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DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE MARK CONDOMINIUM OWNERS ASSOCIATION

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DECLARATION OF

COVENANTS, CONDITIONS AND RESTRICTIONS FOR

THE MARK CONDOMINIUM OWNERS ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE MARK CONDOMINIUM OWNERS ASSOCIATION ("Declaration") is made effective as of __________________, 2005 ("Effective Date"), by THE MARK CONDOMINIUMS LLC, a California limited liability company ("Declarant").

RECITALS

This Declaration is made in contemplation of the following facts and circumstances:

A. Declarant is the owner of certain real property in San Diego, California, described on Exhibit A, attached hereto and incorporated herein by this reference ("Property").

B. Declarant is developing the Property as a condominium project ("Project") as defined in California Civil Code Section 1351(f), pursuant to the provisions of the Davis-Stirling Common Interest Development Act. The Project is a "Common Interest Development" in accordance with California Civil Code Section 1353(a). The Property is the subject of a Condominium Plan. The development of the Property as the Project will be consistent with documentation approved by the California Department of Real Estate.

C. The Project will consist of the Common Area, 244 Living Units and 6 Commercial Units, as further described on the Condominium Plan.

D. The Owner of a Condominium in the Project will receive title to an individual Unit plus an undivided 1/250TH interest as tenant in common in the Undivided Interest Common Area and a nonexclusive easement to use the Common Area located within the Project. Each Condominium shall have appurtenant to it a membership in the Association, which will own the Common Area.

E. Declarant intends by the recordation of this Declaration and the Condominium Plan with the County Recorder to meet the requirements of California Civil Code Section 1352, and to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the Condominiums located upon the Property and the Owners thereof.

F. Declarant hereby establishes by this Declaration a plan for the ownership of real property estates consisting of the individual ownership of the area of space contained in each Unit as well as the co-ownership, as tenants in common and as herein set forth, of the Undivided Interest Common Area.

EFFECT OF DECLARATION

Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, equitable servitudes, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part thereof, in accordance with the plans for its improvement and the division thereof into Condominiums. All of said declarations, limitations, covenants, conditions, restrictions, equitable servitudes, and easements shall constitute enforceable equitable servitudes, covenants and easements which shall run with the land and shall be binding upon Declarant and its respective successors, assigns and grantees, and all parties having or acquiring any right, title or interest in or to any part of the Project. Each Owner (including Declarant, with respect to any unsold Condominiums within the Project) shall be subject to all of the rights and duties set forth in the Condominium Documents.

ARTICLE I

DEFINITIONS

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

Section 1.1. Architectural Committee. The Architectural Committee created pursuant to Article XII.

Section 1.2. Architectural Standards. The architectural standards pertaining to the Project promulgated by the Architectural Committee from time to time, as enumerated in Article XII.

Section 1.3. Articles. The Articles of Incorporation of the Association, filed in the Office of the Secretary of State of California, as amended from time to time.

Section 1.4. Assessment. Any Regular, Special, Reimbursement, or Reconstruction Assessment, as defined below:

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

(b) Special Assessment. A charge against each Owner and his or her Condominium, representing a portion of the cost to the Association for installation or construction of any Improvements on any portion of the Common Area which the Association may from time to time authorize pursuant to this Declaration.

(c) Reimbursement Assessment. A charge against a particular Owner and his or her Condominium for the purpose of reimbursing the Association for costs incurred in bringing the Owner and his or her Unit into compliance with this Declaration, the Articles, Bylaws, or Rules or Regulations, or any other charge designated as a Reimbursement Assessment in this Declaration, together with attorneys' fees and other charges payable by such Owner pursuant to this Declaration.

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

Section 1.5. Association. The Mark Condominium Owners Association, a California non-profit mutual benefit corporation.

Section 1.6. Board of Directors or Board. The governing body of the Association, elected in accordance with the Bylaws and this Declaration.

Section 1.7. Bond. A bond or other arrangement to secure the performance of the commitment of Declarant to complete Improvements to the Common Area under Section 14.1.

Section 1.8. Building. Any of the buildings constructed on the Property in accordance with the Condominium Plan, which are contemplated to be a 33-story condominium tower and three low-rise structures.

