyer in a land sale contract of one or more Units, including Declarant so long as any Units remain unsold.

1.11 "Project" shall mean and include the entire parcel of said real property divided or to be divided into condominiums, including all structures thereon. The City of Hermosa Beach has approved a maximum number of four (4) condominium units for this site. No additional units may be constructed without the prior approval of the City.

1.12 "Unit" shall mean that portion of a Condominium which is not owned in common with Owners of other Condominiums in the Project as designated on the Condominium Plan referred to above.

## 2. OWNERSHIP AND POSSESSION BY OWNERS

2.1 Units and Common Areas. Each Owner shall be entitled to exclusive ownership and possession of his Unit. An undivided one-fourth interest in the Common Area shall appertain to each Unit in equal percentages. The percentage of the undivided interest of each Owner in the Common Area shall have a permanent character and shall not be altered without the consent of all Owners expressed in an amended Declaration duly recorded. The undivided interest in the Common Area and the fee titles to the respective Units conveyed therewith shall not be separated or separately conveyed, encumbered or released, and each such undivided interest shall be deemed to be conveyed, encumbered or released with its respective Unit even though the description in the instrument of conveyance, encumbrance or release may refer only to the Unit. Each Owner may use the Common Area in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners, and subject to rules for such use adopted by the Association. Each Owner shall receive as an incident of conveyance of his Unit, whether or not the instrument of conveyance so states, a nonexclusive easement appurtenant to his Unit for ingress, egress and support over, across and through the Common Area and every portion of any Unit within the Project required for the structural support of the building within which his Unit is located.

2.2 Private Open Space. Each Unit contains appurtenant private open space pursuant to the City's zoning ordinance as described in the Condominium Plan as Exclusive Use Common Area. Said private open space may consist of ground level patios or yards, balconies or roof decks and shall be conveyed as an integral part of each Unit. There shall be no overlap of the common area and this private open space.

2.3 Storage and Parking Spaces. Each Unit has private storage spaces and off-street parking spaces (garage areas). All off-street parking shall be used solely for the purpose of parking motor vehicles (defined in the Motor Vehicle Code of the State of California). No parking space shall be used, rented or leased to any person except in conjunction with the occupancy of a Unit within the Project.

2.4 Easements. If any portion of the Common Area encroaches upon the Units, a valid easement for the encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event any building or buildings containing a Unit is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the Common Area due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist. The Common Area is and shall always be subject to easements for minor encroachments thereof by the Units.

2.5 Association Right of Entry. For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Association of its responsibilities under this Declaration, the Association shall have the right to enter any Unit or upon any portion of the Common Area to effect emergency repairs and as provided in Article 9.3(1) hereof. 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.

2.6 Right of Public Entry to Common Area. The City of Hermosa Beach, County of Los Angeles, State of California, and the Government of the United States, and any department, bureau, or agency thereof, shall have the right of access to the Common Area of the Project at all times for the purpose of preserving the public health, safety and welfare.

2.7 Utilities.

(a) Whenever sanitary sewer, water, electricity, gas, telephone lines or connections, television cable or connections, heating or air-conditioning conduits, ducts, or flues are installed within the Project, which connections, or any portion thereof, lie in or upon Units owned by other than the Owner of a Unit served by said connections, the owners of any Unit served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Units in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections as and when necessary. Entry into a Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry into a Unit for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party.

(b) Whenever sanitary sewer, water, electricity, gas, or telephone lines or connections, television cable or connections, heating or air-conditioning conduits, ducts, or flues are installed within the Project, which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as services his Unit.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the costs thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Association who shall

decide the dispute, and the decision of the Association shall be final and conclusive on the parties.

### 3. UNINCORPORATED OWNERS' ASSOCIATION

3.1 Homeowners Association. There shall be an unincorporated Association consisting of all Owners which shall have jurisdiction over all matters of common interest to the members of the Association. The Association shall comply with all applicable requirements of the California Corporations Code and any other applicable State and/or Federal law.

3.2 Purpose. The Association shall control the use, improvement and maintenance of the Common Area, commencing upon the sale of the first Condominium in the Project, for the benefit and enjoyment of the Owners.

3.3 Membership. Each Owner of a Condominium shall be a Member of the Association. If a given Condominium is owned by more than one Owner, all such Owners shall be Members of the Association; provided, however, that for the purposes of the representation of such Condominium with regard to the affairs of the Association and as provided in Section 3.7, such Owners shall be represented by and entitled to only one (1) vote which shall be exercised and cast in accordance with the provisions of this Declaration and the Bylaws. 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 ownership of any Condominium which is subject to assessment by the Association. The membership held by an Owner of a Condominium shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance 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. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of such Condominium, the Association shall have the right to record the transfer upon the books of the Association.

3.4 Regular Meetings of the Association. The Association shall meet not less frequently than once each calendar year at the Project site, or at any other time or place as shall be designated in writing to the Owners by the Secretary of the Association; provided, however, that the regular annual meeting shall not be more than thirty (30) days before or after the date set for the meeting. The Members shall transact such business as may be brought before the meeting.

3.5 Special Meetings of the Association. A special meeting of the Association shall be promptly called by the Association upon receipt of a written request therefore signed by any Member of the Association.

3.6 Quorum. The presence of the Owners representing sixty-six and two-thirds percent (66-2/3%) of the Condominiums, whether in person or represented by proxy, shall constitute a quorum at any meeting of the Association required or permitted to be held hereby. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Association upon the affirmative vote of a majority of Members voting thereat.

If a quorum shall not be present or represented at any such meeting of the Association, those present in person or by proxy shall have the power to adjourn such meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date. At such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally noticed.

If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.

3.7 Voting Rights. Those Owners appearing of record in the Office of the Los Angeles County Recorder at 8:00 am on the date of any meeting of the Association required or permitted to be held hereby, shall be entitled to select the Member to represent them at said meeting. There shall be one vote for each Member, provided that any Member that represents more than one Condominium shall be entitled to cast one vote for each Condominium which he may represent. The Declarant shall be entitled to one vote with respect to each Condominium owned by Declarant.

3.8 Proxies. Every Member entitled to vote or to exercise consents may do so either in person, or by one or more representatives authorized by an instrument in writing, filed with the Association. Any designation of a representative to act for a Member may be revoked at any time by written notice to the Association or by attendance in person by said Member at the meeting for which said designation was given.

#### 4. MANAGEMENT AND OPERATION

4.1 Organization of the Association. The first annual meeting of the Association shall be held no later than six (6) months after the closing of the sale of the first Unit. Thereafter, all regular and special meetings of the Association shall be held at the Project or in such other suitable place as close thereto as practicable in the County of Los Angeles to be determined by them at the organizational meeting. The Bylaws to

be adopted at said meeting shall also provide for special meetings of the Association.

4.2 Officers. At the organizational meeting, the Owners shall elect the officers of the Association by secret written ballot consisting of a President, Vice President, Secretary and Treasurer whose terms shall run concurrently, all of whom shall be Owners and may include Declarant or its representative. The officers shall serve a one-year term and shall serve without compensation; provided that an officer shall be reimbursed for expenses he incurs in carrying on the business of the Association. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Association, shall see that orders and resolutions of the Association are carried out, shall sign all written instruments authorized to be executed by the Association, and shall discharge such other duties as may be required of him by the Association.

(b) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Association.

(c) Secretary. The Secretary shall record the votes and keep minutes of all meetings and proceedings of the Association, shall keep, or cause to be kept, appropriate current records showing the name of all Owners and their addresses, if not at the Project, and shall perform such other duties as may be required by the Association.

