

Recording Requested by:

Best, Best & Krieger (WCE)
600 E. Tahquitz McCallum Way
Palm Springs, California 92262

When Recorded Return to:

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Palm Springs, California 92262

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County Recorder
RIVERSIDE COUNTY, CALIFORNIA

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE PALM SPRINGS BIARRITZ HOMEOWNERS ASSOCIATION

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DECLARATION OF
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THE PALM SPRINGS BIARRITZ HOMEOWNERS ASSOCIATION

THIS DECLARATION is made this 20 day of April,
1984, by UNITED CITIZENS MORTGAGE COMOPANY, INCORPORATED, a
corporation, hereinafter be referred to as "Declarant."

R E C I T A L S

A. Declarant is the owner of a leasehold estate in and to certain real property described in Exhibit "A" attached hereto, which shall be the Covered Property under this Declaration. Declarant intends to develop on the Covered Property a condominium project as defined in Sections 783 and 1350 of the California Civil Code. These covenants, conditions and restrictions are imposed upon the Covered Property

in order to provide for its management and to enhance and protect the value, desirability and attractiveness of the Covered Property.

B. In furtherance of these objectives, The Palm Springs Biarritz Homeowners Association, a California nonprofit mutual benefit corporation, has been incorporated and will manage the Project, maintain and administer the Common Areas, and administer and enforce this Declaration, the Articles and Bylaws of the Association, and perform such other acts as may benefit the Project.

NOW, THEREFORE, Declarant covenants and agrees that the Covered Property, the Project and all of the Condominiums, including any improvements added or constructed on or about the Project in the future, shall be held, conveyed, assigned, hypothecated, encumbered, leased, used, occupied and improved subject to the following limitations, restrictions, covenants and conditions, for the purpose of creating the condominium project and of mutually benefiting the Covered Property, the Project and all of the Condominiums, and the future Owners thereof. All of the restrictions set forth herein shall run with the land, and shall be binding upon and for the benefit of all parties having or acquiring any right, title or interest in the Covered Property, the Project or any of the Condominiums.

I

DEFINITIONS

The following terms used in this Declaration are defined as follows:

Section 1. Adjacent Owners. The term "Adjacent Owners" shall mean and refer to Owners whose Units are located in the same Condominium Building and are separated by a Party Wall.

Section 2. Architectural Committee. The term "Architectural Committee" or "Committee" shall mean and refer to the Architectural Committee created pursuant to the Article of this Declaration entitled "Architectural Control."

Section 3. Articles. The term "Articles" shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed in the Office of the Secretary of State of California, as amended from time to time.

Section 4. Assessments. The following definitions shall apply to the assessments described below:

(a) Regular Assessment shall mean the amount which is to be paid by each Owner to the Association for Common Expenses as provided by the terms of this Declaration.

(b) Special Assessment shall mean a charge against each Owner and his Condominium, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the

Common Area which the Association may authorize pursuant to the provisions of this Declaration.

(c) Reimbursement Assessment shall mean a charge against a particular Owner for the purpose of reimbursing the Association for costs incurred in bringing the Owner and his Condominium into compliance with the provisions of this Declaration, the Articles, Bylaws, or Association rules, or any other charge designated as a Reimbursement Assessment in this Declaration or Association rules, together with attorney's fees and other charges payable by such Owner, pursuant to the provisions of this Declaration.

(d) Reconstruction Assessment shall mean a charge against each Owner and his Condominium representing a portion of the cost to the Association for reconstruction of any portion of the Common Area pursuant to the provisions of this Declaration.

Section 5. Association. The term "Association" shall mean and refer to THE PALM SPRINGS BIARRITZ HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 6. Board of Directors. The term "Board of Directors" or "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 7. Bylaws. The term "Bylaws" shall mean the Bylaws of the Association, as amended from time to time.

Section 8. City. The term "City" shall mean and refer to the City of Palm Springs, California, a municipal corporation of the State of California.

Section 9. Common Area. The term "Common Area" shall mean all portions of the Project except the Units, and shall include all common recreational facilities as well as all other land, structures and facilities within the Covered Property, all as specifically defined and described in the recorded Condominium Plan for the Project.

Section 10. Common Expenses. The term "Common Expenses" shall mean and refer to the actual and estimated costs of:

(a) maintenance, management, operation, repair and replacement of the Common Area, and all other areas on the Covered Property which are maintained by the Association;

(b) unpaid Special, Reconstruction and Reimbursement Assessments;

(c) maintenance by the Association of areas within the public right-of-way of public streets in the vicinity of the Covered Property as provided in this Declaration or pursuant to agreements with the City;

(d) costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;

(e) the costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their Condominiums to the extent such services are paid for by the Association and not separately and individually billed directly to Owners;

(f) the costs of fire, casualty, liability, worker's compensation and other insurance covering the Common Area, the Project and the Association;

(g) the costs of any other insurance obtained by the Association;

(h) reasonable reserves as deemed appropriate by the Board;

(i) the costs of bonding of the members of the Board, any professional managing agent or any other person handling the funds of the Association;

(j) any taxes paid by the Association;

(k) amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Area or portions thereof;

(l) costs incurred by the Architectural Committee or other committees of the Association; and

(m) such other costs or expenses incurred by the Association in connection with the Common Area, this Declaration, the Articles or Bylaws or in furtherance of the purposes of the Association or in the discharge of any obligations imposed on the Association by this Declaration.

Section 11. Condominium. The term "Condominium" shall mean and refer to a subleasehold estate in the Covered Property defined as a "Condominium" pursuant to California Civil Code Section 783, and consisting of a separate interest in the Unit and an undivided fractional interest as tenant in common in the Common Area.

Section 12. Condominium Building. The term "Condominium Building" shall mean and refer to a separate building containing two or more Units. Each Condominium Building shall be separately identified on the Condominium Plan for the Project.

Section 13. Condominium Plan. The term "Condominium Plan" shall mean that certain Condominium Plan or Plans and any amendments thereto recorded by Declarant for this Project. In interpreting conveyances, declarations and plans, the existing physical boundaries of a Unit constructed, or reconstructed, in substantial accordance with the Condominium Plan shall be conclusively presumed to be its boundaries rather than the description expressed in any such conveyance, declaration or plan, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries as shown on the Plan or in the conveyance or Declaration and those of the building as constructed.

Section 14. County. The term "County" shall mean and refer to Riverside County, California.

Section 15. Covered Property. The term "Covered Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto.

Section 16. Declarant/Grantor. The terms "Declarant" or "Grantor" shall mean and refer to United Citizens Mortgage Company, Incorporated, its successors and assigns.

Section 17. Declaration. The term "Declaration" shall mean this Declaration, i.e., this document.

Section 18. Improvements. The term "Improvements" shall include buildings, outbuildings, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, hedges, windbreaks, plantings, trees and shrubs, poles, signs and all other structures and landscaping improvements of every type and kind.

Section 19. Institutional Holder. The term "Institutional Holder" shall mean and refer to any beneficiary of a deed of trust or mortgagee of a mortgage which encumbers a Condominium and which is a bank or savings and loan association or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency.

Section 20. Maintenance Association. The term "Maintenance Association" shall mean and refer to any incorporated or unincorporated association which is formed to facilitate the maintenance and operation of any portion of the Common Area or to enforce or administer any declaration of covenants, conditions and restrictions recorded by De-

clarant, other than those contained herein, which may be applicable to a particular portion of the Covered Property.

Section 21. Member. The term "Member" shall mean and refer to each person entitled to membership in the Association as provided in this Declaration, the Articles and Bylaws.

Section 22. Mortgage. The term "Mortgage" shall mean and refer to any duly recorded and valid mortgage or deed of trust encumbering a Condominium.

Section 23. Owner. The term "Owner" shall mean and refer to one or more persons or entities holding subleasehold or an equitable ownership interest in any Condominium, including contract purchasers, but excluding those having such interest merely as security for the performance of an obligation.

Section 24. Party Wall. The term "Party Wall" shall mean a common wall which divides two Units and serves as a common wall between such adjacent Units in a Condominium Building. A Party Wall shall be considered to adjoin and abut against the surface from the bottom of the foundation over the full length and height of each Condominium Building.

Section 25. Project. The term "Project" shall mean and refer to all of the Covered Property, together with all of the Condominiums, the Common Area and all Improvements located upon the Covered Property.

Section 26. Public Report. The term "Public Report" shall mean and refer to a Final Subdivision Public

Report issued by the California Department of Real Estate pursuant to the California Subdivided Lands Act.

Section 27. Restricted Common Area. The term "Restricted Common Area" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner, as shown and described on the Condominium Plan, consisting of covered parking. Every Condominium Owner shall have an exclusive right and easement to use one (1) covered parking space, assigned as indicated on Exhibit "B" attached hereto, subject to ownership, maintenance and reasonable regulation by the Association.

Section 28. Unit. The term "Unit" shall mean and refer to those elements of a Condominium excluding rights in the Common Areas, as more particularly described in the recorded Condominium Plan.

II

CREATION OF CONDOMINIUMS

Section 1. Designation of Condominiums. Declarant, in order to establish a plan of condominium ownership for the Project, hereby divides the Project into the following:

(a) One hundred ten (110) designated and legally described Units, which are shown, defined and described on the recorded Condominium Plan for the Project;

(b) The Common Area consisting of the remainder of the Project, excepting the "Units" as shown on the Condominium Plan..

Section 2. Interest in Common Area. Acquisition of title to a Condominium shall also include the right to use and enjoy all of the Common Areas within the Project. Each conveyance of a Condominium shall also convey an undivided fractional interest in the Common Area even though the conveyance document may omit reference to the undivided interest in the Common Area.

