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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

PLAYA PACIFICA CONDOMINIUMS

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This Declaration is made on the day and year hereinafter written by **LARRY W. COX, CHARLOTTE A. COX, PHILIP CHODUR and ROSALYN WARBURTON,** hereinafter called "Declarant," with reference to the following Recitals:

RECITALS

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

B. Declarant desires to develop the Condominium Property as a Common Interest Development and establish a Residential Condominium Project under the provisions of the Davis-Stirling Common Interest Development Act providing for separate title to Living Units (as hereinafter defined), appurtenant to which will be an undivided fractional interest in the Common Area (as hereinafter defined).

C. Declarant intends to develop four (4) Condominium units and related common areas on the Condominium Property in a single phase.

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

E. Declarant has or will cause the incorporation of the **Playa Pacifica Condominium Homeowners Association,** a California nonprofit mutual benefit corporation ("Association"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), which will be the management body for the Condominium Project. Each Condominium shall have an appurtenant membership in the Association.

F. The Owners of a Condominium in the Project will receive title to a Living Unit, an appurtenant undivided one-fourth (1/4) fractional interest as tenant-in-common in the Common Area, and an appurtenant membership in the Association.

G. Before selling or conveying any interests in the Condominium Project, Declarant desires to subject the Condominium Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future Owners of the Condominium Property.

Now, therefore, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the Condominium Property and does hereby fix the following protective conditions and restrictions upon each and every ownership interest in the Condominium Property, under which said conditions and restrictions, each ownership interest in the

Condominium Property shall be hereinafter held, used, occupied, leased, sold, encumbered, conveyed and/or transferred, subject to the limitations, conditions and restrictions hereinafter set forth, all of which shall inure to the benefit of, be binding upon and pass with the Condominium Property described above, and each and every ownership interest therein, and shall inure to the benefit of, and apply to and bind the respective successors in title or interest of Declarant.

ARTICLE 1. - DEFINITIONS

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

1.2 ASSOCIATION and/or CORPORATION. "Association" and/or "Corporation" shall mean and refer to the Playa Pacifica Condominium Homeowners Association, a California nonprofit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

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

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

1.5 COMMON AREA. "Common Area" shall mean and refer to the entire Common Interest Development, except the separate interests in space called a Unit. The Common Areas shall be owned as tenants-in-common in equal share, one (1) for each Unit.

1.6 COMMON EXPENSES. "Common Expenses" means and includes the actual and estimated expenses of operating the Condominium Property and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the Condominium Documents.

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

1.8 CONDOMINIUM PLAN. "Condominium Plan" shall mean and refer to the recorded three-dimensional plan or plans of the condominiums built or to be built on the Condominium Property which identifies the Common Area and each separate interest pursuant to California Civil Code Section 1351(e), including such amendments thereto as may from time to time be recorded.

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1.9 CONDOMINIUM PROPERTY. "Condominium Property" shall mean and refer to that certain real property located in San Diego County, California, more particularly described on Exhibit "A" attached hereto.

1.10 DECLARANT. "Declarant" shall mean and refer to **LARRY W. COX, CHARLOTTE A. COX, PHILIP CHODUR and ROSALYN WARBURTON,** their successors and assigns, if such successors or assigns acquire any or all of the Declarant's interest in the Property for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Project, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

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

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

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

1.14 EXCLUSIVE USE COMMON AREA. "Exclusive Use Common Area" shall mean and refer to those portions of the Common Area designed for the exclusive use of one (1) or more, but fewer than all, of the Owners and which are appurtenant to the Unit as shown on the Condominium Plan or deed of conveyance and pursuant to the provisions herein.

1.15 LIVING UNIT, UNIT, CONDOMINIUM UNIT and/or LIVING AREA. "Living Unit," "Condominium Unit" and/or "Living Area" shall mean and refer to the separate interests in space in the Condominium Project which are not owned in common with the other Owners of other Condominiums in the Project. Said Living Units are shown and described on the Condominium Plan and are identified as a Living Unit and are numbered **L-1 through L-4.**

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

1.17 MORTGAGE. "Mortgage" shall mean and refer to a deed of trust as well as a mortgage encumbering a Condominium. "First Mortgage" means a mortgage that has priority over all other mortgages encumbering the same Condominium or other portions of the Project.

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

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

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

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

1.22 PROJECT DOCUMENTS and/or CONDOMINIUM DOCUMENTS. "Project Documents" and "Condominium Documents" means and includes the Declaration, as it may be amended from time to time, the exhibits, if any, attached thereto, the Articles, the Bylaws, and the rules and regulations for the Members, as established from time to time by the Board and the Condominium Plan.

1.23 RULES. "Rules" shall mean and refer to any Rules and Regulations adopted by the Board as provided hereinafter.

ARTICLE 2. - MEMBERSHIP; RIGHTS AND DUTIES

2.1 MEMBERSHIP.

2.1.1 GENERAL. Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser. The transfer of title to a Condominium or the sale of a Condominium and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant thereto to the transferee.

As a Member of the Association, each Owner is obligated to promptly, fully and faithfully comply with and conform to the Articles, this Declaration, the Bylaws and the Rules and Regulations adopted thereunder from time to time by the Board and officers of the Association.

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2.1.2 MEMBERSHIP CLASSES. The Association shall have two classes of voting membership:

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

CLASS B MEMBERSHIP; The Declarant is a Class B Member. Class B membership entitles the holder to two (2) votes for each Condominium of which the Declarant is record owner.