Section 1.9. Building Signage and Exterior Criteria. The signage, exterior building facade and storefront criteria and guidelines relating to the Commercial Units in the Project set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

Section 1.10. Bylaws. The Bylaws of the Association adopted by the Board of Directors, as amended from time to time.

Section 1.11. City. San Diego, California.

Section 1.12. Class A Member. Any Class A Member as such term is defined in the Bylaws of the Association.

Section 1.13. Class B Member. The Class B Member as such term is defined in the Bylaws of the Association.

Section 1.14. Close of Escrow. The date of recordation of a Grant Deed conveying ownership of a Condominium to an Owner.

Section 1.15. Collateral. Defined in Section 13.12.

Section 1.16. Commercial Units. Those Units which are designated for commercial use on the Condominium Plan and which shall be used subject to the provisions and conditions hereof, for any commercial purpose permitted hereunder and allowed under applicable zoning and other land use regulations which may exist from time to time with respect to the Project.

Section 1.17. Common Area. All of the Project, except the individual Units and the Undivided Interest Common Area, as described on the Condominium Plan. The Common Area includes, without limitation, elements of the Buildings (other than the Units), sidewalks, entry areas and gates, parking and driveway areas, landscaping, irrigation systems, storage areas, corridors, entry areas, stairways, the fitness room, fitness area restrooms, the courtyard, the pool, whirlpool and pool area restrooms.

Section 1.18. Common Expenses. The actual and estimated costs of the following:

(a) Maintenance, management, operation, repair and replacement of the Common Area and the Improvements thereon, and all other areas which are maintained by the Association;

(b) Unpaid Special, Reconstruction and Reimbursement Assessments;

(c) Maintenance by the Association of any areas within the public right-of-way of public streets in the vicinity of the Common Area (including any Encroachment Areas), as provided in this Declaration or pursuant to agreements with the City;

(d) Management and administration of the Association, including, without limitation, compensation or fees paid to managers, accountants, attorneys and employees;

(e) Utilities, gardening, landscaping, irrigation, doormen and other staffing, pool and whirlpool cleaning and maintenance, janitorial services or other services benefiting the Owners, their Condominiums and the Common Area to the extent such services are paid for by the Association and not separately and individually billed directly to the Owners;

(f) Fire, casualty, liability, workers' compensation and other insurance covering the Common Area and the Association;

(g) Other insurance obtained by the Association;

(h) Reasonable reserves as deemed appropriate by the Board of Directors;

(i) Bonding of the members of the Board of Directors, the professional managing agent or any other Person handling the funds of the Association;

(j) Taxes payable by the Association;

(k) Amounts payable 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 the Bylaws in furtherance of the purposes of the Association, or in the discharge of any obligations imposed on the Association by this Declaration.

Section 1.19. Common Interest. The proportionate undivided interest as tenant in common in the Undivided Interest Common Area, which is appurtenant to each Condominium as set forth in this Declaration.

Section 1.20. Condominium. An estate in real property, as defined in California Civil Code Section 1351(f). The ownership of each Condominium shall include the ownership of: (a) a Unit, the boundaries of which are described on the Condominium Plan in sufficient detail to locate all boundaries thereof, (b) the respective undivided interest in the Undivided Interest Common Area; (c) membership in the Association; (d) a nonexclusive easement for ingress, egress, use, enjoyment and support over all of the Common Area; and (e) certain Exclusive Use Common Area, as identified and defined herein and in the Condominium Plan. Each Unit shall be a separate freehold estate consisting of the space described and defined in Section 2.1. Each Unit includes all portions of the structure so described and the airspace so encompassed.

Section 1.21. Condominium Documents. This Declaration, all exhibits attached hereto, the Articles, the Bylaws, and the Rules and Regulations as adopted from time to time.

Section 1.22. Condominium Plan. A plan consisting of: (a) a description or survey map of the Project, which shall refer to or show monumentation on the ground; (b) a three dimensional description of the Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the Common Area, the Undivided Interest Common Area, the Outdoor Spaces, Parking Spaces and Storage Spaces which are part of the Exclusive Use Common Area, and each Living Unit and each Commercial Unit; and, (c) a certificate consenting to the recordation of the Condominium Plan pursuant to the Davis-Stirling Common Interest Development Act, signed and acknowledged by the record owner of the Property. The certificate shall also be signed and acknowledged by the beneficiary of each recorded deed of trust encumbering the Property. Owners of mineral rights, easements, right-of-ways, and other nonpossessory interests shall not need to sign the Condominium Plan. The Condominium Plan may be amended or revoked by a subsequently acknowledged and recorded instrument executed by all the persons whose signatures are then needed.