(d) Treasurer. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all reasonable times be open to inspection by any Owner. The Treasurer shall deposit monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Association. He shall disburse the funds of the Association as may be ordered by the Association, shall render to the President and Owners, whenever they request it, an account of all of his transactions, as Treasurer, and of the financial condition of the Association, and shall have such other powers and duties as may be prescribed by the Association or the Bylaws.

4.3 Adopt Bylaws. The Association is hereby authorized to adopt reasonable Bylaws to govern the affairs of the Owners with respect to the Project which shall not conflict with said covenants contained herein.



4.4 Acts of the Association. The Association shall have the power to enforce said covenants contained herein and to operate the Project on behalf of and for the benefit of the Owners. The Association shall have the exclusive right to contract for all services, goods, capital improvements, repairs and insurance, payment for which is to be made from the maintenance fund.

The Association has an affirmative obligation to maintain the Common Area and any additions which may be subsequently authorized in good, sanitary and attractive condition, order and repair. Without limiting the generality of the foregoing, this obligation includes the maintenance of the surface of any paved area, sidewalks and parking areas on the Project in a level, smooth and evenly covered condition. All landscaping shall be maintained in a good, sanitary and attractive condition, healthy and without deterioration, free of weeds and without waste or debris.

4.5 General Powers and Limitations.

(a) In general, the powers and duties of the Association shall normally include, but shall not be limited to, the following:

(1) Enforcement of applicable provisions of this Declaration, the Bylaws and other instruments for the ownership, management and control of the Project;

(2) Payment of taxes and assessments which are, or could become, a lien on the Common Area or a portion thereof;

(3) Contracting for casualty, liability and other insurance on behalf of the Association;

(4) Contracting for goods and/or services for the Common Area, facilities and interests for the Association subject to the limitations set forth below;

(5) Delegation of its power to any committees, officers or employees of the Association as expressly authorized by the governing instruments;

(6) Preparation of budgets and financial statements for the Association as prescribed in the governing instruments;

(7) Formulation of rules of operation of the Common Area and facilities owned or controlled by the Association;

(8) Initiation and execution of disciplinary proceedings against Members of the Association for violations of the provisions of the governing instruments in accordance with procedures set forth therein;

(9) Upon reasonable notice, and only at reasonable times, enter upon any privately owned Unit as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Area of the Owners in common; and,

(10) Election of officers of the Association.

(b) The Association shall ordinarily be prohibited from taking any of the following actions, except with vote or written assent of a majority vote of the Association residing in Members other than the Declarant, or his representatives:

(1) 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; and (C) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy permits for short-term cancellation by the insured;

(2) 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;

(3) 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;

(4) Paying compensation to Members or officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Association may cause a Member or officer to be reimbursed for expenses incurred in carrying on the business of the Association;

(5) Filling of an officer vacancy of the Association created by the removal of an officer.

4.6 Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and distributed to each Owner regardless of the number of Owners or the amount of assets of the Association pursuant to California Civil Code as follows in part:

(a) A proforma operating statement (budget) for the immediately ensuing fiscal year consisting of at least the following information shall be distributed not less than forty-five (45) nor more than sixty (60) days before the beginning of the fiscal year;

(1) Estimated revenue and expenses on an accrual basis;

(2) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section (e) below, which shall be printed in bold type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;

(B) As of the end of the fiscal year for which the study is prepared: the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain major components; and, the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components;

(C) The percentage that the current amount of accumulated cash reserves actually set aside is equal to the current estimate of the amount of cash reserves necessary as set forth in (B) above.

The summary of the Association's reserves disclosed pursuant to this section shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible by this provision;

(3) A statement as to whether the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefore;

(4) A general statement setting forth the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to

those major components for which the Association is obligated to maintain;

(b) The Association shall do the following not less frequently than quarterly:

(1) Cause a current reconciliation of the Association's operating accounts to be made and review the same;

(2) Cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(3) Review the current year's actual reserve revenues and expenses compared to the current year's budget;

(4) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve account; and,

(5) Review an income and expense statement for the Association's operating and reserve account;

(c) Withdrawal of funds from the Association's reserve account shall require the signatures of two (2) members of the Association;

(d) The Association shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Association may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three (3) years of the date of the initial transfer, except that the Association may, upon making a finding supported by documentation that a delay would be in the best interests of the Project, delay the restoration until the time which the Association reasonably determines to be necessary. The Association shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is not subject to the limitation imposed by a special assessment required by an emergency situation as set forth hereinbelow.

(e) At least once every three (3) years the Association shall cause a study of the reserve account requirements of the Project to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half (1/2) of the gross budget of the Association for any fiscal year. The Association shall review this study annually and shall consider and implement necessary adjustments to the analysis of the reserve account requirements as a result of that review. The study required by this section shall at a minimum include:

(1) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;

(2) Identification of the probable remaining useful life of the components identified in (a) above as of the date of the study;

(3) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in (A) above during and at the end of its useful life;

(4) An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study;

(5) As used in this section, "reserve accounts" means moneys that the Association has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain; and "reserve account requirements" means the estimated funds which the Association has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

4.7 Architectural and Design Control. No building, fence, wall, or other structure shall be commenced, erected, maintained or altered upon the Project, nor shall any exterior addition or alteration therein be made including the landscaping thereof without the approval of the Association being first had and obtained.

## 5. ASSESSMENTS AND MAINTENANCE FUND - LIEN

5.1 Assessments. Each Owner shall be obligated to pay to the Association assessments to be fixed, established and collected from time to time as hereinafter provided. The assessments, together with interest thereon and costs of collection

thereof, as hereinafter provided, shall be a charge on the land and a continuing lien upon the Condominium against which each such assessment is made, which lien shall be created and enforced in accordance with the provisions of this Declaration and the Bylaws of the Association. Each such assessment, together with late charges, interest, costs, penalties and reasonable attorney's fees, as provided for by this Declaration and the Bylaws of the Association, shall also be the joint and several personal obligation of each person who was an Owner of such Condominium at the time when such assessment fell due. No owner may waive or otherwise escape liability for the assessments otherwise provided for herein by non-use of the Common Area or abandonment of his Unit.

5.2 Maintenance Fund. The Association shall collect and retain a maintenance fund sufficient to meet all authorized expenditures of the Association and to provide adequate reserves for the repair and replacement of such portions of the Project as may become in need of repair and replacement.

5.3 Procedure. Not less than sixty (60) days prior to the beginning of each fiscal year, or within thirty (30) days following the organizational meeting, the Association shall prepare a budget estimating the net charge to be paid during such year, including reasonable provisions for contingencies and replacements, with adjustments made for any expected income or surplus from the prior year's fund; and a copy of the budget shall be distributed to all Owners. The Association shall assess the Owner of each Condominium for one-fourth of the amount required by said budget.

If the regular monthly assessment budgeted for any fiscal year exceeds by more than twenty percent (20%) the regular monthly assessment assessed during the next preceding fiscal year, the Association shall call a special meeting for the purpose of approving the budgeted regular monthly assessment, at which time said budgeted assessment must be approved by a majority of the Owners other than the Declarant. In lieu of a meeting, the budgeted assessment may be approved in writing.

5.4 Use of Funds. All funds collected hereunder shall be expended for purposes designated herein or in the Bylaws of the Association. Assessments collected shall be properly deposited in a commercial bank account in a bank to be selected by the Association. The Association shall have control of said account, and shall be responsible to the Owners for the maintenance of accurate records thereof at all times. No withdrawal shall be made from said account except to pay the charges and expenses for the common benefit of all Owners.

5.5 Commencement of Assessments. Assessments against all Units in the Project shall commence on the first day of the month following the closing of the first sale of a Unit. Said assessments shall be paid in equal monthly installments, in

advance, on the first day of each month. Declarant shall pay its full prorata share of assessments on all unsold Condominiums.