2.1.3 CONVERSION OF CLASS B MEMBERSHIP. The Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

(a) when the total outstanding votes held by the Class A Members are equal to or greater than the total outstanding votes held by the Class B Member; or

(b) two (2) years following the sale of the first Condominium.

2.2 VOTING. Fractional votes shall not be allowed. When there is more than one (1) record Owner of a condominium (co-owners), all of the co-owners shall be Members, but only one (1) of them shall be entitled to cast the single vote attributable to the Condominium. Co-owners should designate in writing one (1) of their owners to vote. If no such designation is made or if it is revoked, the co-owners shall decide among themselves, by majority vote, how that Condominium's vote is to be cast. Unless the Board receives a written objection in advance from a co-owner, it shall be conclusively presumed that the voting co-owner is acting with the consent of his or her co-owners. No vote shall be cast for the Condominium on a particular matter if a majority of the co-owners present in person or by proxy cannot agree on a vote;

2.3 MEMBER RIGHT; NOTICE AND HEARING. As set forth in Section 7341 of the California Corporations Code (or any successor statute or law), no suspension of rights or monetary penalty imposed by the Association, as described hereinafter, shall be effective unless a Member receives fifteen (15) days' prior written notice of the proposed action and the reasons therefor and is given an opportunity to be either heard orally or in writing before the Board not less than five (5) days before the proposed effective date of the action. The notice required hereby may be given by any method reasonably calculated to provide actual notice in accordance with the Delivery of Notice provisions of Article 12.

It is provided, however, that the provisions of the preceding paragraph expressly do not apply to charges imposed against a Member consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association

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for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments as more fully described in Article 3 herein.

2.4 MEMBER RIGHT OF ACCESS. Regardless of any provisions of the Condominium Documents to the contrary or any rules adopted, or penalties imposed by the Board, each Owner shall have an unrestricted right of access for ingress and egress to and from such Owner's Living Unit and Exclusive Use Common Area.

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

2.6 COPIES OF DOCUMENTS, REPORTS. In accordance with California Civil Code Section 1368, the Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following to the prospective purchaser:

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

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

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

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

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and reproduce the requested items or the actual costs to change records.

2.7 RIGHTS OF ASSOCIATION TO COMMON AREA. Except as otherwise provided herein, the Association acting through the Board and officers 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, the Articles and the Bylaws.

2.8 ASSOCIATION'S RIGHT TO ENTER. For the purposes reasonably related to the performance by the Board of its responsibilities under this Declaration, including purposes of performing construction, maintenance or repair for the benefit of the Common Area or the Owners in common, the Association's agents or employees shall have the right, after reasonable notice (not less than twenty-four (24) hours except in emergencies) to enter upon any Condominium or upon any portion of the Common Area (including any Exclusive Use Common Area) at reasonable hours. Such entry shall be made with as little inconvenience to any Owner as possible and any damage caused thereby shall be repaired by the Association at its own expense.

2.9 PENALTIES AGAINST MEMBERS. The Board shall have the right to impose the following penalties against Members:

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

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

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

c) Levying of monetary penalties against an individual Member as a disciplinary measure for failure of a Member to comply with provisions of the Project Documents, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in the repair of damage to Common Areas and facilities for which the Member was allegedly responsible, or in bringing the Member and his Condominium in compliance with the Project Documents. Provided, however, no such monetary penalty may be

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characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code.

2.10 POWER OF ATTORNEY. The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when partition of the Owners' interests in said Condominium Property may be had pursuant to law or this Declaration. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding an aggregate of two-thirds (2/3) of the interest in the Common Area by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

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

2.12 RULES AND REGULATIONS. The Association shall have the power to adopt reasonable rules and regulations governing the use of the Common Area, its facilities, and any Association owned property. The rules and regulations may include, but are not limited to: reasonable restrictions on use by the Owners and their families, guests, employees, tenants, and invitees; rules of conduct; the setting of reasonable administrative fees, deposits, fees for the use of recreational facilities, and the setting of reasonable hearing procedures and monetary penalties and fines in the event of a violation any provisions of the Project Documents. A copy of the current Rules and Regulations, if any, shall be given to each Owner or shall be posted at conspicuous places in the Common Area. If any provision of the Rules and Regulations conflicts with any provision of this Restated Declaration, the Articles, or the Bylaws, the Restated Declaration, Articles, or Bylaws shall control to the extent of the inconsistency.

ARTICLE 3. - ASSESSMENTS

3.1 PURPOSE OF ASSESSMENTS. Except as provided herein, the Association shall levy regular and special assessments sufficient to perform its obligations. Regular Assessments shall include an adequate reserve fund for long-term or periodic maintenance, repair and replacement of the Common Area. The assessments levied by the Association shall be used exclusively to promote the recreation and welfare of the Owners; for the operation, replacement, improvement, and maintenance of the Project, and to discharge any other obligations of the Association under this Declaration. All

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assessment payments shall be put into the appropriate accounts to be used for the foregoing purposes.