Section 1.23. County. San Diego County, California.

Section 1.24. County Recorder. The Office of the County Recorder for San Diego County, California.

Section 1.25. Declarant. The Mark Condominiums LLC, a California limited liability company, and its successors and assigns, if such successors and assigns acquire any or all of Declarant's interest in the Property for the purpose of purchase or sale, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion or all of the Project. For any successor or assignee of Declarant to be deemed a Declarant under the terms of this Declaration, Declarant shall record in the County a certificate so designating said successor or assignee as Declarant. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

Section 1.26. Developer Parties. Those certain developer parties defined in Section 18.14(c).

Section 1.27. DRE. The California Department of Real Estate.

Section 1.28. Effective Date. The Effective Date of this Declaration, as set forth above.

Section 1.29. Eligible Holder. Defined in Section 13.2.

Section 1.30. Encroachment Areas. Those certain portions of the Project extending beyond the Property line, as shown on the Condominium Plan and further described in the Encroachment Agreement.

Section 1.31. Encroachment Agreement. Each Encroachment Agreement, Encroachment Maintenance Agreement, and Encroachment Removal Agreement which may be entered into between the City of San Diego and Declarant (and recorded in the San Diego County Recorder's Office), as the same may be amended, replaced or supplemented. In the event any Encroachment Agreement is terminated and replaced with an easement or any other document providing rights to the Encroachment Area, then for purposes of this Declaration, the term "Encroachment Agreement" shall refer to such successor documents and any modifications, amendments or supplements thereto.

Section 1.32. Exclusive Use Common Area. Those portions of the Common Area set aside for the exclusive use of one of the Owners. Said Exclusive Use Common Area shall be allocated to the designated Units and shall include exclusive use Outdoor Spaces, Parking Spaces and Storage Spaces. Additionally, any doorsteps, stoops, porches, exterior doors, door frames and hardware incident thereto, screens and windows or other fixtures designed to serve a Unit are Exclusive Use Common Area allocated exclusively to that Unit.

Section 1.33. Exclusive Use Deck Area. A balcony, deck or terrace space allocated exclusively for the use of a certain Condominium, designated on the Condominium Plan with the letter "D."

Section 1.34. Exclusive Use Patio Area. A patio space allocated exclusively for the use of a certain Condominium, designated on the Condominium Plan with the letter "P."

Section 1.35. First Conveyance Date. The date on which the first Condominium is conveyed in the Project under the authority of a Public Report approved by the DRE.

Section 1.36. FNMA. The Federal National Mortgage Association.

Section 1.37. Fremont. Defined in Section 8.1.

Section 1.38. <u>Fremont Loan</u>. Defined in Section 8.1.

Section 1.39. <u>Improvements.</u> All structural and landscaping improvements of every type and kind constructed within the Project and on the Common Area, including, without limitation, the Buildings and any additions and alterations thereto; any recreational facilities; fixtures; sidewalks; driveways; parking and storage areas; fences; screening walls; retaining walls; stairs; elevators; balconies; windbreaks; hedges; plantings; trees and shrubs; poles; and signs.

Section 1.40. <u>Institutional Holder.</u> Any beneficiary of a deed of trust or mortgagee of a mortgage which encumbers a Condominium and which is a bank, savings and loan association, credit union, established mortgage company, other entity chartered under federal or state laws, an insurance company, or any federal or state agency. In addition to the foregoing, so long as Lehman holds pledged interests in the Owner, it shall be deemed an Institutional Holder hereunder. Any potential conflicts between the respective rights of Fremont and Lehman as Institutional Holders hereunder shall be resolved pursuant to the terms of any intercreditor agreement between them.

Section 1.41. <u>JAMS.</u> Has the meaning given in Section 18.14(c)(iii).

Section 1.42. <u>Lehman.</u> Lehman Brothers Holdings Inc., a Delaware corporation, and its successors and assigns.