5.6 Special Assessments. In the event the regular monthly assessment is insufficient for any reason, the Association shall have the authority to levy a special assessment to defray the costs of any action or undertaking on behalf of the Association provided such general special assessment shall be levied upon the same basis and in the same proportion for the levying of regular assessments. Provided further, that in any fiscal year, the Association may not, without the vote or written assent of a majority of the Association residing in Members other than the Declarant, levy special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. The within limitation as to special assessments shall not apply (1) where the special assessment against a Member is a remedy utilized by the Association to reimburse the Association for costs incurred in bringing the Member and his Unit into compliance with provisions of this Declaration and the Bylaws, or (2) where the special assessment is to raise funds for the rebuilding or major repair of the structural common area housing Units of the Project.

5.7 Special Assessments for Emergencies. Increases in assessments are not limited in the case of emergency situations which are any of the following: (1) an extraordinary expense required by court order; (2) 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 safety of persons is discovered; or (3) repairs to or maintenance of the Project for which the Association is responsible that could not have been reasonably foreseen by the Association in preparing and distributing the proforma operating budget pursuant to section 4.6(a) hereinabove.

5.8 Delinquencies. Any assessment which is not paid when due, shall be delinquent. With respect to each assessment not paid within ten (10) days after its due date, the Association shall require the Owner to pay a "late charge" in a sum to be established by the Association. If any such assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a rate of ten percent (10%) per year, and the Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or upon compliance with the notice provisions set forth herein, foreclose the lien (provided in Article 8 hereof) against the Condominium, and there shall be added to the amount of such assessment the late charge, the costs of filing the complaint in such action, interest, and a reasonable attorneys' fee, together with costs of action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosures against such Owner or other Owners for the collection of such delinquent assessments.

6. SUSPENSION OF VOTING RIGHTS

The Association shall have the right to suspend the voting rights of any Member or Members of the Association for the period during which any assessment against the Condominium owned by such Member or Members and giving rise to such membership remains unpaid and delinquent. The Association shall also have the right to suspend such voting rights for a period not to exceed thirty (30) days for any breach of this Declaration, the Bylaws or of any rules and regulations of the Association, committed by any Owner of the particular Condominium as to which such rights are being suspended, or his guests, servants, family members, tenants or invitees. Any suspension of voting rights, except for a suspension due to failure to pay assessments, shall be made by the Association only after a meeting of the Association, at which a quorum is present, duly called and held for such purpose in the same manner is provided for the noticing, calling and holding of a special meeting of the Association. Written notice of such meeting, which shall state the reasons for taking suspension action and which shall set forth the provisions of this Article 6, shall be given to the Member whose voting rights are being sought to be suspended at least fifteen (15) days prior to the holding of such meeting. Said member whose voting rights are being sought to be suspended shall be entitled to appear at such meeting, personally or in writing, to present his case as to why such voting rights should not be suspended. The decision as to whether such rights should be suspended in accordance with the provisions of this Article shall be made by a majority of the Members of the Association present at such meeting and shall be binding upon all Members of the Association. No suspension shall take effect prior to the sixth day after the meeting.

7. EXPENDITURES

The Association shall collect the maintenance fund herein provided for and shall contract, make expenditures, acquisitions and payments therefrom for the following:

7.1 To enforce the provisions of said covenants and to employ attorneys, accountants and other persons in connection therewith whenever it deems it necessary or proper to do so.

7.2 To maintain such policy or policies of insurance on the Project as the Association shall, in its discretion, deem proper. Such policy or policies shall include, but are not limited to, the following:

(a) Fire insurance with extended coverage endorsement for one hundred percent (100%) of the current replacement cost of the Units and the Common Area in a form acceptable to the holders of all first trust deeds on the Condominiums, payable as provided in Article 12 hereof, or such other fire and casualty insurance as the Association shall determine



gives substantially equal or greater protection to the Owners and their trust deed holders, as their respective interests may appear, which said policy or policies shall contain a separate loss payable endorsement in favor of the trust deed on each Condominium;

(b) Liability insurance insuring the Association and the Owners against any liability to the public or to the Owners or to invitees or tenants of the Owners incident to the ownership, occupancy or use of the Project or any part thereof and including the personal liability exposure of the Owners. Such insurance shall be in such amounts as the Association shall select but shall be for not less than \$500,000.00 for the total personal injury from any accident; \$500,000.00 personal injury to any one person; and \$500,000.00 property damage shall be issued on a comprehensive coverage basis, and shall provide cross-liability endorsements wherein the right of the named insured under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured;

(c) Workmen's Compensation insurance to the extent reasonably deemed necessary to comply with any applicable laws.

The Association shall annually review all insurance maintained by them pursuant to the above and shall make such adjustments thereto as may be required.

7.3 To obtain the services of a Manager to the extent deemed advisable by the Association as well as such other personnel as the Association shall determine are necessary or proper for the operation and maintenance of the Common Area, whether such personnel are employed directly by the Association or are furnished by or through the Manager.

7.4 To obtain a fidelity bond naming such person, persons, firms or corporations as the Association may designate as principals and the Owners as obligees in such form and amount as the Association shall from time to time determine.

7.5 To obtain any other items including, but not limited to, materials, supplies, furniture, labor, services, maintenance, repairs, renovations, gardening, utilities, landscaping and structural alterations which the Association deems necessary or proper for the operation, maintenance, contribution or benefit of the Project, or to comply with any law or to implement or enforce the within covenants, conditions and restrictions.

7.6 To pay any taxes or special assessments which in the opinion of the Association become or may become a lien upon the Common Area and to discharge any lien or encumbrance levied thereon.

(a) The Owners shall execute such instruments and take such action, if any, as may be reasonably required or as may be specified by the Association to obtain separate real property tax assessments of their own Condominiums. Each Owner shall pay prior to delinquency the taxes or assessments levied by the County Assessor or the City against any of their own Units or personal property, or interest in the Project.

(b) If any taxes and/or assessments may, in the opinion of the Association, nevertheless be a lien on the entire Project or any part of the Common Area, they may be paid by the Association and assessed by the Association to the Owners. Each Owner shall be obligated to pay an assessment by the Association for the portion of any taxes or assessments, if any, levied by the County Assessor or the City against the entire Project or any part of the Common Area, in proportion to his interest in the Common Area, as set forth in his grant deed thereto, such payment to be made to the Association at least thirty (30) days prior to delinquency of such tax or assessment.

#### 8. DEFAULT IN PAYMENT OF ASSESSMENTS

8.1 Lien. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owners of the Condominiums against which the same are assessed. The amount of any such assessment assessed to the Owner of any Condominium, including interest, late charges as established by the Association, and costs, including reasonable attorneys' fees, shall become a lien upon such Condominium when a notice of assessment as provided in Section 1366 of the California Civil Code is duly recorded. A certificate executed and acknowledged by a majority of the Association stating the indebtedness secured by a lien on any Condominium created hereunder shall be conclusive upon the Association, the Owners and all persons who rely thereon in good faith, as to the amount of such indebtedness on the date of the certificate, and such certificate shall be furnished any Owner upon request at a reasonable fee not to exceed \$15.00.

Any such lien may be foreclosed by an appropriate action in court or in the manner provided by law for the foreclosure of a Mortgage under power of sale; provided, that no judicial action shall be brought to foreclose such lien or proceeding under the power of sale less than thirty (30) days after a notice of assessment is deposited in the United States mail, certified or registered, postage pre-paid, addressed to the Owner of such Condominium at his address appearing on the records of the Association. Such notice of assessment may be recorded and an action may be brought to foreclose the same or exercise the power of sale by the Association only. Reasonable attorneys' fees and expenses in connection with collection of the debt secured by such lien or foreclosure thereof shall be paid by the Owner against whom such notice of assessment is recorded.