3.2 COMMENCEMENT; DUE DATES; NOTICE. The regular assessments provided for herein shall commence as to all Condominiums covered by this Declaration on the first day of the month following the first conveyance of a Condominium to an individual Owner. The first regular assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall determine and fix the amount of the regular assessment against each Condominium at least thirty (30) days in advance of each regular assessment period. Written notice of the regular assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

3.3 RATE OF ASSESSMENTS; COLLECTION. Regular assessments and special assessments (other than those special assessments levied for the rebuilding or major repair of the structural common areas) shall be levied at a uniform rate for all Condominiums and may be collected on a monthly basis, or otherwise, as determined by the Board.

3.4 SPECIAL ASSESSMENTS. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year due to the cost of any construction, unexpected repairs or replacements of capital improvements upon the Common Area, or any other reason, it shall make a special assessment for the additional amount needed, and may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Special assessments shall be levied on the same basis as regular assessments, provided that a special assessment against Owners to raise funds for the rebuilding or major repair of the structural Common Area of the Project shall be levied on the basis of the ratio of the square footage of the floor area of the Condominium to be assessed to the total square footage of floor area of all Condominiums to be assessed.

3.5 SINGLE BENEFIT ASSESSMENT. The Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or for any other cost or expense not otherwise provided for in this Declaration, which will benefit less than all of the Owners, subject to the following:

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

b) Whenever the Association performs any service or accomplishes any item of repair or maintenance which is the duty of any Owner to accomplish, but which has not been accomplished by such Owner, or whenever the Association determines to preempt the performance of a specific Owner of a given act of maintenance or repair, the Association shall

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specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Association, to the Owner for whom such work was done, and shall include such additional cost as a Single Benefit Assessment for such Owner(s).

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

3.6 LIMITATIONS ON ASSESSMENTS.

a) The Board of Directors of the Association shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

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

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

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

3) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget described in the Bylaws and in accordance with Civil Code Section 1365. Provided, however, that prior to the imposition or collection of an assessment under this Section, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting

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process, and the resolution shall be distributed to the members with the Notice of Assessment.

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

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

3.7 OBLIGATION OF PAYMENT. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association all regular assessments, special assessments and single benefit assessments levied and collected as provided herein.

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

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

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

3.10 DELINQUENT ASSESSMENTS. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a Notice of Delinquent

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Assessment as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorneys' fees), late penalties and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien, if by nonjudicial foreclosure as provided below. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association. Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorneys' fees), late penalties and interest accruing thereon, shall be and become a lien upon the Condominium described therein, which lien shall also secure all costs (including attorney fees), late penalties and interest accruing thereon. In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium together with all costs (including attorney fees), late charges and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and release of such lien.

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

3.12 FORECLOSURE OF LIEN. Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1367 of the California Civil Code, or any successor statute or law, and to that end, the right to enforce the lien by sale is hereby conferred upon the Association and its trustee designated in the Notice of Delinquent Assessment, or a trustee substituted pursuant to California Civil Code Section 2934a. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, costs, late penalties and

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attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

3.13 FINANCIAL ACCOUNTS. The Board shall establish no fewer than two (2) separate accounts ("Maintenance Accounts"), into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration and the Bylaws. The Maintenance Accounts shall be established as separate trust savings or trust checking accounts at any banking or savings institution insured by the Federal Deposit Insurance Corporation. The Maintenance Accounts shall include: (i) an Operating Account for current Common Expenses of the Association, (ii) a Reserve Account for capital improvements, replacements, painting and repairs of the Common Area, and (iii) any other accounts which the Board may establish to the extent necessary under the provisions of this Declaration. The Board shall not commingle any amounts deposited into any of the Maintenance Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Accounts by the Declarant so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by the Declaration.

3.14 ASSESSMENT ROLLS. The Association shall maintain and revise as necessary, an assessment roll for every Condominium subject to assessment hereunder, reflecting the name and address of each Owner, and other data necessary to levy assessments.

3.15 CONDOMINIUMS NOT SUBJECT TO ASSESSMENTS. If for any reason whatsoever one or more Condominiums is not required to pay assessments (e.g. a Condominium owned by the Association by virtue of the Association having acquired such Condominiums through foreclosure), such assessments shall be deemed to be common expenses collectible from all of the remaining Condominium Owners in the same proportion as each Condominium now bears to the others less the number of Condominiums owned or not assessed by the Association.

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

ARTICLE 4. - USE RESTRICTIONS

4.1 USE OF CONDOMINIUMS. Each Condominium shall be improved, used and occupied for private, single-family dwelling purposes only, and no portion thereof, nor the Common Area, shall be used for any commercial purpose; provided, however, Declarant may use any of the Units and Exclusive Use Common Areas owned or leased by Declarant

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as model homes and sales offices during that period of time commencing when the Condominiums are first sold or offered for sale to the public, and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners thereof, or three (3) years from the date of sale of the first Condominium in the Project, whichever shall first occur.

4.2 EXCLUSIVE USE COMMON AREAS. Each Exclusive Use Common Area shall be (i) appurtenant to the Unit with which the Exclusive Use Common Area is conveyed, and (ii) used only for the purposes set forth in this Declaration. The right to so use an Exclusive Use Common Area shall be exercisable only by the Owner of the Condominium appurtenant thereto and/or said Owner's tenants and licensees. Conveyance of a Condominium shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer all rights thereto to the vested Owner of the Condominium. Any license thereto shall be terminated upon such conveyance. No Exclusive Use Common Area nor any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from the Condominium to which it is appurtenant. Each Exclusive Use Common Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Article 4 or Article 6 hereinafter.