Section 1.43. <u>Living Units.</u> Those Units, including but not limited to the Townhome Units, which are designated for residential use on the Condominium Plan.

Section 1.44. <u>Manager.</u> A Person or firm retained by the Association to perform management or administrative functions as set forth in Section 7.3(d).

Section 1.45. <u>Member.</u> Each Person, including Declarant, entitled to membership in the Association. Whenever "Member" or "Membership" is used in this Declaration for the purpose of determining quorums, percentages, or minimum or maximum numbers for voting, as specified in this Declaration, all Persons who are Members because of their joint ownership of a particular Condominium shall be counted as one (1).

Section 1.46. <u>Mortgage.</u> Any duly recorded and valid mortgage or deed of trust encumbering a Condominium.

Section 1.47. <u>Motorcycle Parking Space.</u> A Parking Space designated for the parking of a motorcycle, as described on the Condominium Plan.

Section 1.48. <u>Notice and Hearing.</u> A notice and a hearing in connection with any disciplinary hearing as set forth in the Bylaws.

Section 1.49. <u>Notice of Completion.</u> A Notice of Completion filed in connection with the completion of any Improvement involving the Common Area.

Section 1.50. Notice of Delinquent Assessment. A notice recorded by the Association in connection with a lien for delinquent Assessments pursuant to Section 6.11.

Section 1.51. Owner. Owner shall mean and refer to the record holder or holders of title, if more than one, of a Condominium in the Project. Owner shall include any Person having a fee simple title to any Condominium and a purchaser under a recorded installment land sales contract, but shall exclude Persons having any interest merely as security for the performance of an obligation or as a lessee. Whenever "Owner" is used in this Declaration for the purposes of determining quorums, percentages, or minimum or maximum numbers for voting, as specified in this Declaration, all the Owners of a particular Condominium shall be counted as one.

Section 1.52. Outdoor Spaces. Outdoor areas allocated exclusively to certain Condominiums, designated as Exclusive Use Deck Areas or Exclusive Use Patio Areas on the Condominium Plan.

Section 1.53. Parking Space. A parking space for the parking of a motor vehicle, designated on the Condominium Plan with the letters "PS," other than (i) Parking Spaces for the use of handicapped persons, which are designated on the Condominium Plan with the letters "HC" and (ii) Motorcycle Parking Spaces, which are designated on the Condominium Plan with the letter "M."

Section 1.54. Person. A natural individual, partnership, limited partnership, limited liability company, corporation, trust, estate, association or any other entity, whether domestic or foreign.

Section 1.55. Planned Construction Statement. A Planned Construction Statement issued in connection with a Bond under Section 14.1(a).

Section 1.56. Planned Development. A "planned development" as defined in Cal. Civ. Code § 1351(k).

Section 1.57. President. The president of the Board of Directors, elected pursuant to the Bylaws.

Section 1.58. Project. All property and Improvements, including all of the Units and the Common Area, contained within the Property.

Section 1.59. Property. That certain real property located in San Diego, California described on Exhibit A.

Section 1.60. Public Report. A Final (White) Subdivision Public Report issued by the DRE pursuant to the California Subdivided Lands Act.

Section 1.61. Rules and Regulations. The rules and regulations adopted by the Board of Directors pursuant to the Bylaws and Section 7.3(g).

Section 1.62. Secretary. The secretary of the Board of Directors, duly elected pursuant to the procedures set forth in the Bylaws.

Section 1.63. Small Antenna. As defined in Section 4.11.

Section 1.64. Storage Space. A storage space, as described on the Condominium Plan.

Section 1.65. Taking. A condemnation by eminent domain, or by sale under threat thereof, of all or part of the Common Area of the Project.

Section 1.66. Townhome Units. The eleven Living Units designated as "Townhome Units" on the Condominium Plan, located in three low-rise structures facing 8th Avenue, Island Avenue and 9th Avenue.

Section 1.67. Undivided Interest Common Area. The three dimensional airspace above the Project designated as Undivided Interest Common Area on the Condominium Plan.

Section 1.68. Unit. A separate freehold estate as defined in Civil Code Sections 1351(f)(1) and 1351(f)(2) and shall consist of the separate interest in space as designated on the Condominium Plan and further designated in Section 2.1(a) below.