III

RIGHTS OF ENJOYMENT

Section 1. Members' Right of Enjoyment. Every Member of the Association shall have a nonexclusive easement for use and enjoyment of the Common Area, which shall be appurtenant to and pass with title to each Condominium, subject to all of the easements, covenants, conditions, restrictions and other provisions contained in this Declaration, including, without limitation, the following:

(a) The right of the Association to reasonably limit the number of guests of Owners using the Common Area recreational facilities;

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area and any recreational facilities thereon;

(c) The right of the Association, upon the vote or written assent of two-thirds (2/3) of the voting power of each class of Members, to borrow money for the purpose of improving the Common Area and any Improvements thereon and (subject to the rights of Institutional Holders described in Article XIV) to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(d) Subject to the rights of Institutional Holders described in Article XIV, the right of the Association to dedicate, release, alienate, transfer or assign an interest in the Common Area to any public agency, authority, utility or other person for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation, transfer or assignment shall be effective, unless an instrument is signed by Members entitled to cast at least two-thirds (2/3) of each class of the voting power of the Association agreeing to such dedication, release, alienation or transfer has been recorded;

(e) The rights and reservations of Declarant as set forth in this Declaration, including the right of Declarant, its sales agents, representatives and prospective purchasers, to the nonexclusive use of the Common Area, without cost, for access, ingress, egress, use and enjoyment, in order to market and sell Condominiums, until the close of escrow for the sale of all of the Condominiums in the Project; provided, however, that such use shall not unrea-

sonably interfere with the rights of enjoyment of the other Owners;

(f) The right of the Board to suspend the rights and easements of use and enjoyment of the recreational facilities, if any, located on the Common Area, of any Member, and the persons deriving such rights and easements from any Member, for any period during which the payment of any assessment against such Member and his Condominium remains delinquent; and, after notice and hearing with an opportunity to be heard, to impose monetary penalties or suspend such use rights and easements for a reasonable period of time as determined by the Board for any violation of this Declaration, the Articles, Bylaws or rules and regulations of the Association, it being understood that any suspension for either nonpayment of any assessment or breach of such restrictions shall not constitute a waiver or discharge of the Member's obligation to pay assessments or comply with the restrictions;

(g) The right of the Association, acting through the Board, to levy a reasonable charge for the use of any recreational facilities located on the Common Area;

(h) The right of the Association, acting through the Board, to grant concessions for snack bars and other commercial activities relating to the use and enjoyment of the Common Area by the Members, provided that any such contract shall be subject to the restrictions on con-

tracts described elsewhere in this Declaration and in the Bylaws.

Section 2. Delegation of Use. Any Member may delegate his right to use and enjoyment of the Common Area to the members of his family, his guests or tenants who reside in his Condominium, subject to rules and regulations adopted by the Board.

Section 3. Waiver of Use. No Member may exempt himself from personal liability for assessments duly levied by the Association, or release his Condominium from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and Association rules, by waiver of the use and enjoyment of the Common Area or the abandonment of his Unit.

IV

USE RESTRICTIONS

In addition to all other covenants contained herein, the use of the Project, each Unit and the Common Area is subject to the following:

Section 1. Commercial Use. Subject to the Section entitled "Leasing and Renting of Condominiums" of this Article and the Section entitled "Construction and Sales" of the Article hereof entitled "EASEMENTS," no part of a Unit shall be used for any business, commercial, manufacturing, mercantile, storing, vending, or other nonresidential purposes; provided, however, that the Association shall have the

right to provide or authorize such services on the Common Area as it deems appropriate for the enjoyment of the Common Area or for the benefit of the Members.

Section 2. Interior of Units. Each Owner shall have the exclusive right and shall be required to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surface of the walls, ceilings, floors, windows and doors bounding his own Unit and otherwise maintain the Unit in a neat, clean, orderly, safe, sanitary and attractive condition.

Section 3. No Obstruction of Common Area. There shall be no obstruction of the Common Area nor shall anything be stored in the Common Area without the prior written consent of the Board; provided, however, that personal property and fixtures consistent with the use of any Restricted Common Area may be maintained by Owners upon such Restricted Common Area, subject to such limitations as rules and regulations adopted by the Board may impose. Nothing shall be altered or constructed in or upon or removed from the Common Area, except upon the prior written consent of the Board.

Section 4. Signs. No sign, poster, billboard, advertising device or other display of any kind shall be displayed so as to be visible from outside any portion of the Project without the approval of the Architectural Committee, except such signs as may be used by Declarant in connection with the development of the Project and sale of

Condominiums and such signs of customary and reasonable dimensions as prescribed by the Architectural Committee which may be displayed on or from a Unit, advertising it for sale or lease. Any "for sale" or "for lease" signs which are not (1) attached to the exterior walls of a Condominium Building and (2) not more than six (6) square feet in size, shall not require Architectural Committee approval.

Section 5. Animals. No insects or animals of any kind shall be raised, bred or kept on the Project except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained, for any commercial purpose, or in violation of any other provision of this Declaration and the rules and regulations of the Association. The Association, acting through the Board of Directors, shall have the right to prohibit maintenance of any animal in any Unit which constitutes, in the opinion of the Board, a nuisance to other Owners within the Project. Animals belonging to Owners or their licensees, tenants or invitees within the Project must be either kept within an enclosure, an enclosed yard or on a leash or bridle being held by a person capable of controlling the animal. Owners shall be liable to other Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by such Owner or by members of his family, his tenants or guests. It shall be the duty

and responsibility of each Owner to clean up after his animals.

Section 6. Structural Alterations. No Owner shall make or cause to be made any structural alterations or modifications to his Unit or Condominium Building or installations located therein which would have a material effect on another Unit without the prior written consent of the Architectural Committee.

Section 7. Utilities. Each Owner shall be obligated to pay any and all assessments for sewage, electricity, other utilities, taxes and other charges assessed individually against his Unit.

Section 8. Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted upon any portion of the Property, except in sanitary containers located in appropriate areas screened and concealed from view, and no odor shall be permitted to arise therefrom so as to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity or to its occupants. Such containers shall be exposed to the view of neighboring Units only when set out for a reasonable period of time (not to exceed twenty-four (24) hours) before and after scheduled trash collection hours. If trash bins are located in designated trash areas on the Common Area, all Owners shall utilize such trash bins for the disposal of their trash.

Section 9. Vehicles. No trailer, motor home, truck, camper or boat shall be kept, constructed, repaired or maintained anywhere on the Project (including any public or private street) in such a manner as to be visible from any other Unit within the Project. No inoperable vehicle shall be stored or allowed to remain within the Project (including any public or private street) in such a manner as to be visible from any other Unit within the Project.

Section 10. Rules of Association. Each Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, decisions, rules and regulations of the Association or its duly authorized representatives which may from time to time be promulgated. Failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, for injunctive relief, or for any other remedy permitted by law or by the terms of this Declaration.

Section 11. Conduct in Units and Common Area. No Unit or the Common Area shall be occupied or used for any purpose or in any manner which shall cause either to be uninsurable against loss by fire or the perils of the extended coverage endorsement of the California Standard Fire Policy form, or cause any policy of insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof. No Unit shall be used in such a manner as to obstruct or interfere with the enjoyment of occupants of other Units or annoy them by unreasonable noises or other-

wise, nor shall any nuisance be committed or permitted to occur in any Unit or upon the Common Area.

Section 12. Leasing and Renting of Condominiums.

Any other provision herein notwithstanding, each Owner shall be entitled to lease or rent his Condominium on a nightly, weekly or other basis. Any such leasing or renting shall be in accordance with and subject in all respects to the provisions of this Declaration, the Bylaws and Association rules, and any failure by the lessee or any tenant to comply with the terms of such documents shall be a default under the lease or rental agreement.

Section 13. Antennae. No television, radio, or other electronic antenna or device of any type shall hereafter be erected, constructed, placed or permitted to remain on any Condominium Building unless it was a part of the building as originally constructed or until it has been approved in writing by the Architectural Committee, or the Board, or unless it is fully contained within a Unit.

Section 14. Window Covers. Curtains, drapes, shutters or blinds may be installed as window covers. No window shall be covered with aluminium foil or similar material.

Section 15. Maintenance Association Use Restrictions. Nothing herein shall prevent a Maintenance Association from adopting use restrictions for its portion of the Covered Property which are more restrictive than those set forth herein, provided that such restrictions shall in no way modify the provisions of this Declaration.

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner shall automatically, upon becoming the Owner of a Condominium, be a Member of the Association, and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. For each Condominium there shall be on file with the Association an address of record for the Owner, if different from the Unit address, and a phone number in case of emergency, all of which shall be kept current by the Owner. Ownership of a Condominium shall be the sole qualification for membership in the Association; provided, however, that a Member's voting rights or privileges to use the Common Area, or both, may be regulated or suspended as provided in this Declaration, the Bylaws or Association rules. All memberships shall be appurtenant to the Condominium conveyed, and with the exception of Declarant, a person or entity shall be deemed an Owner of a Condominium only upon recordation of a deed, contract of sale or other document conveying the Condominium to him.

Section 2. Transfer. The membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of his Condominium, and then only to the transferee or Mortgage holder of the Condominium. Any attempt to make a prohibited trans-

fer is void, and will not be reflected upon the books and records of the Association. In the event an Owner fails or refuses to transfer the membership registered in his name to the transferee of such Condominium, the Board may record the transfer upon the books of the Association.

Section 3. Two Classes of Memberships.

The

Association shall have two (2) classes of voting membership.

Class A. Class A members shall be those Owners described in Section 1 above, with the exception of Declarant for so long as there exists a Class B membership. Each Class A member shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be Members, and the vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium. The Association shall not be required to recognize the vote or written assent of a co-owner unless that co-owner is designated in a writing executed by all such co-owners and delivered to the Association.

Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes for each Condominium owned; provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) At such time as the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On the second anniversary of the original issuance of the Public Report for the Project.

Section 4. Required Vote. Notwithstanding anything to the contrary contained elsewhere in this Declaration, any action by the Association which, pursuant to this Declaration, must have the approval of the membership before being undertaken (except for the action referred to in the Article entitled "ENFORCEMENT OF BONDED OBLIGATIONS") shall require the vote or written assent of the required percentage of each class of membership during the period of time that there are two (2) outstanding classes of membership. Except for the provisions of the Article entitled "ENFORCEMENT OF BONDED OBLIGATIONS," any provision of this Declaration which provides that the vote of the Declarant shall be excluded shall be applicable only if there has been a conversion of Class B to Class A membership and such provision shall be interpreted as requiring the prescribed vote of the total voting power of the Association as well as the vote or written assent of the prescribed majority of the total voting power of Members other than Declarant.

Section 5. Special Class A Voting Rights. From the first election of Directors and thereafter for as long as a majority of the voting power of the Association resides in Declarant, or as long as there are two (2) classes of member-

ship in the Association, not less than twenty percent (20%) of the incumbents on the Board of Directors shall have been elected solely by votes of Members other than Declarant. A Director who has been elected solely by votes of Members other than Declarant may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in Members other than Declarant.

Section 6. Vesting of Voting Rights. All voting rights which are attributable to a specific Condominium shall not vest until such time as that Condominium is subject to Regular Assessments (and Special Assessments, if any) pursuant to the terms of this Declaration.

VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Covenant to Pay Assessments. Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium, by acceptance of a conveyance therefor (whether or not it is expressed in such conveyance), is deemed to covenant and agree to pay to the Association: (1) Regular Assessments or charges, (2) Special Assessments for capital improvements, (3) Reimbursement Assessments, and (4) Reconstruction Assessments, all such assessments to be established and collected as hereinafter provided. Each of these assessments, together with

interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to such person's successors in interest unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Project and for the improvement, operation and maintenance of the Common Area and the Project and the performance of the duties of the Association as set forth in this Declaration, the Articles and Bylaws.

Section 3. Regular Assessments. The amount and time of payment of Regular Assessments against each Condominium shall be determined by the Board, giving due consideration to the current maintenance costs and future needs of the Association. Not later than sixty (60) days prior the beginning of each fiscal year, the Board shall estimate the total Common Expenses to be incurred for the upcoming fiscal year, and shall determine the amount of Regular Assessments to be paid by each Member. Written notice of the amount of the Regular Assessment for the year shall be sent to each Member, who shall thereafter pay the Regular Assessment to the Association in monthly installments unless some other period for collection is established by the Board. In the event that the Board at any time determines

that the estimate of total charges for the current year is or will become inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy and issue a supplemental estimate of the Common Expenses and determine a revised amount of Regular Assessments for each Member, and the date or dates when due. Regular Assessments against each Condominium shall not be increased more than twenty percent (20%) over the Regular Assessments for the preceding year without the vote or written consent of a majority of the total voting power of the Association (excluding the voting power of the Declarant).

Section 4. Special Assessments for Capital Improvements. In addition to the Regular Assessments authorized above, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, repair or replacement (other than due to destruction) of a capital improvement upon the Common Area and the Project, including fixtures and personal property related thereto, or any other action or undertaking on behalf of the Association, to the extent the same is not covered by the provisions affecting Reconstruction Assessments described below. Any such assessment for all Condominiums for the fiscal year in the aggregate in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year must first be approved by

the vote or written assent of a majority of the voting power of the Association residing in Members other than the Declarant at a meeting duly called for this purpose. The foregoing limitation on Special Assessments shall not apply to any Reimbursement Assessment which is authorized by this Declaration.

Section 5. Notice and Quorum for Meetings Called under Section 3 and 4. Written notice of any meeting called to approve an increase in Regular Assessments greater than twenty percent (20%) or Special Assessments in excess of five percent (5%) of the budgeted gross expenses for the fiscal year shall be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At any such meeting, the presence of Members or of proxies entitled to cast fifty-one percent (51%) of the voting power of the Association other than the Declarant shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same quorum requirement.

Section 6. Reimbursement Assessments. The Association may levy a Reimbursement Assessment against any Owner who fails to comply with the provisions of this Declaration, the determinations of the Architectural Committee, the Articles or Bylaws, or any rule or regulation adopted by the Association, if such failure results in the expenditure of monies by the Association in carrying out its functions hereunder or for purposes of collecting any fines which may

be levied by the Association. Such assessment shall also be for the purpose of reimbursing the Association for any costs incurred by the Association on behalf of an individual Owner. A Reimbursement Assessment shall be due and payable to the Association when levied but may not become a lien as provided by Section 14(b) of this Article VI which could otherwise be enforced by a sale of the Owner's Condominium.

Section 7. Reconstruction Assessments. Assessments for reconstruction of Improvements upon the Common Area may be levied in accordance with the provisions of that Article below entitled "DESTRUCTION OF IMPROVEMENTS."

Section 8. Uniform Rate of Assessment. Regular and Special Assessments shall be fixed at a uniform rate for all Condominiums (including those owned by Declarant) and shall be levied against each Owner according to the ratio of the number of Condominiums owned by the Owner to the total number of Condominiums subject to assessment.

Section 9. Date of Commencement of Regular Assessments: Due Dates. The Regular Assessments described herein shall commence as to all Condominiums (including those owned by Declarant) on the first day of the month following the conveyance of the first Condominium by Declarant to an Owner.

Section 10. Certificate of Payment. The Association shall, upon demand, furnish to any Member liable for assessments a certificate in writing signed by an Officer or authorized agent of the Association, stating whether assess-

ments for a specified Condominium have been paid and the amount of delinquency, if any. A reasonable charge, not to exceed Fifteen Dollars (\$15.00) may be collected by the Board for the issuance of such a certificate. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid as to all third parties relying thereon, but shall not relieve any Owner of liability for assessments not in fact paid.

Section 11. No Offsets. All assessments shall be payable in the amount specified and no offset against such amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

Section 12. Reserves. Regular Assessments shall include reasonable amounts as determined by the Board collected as reserves for the future periodic maintenance, repair or replacement of all or any portion of the Common Area that must be repaired or replaced on a periodic basis, or any other purpose as determined by the Board. All amounts collected as reserves, whether pursuant to this Section or otherwise, shall be deposited by the Board in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association. Such reserves shall be deemed a contribution to the capital account of the Association by the Members.

Section 13. Pledge of Assessment Rights.

The Association shall have the power to pledge to exercise its assessment powers to obtain funds to repay a debt of the Association; provided, however, that any such pledge shall require the prior affirmative vote or written assent of not less than seventy-five percent (75%) of the Class A members at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with Special Meetings of Members. The Association may levy Special Assessments against the Members to obtain such funds. Upon the failure of any Member to pay such a Special Assessment when due, the Association may exercise all of its rights, including, without limitation, the right to foreclose its lien, pursuant to the further provisions of this Declaration.

Section 14. Effect of Nonpayment of Assessments;

Remedies of the Association. Each Owner upon becoming an Owner of any Condominium, covenants and agrees to pay to the Association all of the assessments provided for in this Declaration and further agrees to the enforcement of all such assessments in the manner herein specified. In the event an attorney is employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with the terms and conditions of this Declaration, each Owner shall be liable for reasonable attorneys' fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against such Owner. Any assessment or installment thereof not paid within fifteen

(15) days after the date on which it became due shall bear interest from the date of delinquency at the rate of ten percent. (10%) per annum, and a late charge of Ten Dollars (\$10) shall be assessed. In addition to any other remedies provided herein or available at law or in equity, the Board or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration by either or both of the following procedures:

(a) Enforcement by Suit. By commencement and maintenance of a suit at law against any Owner personally obligated to pay assessments for such delinquent assessments. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon, costs of collection, court costs and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner. Suit to recover a money judgment for unpaid assessments shall be maintainable without foreclosing or waiving the lien hereinafter described. The remedy provided in this paragraph shall be the exclusive manner of enforcing payment of delinquent Reimbursement Assessments.

(b) Enforcement by Lien. The Board may record, or cause to be recorded, a Notice of Assessment with respect to the Condominium as to which assessments are delinquent. The Notice of Assessment shall be recorded in the Recorder's Office of the County and shall set forth all assessments (other than Reimbursement Assessments) which have become delinquent as of the date of recordation thereof,

together with all costs, attorney's fees, late charges and interest accrued thereon. The Notice of Assessment shall also set forth a description of the Condominium with respect to which it is recorded and the name of the record Owner thereof and shall be signed by any Officer of the Association, or by any authorized representative of the Board. Immediately upon recordation of a Notice of Assessment, the amounts set forth in said Notice, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said Notice, shall be and become a lien in favor of the Association upon the Condominium described in the Notice, which lien shall be immediately due and payable.

Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except for liens for real property taxes and assessments in favor of any governmental assessing unit. Any such lien may be foreclosed by appropriate action in court or in the manner provided by the California Civil Code Sections 2924 et seq. for the foreclosure of a deed of trust with power of sale, or in any other manner permitted by law. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Condominium. Upon the timely curing of any default for which a Notice of Assessment was filed, by payment of all sums secured by the lien, the Board shall

cause an appropriate release of such lien to be recorded in the Recorder's Office of the County.

No Owner may waive or otherwise escape liability for the assessments described in this Declaration by non-use of the Common Area or any other part of the Project, or abandonment of his Condominium. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created by recordation of a Notice of Assessment, whether judicially, by power of sale, or otherwise, until the expiration of ten (10) days after a copy of said Notice, showing the date of recordation thereof, has been mailed to the Owner of the Condominium which is described in such Notice.