Except as expressly provided in this Article, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Common Area or any other part of the Common Area without the prior written consent of the Board or its committee in accordance with the provisions of Article 5 herein.

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

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

4.5 OFFENSIVE ACTIVITIES AND CONDITIONS. No noxious or offensive activity shall be carried on in any Living Unit, or on the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements made at the Board's instruction, or at Declarant's instruction. Nothing shall be done in any Living Unit, or in, on, or to the Common Area which will impair the structural integrity of any structure located in the Project. Except as

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otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Living Units, streets and the Common Area. No fences, hedges or walls shall be erected or maintained upon the Condominium Property except such as are installed in accordance with the initial construction of the buildings located on the Condominium Property or as provided by the Board. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area, except in areas which may be approved by the Board.

4.6 ENTIRETY OF UNIT. No Owner may sell, assign, lease or convey his interest in the Common Area separate and apart from his Unit nor any portion of his Unit apart from the entire Unit.

4.7 LEASE OF CONDOMINIUM. Each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board and the failure to comply with the provisions of these documents shall be a default under the lease.

4.8 PETS. No Owner may raise, breed, or keep animals, livestock, or poultry of any kind in a Unit, Exclusive Use Common Area or on the Common Area, except dogs, cats, or other usual and ordinary household pets, which may be kept in Units, not to exceed two (2) in number, subject to the Rules and Regulations (if any).

4.9 SIGNS. No Owner may display any sign to the public view on or from any Unit or the Common Area without the prior written consent of the Board, except a sign advertising the property for sale, lease, or exchange as provided in Section 712 of the California Civil Code.

Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain during the sales period set forth above, such signs, poles and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums, provided such signs do not unusually interfere with the right of use and quiet enjoyment of the Condominium Owners.

4.10 ANTENNAS, FLAG POLES, ETC. There shall be no outside television or radio antennas, satellite dishes, masts, poles or flag poles constructed, installed or maintained on the Condominium Property for any purpose whatsoever without the prior written consent of the Board and necessary approvals and permits from the appropriate local government agency.

4.11 CAR MAINTENANCE AND POWER EQUIPMENT. No power equipment, hobby shops or car maintenance (other than emergency or minor maintenance work) shall be permitted on the Condominium Property,

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except with prior written approval of the Board. Approval shall not be unreasonably withheld.

4.12 WINDOW COVERINGS. All drapes, curtains, window coverings, shutters or blinds visible from the street or Common Areas shall be beige in color or lined in beige. Other colors, materials and patterns may be used as approved by the Board. No window shall ever be covered with paint or aluminum foil, provided however, non-reflective solar films will be allowed.

4.13 INTERIOR OF CONDOMINIUMS. Subject to the provisions of this Declaration, applicable provisions of law and Civil Code Section 1360, each Owner shall have the right, at his sole cost and expense to make any improvement or alteration within the boundaries of his Living Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Area, and to maintain, repair, repaint, paper, panel, plaster, tile and finish the interior surfaces of the ceiling, floors, window frames, trim, door frames and perimeter walls of the Unit and the surfaces of the bearing walls and partitions located within the Unit and to substitute new finished surfaces in place of those existing on said ceiling, floors, walls, and doors of said Unit.

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

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

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

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

(d) Any Owner who wishes to modify his Living Unit pursuant to this Section, shall comply with the provisions of Article 5 hereafter regarding the review and approval by the Board or its designated committee of such modifications, which approval shall not be unreasonably withheld.

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4.15 VEHICLE RESTRICTIONS. No Owner may park any automobile or other motor vehicle in the Common Area or in any Exclusive Use Common Area except in a space designated for the Owner by the Board or the Governing Documents. The Board, in its discretion, may adopt reasonable rules governing the operation, maintenance, storage and parking of any vehicle, including trucks, campers, trailers, boats or commercial vehicles on the Common Area.

4.16 REMOVAL OF TRASH. All rubbish, trash, garbage and other waste shall be regularly removed from the Condominium Property, and shall not be allowed to accumulate thereon. Rubbish, trash, garbage and other waste shall not be kept on the Project except in sanitary containers designed for such purpose. All equipment for storage or disposal of such materials shall be maintained reasonably clean and sanitary, and shall be kept screened and concealed from view of other Condominiums and from the Common Area.

4.17 USE OF COMMON AREA. Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

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

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

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

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

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be canceled or suspended or the company issuing the same to refuse renewal thereof.

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

4.19 LIABILITY FOR DAMAGE TO COMMON AREA. Each Owner shall be legally liable to the Association for all damages to the Common Area or to any improvements thereof or thereto, including but not limited to the buildings, facilities and landscaping, caused by such Owner, his licensee or any occupant of such Owner's Living Unit, as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of his Unit, and shall, after written notice and an opportunity for a hearing as provided in Article 2 herein, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Living Unit.

4.20 EXCLUSIVE USE OF NONEXCLUSIVE USE COMMON AREAS. The Board shall have the right to allow one or more Owners to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Exclusive Use Common Area(s) or Living Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

ARTICLE 5. - ARCHITECTURAL CONTROL

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

5.2 MEETINGS. The Board shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of the majority of the Board shall constitute an act by the Board unless the unanimous decision is otherwise required.