Section 1.69. Upgrades. Optional items and fixtures installed in any standard Unit (as described in the original plans and specifications for the Project Units) by or at the direction of Declarant prior to the Close of Escrow for such Unit or by any Owner following the Close of Escrow for that Owner's Unit.

ARTICLE II

CREATION OF PROJECT

Section 2.1. Division of Project. Declarant, in order to establish the Project as a condominium project, hereby divides the Project into the following:

(a) Units. Each of the Commercial Units and the Living Units, as separately shown, numbered and designated in the Condominium Plan for the Property. The dimensions of a Unit are measured from the unfinished floor, walls, drop ceiling, except as otherwise noted herein. The Unit includes all Improvements and Upgrades situated within its boundaries including, but not limited to, interior walls (except interior bearing walls), appliances, cabinets, interior doors, all electrical, heating, plumbing and other utility fixtures. The following are not part of any Unit: bearing walls, columns, floors, ceilings, roofs and foundations; central heating and other central services; pipes, ducts, flues, shoots, conduits, wires and other utility installations wherever located, except the openings and outlets thereof when located in the Unit. Each Unit shall include any door or window within a perimeter wall, the interior uncoated surfaces of bearing walls and perimeter walls, floors and ceiling, the openings and outlets of all utility installations in the Unit. Any utility fixtures that are located partially within the Unit and partially in the Common Areas such as electrical outlets, and that exclusively serve the Unit are part of the Unit. Areas within a dropped ceiling that contain utilities that serve two or more Condominiums are Common Area and not part of the Unit. If any portion of the Common Area encroaches upon any Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. In interpreting deeds and the Condominium Plan, the then existing physical boundaries of a Unit, whether in its original state or as reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or the Condominium Plan, regardless of settling or lateral movement of any Building and regardless of any minor variance between boundaries shown on the Condominium Plan or any deed, and those of any Building.

(b) Common Area. The Common Area consists of that portion of the Project defined in Section 1.17, title to which shall be held by the Association. Each Owner may use, on a non-exclusive basis (except as otherwise provided herein), the Common Area in accordance with the purposes for which it is intended, subject to this Declaration and the Rules and Regulations. Each Owner of a Commercial Unit shall have a non-exclusive right to install and maintain a store front, awning and sign over, across and within the Common Area as more fully described on Exhibit "B" and in this Declaration. The Common Area, which shall be held for the benefit of all Owners, shall be conveyed to the Association prior to or on the First Conveyance Date.

(c) Undivided Interest Common Area. Each Owner shall have, as appurtenant to his or her Condominium, an equal undivided $1/250^{th}$ interest in the Undivided Interest Common Area. The Common Interest appurtenant to each Condominium is permanent in character and cannot be altered without the consent of all of the Owners, as expressed in an amended Declaration. The Common Interest cannot be separated from the Condominium, and any conveyance or transfer of the Condominium shall include the Common Interest, the Owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium.

(d) Exclusive Use Common Area. The areas designated as "Exclusive Use Common Area" on the Condominium Plan are hereby set aside and allocated for the exclusive use of the Owners of the Units to which such areas are allocated. Any exclusive use Storage Spaces or Parking Spaces, including Motorcycle Parking Spaces, which are not assigned to Units on the Condominium Plan and which remain unassigned as of the date that the last Living Unit is conveyed in the Project shall continue to be held by the Association as part of the Common Area and the Association may assign or otherwise use the same from time to time as the Board deems fit. Certain parts of the Exclusive Use Common Area (involving portions of the Outdoor Spaces, Parking Spaces and Storage Spaces) may be located within Encroachment Areas. In those situations, the City may at a future date have the right to require that Improvements in such Encroachment Area be removed.

(i) Outdoor Spaces – Encroachment Area. Portions of certain Outdoor Spaces may be located within Encroachment Areas, as shown on the Condominium Plan. The

Owner of a Condominium of which such Outdoor Space is a part will not have a license over the portion of the Outdoor Space situated within an Encroachment Area, but will have an exclusive right to use such balance of the Outdoor Space. Notwithstanding the foregoing, if the City agrees to grant rights of use over the Encroachment Area on which the Outdoor Space is situated, then the Owner shall have rights of use over such Encroachment Area.