Any such sale provided for above is to be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. The Association, after a vote by Members holding at least sixty-six and two-thirds percent (66-2/3%) of the membership, may, through its duly authorized agents, bid on the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Upon the timely curing of any default for which a notice of claim of lien was recorded by the Association, the officers of the Association shall record an appropriate release of such notice.

The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for 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 assessments.

The provisions of this Article 8 relative to the creation of a lien for assessments and the enforcement of assessments shall apply to all assessments levied pursuant to this Declaration including, without limitation, assessments levied pursuant to subsection (1) of Article 9.3.

8.2 Subordination of Assessment Liens. A lien for regular or special assessments against an Owner shall be subordinate to any prior recorded first Mortgage against the Owner's interest in the Unit to which the lien appertains. The lien for assessments shall not be affected by any sale or transfer of a Unit (or interest therein) to which it appertains except that a sale or transfer pursuant to the exercise of a power of sale or judicial foreclosure because of a default of the first Mortgage shall extinguish a subordinate lien for assessments which became payable before the sale or transfer. No sale or transfer of a Unit (or interest therein) as the result of a foreclosure or exercise of power of sale shall relieve the new Owner, whether it be the former Mortgagee of the first Mortgage or another person, or the Unit from liability for any assessments thereafter becoming due, or the lien thereof.

## 9. LIMITATIONS ON THE USE OF UNITS AND COMMON AREA

In addition to regulations established by law, and regulations which may from time to time be promulgated by the Association, the following restrictions shall be observed by the Owners:

9.1 Units. Restrictions relating solely to the use of the Units are as follows:

(a) Each Unit shall be used for single family residential purposes only. "Residential purposes" shall be construed to include lease or rental of a Unit for a minimum period of thirty (30) days. No Unit shall be used for any business or commercial use, except those uses expressly permitted by local zoning ordinances which are considered to be Home Occupation types of uses and may be subject to a business license. Such uses are expressly declared to be customarily incident to the principal residential use.

(b) Each Owner shall have the exclusive right at his sole cost and expense to paint, repair, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his own Unit and the surfaces of bearing walls and partitions within his Unit, and to, at his sole cost and expense, substitute new finished interior surfaces in place of those existing on said walls, floors, partitions or ceilings.

(c) Each Owner shall be responsible for the maintenance, repair or replacement of the windows and doors (whether glass, screen or otherwise) enclosing his Unit and all appliances and equipment, including but not limited to, refrigerators, dishwashers, disposals, lighting fixtures, heating equipment, water heaters or ranges located within his Unit. Each Owner shall also be responsible for the maintenance and repair of the electrical and heating systems, television cable and connections, and plumbing and gas lines and connections servicing his Unit which are located within the outside perimeter of the exterior bearing walls thereof. Each Owner shall also be responsible for the maintenance and repair of the patios, yards and balconies which he has the exclusive right to use, and shall make such repairs as the Association deems necessary to preserve the attractive appearance and protect the value thereof.

(d) No Owner shall make or cause to be made structural alterations or modifications including, without limitation, plumbing or electrical alterations within any bearing walls, to the interior of his Unit or installations located therein without the prior written consent of the Association.

9.2 Common Area. Restrictions relating solely to the use or occupancy of the Common Area are as follows:

(a) There shall be no obstruction of the Common Area nor shall anything be stored in the Common Area without the prior written consent of the Association except as hereinafter expressly provided.

(b) Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Association.

(c) Each Owner shall be liable to the Association for any damage to the Common Area or to any improvements, landscaping or equipment thereon, which may be sustained by reason of the negligence or willful misconduct of said Owner, his family, guests, tenants, servants or invitees. The Association shall have the power to enforce that liability by civil suit against the Owner, his family, guests, tenants, servants and invitees.

(d) Each parking space shall be used solely by the Owner of the Unit to which it is conveyed or assigned, members of his family, his guests or lessees of the Unit. All parking spaces shall be used solely for the purpose of parking motor vehicles as defined by the Vehicle Code of the State of California or bicycles. Where required by local ordinance, all guest parking spaces shall be labeled "guest parking" and shall be for the exclusive use of guests.

(e) Except as otherwise provided herein, the Association shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration and the Bylaws.

(f) Restrictions on the Storage of Boats, Trailers and Recreational Vehicles. The storage of boats, trailers, recreational vehicles and other similar vehicles shall be prohibited in required parking spaces and/or where visible from the public right-of-way, and/or adjacent property.

(g) Television and Radio Antenna. Individual television and radio antenna is prohibited outside the Owner's Unit. Only the following may be installed and maintained in the Project: (1) one central antenna with connections to each Unit via underground or internal wall wiring; or (2) each unit may be served by a cable antenna service provided by a company licensed to provide such service within the City.

9.3 General. Restrictions governing the use of the Project generally and certain obligations of Owners are as follows:

(a) Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance on the Common Area without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of any insurance referred to above or any portion thereof or which would be in violation of any law. No Owner shall separately insure his Unit against loss by fire or other casualty covered by insurance obtained by the Association if doing so causes a diminution in the insurance proceeds otherwise payable under policies acquired by the Association; and any Owner whose violation hereof

results in such a diminution shall be liable to the Association for the amount of such diminution.

(b) No sign of any kind shall be displayed to the public view on or from any Unit or the Common Area without the prior written consent of the Association, except that a "For Sale" or "For Rent" sign of reasonable size may be displayed as provided in Section 712 of the California Civil Code.

(c) No animals, livestock or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Area, except that dogs, cats or other household pets may be kept in a Unit, subject to any rules and regulations adopted by the Association and provided that they are not kept, bred or maintained for any commercial purpose.

(d) No noxious or offensive activity shall be carried on in any Unit or in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners.

(e) No drilling or mining operations of any kind shall be permitted upon or in any Unit or the Common Area.

(f) Each Owner of a Unit shall be obligated to pay any and all assessments for water, sewage, gas, electricity, other utilities, taxes and other charges assessed individually against such Unit.

(g) No Owner shall deposit any garbage, refuse or rubbish in or on the Common Area unless such matter is deposited in appropriate containers suitably placed as designated by the Association so as not to detract from the physical appearance of the Common Area or the Project.

(h) No Owner may exempt himself from liability for his specified contribution to any assessments or charges which may be made under this Declaration or the Bylaws of the Association.

(i) Notwithstanding any other provision set forth in this Declaration, Declarant shall have the express right and privilege during the period of sale and improvements upon the Project to use such facilities as may be reasonably required, convenient or incidental to the sale of said improvements, including, but without limitation, a business office, storage areas, signs, model units and sales offices, all or portions of which may be within the Common Area of the Project. The foregoing right shall continue and be effective until the original sale of all Units has been completed. In exercising his rights hereunder, Declarant will not unreasonably interfere with the use of the Common Area by Owners.

(j) No Owner shall, at his own expense or otherwise, make any structural alterations, additions or modifications to the Unit or any alterations, additions or modifications to any part or portion of the Common Area, nor decorate any exterior portion of the Unit or Common Area, without the prior written approval of the Association. With respect to the installation of awnings, sunshades, screen doors, and other minor installations to any Unit, the prior written approval of the Association shall be exercised with a view toward promoting uniformity and thereby enhancing the attractiveness of the Project as a whole. Any written request for the Association's approval for such alterations, additions, modifications or decoration which is not acted upon by the Association within ninety (90) days after it is submitted to the Association, shall be deemed granted as of the 90th day after its submittal, provided that the request includes at least all of the following:

- (1) the identity of the Owner;
- (2) the identity of the Unit or a description of the Common Area to be altered, added to, modified or decorated;
- (3) a detailed description of the proposed alteration, addition, modification, or decoration;
- (4) a copy of the architect's contractor's or vendor's plans for the alteration, addition, modification or decoration; if there are none, a statement to that effect;
- (5) the identity of the persons who will perform the proposed alteration, addition, modification or decoration.