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

5.4 FEE FOR REVIEW. The Board shall have the right to establish a fee for the review and approval of plans and specifications which must be submitted pursuant to the provisions of this Article or the Bylaws, which shall be reasonably related to the duties performed.

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5.5 COMPENSATION. The members of the Board shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder.

5.6 LIABILITY. Neither the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the neighborhood; or (d) the execution and filing of an estoppel certificate whether or not the facts therein are correct; provided, however, that such Board member has acted in good faith on the basis of such information as may be possessed by him.

5.7 RESTRICTED ACTIVITY. No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement or structure of any kind, or exterior alteration shall be commenced, erected, placed, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto, until the same has been approved in writing by the Board. No extensive landscaping visible from the street or from the Common Area shall be undertaken by any Owner until the same has been approved in writing by the Board.

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

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

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improvements, and neither the Board nor any Committee shall have any authority or right to approve or disapprove thereof.

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

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

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

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

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ARTICLE 6. - MAINTENANCE

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

6.2 FAILURE BY OWNER TO MAINTAIN. In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, the Board may notify the Owner of the work required and request that the same be done within sixty (60) days from the giving of such Notice. In the event the Owner fails to carry out such maintenance within said time period, the Board may, following notice and a hearing as provided in Article 2 herein, cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid, such costs shall bear interest which shall not be greater than the maximum rate authorized by law.

6.3 INTERIOR OF UNIT. Each Owner shall be responsible for the maintenance, repair and replacement of the following items relating to such Owner's Condominium Unit, provided such systems are used or operated exclusively by such Owner and not in common:

(a) the glass doors and windows attached to the Unit, whether interior or exterior, including the screens, metal frames and tracks of such doors and windows, and fixtures attached thereto, provided that replacement of exterior items shall be subject to the requirements of Article 5, herein;

(b) the interior areas of such Owner's Living Unit, including the interior surfaces of doors, walls, floors and ceilings;

(c) all appliances whether "built-in" or "free-standing" within the Unit;

(d) the plumbing, heating, ventilating and air-conditioning systems, if any, servicing such Owner's Condominium, wherever located; and

(e) the television cable equipment, wires and connections, telephone wiring, and all related appliances, equipment and fixtures.

6.4 EXCLUSIVE USE COMMON AREAS. Each Owner shall be responsible (i) for the maintenance of the interior areas of the Exclusive Use Common Areas appurtenant to such Owner's Unit in a clean manner, consistent with the surrounding properties, and to insure that such area does not pose a threat to the health, safety or welfare of

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other Owners, and (ii) for the maintenance, repair and replacement of the lighting fixtures, including light bulbs, and other appliances located within such exclusive use common areas, including lighting fixtures located at the front entrance to said Unit, provided such fixtures and appliances are not used in common with other Owners, in which case the Association shall be responsible. Except in emergency situations, the replacement of exterior fixtures, appliances and equipment shall require the prior approval of the Board. In the case of emergency replacement of the items specified above, such Owner shall take reasonable measures to conform with the overall scheme of the Project, and subsequently replace such item if directed by the Board.

6.5 COMMON AREAS. The Association shall be responsible for the maintenance, repair and replacement of the following items related to the Common Areas:

(a) All Common Area facilities, including utility facilities as described herein;

(b) All Common Area fixtures (lighting or otherwise) including those located in the Exclusive Use Common Areas which are not used exclusively by one Owner;

(c) All Common Area improvements including the exterior surfaces, roofs, doors and foundations of all buildings and structures;

(d) All Common Area and Exclusive Use Common Area walls, railings and fences; provided, that upon application by an Owner, the responsibility for maintenance of Exclusive Use Common Area walls, railings and/or fences related to such Owner's Exclusive Use Common Areas which are not visible from the Common Area may be transferred to such Owner;

(e) All Common Area landscaping;

(f) All Association owned furniture and equipment; and

(g) All property that may be acquired by the Association.

Should the maintenance or repair herein described result from the negligent act or neglect of an Owner, his guests or licensees, the Owner shall reimburse the Association for such maintenance or repair.

6.6 WILLFUL OR NEGLIGENT ACT; NEGLECT. The responsibility of the Association for maintenance, repair and replacement shall not extend to any such action arising out of or caused by the willful or negligent act or neglect of an Owner, or such Owner's guests, tenants, invitees or pets, the cost of which is not covered by insurance carried by the Association. Such maintenance, repair and replacement shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the

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method of repair. If the responsible Owner fails to take the necessary steps to rectify the situation within a reasonable time under the circumstances, the Association shall make the repairs and charge the cost thereof to the responsible Owner, which cost shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law) until paid in full. If an Owner disputes his or her responsibility for the repairs, the Owner shall be entitled to a notice and hearing as provided in Article 2 herein before any charges may be imposed.

6.7 PEST CONTROL. The Association shall cause the maintenance and repair of the Common Area as required to control the presence of or damage caused by wood-destroying pests or organisms; provided, however, the costs of temporary relocation during such maintenance or repair shall be paid by the Unit owner affected. The Association is hereby given the power to temporarily remove any Unit owner for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The Association shall give notice of the need to temporarily vacate a Unit to the record owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation. Any such notice shall be given in accordance with the Delivery of Notice provisions in Article 12 herein, provided that an additional notice shall also be given to any occupant of the Condominium if such occupant is not the record owner.