Section 15. Subordination to Certain Trust Deeds.

The lien for the assessments described herein shall only be subordinate to the lien of a first Mortgage, given and made in good faith and for value, that is of record as an encumbrance against such Condominium prior to the recordation of a Notice of Assessment. The sale or transfer of any Condominium shall not affect the assessment lien described herein, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent assessments. However, the sale or transfer of any Condominium pursuant to a judicial foreclosure or foreclosure by power of sale of a senior encumbrance shall extinguish any assessment lien recorded prior to the time of such sale or transfer. Following a foreclosure, the interest of any purchaser at such

foreclosure sale shall be subject to all assessments becoming due after the date of such sale or transfer, and in the event of nonpayment of such assessments, shall be subject to all of the remedies described in this Declaration. For the purpose of this Section 15, a sale or transfer of a Condominium shall occur on the date of recordation of a deed or land sale contract evidencing the conveyance of record ownership of the Condominium.

VII

MANAGEMENT OF THE ASSOCIATION AND THE PROJECT

Section 1. General Powers of the Association.

All powers relating to the management, operation and maintenance of the Project and of the Common Area, as well as certain rights, duties and powers relating to the individual Units, shall be vested in the Association and in its Board of Directors. The specific and primary purposes and powers of the Association and the Board are to provide architectural control of, manage and maintain the Project and the Common Area and to enforce the provisions of this Declaration, the Articles and Bylaws, and any other instruments relating to the management and control of the Association and the Project. The Association may do any and all other acts and things that a nonprofit mutual benefit corporation is empowered to do, which may be necessary, convenient or desirable in the administration of its affairs and in order to carry out the

duties described in this Declaration. The Association, through its Board of Directors, shall have the authority to delegate its powers to committees, Officers of the Association and its employees.

Section 2. Contracts of the Association. The Association shall have the right and power to employ or engage a manager and other employees or agents and contract for such services, labor and materials as it may deem reasonably necessary to operate and maintain the Project, the Common Area and the improvements thereon and to discharge its other duties. Any agreement for professional management of the Association or any contract providing for services by the Declarant must provide for termination of such contract or agreement by either party with or without cause or payment of a termination fee on thirty (30) days or less written notice and for a maximum contract term not to exceed one (1) year.

Section 3. General Duties of Association. In addition to the duties and powers enumerated in its Articles and Bylaws, or elsewhere described herein, and without limiting the generality thereof, and subject to the limitations set forth in Sections 7 and 8 of this Article, the Association acting through the Board shall:

(a) Maintain and otherwise manage all of the Common Area and all facilities, improvements, and landscaping within the Project;

(b) Procure and maintain public liability and fire insurance with extended coverage on the Project as required by the terms of this Declaration. The Board shall also have the authority to procure and maintain any other type of insurance which the Board determines is in the best interest of the Association and its Members;

(c) Obtain, for the benefit of the Common Area and the Units, all water, gas and electric services and refuse collection, to the extent that such services are not separately charged and metered to the individual Units;

(d) Pay taxes and assessments which are or could become a lien on the Common Area, or some portion thereof;

(e) Prepare budgets and financial statements for the Association and its Members as prescribed in the Bylaws;

(f) Initiate and pursue disciplinary proceedings against Members for violations of provisions of this Declaration, the Articles or Bylaws, in accordance with the procedures set forth in this Declaration;

(g) Subject to approval by a majority vote of each class of Members, borrow money and incur indebtedness for the purposes of the Association and cause to be executed and delivered therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges or other evidences of debt and security.

Section 4. Maintenance of Buildings and Common Area by the Association. The Association shall provide exterior maintenance of each Condominium Building as follows:

(a) The Association shall maintain in good repair all exterior surfaces including, but not limited to, the exterior walls and roof. The Owner of each Unit shall maintain in good repair all other surfaces, parts and portions abutting the Unit.

(b) Such exterior maintenance shall not include: window glass, interior doors, including locks, latches, weather stripping and thresholds, interior building surfaces, stoppage of drains when attributable to a specific Unit, improvements within the Restricted Common Area, if any, air conditioners or any repairs or replacements arising out of or caused by the willful or negligent act of the Owner, his family, guests or invitees. Such excluded items shall be the responsibility of the Owner of each Unit.

The Association shall provide landscaping and gardening services for all Common Areas and shall assure that all landscaping is properly irrigated, trimmed and maintained. The Association will repair and maintain all recreational facilities within the Common Area in a neat, clean, orderly, safe, sanitary and attractive condition.

Section 5. Repair and Maintenance of the Units by Owners. Each Owner shall maintain, repair, replace and restore all portions of his Unit including, without limitation, all window glass, plantings, the interior walls, ceilings,

windows, floors and doors in a clean, sanitary and attractive condition, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his Unit and located within the outside perimeter of the exterior bearing walls of the Condominium Building. All repairs and maintenance effected pursuant to this section shall be subject to such rules as the Association may establish. If any Owner fails to maintain or make the repairs or replacements which are the responsibility of such Owner, then, upon vote of a majority of the Board, and after not less than thirty (30) days notice to the Owner, the Association shall have the right (but not the obligation) to enter the Unit and provide such maintenance or make such repairs or replacements, and the cost thereof shall be a Reimbursement Assessment chargeable to such Condominium and payable to the Association by the Owner thereof.

Section 6. Additional Restrictions on Power of the Board. The Board shall be prohibited, without the prior vote or written consent of a majority of the voting power of the Association (excluding the voting power of the Declarant), from doing any of the following: (i) incurring aggregate expenditures for capital improvements to any portion of the Project in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or (ii) selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross

expenses of the Association for that fiscal year; (iii) paying compensation to Directors or Officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a Director or Officer to be reimbursed for expenses incurred in carrying on the business of the Association; or (iv) filling a vacancy on the Board created by the removal of a Director.

Section 7. Limitation on Board Authority to Contract. The Board shall not enter into any contracts for goods or services with a duration greater than one (1) year without the vote or written consent of a majority of the voting power of the Association residing in Members other than Declarant with the following exceptions: (i) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration; (ii) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate; (iii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration, provided that the policy provides for short rate cancellation by the insured; or (iv) lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration; provided that the lessor under the agreement is not an entity in

which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

Section 8. Maintenance of Public Utilities.

Nothing contained herein shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements in the Common Area. However, the Association shall take such steps as are necessary or convenient to ensure that such facilities are properly maintained, replaced or restored by such public utilities.

Section 9. Rights of Entry. Each Owner grants to all other Owners within the Project an easement and right to enter each Unit or to have utility companies or repairmen enter such Units in order to repair the plumbing, heating and electrical systems located thereon. The Association, through its agents or employees, shall have a limited right of entry in and upon all Units for the purpose of inspecting the Project, and taking whatever corrective action may, after approval by a two-thirds (2/3) vote of the Board, be deemed necessary or proper by the Board, consistent with the provisions of this Declaration. However, nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or portion of a Unit to be maintained or repaired by the Owner thereof.

Nothing in this Article shall in any manner limit the right of an Owner to the exclusive occupancy and control of his Unit. Entry into a Unit by another Owner or the

Association for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner, shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. In case of an emergency, the right of the Association or another Owner, or an agent or employee on their behalf, to enter into a Unit shall be immediate; provided, however, that such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. No party shall be liable for failing to exercise this right of entry during any emergency.

Section 10. Association Rules. The Board shall have the power to adopt, amend and repeal such rules and regulations as it deems reasonable which may include the establishment of a system of fines and penalties enforceable as a Reimbursement Assessment. The Association rules shall govern matters in furtherance of the purposes of the Association, including, without limitation, the use of the Common Area; provided, however, that the Association rules may not discriminate among Owners, and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association rules as they may from time to time be adopted, amended or repealed or a notice setting forth the adoption, amendment or repeal of specific portions of such rules shall be delivered to each Owner. The Association rules shall have the same force and effect as if they were

set forth in and were part of this Declaration and shall be binding on the Owners and their successors in interest whether or not actually received by them.

.VIII

INSURANCE

Section 1. Duty to Obtain Insurance; Types. The Board of Directors, on behalf of the Association, shall obtain and continue in effect the following types and policies of insurance:

(a) Public liability insurance with a limit of not less than One Million Dollars (\$1,000,000) for claims for personal injury and/or property damage arising out of a single occurrence. Such policy of public liability insurance covering the Common Area shall contain a "Severability of Interest" endorsement, which shall preclude the insurer from denying the claim of any Owner because of negligent acts of the Association or other Owners.

(b) Casualty insurance and fire insurance with extended coverage, in an amount equal to one hundred percent (100%) of the full insurable replacement cost of the Project, including all Condominiums, without deduction for depreciation. Such insurance shall be maintained by the Board for the benefit of the Association, the Owners and Institutional Holders as their interests may appear as named insured, subject, however, to loss payment requirements set

forth herein. Each such policy shall contain a standard mortgagee clause, which must be endorsed, which provides that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interest may appear.

(c) Fidelity coverage against dishonest acts on the part of Directors, Officers, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association. Such insurance shall name the Association as obligee and shall be written in an amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, including reserves. Persons serving without compensation shall be covered by endorsement to the policy if not otherwise covered under the policy.

The Board may purchase such other insurance as it deems necessary, including but not limited to, plate glass insurance, medical payments, malicious mischief and vandalism insurance, worker's compensation and Directors' and Officers' liability.

Section 2. Waiver of Claims Against Association.

As to each policy of insurance maintained by the Board, the Owners hereby waive and release all claims against the Association, the Board and Declarant, only to the extent of the insurance proceeds available to the Owners, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by said persons.