(k) In the event that the Association shall determine that an Owner of a Unit has failed to maintain his Unit, or any portion or element thereof, in accordance with the general standards of the Project, as may be fixed by the Association from time to time, or as required in the judgment of the Association to preserve and protect the attractive appearance and the value of the Project, the Association shall give written notice to such Owner, setting forth this provision in full, stating with particularity the work of maintenance or repair which the Association finds to be required, and requesting that the same be carried out within a period of sixty (60) days from the giving of such notice. If such Owner fails to carry out such maintenance or repair within the period specified by the notice, the Association shall have the right to enter upon or in the said Unit and/or element and shall cause such work to be done and shall assess the cost thereof to such Owner, such assessment to be due and payable within thirty (30) days after the Association gives written notice thereof. If the circumstances requiring the maintenance or repair require that such work be performed within less than sixty (60) days, the Association shall be required to give only such notice of the work required to be performed, including no notice, as the circumstances permit.

(l) No Owner shall be held liable for the expense of any such repair or maintenance work done by the Association unless the decision to require the performance of that repair or maintenance shall be made by the Association at a meeting of the Association, at which a quorum of the Owners is present, duly called and held for such purpose in the same manner as provided for the noticing, calling and holding of a special meeting of the Association. Written notice of such meeting, which shall set forth the provisions of this Article 9.3(1), shall be given to the Owner of Unit for which repair or maintenance work is proposed to be done at least fifteen (15) days prior to the holding of such meeting. The Owner shall be entitled to appear at such meeting and present his case as to why the proposed repair or maintenance should not be required or why he should not be responsible for performing it. The decision as to whether to require the performance of that repair or maintenance shall be made by a majority of the Members of the Association present at such meeting and shall be binding upon all Members of the Association.

Provided that the Association, its agents, servants and/or employees shall have exercised due care in the performance of said repairs and/or maintenance, they shall not be liable to the Owner in connection therewith.

The assessment provided herein shall be a personal obligation of the Owner.

(m) No Owner shall park his automobiles or any other vehicles (including bicycles) or permit his tenants, servants or the members of his family to park their automobiles or any other vehicles (including bicycles) in any space but the garage constituting a part of such Owner's Unit. Guest parking spaces shall be used only for guest parking. No individual vehicle shall use a guest parking space for more than seventy-two (72) hours without the specific permission of the Association.

(n) No power equipment, hobby shops, or carpenter shops shall be maintained on the Project, except with the prior approval of the Association. No automobile overhaul or maintenance work, other than emergency work shall be permitted in the Project.

#### 10. RIGHTS OF INSTITUTIONAL HOLDERS OF MORTGAGES

Notwithstanding any provisions to the contrary as may be provided elsewhere in this Declaration, Institutional Holders of Mortgages (Mortgagees) shall have the following rights:

10.1 Written Notification to First Mortgagees. A first Mortgagee, upon request, is entitled to written notice from the Association of any default in the performance by an individual unit mortgagor of any obligation under this Declaration and the Bylaws which is not cured within sixty (60) days. It shall be the



responsibility of each Owner of a Unit to notify the Association within thirty (30) days of the close of his escrow to purchase his Unit of the name and address of the holder of his first mortgage on his particular Unit. In addition, timely written notice shall be given of:

(a) Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage;

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

(c) Any proposed action that requires the consent of a specified percentage of eligible mortgage holders.

10.2 Exemption from Right of First Refusal Any first Mortgagee which comes into possession of the Unit pursuant to the remedies provided in the mortgage, by foreclosure of the mortgage or by deed or assignment in lieu of foreclosure, shall be exempt from any right of first refusal.

10.3 Subordination of Assessment Lien to Mortgagees. Any holder of a first mortgage or any third party purchaser who comes into possession of the Condominium pursuant to the remedies provided in the mortgage or foreclosure of the mortgage shall take the property free of any claim for unpaid assessments or charges against the mortgaged Unit which accrue prior to the time such person comes into possession of the Unit, except 1) when title is received via Deed in Lieu of Foreclosure, and 2) for claims for a prorata share of such assessments or charges resulting from a prorata reallocation thereof to all Units in the Project including the mortgaged Unit. The lien for assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed on the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure or trustee's sale. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

10.4 Leasing. No Unit Owner may lease a Unit for transient or hotel purposes. Any lease agreement between a Unit Owner and a lessee shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Association Bylaws and that any failure by a lessee to comply with the terms of such documents shall be a default under the lease. No Unit Owner may lease less than his or her entire Unit and all such leases shall be in writing.

10.5 Prior Approval of First Mortgage Holders. The Association shall give written notice to each institutional holder of a first mortgage lien on Units in the Project of any material amendment to this Declaration and/or the Association Bylaw; including but not limited to, any amendment which would change the percentage interests of the Unit Owners in the Project. Unless seventy-five percent (75%) of the holders of first mortgages on Units in the Project have given their written approval, neither the Association nor the Owners shall:

(a) By act or omission seek to abandon or terminate the Condominium regime;

(b) Change the prorata interest or obligation of any Unit for purposes of levying assessments or charges, or allocating distributions of hazard insurance proceeds or condemnation awards; and for determining the prorata share of ownership of each Unit in the Common Area;

(c) Change, waive or abandon, by act or omission, any scheme of regulation or enforcement thereof pertaining to the architectural design or exterior appearance of any Units, exterior maintenance of Units, maintenance of driveways or upkeep of landscaping in the Project;

(d) Partition or subdivide any Condominium;

(e) Subject to the provisions of California Corporations Code Section 8724, attempt to abandon, partition, subdivide, encumber, release, hypothecate, sell or transfer, by act or omission, the Common Area; the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Project shall not be deemed a transfer within the meaning of this subsection;

(f) Fail to maintain fire and extended coverage on insurable Project common area property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement costs); or

(g) Use hazard insurance proceeds for losses to any Project common area property for other than repair, replacement or reconstruction of such improvements.

10.6 Examination of Books and Records. The holders of first mortgages shall have the right to examine the books and records of the Association.

10.7 Taxes, Assessments and Charges. All taxes, charges and assessments which may become liens prior to first mortgages under local law, shall relate only to the individual

Units and not to the Project as a whole. First Mortgagees of Units may jointly and singly pay taxes or other charges which are delinquent and which may or have become a charge against the common property, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for such property, and first Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

10.8 Reserves for Replacement. An adequate reserve fund for replacement of the Common Area property and facilities must be established by the Association and must be funded by regular monthly assessments, and not be special assessments.

10.9 No Priority Over Rights of First Mortgagees. No provision herein shall give a Unit Owner or any other party priority over any rights of first Mortgagees of Units pursuant to their mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or the Common Area. Such first Mortgagees shall be entitled to timely written notice of such damage or destruction, if such loss or taking exceeds \$10,000.00 for the Project as a whole or damage to any single Unit exceeds \$1,000.00. Additionally, if any Unit or portion thereof, or the Common Area and facilities, or any portion thereof, is made the subject matter of any condemnation or eminent domain proceeding, no provision herein shall entitle the Owner of a Unit or any other party to priority over a first Mortgagee of a Unit with respect to any distribution to such Unit of the proceeds of any award or settlement. Such first Mortgagees shall be entitled to timely written notice of any such proceeding or proposed acquisition.