6.8 UTILITIES. The Association shall maintain all utility facilities located in the Common Area except for those facilities maintained by public, private or municipal utility companies, and those maintained by the Owners as described herein. The Association shall pay all charges for utilities supplied to the Common Area except those metered or charged separately to the Condominiums. The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving and telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

(a) Whenever utility facilities are installed within the Project, which utility facilities or any portion thereof lie in or on Condominiums owned by other than the Owner of a Condominium served by said utility facilities such Owner shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain said utility facilities as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance;

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(b) The foregoing notwithstanding, a Condominium Unit owner shall be entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common area for such Unit. The access shall be subject to the consent of the Association or Board, whose approval shall not be unreasonably withheld, and which may include such approval of telephone wiring upon the exterior of the Common Areas, and other conditions as the Association or Board determines reasonable;

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

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

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

ARTICLE 7. - INSURANCE

7.1 FIRE AND CASUALTY INSURANCE. The Association shall obtain and maintain a policy or policies of fire and casualty insurance with an extended coverage endorsement for the full insurable replacement value of the improvements in the Common Area. The amount of coverage shall be determined by the Board. This insurance shall be maintained for the benefit of the Association, the Owners, and their Mortgagees, as their interests may appear as named insured.

7.2 GENERAL LIABILITY INSURANCE. The Association shall obtain and maintain a policy or policies insuring the Association, Manager, Owners, and the Owners' relatives, invitees, guests, employees, and their agents against any liability for bodily injury, death, and property damage arising from the activities of the Association and

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its Members, with respect to the Common Area. Limits of liability under the insurance shall not be less than that common to similar project in the area covering all claims for death, personal injury, and property damage arising out of a single occurrence.

The limits and coverage shall be reviewed at least annually by the Board and increased or decreased in its discretion.

7.3 OTHER ASSOCIATION INSURANCE. The Association shall purchase and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws. The Association may also purchase and maintain fidelity bond coverage which names the Association as an obligee, for any person or entity handling funds of the Association, whether or not such persons or entities are compensated for their services. This coverage may be in an amount that is at least equal to the estimated maximum of funds, including reserve funds, in the custody of the Association or its Managing Agent at any given time during the term of each bond. However, the aggregate amount of these bonds may not be less than one hundred fifty percent (150%) of each year's estimated annual operating expenses and reserves. The Association also may purchase and maintain a blanket policy of flood insurance, and demolition insurance in an amount that is sufficient to cover any demolition that occurs following the total or partial destruction of the Project and a decision not to rebuild. Additionally, the Association may obtain such other insurance as the Board of Directors deems reasonable and necessary.

7.4 TRUSTEE FOR POLICIES. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interests of all named insureds under all insurance policies purchased and maintained by the Association. All insurance proceeds under any of those policies shall be paid to the Board as trustee. The Board shall use the proceeds for the repair or replacement of the property for which the insurance was carried or for the purposes described herein. The Board also is authorized to negotiate loss settlements with the appropriate insurance carriers, to compromise and settle any claim or enforce any claim by any lawful action, and to execute loss claim forms and release forms in connection with such settlements.

7.5 INDIVIDUAL INSURANCE. An Owner shall separately insure his or her personal property, and shall obtain and maintain personal liability and property damage liability insurance for his or her Unit, provided that the insurance contains a waiver of subrogation rights by the carrier as to the other Owners, the Association, and the institutional First Mortgagee of the Owner's Unit. The Owner shall integrate his or her personal insurance with the Association's insurance.

7.6 INSURANCE PREMIUMS. Insurance premiums for any insurance coverage obtained by the Association shall be included in the regular or special assessments. That portion of the assessments necessary for the required insurance premiums shall be used solely for the payment of the premiums when due.

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ARTICLE 8. - DAMAGE OR DESTRUCTION; CONDEMNATION

8.1 DAMAGE OR DESTRUCTION. If Project improvements are damaged or destroyed by fire or other casualty, the improvements shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Board or its appointed committee, unless either of the following occurs:

(1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the costs of such repairs or reconstruction, and seventy-five percent (75%) of the total voting power of the Association residing in Members and their first lenders vote against such repair and reconstruction; or

(2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in Article 3, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

8.2 REPAIR OR RECONSTRUCTION.

8.2.1 COSTS OVER $20,000. If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of $20,000 the Board shall designate a general contractor and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction and any borrowing by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the general contractor or the architect and/or are justly due to

contractors, subcontractors, materialmen, engineers, or other person (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed shall not exceed the cost of the work actually accomplished up to the date of such certificate;

(4) That no part of the costs of the services and materials described in the foregoing paragraph (1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) If the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

8.2.2 COSTS UNDER $20,000. If the cost of repair or reconstruction is $20,000 or less, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

8.3 FAILURE TO REPAIR OR RECONSTRUCT.

8.3.1 MATERIAL ALTERATION. If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction as determined by the Board (a material alteration shall be conclusively presumed if repair or reconstruction costs are one hundred-twenty-five percent (125%) of the current replacement cost of all Project improvements), the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. If any Owner or first lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board. For the purpose of effecting a sale under this Section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event that Association fails to take the necessary steps to sell the entire Project as required hereunder

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within sixty (60) days following the date of a determination by the Board or arbitrator of a material alteration, or within one hundred twenty (120) days following the date of damage or destruction if the Board has failed to make a determination as to a material alteration, any Owner may file an action covering the entire Project under Civil Code Section 1359, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided herein.