Section 3. Individual Fire Insurance Prohibited and Rights and Duty of Unit Owner to Insure. No Owner shall separately insure his Condominium or any part thereof against loss by fire or other casualty covered by any insurance carried by the Association; provided, however that each Owner shall insure his personal property and improvements within his Unit, but not including the Unit. Each Owner may carry such public liability insurance as he may deem desirable to cover his individual liability for damage to person or property occurring inside his Unit or elsewhere upon the Project. All such other policies as may be carried by Owners shall contain waivers of subrogation of claims against Declarant, the Association, the Board, Officers of the Association and all other Owners. Such other policies shall not adversely affect or diminish the coverage of any insurance maintained by the Association, and duplicate copies of such other policies shall be deposited with the Board. If any loss intended to be covered by insurance carried by the Association occurs and the proceeds payable thereunder are reduced by reason of insurance carried by an Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

Section 4. Notice of Expiration Requirements. All of the policies of insurance described herein shall contain a provision that said policies shall not be can-

celled or terminated, or expire by their terms, without thirty (30) days' prior written notice to the Board, Declarant, Owners and Institutional Holders (provided that such Owners or Institutional Holders have filed written requests with the carrier for such notice) and every other person in interest who requested such notice of the insurer.

Section 5. Insurance Premiums. Premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board shall be a Common Expense to be included in the assessments levied by the Association and collected from the Owners. The proportion of such assessments necessary for the required insurance premiums shall be used solely for the payment of premiums of required insurance as such premiums become due.

Section 6. Trustee for Policies. The Board shall be trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies shall be paid to the Board as trustee. The Board shall have full power to receive and to receipt for the proceeds and to disburse such proceeds as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in this Declaration. The Board shall have the authority to negotiate loss settlements with insurance carriers, with participation by Institutional Holders who so desire and have filed written

requests under Section 4 of this Article. Any two (2) Officers of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

Section 7. Actions as Trustee. Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to seventy-five percent (75%) of the Institutional Holders who have filed requests under Section 4 of this Article to the extent such Institutional Holders desire to participate. Duplicate originals or certificates of all policies of fire and casualty insurance carried by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Institutional Holders who have requested the same in writing.

Section 8. Annual Insurance Review. The Board shall review the insurance carried by the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Section 1 above. The Board shall obtain a current appraisal of the full replacement value of the buildings and improvements in

the Project, except for foundations, footings and masonry walls, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review.

Section 9. Required Waiver. All policies of hazard and physical damage insurance shall provide for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) Subrogation of claims against the tenants of the Owners;
- (b) Any defense based on co-insurance;
- (c) Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of an Owner, or arising from any act, neglect or omission of any named insured, or the respective agents, contractors and employees of any insured;
- (e) Any right of the insurer to repair, rebuild or replace, and, in the event the building is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured or the fair market value thereof;

(f) Notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Condominium; and .

(g) Any right to require any assignment of any mortgage to the insurer.

IX

DESTRUCTION OF IMPROVEMENTS

Section 1. Nonstructural Common Area. In the event of partial or total destruction of that portion of the Common Area excluding Condominium Buildings ("Nonstructural Common Area") it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practicable. The proceeds of any insurance maintained pursuant hereto shall be used for this purpose, subject to the prior rights of Institutional Holders whose interest may be protected thereunder. In the event that the amount available from the proceeds of such insurance for restoration and repair is at least eighty-five percent (85%) of the estimated cost of restoration and repair or the cost not covered by insurance proceeds is less than Twenty-Five Dollars (\$25.00) per year per Condominium, a Reconstruction Assessment, with each Owner contributing an equal sum, may be levied by the Association to provide the necessary funds for reconstruction, in addition to any insurance proceeds available for such purpose. In the event that the amount

available from the proceeds of such insurance for such restoration and repair is less than eighty-five percent (85%) of the estimated cost of restoration and repair or greater than the sum of Twenty-Five Dollars (\$25.00) per Condominium per year, the improvement shall not be replaced or restored unless a majority of the voting power of the Association agrees in writing to such replacement or restoration or gives its affirmative vote at a meeting duly called therefor. Such majority vote must include at least a seventy-five percent (75%) majority of the Class A members.

In the event of a determination not to replace or restore affected portions of the Nonstructural Common Area, such affected areas shall be cleared and landscaped for community park use and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by a Reconstruction Assessment in an amount determined by the Board. In the event any excess insurance proceeds remain, the Board, in its sole discretion, may retain such sums in the general funds of the Association or distribute pro rata all or a portion thereof to the Members, subject to the prior rights of Institutional Holders whose interest may be protected by such insurance policies. The rights of an Owner and the Institutional Holder of his Condominium as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Condominium.

Section 2. Condominium Buildings. In the event of partial or total destruction of a Condominium Building,

so long as not more than fifty percent (50%) of all Condominium Buildings in the Project are totally destroyed, it shall be the duty of the Association to restore and repair the same to their former condition as promptly as practicable. The proceeds of any insurance maintained pursuant hereto shall be used for this purpose, subject to the prior rights of Institutional Holders whose interest may be protected thereunder.

In the event that over fifty percent (50%) of the Condominium Buildings are totally destroyed, the Owners whose Units are destroyed may, subject to the rights of affected Institutional Holders, elect whether to rebuild all or a part of such destroyed Condominium Buildings. In the event that the amount available from the proceeds of insurance for restoration and repair of destroyed or damaged Condominium Buildings is insufficient to fully restore such Buildings to their prior condition, the affected Owners may elect to subject themselves to a Reconstruction Assessment in such amount and upon such terms as may be agreeable to such Owners and the Board, in order to pay for all work necessary in order to fully restore affected Condominium Buildings. The amount of each Owner's Reconstruction Assessment shall be prorated among destroyed Condominium Buildings and Units and levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units to be assessed.

In the event of a decision not to rebuild any destroyed Condominium Building, the site of such Building shall be cleared and landscaped and the costs thereof shall be paid for with insurance proceeds, and any deficiency may be raised by a Reconstruction Assessment in an amount determined by the Board. In the event any excess insurance proceeds remain, such funds shall be distributed pro rata between the Owners of the affected Units, subject to the rights of Institutional Holders whose interest may also be protected by such insurance. The rights of an Owner and the Institutional Holder of his Unit as to such pro rata distribution shall be governed by the provisions of the Mortgage encumbering such Unit. Any distribution of excess insurance proceeds between Owners of destroyed Units (and/or Institutional Holders) shall be effected proportionately, in accordance with the fair market values of such Units as of the time of destruction, as determined by an MAI appraiser appointed by the Board. The cost of such appraisal shall be paid for by the affected Owners, and the appraisal amounts and resulting proportional distribution of excess insurance proceeds shall be binding on the affected Owners.

All amounts collected as Reconstruction Assessments shall be used only for the purposes set forth in this Article, shall be deposited by the Board in a separate bank account to be held in trust for such purposes, shall not be commingled with any other funds of the Association and shall

be deemed a contribution to the capital account of the Association by the Members.

X

PARTY WALLS

Section 1. Designation: Applicable Law. Each wall which is built as a part of the original construction of Condominium Buildings and placed upon the dividing line between adjacent Units shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

Section 2. Destruction; Repair; Maintenance of Utilities. The cost of reasonable repair and maintenance of a Party Wall and any utilities located therein shall be shared equally by the Adjacent Owners whose Units abut such wall. Should any Party Wall or portion thereof abutting an Owner's Unit be damaged or destroyed, that Owner shall immediately reconstruct or repair the same, and in the event that the Owner fails to do so within a reasonable time, the Board may elect to cause such reconstruction or repair, and the cost thereof shall be a Reconstruction Assessment chargeable to such Unit and payable to the Association by the Owner thereof. An Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall

bear the sole cost of furnishing the necessary protection against such elements.

XI

PROPERTY TAXES

Real property taxes, levies and assessments shall be separately and individually billed by the County Assessor's Office to Owners of the Condominiums. Payment of any real or personal property tax, assessment or levy of any type allocated to an individual Condominium shall be the sole responsibility of the Owner of that Condominium. The Association shall not be liable for the collection and payment of any real or personal property taxes of any type whatsoever levied against individual Members and Owners on account of their Condominiums.

In the event that any taxes are levied or assessed against the Common Area or personal property of the Association rather than against individual Condominiums, the amount of such taxes shall be considered a Common Expense which shall be paid by the Association through the Regular Assessment process.

XII

PROHIBITION AGAINST PARTITION OR SEVERANCE OF UNIT FROM INTEREST IN COMMON AREA

Except as provided by California Civil Code Section 1354 or any amendment thereto, the Common Area shall remain undivided and each Owner irrevocably waives the right to bring any action to partition the Common Area. The rights in the Common Area and title to the respective Condominiums, together with any exclusive easements or rights appurtenant to each Unit, shall not be separated, severed or separately conveyed, assigned, encumbered or otherwise transferred. All rights in the Common Area shall be conclusively deemed to be conveyed, assigned, transferred or encumbered with the respective Condominium even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

XIII

ARCHITECTURAL CONTROL

Section 1. Architectural Approval. In order to maintain a uniform and well-maintained appearance throughout the Project, no exterior improvements or other structures shall be commenced, erected, altered or maintained upon the Project without the prior approval of the Architectural Committee.

Section 2. Architectural Committee. An Architectural Committee, consisting of not less than three (3) nor more than five (5) members shall be established for the Project. The Declarant may appoint all of the original members of the Committee and retains the right to appoint or replace Committee members until ninety percent (90%) of the Condominiums in the Project have been sold or until the fifth anniversary of the issuance of the Public Report for the Project, whichever first occurs. After one (1) year following the date of issuance of the original Public Report for the Project, the Board shall have the right to appoint one (1) member to the Committee until ninety percent (90%) of all Condominiums in the Project have been sold or until the fifth anniversary date of the original issuance of the Public Report for the first Phase of the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all members of the Committee. Committee members appointed by Declarant need not be Members of the Association. Committee members appointed by the Board shall be from the membership of the Association.