10.10 Further Notice to Lenders.

(a) Upon request, the Association shall give written notice to any first Mortgagee of all meetings of the Association. Each such first Mortgagee shall have the right to be represented at such meeting, but shall have no voting rights unless it has succeeded to title to one or more of the Units by foreclosure or otherwise.

(b) Upon request, the Association shall deliver to each such first Mortgagee, a copy of the Association's annual statement within ninety (90) days after the end of the Association's fiscal year.

10.11 Professional Management of Project. Any agreement for professional management of the Project shall provide that management contracts may be terminated, with or without cause, upon thirty (30) days, or less, written notice. The term of any such contract shall not exceed one (1) year. In the event the Association first hires professional management and assumes self-management of the Project, each institutional holder of a first

mortgage on Units in the Project shall be entitled to timely written notice thereof.

10.12 Conflict. If there is any conflict between any provisions of this Article 10 and any other provisions in this Declaration of the Association Bylaws, the language contained in this Article 10 shall control.

10.13 Amending Article. Notwithstanding the foregoing, any amendment to this Article shall require the consent of at least seventy-five percent (75%) of the holders of first Mortgages which may then be of record as valid encumbrances against the Project or any portions thereof.

## 11. PARTITION

Except as provided by Section 1359 of the California Civil Code, there shall be no judicial partition of the Project or any part thereof, nor shall Declarant or any person acquiring an interest in the Project or any part thereof seek any judicial partition; provided, however, that if any Condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

Except as provided in Section 1359 of the California Civil Code, the unanimous consent of Owners and the approval of the eligible holders of first Mortgages on all Units subject to a Mortgage shall be required to terminate the condominium regime.

## 12. DAMAGE AND DESTRUCTION

The provisions of this Article 12 shall govern the repair and rebuilding of the Project if any part thereof is damaged by fire or other casualty, and shall also apply to the collection, holding, application, and disposition of the proceeds of any insurance policy or coverage obtained pursuant to this Declaration or the Bylaws of the Association, or under which the insurance proceeds are to be paid to or for the account of the Association or under which the Association has control of the disposition of such proceeds. Where provision is made herein for the payment and distribution of all or any portion of any insurance proceeds to all the then Owners, the payment to each of said Owners shall be in the same proportion that the fair market value of their respective Units bears to the total fair market value of the Project immediately prior to the damage or destruction; but if an Owner's interest in the Project is subject to one or more Mortgages the share of said Owner shall be paid to the various Mortgagees thereunder, in order of priority, to the extent necessary to satisfy the obligations secured thereby, rather than to the Owner. The balance of an Owner's share, if any, remaining after such payment shall be paid to such Owner.

12.1 Damage to Units. If the Project is damaged by fire or other casualty and said damage is limited to a single Unit, all insurance proceeds shall be paid to the Owner or Owners, Mortgagee or Mortgagees of the Owner or Owners, as their respective interests may appear, and such Owner or Owners, Mortgagee or Mortgagees, shall use the same to rebuild or repair such Unit in accordance with the original plans and specifications therefore.

12.2 Damage to Common Area. If all or any part of the Common Area is damaged by fire or other casualty, the following provisions shall govern the repair and rebuilding thereof as well as the collection, holding, application and distribution of the proceeds of any insurance policy payable to or for the account of the Association on account of such damage.

(a) If the estimated costs of repairing or rebuilding the damaged portions of the Common Area does not exceed the amount of insurance proceeds available therefore by more than ten percent (10%) of such amount, such proceeds shall be deposited with a bank or a savings and loan institution as trustee for the Owners by the Association, and such proceeds shall be held, used and disbursed to rebuild and repair such damage as the work progresses or on completion, pursuant to such contract as shall be entered into by the Association. The Association shall thereupon contract to repair or rebuild the damaged portions of the Common Area. If the insurance proceeds actually received exceed the cost of rebuilding and repairing such damage, the excess shall be paid and distributed to all the then Owners of the Common Area. The repair or rebuilding contemplated by this Article 12.2(a) shall restore the Common Area to its condition existing immediately prior to such damage, and shall be commenced within one hundred twenty (120) days following receipt of the proceeds of any such insurance by the Association or such trustee. In the event that the repair or rebuilding of the damaged portions of the Common Area is not commenced within said one hundred twenty (120) day period, then such proceeds shall be paid and distributed to the then Owners that are affected by the damaged portions of the Common Area.

(b) Notwithstanding Article 12.2(a) hereof,

(1) if the estimated cost of repairing or rebuilding the damaged portions of the Common Area exceeds that amount of insurance proceeds available therefore by more than ten percent (10%) of such amount, or

(2) if three-fourths (3/4) or more of the Project has been destroyed or substantially damaged, then the proceeds from such insurance policies shall be deposited by the Association with a bank or savings and loan institution selected by the Association as trustee for the Owners. Within thirty (30) days following the delivery of such proceeds to the Association or

to such trustee, the Association shall properly call and hold a special meeting of the Owners. A vote of the Owners shall be held to determine whether to rebuild and repair the Common Area or not to repair and rebuild. In the event Owners representing a majority of the Association to vote to repair and rebuild the damaged portion of the Common Area, the Association shall proceed in accordance with the procedure set forth in Article 12.2(a) hereof and such rebuilding and repair shall commence within ninety (90) days of such vote. In the event Owners representing a majority of the Association do not vote to rebuild and repair the damage, the proceeds of the insurance policies shall be distributed to the Owners and their respective lenders as their respective interests appear in the same proportion that the fair market value of their respective Units bears to the total fair market value of the Project immediately prior to the damage or destruction. Such a vote to not rebuild and repair shall constitute a valid election by the Owners to waive any prohibition against partition.

12.3 Bids for Repair of Common Area. As soon as is practicable following damage to the Common Area on account of fire or other casualty, the Association shall obtain firm bids from two (2) or more reputable contractors to rebuild and repair the Common Area so as to restore them to their condition existing immediately prior to such damage. Such bids shall be used by the Association in estimating the cost of repairing and rebuilding the damaged portions of the Common Area and shall be presented to any meeting of the Owners, where one of the purposes of such meeting is to determine whether or not to rebuild and repair such damage.

12.4 Special Assessments. In the event Owners representing a majority of the Association vote to rebuild and repair the damaged portions of the Common Area, and the proceeds from insurance are not sufficient to cover the cost of rebuilding, the Association shall make a special assessment of the Owners upon the basis of the ratio of the square footage of the floor area in each Unit to be assessed to the total square footage of floor area of all Units to be assessed, in order to raise any additional amount necessary to so rebuild and repair. Such funds shall be deposited with the trustee appointed by the Association in the manner set forth in Article 12.2(a) hereof along with such insurance proceeds.

12.5 Repair of Units. Restoration and repair of any damage to the interior of any individual Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to rebuild after partial or total destruction, shall be completed as promptly as practical and in a lawful and workmanlike manner.

12.6 Determining Fair Market Value. For purposes of distributing insurance proceeds as provided in this Article 12,

the fair market values of the Units, if not otherwise determined (for example, by agreement or court judgment), shall be determined by independent appraisal conducted at the expense of the Association by an MAI appraiser familiar with the residential condominium market in the locality of the Project.

12.7 Recordation of Certificate Not to Rebuild; Revival of Right of Partition. The Association shall promptly execute, acknowledge and record a certificate setting forth the determination of Owners not to rebuild if such determination is made pursuant to this Article 12, and upon recordation the right of the Owner of a Unit which was destroyed and not rebuilt to partition his Condominium shall revive. The Association also shall promptly cause to be prepared and filed with the County Recorder of Los Angeles such revised maps and other documents as may be necessary to show the conversion of the Project (or the portion destroyed) to the status of unimproved land or to show the elimination of one or more of the Units as the result of the destruction.