Anything herein to the contrary notwithstanding, any Owner or group of Owners shall have a right of first refusal to match the terms and conditions of any offer made to the Association in the event of a sale of the Project under this Section, provided this right is exercised within ten (10) days of receipt by the Owners of a notice from the Association containing the terms and conditions of any offer it has received. If the Owner or group of Owners subsequently default on their offer to purchase, they shall be liable to the other Owners and their respective mortgagees, for any damages resulting from the default. If more than one (1) Owner or group elects to exercise this right, the Board shall accept the offer that in its determination is the best offer.

8.3.2 NO MATERIAL ALTERATION. If the improvements are not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners, subject to the rights of the Owners' respective mortgagees, in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds of the cost of mitigating hazardous conditions on the property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree on an appraiser, the appraiser shall be appointed by the then President of the San Diego County Bar Association.

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

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

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Condominiums affected by the condemnation, said values to be determined by the method provided above.

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

If there is a substantial taking of the Project's property (more than fifty percent (50%)), the Owners may terminate the legal status of the Project, and if necessary, bring a partition action under Civil Code Section 1359 or any successor statute, on the election to terminate by sixty-seven percent (67%) of the total voting power of the Association residing in Members other than Declarant and the approval of Eligible Mortgage Holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holder Mortgages. The proceeds from the partition sale shall be distributed to the Condominium Owners and their respective mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in above.

ARTICLE 9. - PARTITION PROHIBITED

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

ARTICLE 10. - RIGHTS OF MORTGAGEES

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

10.2 NO RIGHT OF FIRST REFUSAL. This Declaration neither contains nor shall be amended to contain any provision creating a "right of

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first refusal" to the Association before a Condominium can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of any first mortgagee to: (a) foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor, or (c) sell or lease a Condominium acquired by the Mortgagee.

10.3 UNPAID DUES OR CHARGES. Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments made by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Condominiums including such acquirer, his successors and assigns.

10.4 ACTION REQUIRING MORTGAGEE APPROVAL. Except as provided by statute in case of condemnation or substantial loss to the Units and/or Common Area, unless at least two-thirds (2/3) of the First Mortgagees (based upon one (1) vote for each mortgage owned), or two-thirds (2/3) of the Owners (other than Declarant) of the individual Condominium Units in the Project have given their prior written approval, the Association and/or the Owners shall not be entitled to:

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

(b) Change the pro rata interest or obligations of any Condominium Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Unit in the Common Area;

(c) Partition or subdivide any Condominium Unit;

(d) Seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area by act or omission (the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not be considered a transfer within the meaning of this clause);

(e) Use hazard insurance proceeds for losses to any Condominium Property (whether Units or Common Area) for other than the repair, replacement, or reconstruction of the Condominium Property.

10.5 PRIORITY OF PROCEED DISTRIBUTION. Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other condominium constituent documents shall

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give a Condominium Unit Owner, or any other party, priority over any rights of the first mortgagee or beneficiary of the condominium unit pursuant to its mortgage or deed of trust in the case of a distribution to such unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

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

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

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

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

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

10.7 MANAGEMENT AGREEMENT. Any agreement for management of the Project, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, or fewer, written notice and shall have a term of not more than one (1) year, renewable with the consent of the Association and the management agent.

The Board shall not terminate professional management of the Project and assume self-management, when professional management had been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the first Mortgages on Condominiums;

10.8 INFORMATION FROM MORTGAGEE. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

10.9 NON-CURABLE BREACH. Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment-in- lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. For purposes of this Section, "breach" shall not apply to any lien of or obligation for

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assessments owed to the Association which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

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

10.11 FINANCIAL STATEMENT. Any First Mortgagee shall be entitled, on written request therefor, to have an audited financial statement for the immediately preceding fiscal year prepared at its own expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

10.12 TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION. Neither the Association nor Owners may elect to terminate the legal status of the Project for reasons other than substantial destruction or condemnation of the Project as provided herein, without the written consent of Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the votes of the mortgaged Dwelling Units.

ARTICLE 11. - ENFORCEMENT

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

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

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

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

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ARTICLE 12. - GENERAL PROVISIONS

12.1 EXTENSION OF DECLARATION. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2050, after which date they shall automatically be extended for successive periods of ten (10) years, unless a majority of the Owners have executed and recorded at any time within six (6) months prior to December 31, 2050, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for the conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2050, or at the end of any such ten (10) year period.

12.2 DELIVERY OF NOTICE. Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States Mail, first class or certified, postage prepaid, addressed to the person to be notified at the current address given by such person to the Secretary of the Board or addressed to the Condominium of such person if no address has been given to the Secretary.

12.3 AMENDMENTS. Prior to close of escrow on the sale of the first Condominium in the Project, Declarant may amend this Declaration. Except as may be in accordance with the provisions of California Civil Code Sections 1355 and 1368 or any amendment or successor statute thereto, during the period of time after the sale of the first Condominium, and prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of sixty-seven percent (67%) of the total voting power of each class of members of the Association. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of (i) sixty-seven percent (67%) of the total voting power of the Association, and (ii) sixty-seven percent (67%) of the voting power of the members of the Association other than Declarant. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any such amendment shall become effective upon the recording with the Office of the County Recorder of San Diego County, California of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the Office of the County Recorder of San Diego County, California. No material amendment may be made to this

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Declaration without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units which are subject to mortgages held by such Eligible Mortgage Holders.