Section 3. Submission, Approval and Conformity of Plans. The Board shall adopt and promulgate Architectural Standards to be administered through its Architectural Committee. If the Architectural Standards so provide, no improvement, alteration, other structure or addition shall be commenced, erected, altered or maintained within the Project, nor shall any exterior addition, change, altera-

tion, or change in original exterior color to any Unit be made until plans and specifications showing the nature, kind, shape, height, materials and location of the same are submitted to and approved in writing by the Architectural Committee. The Architectural Standards shall include the following restrictions and limitations:

(a) Time limitations for the completion of the improvements for which approval is required pursuant to the Architectural Standards;

(b) Conformity of completed improvements to plans and specifications approved by the Architectural Committee; provided, however, that as to purchasers and encumbrancers in good faith and for value, unless a notice of noncompletion or nonconformance identifying the violating Condominium and its Owner and specifying the reason for the notice, executed by the Architectural Committee, is recorded in the County Recorder's Office the County and given to such Owner within thirty (30) days of the expiration of the time limitation described in subsection (a) above, or unless legal proceedings have been instituted to enforce compliance or completion within that thirty-day period, the completed architectural improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee;

(c) Such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, regulation of construction,

reconstruction, exterior addition, change, alteration to or maintenance of any building, with regard to the nature, kind, shape, height, materials, exterior color and surface and location of such structure.

The Architectural Committee may delegate its plan review responsibilities to one (1) or more members of the Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Committee. The Committee may establish reasonable procedural rules and may assess a fee not to exceed Twenty-Five Dollars (\$25.00) per submission in connection with review of plans and specifications. Unless such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted. In the event that the Architectural Committee fails to approve or disapprove plans or other requests submitted to it within thirty (30) days after such submission, then such approval will not be required so long as any structure or improvement erected or altered pursuant to such plans conforms to all the conditions and restrictions herein contained and is in harmony with similar structures erected within the Project.

Section 4. Appeal. In the event plans and specifications submitted to the Architectural Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the

final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for comment and the Committee's written comments will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. Failure of the Board to render a decision within this forty-five (45) day period shall be deemed a decision in favor of the appellant.

Section 5. General Provisions. Operation of the Architectural Committee shall be subject to the following general provisions:

(a) Review and approval by the Committee of plans and specifications does not constitute approval of engineering design, and by approving such plans and specifications, neither the Committee, the members thereof, the Association, the Members, the Board nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Approval of plans and specifications by the Committee does not relieve the Owner-applicant of the responsibility to obtain necessary building permits and approvals from the City.

(b) The address of the Architectural Committee shall be the principal office of the Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for submission of plans and speci-

fications and the place where the current Architectural Standards, if any, shall be kept.

(c) The establishment of the Architectural Committee and the procedures described herein for architectural approval shall not be construed as changing any rights or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over their Condominiums as may otherwise be specified in this Declaration, the Bylaws or the Association rules.

Section 6. Nonapplicability to Declarant. The provisions of this Article shall not apply to any Condominium owned by Declarant prior to its first conveyance to an Owner.

Section 7. Reconstruction of Condominiums. The reconstruction of any Condominium Building after destruction, which is accomplished in substantial compliance with the Condominium Plan filed covering the portion of the Covered Property in which such Condominium Building is situated shall not require compliance with the provisions of this Article. Such reconstruction shall be conclusively deemed to be in substantial compliance with such Condominium Plan if it has received the approval of the Board.

XIV

RIGHTS OF INSTITUTIONAL HOLDERS OF MORTGAGES

The following provisions are for the benefit of Institutional Holders, Insurers and Guarantors of first Mortgages on Condominiums within the Covered Property and shall apply notwithstanding any provision to the contrary set forth elsewhere in this Declaration or the Bylaws. These provisions apply only to "Eligible Holders" as defined below.

Section 1. Notices of Actions. Any Institutional Holder, Insurer or Guarantor of a first Mortgage who provides written request to the Association, stating the name and address of such Holder, Insurer or Guarantor and the Condominium number, address or legal description of the particular Condominium encumbered (thus becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any default by the Owner of such Condominium in the performance of such Owner's obligations under the Declaration or Bylaws which is not cured within sixty (60) days from the date of such default;
- (b) Any condemnation proceedings affecting the Project;
- (c) Any substantial damage to or destruction of the secured Condominium or any portion of the Common Area;

(d) Any proposed termination of the Association;

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

(f) Any proposed action which would require the consent of Eligible Holders as further described in this Article.

Section 2. Rights of Institutional Holders Upon Foreclosure. Any Institutional Holder of a first Mortgage on a Condominium which comes into possession of that Condominium pursuant to judicial foreclosure or foreclosure by power of sale shall:

(a) Acquire title in such Condominium free of any claims for unpaid assessments or charges against the Condominium accruing prior to the Institutional Holder's acquisition of title;

(b) Not be obligated to cure any breach of this Declaration which is noncurable or of a type which is not practical or feasible to cure and which took place prior to acquisition of title to the Condominium by the Institutional Holder; and

(c) Be exempt from any right of first refusal contained in this Declaration, or any amendment hereto, and such right of first refusal shall not impair the rights of an Institutional Holder to (i) foreclose or acquire title to a Condominium pursuant to the remedies provided in the

Mortgage, (ii) accept an assignment in lieu of foreclosure in the event of default by the mortgagor, or (iii) sell or lease a Condominium acquired by the Institutional Holder.

Section 3. Consent of Institutional Holders. The consent of Institutional Holders, Insurers or Guarantors shall be required in order to take the following actions with respect to the Association and rights and obligations of Members and Institutional Holders:

(a) Any restoration or repair of the Covered Property after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the Eligible Holders of first encumbrances on Condominiums to which at least fifty-one percent (51%) of the votes of the Owners of such Condominiums, subject to encumbrances held by such Eligible Holders are allocated, is obtained;

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first encumbrances on Condominiums to which at least fifty-one percent (51%) of the votes of Owners of such Condominiums, subject to first encumbrances held by such Eligible Holders, are allocated;

(c) Unless at least seventy-five percent (75%) of the Owners (other than Declarant) have given their prior written approval, the Association and the Owners shall

not be entitled to: (i) change the pro rata interest or obligations of any Condominium for the purposes of levying assessments and charges or allocating distributions of hazard insurance proceeds or condemnation awards; (ii) partition or subdivide any Unit or the Common Area; (iii) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area of the Project shall not be deemed a transfer within the meaning of this provision); (iv) use hazard insurance proceeds for losses to any portion of the Project (whether to Units or the Common Area) for other than the repair, replacement or reconstruction of such improvements, except as provided by statute in case of substantial loss to the Units and/or Common Area of the Project.

Section 4. Amendments to Documents. The following provisions contained in this Section do not apply to amendments to the Bylaws or this Declaration or termination of the Association made as a result of destruction, damage or condemnation pursuant to subsections (a) and (b) of Section 3 above.

(a) The consent of one hundred percent (100%) of the voting power of the Association and the approval of the Eligible Holders of first encumbrances on Units to which at least sixty-seven percent (67%) of the votes of Members owning Condominiums subject to such encum-

branches pertain, shall be required to terminate the Association.

(b) The consent of at least sixty-seven percent (67%) of Class A members and the consent of the Class B member and the approval of Eligible Holders of first encumbrances on Condominiums to which at least fifty-one percent (51%) of the votes of members whose Condominiums are subject to such an encumbrance pertain, shall be required in order to materially amend any provision of the Declaration, Bylaws, or Articles, or to add any material provisions thereto, which establish, provide for, govern or regulate any of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area; (iv) insurance or fidelity bonds; (v) rights to use the Common Area; (vi) responsibility for maintenance and repair of the Project; (vii) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Association; (viii) boundaries of any Condominium Building or Unit; (ix) leasing of Condominiums; (x) imposition of any right of first refusal or similar restrictions of the right of any Owner to sell, transfer or otherwise convey his Condominium; (xi) establishment of self-management by the Association where professional management has previously been required; or (xii) any provisions included in the Declaration, Bylaws or Articles which are for the express benefit of Institutional Holders, Guarantors or

Insurers of first encumbrances on Condominiums.

Section 5. Additional Rights of Institutional Holders. Any Institutional Holder of a Mortgage on a Condominium in the Project will, upon request, be entitled to: (a) inspect the books and records of the Association during normal business hours; and (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; provided, however, that such audited statements shall be made available only if they have been prepared by the Association in the regular course of business; and (c) receive written notice of all meetings of Owners and be permitted to designate a representative to attend all such meetings.

Section 6. Information. Any Institutional Holder is authorized to furnish information to the Board concerning the status of any loan encumbering a Condominium.

Section 7. Priority of Mortgage Lien. No breach of the covenants, conditions or restrictions contained in this Declaration, nor the enforcement of any lien provisions created herein, shall affect, impair, defeat or render invalid the lien of any first Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title to a Condominium is derived through foreclosure, trustee's sale, or otherwise.

Section 8. Insurance. The Owners and the Association shall procure and maintain fire and liability insurance and such other insurance as may from time to time be required by Institutional Holders of first Mortgages on Condominiums within the Project. All such insurance shall contain loss payable clauses naming the Institutional Holders which encumber a Condominium by a first Mortgage, as their interests may appear.

Section 9. Priority on Distribution of Proceeds. No Owner or any other party shall have priority over the Institutional Holder of the Mortgage on his Condominium in the case of a distribution of insurance proceeds or condemnation awards for losses to or a taking of the Condominium or Common Area.