12.8 Non-Conforming Status - Destruction. In the event the Project has become non-conforming due to changes in the zoning ordinance or the general plan, and if it is determined by the Fire and Building Departments that three-fourths (3/4) of the Project has been destroyed, or substantially damaged, the Project shall not be rebuilt or reconstructed. Further, if the Fire and Building Departments find that the Project has been damaged or destroyed to such an extent that a material part of the Project has been rendered unfit for its prior use and has not been repaired for a period of three (3) years after such damage or destruction, then said non-conforming status shall be lost and the Project may only be reconstructed in conformity with zoning requirements. Any property owner affected by the finding of the Fire and Building Departments may within thirty (30) days after written notice of these findings, appeal to the City Council.

12.9 Amendment. This Article 12 shall not be deleted or amended without the written consent or vote of all Owners.

### 13. CONDEMNATION

The provisions of this Article 13 shall govern the distribution of the proceeds received upon condemnation of the whole or any part of the Project by any governmental or other agency having or claiming eminent domain powers with respect to the Project.

13.1 Negotiation for Compensation. If the entire Project is condemned, the Association shall have the exclusive authority to negotiate the amount of money or other consideration to be paid by the condemning agency in compensation for the taking. Any settlement agreed to by the Association shall not be

binding on the Owners until it is approved by Owners representing a majority of the Association, the Association shall, in the name of the Association, commence or join litigation to determine the amount of compensation for the taking; provided that at the time the Association so approves, it shall also approve a special assessment for the costs of such litigation.

13.2 Distribution of Compensation. Consideration other than money received in compensation of a taking by a condemning agency shall be liquidated. Unless apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners, the compensation shall be distributed among the Owners in the same proportion that the fair market value of their respective Units bears to the total fair market value of the Project at the time of the condemnation. Fair market values of the Units, if not otherwise determined (for example, by court judgment or by agreement) shall be determined by independent appraisal conducted at the expense of the Association as close in time to the condemnation date as is practicable by an MAI appraiser familiar with the residential condominium market in the locality of the Project.

13.3 Partial Condemnation. If only a part of the Project, containing Units, is condemned, and which part is physically severable from the remainder of the Project, which remainder also contains Units, then each Owner of a Unit in the condemned part of the Project shall have exclusive authority to negotiate the compensations for the condemnation of his Unit and his undivided interest in the Common Area, and to commence or join litigation of the same. The Association shall seek a partition of the interests in the Common Area, but only between the Owners of the Units not condemned and each Owner of a Unit which is condemned.

#### 14. AMENDMENT

14.1 Subject to the other provisions of this Declaration, including, without limitation, the rights of Mortgagees pursuant to Article 10 hereof, the provisions of this Declaration and the Bylaws may be amended only by an instrument in writing, signed and acknowledged by all record Owners which amendment shall be effective upon recordation in the Office of the Recorder of Los Angeles County.

14.2 Amendments of a Material Nature. Amendments of a material nature to this Declaration or the Bylaws shall require the approval of all Owners as stated hereinabove as well as the approval of institutional holders of first mortgages representing at least fifty-one percent (51%) of the Units subject to mortgages. A change of any of the following would be considered material:

- (a) Voting rights;



(b) Assessments, assessment liens, or subordination of assessment liens;

(c) Reserves for maintenance, repair and replacement of Common Areas;

(d) Responsibility for maintenance and repairs;

(e) Reallocation of interests in the general or restricted Common Area, or right to their use;

(f) Boundaries of any Units;

(g) Convertibility of Units into Common Areas or vice versa;

(h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;

(i) Insurance or fidelity bonds;

(j) Leasing of Units;

(k) Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;

(l) A decision by the Association to establish self-management when professional management has been required previously by an eligible mortgage holder;

(m) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in this Declaration;

(n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or,

(o) Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

When Unit Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation of the Project, the eligible Mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged Units must agree.

This Declaration shall provide for implied approval to be assumed when an eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal,

provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

15. NOTICES

Any notice permitted or required to be delivered as provided herein or by the Bylaws of the Association may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in a regular depository of the United States Postal Service, postage prepaid, addressed to each person at the address given by such person to the Association for the purpose of service of such notice or to the Unit of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association. Wherever herein or in the Bylaws of the Association notice is required to be given to the Association, notice may be given to any Member of the Association (other than the person giving notice if he is a Member of the Association).

16. SEVERABILITY

The provisions hereof shall be deemed to be independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

17. INTERPRETATION

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

18. LIMITATION OF LIABILITY

The liability of any Owner for performance of any of the provisions hereof shall terminate upon sale, transfer, assignment, or other divestiture of said Owner's entire interest in his or her Condominium with respect to obligations arising hereunder from and after the date of such divestiture.

19. JOINT AND SEVERAL LIABILITY

In the case of joint ownership of a Condominium, the liability to the Association and its Members of each of the Owners thereof, in connection with the liabilities and obligations of Owners set forth or imposed by this Declaration, the Bylaws or any rules and regulations of the Association, shall be joint and several.

20. CONTINUING APPLICABILITY OF MORTGAGE LIEN

No breach of the covenants, conditions and restrictions herein contained nor the enforcement of any lien provisions herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value.

21. CONTINUING APPLICABILITY OF COVENANTS, CONDITIONS AND RESTRICTIONS

All covenants, conditions or restrictions shall be binding upon and valid against any Owner whose title is derived through foreclosure or trustee's sale or otherwise.

22. PROVISION OF GOVERNING DOCUMENTS TO FUTURE PURCHASERS

Pursuant to California Civil Code Section 1368, the Owner of a Unit shall, as soon as practicable before transfer of title to the Unit or execution of a real property sales contract therefore, provide the prospective purchaser with the Associations governing documents, a current financial statement and a statement of the Association's current regular assessments.

23. OPERATION OF SALES MODELS AND OFFICES

Declarant and its agents or designees may, so long as Declarant shall be an Owner of one or more Units within the Project, however, not more than two (2) years after the close of escrow of the sale of the first Unit, maintain or operate sales models and offices on the Project, and construct and maintain such promotional signs and other sales signs and sales aids on or about any part, or portion of the Project, which Declarant, in its reasonable judgment, deems necessary or desirable to sell the remaining Units in the Project owned by Declarant; provided, however, the Declarant in exercising his rights hereunder, shall not unreasonably interfere with the use of the Common Area by any Owner.

24. AUTHORITY TO ENFORCE

The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, rules, liens and charges now or hereafter imposed by or pursuant to the provisions of the Bylaws or the Declaration. Failure by the Association or any Owner to enforce any covenant, condition or restriction applicable to the Project shall in no event be deemed a waiver of the right to do so thereafter. A waiver of any such right shall be only pursuant to an instrument in writing signed by the party to be charged with such waiver and shall be limited to the particular covenant, condition or restriction which is expressly set forth as being waived in such writing.

25. ARBITRATION PROVISIONS

25.1 Notwithstanding anything to the contrary contained in this Declaration, it is expressly declared, stipulated and agreed except as set forth below, that upon the occurrence of any of the following events, the matter shall be resolved by Arbitration, pursuant to the procedures set forth below:

(a) Any breach, default, violation or dispute by or between any Owner(s) and/or the Association, regarding any provision of this Declaration, the Bylaws, or the rules and regulations;

(b) The failure of the Association or any Owner to comply with any requirement or restriction set forth in the Declaration, the Bylaws, or the rules and regulations;

(c) Any dispute between Owner(s) and the Association with respect to any matter related to any portion of any Property covered by this Declaration;

(d) Nothing contained herein shall apply to any action taken by or on behalf of the Association to seek to collect any assessment(s) due and owing from an Owner, as well as any and all costs and expenses associated therewith, and nothing contained herein associated therewith, and nothing contained herein shall apply to any action taken by or on behalf of the Association to seek any immediately necessary equitable relief or similarly urgent remedy, such as temporary restraining order, ex parte temporary protective order or writ of attachment, order to show cause, hearing for preliminary injunction and the like.