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

(a) Voting rights;

(b) Assessments, assessment liens, or the priority of assessment liens;

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

(d) Responsibility for maintenance and repairs;

(e) Reallocation of interests in the Common Areas, or rights to their use;

(f) Redefinition of the boundaries of any Condominium Unit;

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

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

(i) Insurance or fidelity bond coverage;

(j) Leasing of Condominium Units;

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

(l) Any decision by the Board to establish self-management when professional management had been required previously by the Project Documents or by an Eligible Mortgage Holder;

(m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;

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

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

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

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

12.4 ANNEXATION OF ADDITIONAL PROPERTY. Upon approval in writing of the Association, pursuant to two-thirds (2/3) majority of the voting power of its Members, excluding the voting power of the Declarant, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation, which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership in the Association to Class A membership, the action herein requiring membership approval shall require the vote or written consent of at least (i) two-thirds (2/3) majority of the voting power of Members of the Association, and (ii) two-thirds (2/3) majority of the voting power of Members of the Association other than Declarant.

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

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

12.7 CONFLICT. In the event of a conflict between any Project Documents, the provisions of this Declaration shall take precedence.

12.8 TITLES; HEADINGS. The titles and/or headings of the Articles and Sections of this Declaration are not a part hereof and shall

have no effect upon the construction or interpretation of any part hereof.

12.9 COST OF LITIGATION. In the event the Association, Declarant, or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgement. A party not entitled to recover his costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover his costs or attorney's fees.

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

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

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

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

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

The rights of Declarant provided in said paragraphs (a) through (d) above may be exercised during the period of time

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commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners thereof, or three (3) years from the date of sale of the first Condominium in the Project, whichever shall first occur.

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

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

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

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IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this Declaration of Covenants, Conditions and Restrictions on this 30 day of November, 1970.

DECLARANT:

Larry W. Cox

Charlotte A. Cox

Philip Chodur

Rosalyn M. Warburton

(Attach Proper Notary Certificate(s))

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Through the Courtesy of — UNION LAND TITLE COMPANY

Individual Acknowledgment

STATE OF CALIFORNIA
COUNTY OF San Diego } SS.

331

On December 3, 19 90, before me, the undersigned, a Notary Public in and for said County and State, personally appeared

Charlotte A. Cox

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person ____ whose name is subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

L Bodenstadt

Notary Public in and for said County and State.

Notary Seal

OFFICIAL SEAL
L. BODENSTADT
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Exp May 29 1991

UL-121

San Diego Trust & Savings Bank 724

NOTARY ACKNOWLEDGEMENT
INDIVIDUAL

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO } SS.

On this 30th day of November in the year 1990 before me, the undersigned, a Notary Public in and for said County and State, personally appeared LARRY W. COX

~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to this instrument, and acknowledge that he (she/they) executed the same.

Witness my hand and official seal:

Robert J. Sutherland
Notary's Signature

OFFICIAL SEAL
ROBERT J. SUTHERLAND
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Exp April 5 1991

(for notary seal or stamp)

MIS-45 (Rev. 3/85)

GENERAL ACKNOWLEDGMENT

NO. 201

State of California
County of San Diego } SS.

On this the 30 day of November 1990, before me,

Joan W. Rayner

the undersigned Notary Public, personally appeared

Philip Chodur and Rosalyn M. Warburton

✓ personally known to me
proved to me on the basis of satisfactory evidence
to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged that they executed it.

WITNESS my hand and official seal.

Joan W. Rayner
Notary's Signature

7110 122

NATIONAL NOTARY ASSOCIATION • 8236 Remmet Ave • P.O. Box 7184 • Canoga Park, CA 91304-7184

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EXHIBIT "A"

PROJECT LEGAL DESCRIPTION

Lots 15 and 16 in Block 233 of PACIFIC BEACH, in the City of San Diego, County of San Diego, State of California, according to the Map thereof Nos. 697 and 854, filed in the Office of the County Recorder of San Diego County, January 8, 1892 and September 28, 1898 respectively.

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SUBORDINATION AGREEMENT

Valle De Oro Bank, N.A., being the beneficiary under that certain Deed of Trust, recorded June 29, 1990 as File/Page No. 90-354502, of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to the Declaration of Covenants, Conditions and Restrictions to which this Subordination Agreement is attached.

DATED: Nov. 12, 1990

By: _____
T. FERRARA
EXEC. VICE PRESIDENT

By: D. Brian Snow
D. BRIAN SNOW
Vice President & Manager

(Attach Proper Notary Certificate(s))

Staple

STATE OF CALIFORNIA
COUNTY OF San Diego } SS.

On November 12, 1990 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Tom Ferrara personally known to me (or proved to me on the basis of satisfactory evidence) to be the Executive Vice President, and D. Brian Snow personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President ~~Secretary~~ on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

Signature _____

Ack. Corporation

Staple

WTC 063

WTC WORLD TITLE COMPANY

FOR NOTARY SEAL OR STAMP

OFFICIAL SEAL
LISA A. KILPATRICK
NOTARY PUBLIC CALIFORNIA
PRINCIPAL OFFICE IN
SAN DIEGO COUNTY
My Commission Exp. November 26, 1993