Section 10. Special FNMA-FHLMC Provisions. So long as required by The Federal National Mortgage Corporation ("FNMA") or The Federal Home Loan Mortgage Corporation ("FHLMC"), the following provisions shall apply in addition to and not in lieu of the foregoing provisions contained in this Article.

(a) Unless two-thirds (2/3) of the Institutional Holders of first encumbrances or Owners of Condominiums subject to such encumbrances give their consent, the Association shall not: (i) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area which the Association owns, directly or indirectly; (ii) change the method of determining the obligations, assessments, dues or other charges which may be levied

against an Owner; (iii) by act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of the Condominium Buildings and the Common Area; (iv) fail to maintain fire or extended coverage insurance, as required by this Declaration; or (v) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement or reconstruction of such Property.

(b) The Association agrees to give written notice to the FNMA or FHLMC, as appropriate, or its designated representative of any loss to, or taking of, the Common Area if such loss or taking exceeds Ten Thousand Dollars (\$10,000.00) or damage to a Condominium covered by a first Mortgage purchased in whole or in part by the FHLMC which damage exceeds One Thousand Dollars (\$1,000.00).

(c) If any loan secured by a Mortgage encumbering a Condominium is owned by the FNMA or FHLMC, its successors or assigns or is tendered to FNMA or FHLMC, its successors or assigns for purchase, the Association and the Owners shall obtain and maintain in full force and effect all insurance coverages which may at any time required by FNMA or FHLMC, as appropriate, its successors or assigns and shall otherwise comply in all respects with all insurance requirements of FNMA or FHLMC, as appropriate which may be in effect at any time.

ENFORCEMENT OF BONDED OBLIGATIONS

In the event that the improvements to the Common Area of the Project have not been completed prior to the issuance of a Public Report for the Covered Property and the Association is obligee under a bond or other arrangement (the "Bond") to secure performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvements for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for such improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Members for the purpose of voting to override such decision or such failure to act by the Board.

Such meeting shall be called according to the provisions of the Bylaws dealing with meetings of the Members, but in any event such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such meeting, signed by Members representing not less than five percent (5%) of the total voting power of the Association.

(c) The only Members entitled to vote at such meeting shall be the Owners other than Declarant. A vote at such meeting of a majority of the voting power of such Members, other than Declarant, to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

XVI

EMINENT DOMAIN

Section 1. Definition of Taking. The term "taking" as used in this Article shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Project.

Section 2. Representation by Board in Condemnation Proceeding. In the event of a taking, the Board shall, subject to the right of all Institutional Holders who have requested the right to join the Board in the proceedings,

represent all of the Members in an action to recover all awards. No Member shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Article. The Board is further designated as the sole representative of the Members, in all aspects of condemnation proceedings not specifically covered herein.

Section 3. Award for Condominiums. In the event of a taking of Condominiums, the Board shall distribute the award from the taking authority according to the provisions of this Section after deducting therefrom fees and expenses related to the condemnation proceeding including, without limitation, fees for attorneys and appraisers and court costs. In the event that the taking is by judgment of condemnation and said judgment apportions the award among the Owners and their respective Institutional Holders, the Board shall distribute the amount remaining after such deductions among such Owners and Institutional Holders on the allocation basis set forth in the judgment. In the event that the taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among the Owners based upon the proportionate fair market value that each of the taken Condominiums bears to the total fair market value of all Condominiums in the Project so taken. The value of the respective Units for purposes of this Section shall be based upon the relative estimated value of each Condominium as determined by the Board based on an

appraisal prepared by an appraiser who is a M.A.I. member of the American Institute of Real Estate Appraisers. Nothing contained herein shall entitle an Owner to priority over the Institutional Holder of the Mortgage on his Condominium as to the portion of the condemnation award allocated to his Condominium.

Section 4. Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

Section 5. Awards for Owners' Personal Property and Relocation Allowances. In the event of a taking, each Owner shall have the exclusive right to claim any award made for his personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. The Board shall nevertheless represent each Owner in any action to recover all awards with respect to any personal property which may, at the time of the taking, be part of the real estate comprising any Condominium, and shall allocate to such Owner so much of any awards as is attributed in the taking proceedings, or failing such attribution, attributable by the Board to such personal property.

Section 6. Notice to Members. The Board, immediately upon having knowledge of any taking or threat thereof, shall promptly notify all Members.

XVII

EASEMENTS

Section 1. Utility Easements. Easements over the Project for the installation and maintenance of electric, telephone, water, gas and sanitary sewer lines and facilities, and for drainage facilities as shown on the recorded map of the Project, and as may be hereafter required or needed to service the Project are hereby created by Declarant for the benefit of each Owner and the Association.

Section 2. Encroachment Easement. Declarant, his successors and assigns, and all future Owners, by acceptance of their respective deeds, covenant and agree as follows:

(a) If any portion of the Common Area encroaches upon the Units, a valid easement into the Unit in order to accommodate the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event a Unit is partially or totally destroyed, and then rebuilt, minor encroachments of parts of the Unit into the Common Area due to construction shall be permitted and valid easements for said encroachment and the maintenance thereof shall exist.

(b) The Common Area is and shall always be subject to easements for minor encroachments thereon by the Units as a result of construction, reconstruction, repairs, shifting, settlement or movement of any portion of the Project and a nonexclusive easement for ingress, egress and

support through the Common Area is appurtenant to each Condominium.

Section 3. Common Area Easements. Each Condominium within the Project is hereby declared to have an easement over all of the Common Area, for the benefit of the Condominiums, the Owners thereof, and for their respective families, guests, invitees and tenants for all of the purposes and uses described herein including ingress and egress over and through the Common Area.

Section 4. Utilities. Wherever sewer connections, water connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Project, the Owners of Condominiums served by such connections, lines or facilities shall have an easement to the full extent necessary for the use and enjoyment of that portion of the connections which service his Condominium, and to enter upon or have utility companies enter upon the Units owned by others, in or upon which said connections, lines or facilities, or any portion thereof lie, to repair, replace and generally maintain those connections as necessary, provided that such Owner or utility company shall promptly repair any damage to a Unit caused by such entry as promptly as possible.

Section 5. Construction and Sales Easements. Declarant hereby reserves easements over the Project for construction, display, maintenance, sales and exhibit purposes in connection with the construction and sale or lease

of Units within the Project, together with the right to grant and transfer such easements to Declarant's sales agents, representatives and prospective purchasers of Condominiums; provided, however, that such use shall not be for a period beyond the earlier of (i) seven (7) years from the conveyance of the first Unit by Declarant or (ii) the sale by Declarant of all Units within the Project, and provided further that such use by Declarant and others shall not interfere with the reasonable use and enjoyment of the Common Area by the Members.

Section 6. Establishment of Easements. The easements described in this Declaration shall be deemed established upon the recordation of this Declaration, and shall thereafter be considered covenants running with the land for the use and benefit of all of the Condominiums and the Common Area, superior to all other encumbrances affecting any portion of the Project. Individual conveyances of Condominiums may, but shall not be required to, set forth such easements.

XVIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association and each 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, or any amendment hereto and the Articles and Bylaws; provided, however, that with respect to assessment liens, the Association shall have the exclusive right of enforcement. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 2. Severability of Covenants. Invalida-
tion of any one of these covenants or restrictions by judgment or court order shall not affect any other provisions which shall remain in full force and effect.

Section 3. Term. The covenants and restrictions of this Declaration shall run with and bind the Covered Property and the Project, and shall inure to the benefit of and be enforceable by the Association or the Owners, their legal representatives, heirs, successors and assigns until twenty (20) years after the date this Declaration is recorded, after which date they shall automatically be extended for successive periods of ten (10) years.

Section 4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a Condominium project and for the maintenance of the community recreational facilities and Common Areas. In case of any conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. The article and section headings have been inserted for convenience only and shall

not be considered or referred to in resolving questions of interpretation or construction.

Section 5. Amendments. Subject to the rights of Institutional Holders described in Article XIV above, this Declaration may be amended only by the affirmative assent or vote of both (i) seventy-five percent (75%) of the voting power of the Association, including the voting power of the Declarant, and (ii) seventy-five percent (75%) of the voting power of Members other than Declarant; provided, however, that the percentage of voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause; provided further, that if the two-class voting structure as provided by this Declaration is still in effect, this Declaration may not be amended without the vote or written assent of seventy-five percent (75%) of the voting power of each class of Members.

Notwithstanding any other provision of this Declaration, in the event that any further modification of this Declaration is required in order to comply with requirements of governmental or quasi-governmental corporations or agencies such as the Veterans Administration (VA), Federal Housing Administration (FHA), Government National Mortgage Association (GNMA), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC) or the like, such modifications may be effected by an amendment executed and recorded by the Class B

member alone. This power shall exist in Declarant only so long as there exist two classes of memberships as described in Article V above. Such modifications shall be for the benefit of and not impose any increased burden upon the Owners. Any such modifications to this Declaration shall also require approval by the California Department of Real Estate.

This amendment provision shall not be amended to allow amendments by the assent or vote of less than the prescribed percentage of voting power required for amendments hereof. An amendment or modification shall be effective when executed by the Secretary of the Association, who shall certify that the amendment or modification has been approved as provided herein, and recorded in the official records of the County. No amendment or modification of this Declaration which would adversely affect the rights of the City to enforce the terms and provisions of this Declaration as they relate to the maintenance of the Common Area, structures and landscaping within the Project, terminate or materially impair the powers and duties of the Association as set forth in this Declaration, or interfere with the rights of ingress and egress to any Unit or the Common Area shall be effective without the prior written consent of the Planning Director of the City.

Section 6. Dissolution. So long as there is any Condominium for which the Association is obligated to provide management, maintenance, preservation or control, the

Association may be dissolved or may transfer all or substantially all of its assets only upon the approval of one hundred percent (100%) of the Members.