25.2 Any claim or dispute described above shall be settled and finally determined by arbitration in accordance with the Rules of Commercial Arbitration of the American Arbitration Association (or its successors) and the provisions of the California Code of Civil Procedure Section 1283.05 (or any successor amended statute or law containing similar provisions shall be applicable in any such arbitration).

25.3 In any case where the American Arbitration Association (or its successor) is not in existence or fails or refuses to act within a reasonably prompt period of time (but in no event exceeding ninety (90) days from the date a request for arbitration is filed), the arbitration shall proceed in accordance with the laws relating to arbitration then in effect in the State of California (including but not limited to Sections 1280 through 1294.2 of the California Code of Civil Procedure, as the same may be amended or superseded from time to time).

25.4 Any such arbitration shall be conducted by one (1) or three (3) Arbitrators but if the parties cannot agree then by three (3) Arbitrators. The judgment upon the award rendered in

any such arbitration shall be final and binding upon the parties and may be entered in any court having jurisdiction thereof.

25.5 The prevailing party of the arbitration shall be entitled to receive as part of the award in its favor, all costs, fees and expenses (including actual attorney's fees and arbitrator fees) incurred with respect to the arbitration, plus interest at the highest rate permitted by law, from and as the date of the alleged breach or violation. In the event it is determined by the Arbitrator that there is no prevailing party, then all costs, fees and expenses excluding attorney's fees incurred where there are no prevailing parties shall be the sole responsibility and obligation of the respective parties who incurred such fees.

26. FINAL PLANS BINDING ON THE ASSOCIATION.

The final City approved building plans, landscaping plans, and utility plans are binding on the Association. Any changes to these items must be first approved by the Planning Commission.

27. RIGHTS OF THE CITY OF HERMOSA BEACH.

In the opinion of the City Manager of the City of Hermosa Beach, (or his authorized representative), the Association at any time fails to maintain the Common Areas or improvements thereon in accordance with standards of repair, maintenance and cleanliness specified in this Declaration, the City may give written notice to the Association, specifying the exact nature of such deficiency. Such written notice of deficiency from the City shall be addressed to the Association and shall require that the Association take appropriate corrective action within thirty (30) days of receipt of such written notice unless there exists a hazardous condition creating an immediate possibility of serious injury to persons or property, in which case the time for correction may be reduced to a minimum of five (5) days. The Association shall have the right, within ten (10) days of receipt of such written notice of deficiency, to file an appeal with the City Council of the City for public hearing before the City Council to consider the reasonableness of the City's requirements as set forth in the written notice of deficiency. The decision of the City Council on such appeal shall be binding upon all parties but may be appealed by the Association through an appropriate action in any court having jurisdiction. If the Association, within the time set forth in the notice of deficiency (subject to extension for such time as may be required to appeal the notice of deficiency to the City Council) does not undertake and complete the corrective work required in the notice of deficiency, the City may undertake and complete such corrective measures as are set forth in the notice, and assess the costs thereof against the Association as a lien, in the same manner as set forth therein for

the establishment of liens against Association property. The remedy in this section allows the City of Hermosa Beach to take action but does not require any action by the City. This remedy is cumulative in nature and does not prevent the City from exercising any other remedy civilly, criminally or administratively than it may possess under its police powers and the laws of the State of California.

28. TERM OF DECLARATION.

The covenants contained herein shall run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2050, after which time, the covenants shall be automatically extended for successive periods of twenty (20) years unless an instrument, executed by all of the Owners in the Project shall be recorded, canceling or terminating this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration on the day and year indicated hereinabove.

SILZAN CO. INC., A  
CALIFORNIA CORPORATION

MARTIN GAHWILER

BY: *Arthur J. Zanello*  
Arthur J. Zanello, President

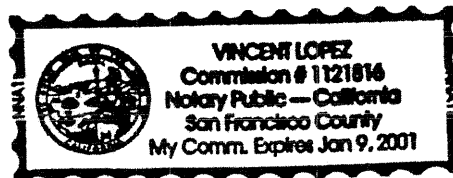
BY: *Martin Gaehwiler*  
Martin Gaehwiler

STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO ) SS.

On NOV. 8, 1999, before me, VINCENT LOPEZ,  
a Notary Public, personally appeared  
ARTHUR J. ZANELLO AND MARTIN GAHWILER  
personally known to me (or proved to me on the basis of satisfac-  
tory evidence) to be the person(s) whose name(s) ~~is~~/are subscribed  
to the within instrument and acknowledged to me that he/~~she~~/they  
executed the same in his/~~her~~/their authorized capacity(ies), and  
that by his/~~her~~/their signature(s) on the instrument the person(s)  
or the entity upon behalf of which the person(s) acted, executed  
the instrument.

WITNESS my hand and official seal.

*Vincent Lopez*



# 2<sup>nd</sup> Street Town Home Association

Meeting: Sept 25, 2001 Tuesday

Time: 7:30pm

## Motion Amendment

### 2<sup>ND</sup> Street THA AMENDMENT Sept. 25, 2001

According to the CCNR's of THA/Condo

#### Leasing

- I. No Unit Owner may lease a Unit for transient or hotel purposes. Any lease agreement between a Unit Owner and a lessee shall be required to first obtain prior written approval from the Town Home Board for said proposed tenancy and further provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Association Bylaws. And that any failure by lessee to comply with the terms of such documents shall be a default under the lease and the provisions of this declaration of the association Bylaws. No Unit Owner may lease his or her entire Unit with out approval of the Town Home Association Board, which shall not be unreasonably withheld, and all such leases shall be in writing. The Association may consider the financial condition of the proposed tenant, the number of occupants in the unit, and any other reasonable information relating to the proposed tenancy. Upon review of the tenant applications a board vote will be casted for tenancy approval. THA Voting Body consists of the President of the Association, Treasurer, Secretary, and Homeowner. A Majority vote must be passed to allow tenancy of applicant. Town Home Leasing Procedure is as follows, no tenant may occupy said home until approval process has been conducted and a vote has been cast by the THA Board:
- a. Homeowner motion for leasing to tenant brought to board at meeting.
  - b. Board motion accepted.
  - c. Tenant information presented to board to assess.
  - d. Board casts tenancy vote on said tenant. Majority rules.
  - e. Upon "Yes" vote determination, said Tenant signs agreement to 2<sup>nd</sup> Street THA Bylaws.
  - f. Failure to apply with Bylaws defaults tenants right to lease said property.
  - g. Immediate eviction right of named tenant instituted.

Penalty of Leasing Agreement Default: If home owner does not comply with in 30 Days to Boards decision to revoke tenancy of occupant/lessee a \$250.00 per day penalty will apply for as many days the above said tenant does not vacate the place of residents. These Funds collected will be placed into the Second Street Town Home Associate account. If home owner does not comply with in 35 days to boards decision to revoke tenancy of occupant/lessee civil action can be investigated and action will be taken against the home owner and tenant that is reasonable.

John O. Felactu  
309 2<sup>nd</sup> Street

Marc & Jo Saalberg  
313 2<sup>nd</sup> Street

Kendra Nichols  
305 2<sup>nd</sup> Street

Marianne Bess  
301 2<sup>nd</sup> Street