Section 7. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association or any member of such Board or committee shall be liable to any Member of the Association for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within which such Board, committees or persons reasonably believed to be the scope of their duties.

Section 8. Violation of Declaration. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation contained in this Declaration is violated is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Architectural Committee and the Association. Such remedy shall be deemed cumulative and not exclusive.

Section 9. Common Plan Declaration. The covenants, conditions and restrictions set forth in this Declaration constitute a general program for the development, protection and maintenance of the Project to enhance its

value, desirability and attractiveness for the benefit of all Owners. By acquiring any ownership interest in a Condominium subject to this Declaration, each person or entity, for himself, his heirs, personal representatives, successors, transferees and assigns, agrees to be subject to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration. Declarant, by this Declaration, sets forth a program for the improvement and development of the Project and hereby evidences its intent that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all future Owners, grantees, purchasers, assignees, and transferees.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 20 day of April, 1984.

UNITED CITIZENS MORTGAGE
COMPANY

Richard Garber
Vice President

CORPORATE ACKNOWLEDGMENT

State of California }
County of Los Angeles } ss.

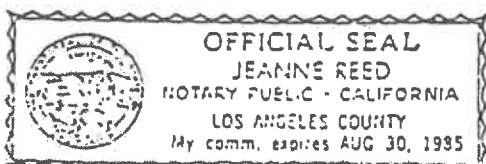
On this the 20th day of April, 1984 before me

Jeanne Reed

the undersigned Notary Public, personally appeared

Richard Garber

☒ personally known to me
☐ proved to me on the basis of satisfactory evidence
to be the person(s) who executed the within instrument as
Vice President or on behalf of the corporation therei
named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.



Jeanne Reed
Notary's Signature

EXHIBIT "A"

Lot 1 of Tract 15687 filed on September 15, 1983,
in Book 134, pages 8 and 9, of Maps, Official Re-
cords of the County Recorder of Riverside County,
California.

Exhibit "B"

STREET ADDRESS :

BUILDING "A" - ⁴⁶⁴~~460~~ S. CALLE ENCINITA

ADDRESS UNIT NO.	CONDOMINIUM PLAN UNIT NO.	CONDOMINIUM PLAN PARKING NO.
1st Fl. A-12	1-A	1-P
A-11	2-A	2-P
A-10	3-A	3-P
A-9	4-A	4-P
A-8	5-A	5-P
A-7	6-A	6-P
A-6	7-A	8-P
A-5	8-A	7-P
A-4	9-A	9-P
A-3	10-A	10-P
A-2	11-A	12-P
A-1	12-A	11-P
2nd Fl. A-24	13-A	14-P
A-23	14-A	13-P
A-22	15-A	16-P
A-21	16-A	15-P
A-20	17-A	17-P
A-19	18-A	18-P
A-18	19-A	20-P
A-17	20-A	19-P
A-16	21-A	21-P
A-15	22-A	22-P
A-14	23-A	23-P
A-13	24-A	24-P

STREET ADDRESS :

BUILDING "B" - 470 S. CALLE ENCILIA

ADDRESS UNIT NO.		CONDOMINIUM PLAN UNIT NO.	CONDOMINIUM PLAN PARKING NO.
1st Fl.	B-12	25-A	38-P
	B-11	26-A	37-P
	B-10	27-A	28-P
	B-9	28-A	27-P
	B-8	29-A	29-P
	B-7	30-A	30-P
	B-6	31-A	32-P
	B-5	32-A	31-P
	B-4	33-A	33-P
	B-3	34-A	34-P
	B-2	35-A	36-P
	B-1	36-A	35-P
2nd Fl.	B-24	37-A	25-P
	B-23	38-A	26-P
	B-22	39-A	40-P
	B-21	40-A	39-P
	B-20	41-A	41-P
	B-19	42-A	42-P
	B-18	43-A	44-P
	B-17	44-A	43-P
	B-16	45-A	45-P
	B-15	46-A	46-P
	B-14	47-A	48-P
	B-13	48-A	47-P

STREET ADDRESS :

BUILDING "C" - 471 EL SEGUNDO

ADDRESS UNIT NO.		CONDOMINIUM PLAN UNIT NO.	CONDOMINIUM PLAN PARKING NO.
1st Fl.	C-12	74-A	86-P
	C-11	73-A	85-P
	C-10	72-A	83-P
	C-9	71-A	84-P
	C-8	70-A	82-P
	C-7	69-A	81-P
	C-6	68-A	79-P
	C-5	67-A	80-P
	C-4	66-A	78-P
	C-3	65-A	77-P
	C-2	64-A	75-P
	C-1	63-A	76-P
2nd Fl.	C-24	86-A	74-P
	C-23	85-A	73-P
	C-22	84-A	71-P
	C-21	83-A	72-P
	C-20	82-A	70-P
	C-19	81-A	69-P
	C-18	80-A	67-P
	C-17	79-A	68-P
	C-16	78-A	66-P
	C-15	77-A	65-P
	C-14	76-A	63-P
	C-13	75-A	64-P

STREET ADDRESS :

467
BUILDING "D" - 461 EL SEGUNDO

ADDRESS UNIT NO.		CONDOMINIUM PLAN UNIT NO.	CONDOMINIUM PLAN PARKING NO.
1st Fl.	D-12	98-A	110-P
	D-11	97-A	109-P
	D-10	96-A	107-P
	D-9	95-A	108-P
	D-8	94-A	106-P
	D-7	93-A	105-P
	D-6	92-A	103-P
	D-5	91-A	104-P
	D-4	90-A	102-P
	D-3	89-A	101-P
	D-2	88-A	99-P
	D-1	87-A	100-P
2nd Fl.	D-24	110-A	98-P
	D-23	109-A	97-P
	D-22	108-A	95-P
	D-21	107-A	96-P
	D-20	106-A	94-P
	D-19	105-A	93-P
	D-18	104-A	91-P
	D-17	103-A	92-P
	D-16	102-A	90-P
	D-15	101-A	89-P
	D-14	100-A	87-P
	D-13	99-A	88-P

STREET ADDRESS :

BUILDING "E" - ⁴⁷⁴~~450~~ S. CALLE ENCILIA

ADDRESS UNIT NO.		CONDOMINIUM PLAN UNIT NO.	CONDOMINIUM PLAN PARKING NO.
1st Fl.	E-1	49-A	50-P
	E-2	50-A	52-P
	E-3	51-A	54-P
	E-4	52-A	56-P
	E-5	53-A	57-P
	E-6	54-A	59-P
	E-7	55-A	61-P
2nd Fl.	E-8	56-A	49-P
	E-9	57-A	51-P
	E-10	58-A	53-P
	E-11	59-A	55-P
	E-12	60-A	58-P
	E-13	61-A	60-P
	E-14	62-A	62-P

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
BEST, BEST & KRIEGER (WCE)
600 E. Tahquitz-McCallum
Palm Springs, CA 92262

COPY of Document Recorded
on ~~OCT 5 1984~~ as No 216264
has not been compared with
original.
WILLIAM E. CONERLY
County Recorder
RIVERSIDE COUNTY, CALIFORNIA

FIRST AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR THE
PALM SPRINGS BIARRITZ HOMEOWNERS ASSOCIATION

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE PALM SPRINGS BIARRITZ HOMEOWNERS ASSOCIATION ("Declaration") is made this 25th day of September, 1984, by UNITED CITIZENS MORTGAGE COMPANY, INC., a Corporation ("Declarant"), with reference to the following:

A. Declarant recorded the Declaration on April 23, 1984 as Instrument No. 83360, Official Records of Riverside County, California, covering property described therein.

B. Declarant has not conveyed any portion of or interest in said property and is entitled to amend the Declaration.

C. Declarant desires to amend the Declaration as provided herein.

NOW, THEREFORE, the Declaration is hereby amended as follows:

1. Sections 16 and 17 are hereby added to Article VI as follows:

16. Maintenance Agreement. Anything in this Declaration to the contrary notwithstanding, the Association shall have the right and power to enter into a Maintenance Agreement pursuant to which Declarant shall maintain Project Common Areas; provided, however, that the form of the Agreement has first been reviewed and approved by the California Department of Real Estate.

17. Exemption of Certain Units from Assessments. Anything in this Declaration to the contrary notwithstanding, Declarant shall not be required to pay any assessments on Units A-1 through A-24 and B-1 through B-24, inclusive, located in Buildings A and B, until the first day of the first month subsequent to the earlier of the following to occur:

- (a) The sale of any of said Units; or
- (b) The recording of a Notice of Completion with respect to any of said Units or said Building; or
- (c) The issuance of a Certificate of Occupancy for any of said Units or said Building; or
- (d) The expiration of two (2) years from the date of recording this First Amendment but in any event not later than September 25, 1986.

Declarant shall have no voting rights with respect to any of said Units until assessments have commenced as provided above.

2. Except as amended herein, the Declaration shall remain in full force and effect as originally written.

UNITED CITIZENS MORTGAGE COMPANY, INC.
a corporation

By: Marjorie S. Dix
Vice President

CORPORATE ACKNOWLEDGMENT

State of California

County of Los Angeles

ss.

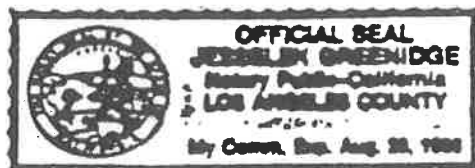
On this the 3rd day of October, 1984, before me,

Jesselen Greenidge

the undersigned Notary Public, personally appeared

Marjorie S. Dix

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument as Vice Pres. & Asst. Sec. or on behalf of the corporation therein named, and acknowledged to me that the corporation executed it.
WITNESS my hand and official seal.



Jesselen Greenidge
Notary's Signature