(ii) Outdoor Spaces – Window Washing Equipment. Portions of certain Outdoor Spaces, including but not necessarily limited to Outdoor Spaces conveyed with Units 2505, 2706, 2601 and 3201, may be subject to the permanent installation of window cleaning equipment thereon. In such instances, the applicable Owner will not have a license to use any portion of the Outdoor Space containing such equipment. In addition, the easement rights granted to the Association by Section 16.1 shall include an easement over and through the foregoing Units, Units 3101, 2701 and 2706, and such other Units as may be reasonably necessary for access to the window washing equipment in connection with the maintenance and repair thereof and for cleaning the exterior windows of the Building.

(iii) Storage and Parking Spaces. Each Storage Space and Parking Space, including each Motorcycle Parking Space, shall be part of the Common Area and part of the Exclusive Use Common Area after being assigned to an Owner pursuant to the provisions hereof. The Storage Spaces and Parking Spaces, including the Motorcycle Parking Spaces, shall be permanently maintained for such purposes and shall not be converted for any other use at any time. The Association shall have the power and the authority to reassign Storage Spaces and Parking Spaces, including Motorcycle Parking Spaces, from time to time, to accommodate individuals with disabilities, as set forth in Section 2.1(d)(vi), to keep Storage Spaces and Parking Spaces assigned to particular Condominiums reasonably proximate, or as otherwise necessary to comply with applicable legal requirements. In the event that the Association finds it necessary to reassign any Storage Spaces or Parking Spaces, including Motorcycle Parking Spaces, the affected Owners shall cooperate with the Association and sign all necessary documents in connection with such reassignment.

(iv) Parking Spaces – Encroachment Area. Portions of certain Parking Spaces are located within Encroachment Areas, as shown on the Condominium Plan. The Owner of the Condominium to which such Parking Space is assigned will have an exclusive license to use such Parking Space, subject to the rights set forth in the Encroachment Agreement.

(v) Storage Spaces – Encroachment Area. Portions of certain Storage Spaces may be located within Encroachment Areas, as shown on the Condominium Plan. The Owner of the Condominium to which such Storage Space is appurtenant will have an exclusive license to use such Storage Space, subject to the rights set forth in the Encroachment Agreement.

(vi) Handicap Parking Spaces. The Project will provide Parking Spaces for handicapped persons (which are designated on the Condominium Plan with the letters "HC"), the exclusive use of which may be allocated by Declarant to the Owners of particular Condominiums. It is the intention of Declarant to allocate Parking Spaces, other than those for handicapped persons, at the time each original Owner executes his or her purchase contract for a

Condominium. At or after such time, any handicapped Owner may request a Parking Space designated for a handicapped person and the Declarant agrees to provide any such Owner at the close of escrow, on an "as available" and non-discriminatory basis, a Parking Space so designated. Notwithstanding the foregoing, nothing herein shall be construed to require the Declarant or the Association to provide handicapped-assessable parking in excess of applicable legal requirements. An Owner who has been assigned a Parking Space designated for a handicapped person who is not himself or herself handicapped may be required by the Association to permit the Owner or occupant of another Unit who is or becomes handicapped (regardless of whether the handicapped person is a new Owner) the exclusive right to use such designated Parking Space. Where a non-handicapped Owner is required to surrender a Parking Space designated for a handicapped person, the Association shall reassign such affected Owner a replacement Parking Space. In addition, in the event an Owner who has been assigned a handicapped-assessable Parking Space should sell or otherwise transfer his or her interest in the Condominium, the handicapped Parking Space shall automatically revert back to the Association for reassignment to another Owner as necessary. Evidence of handicap status shall be provided by a distinguishing license plate or placard issued by the California Department of Motor Vehicles. The Association shall have the authority and be responsible for coordinating the reassignment of Parking Spaces pursuant to this section and may adopt Rules and Regulations with respect thereto, including the procedure to be followed should an Owner or occupant be handicapped and wish to use a designated Parking Space, the notice required to be given to the Association and any affected Owner, and review of the required evidence of handicap status. The Association shall maintain appropriate records of such reassignments, including a copy of the evidence provided.

Section 2.2. Partition Prohibited. Except as provided in this section, and in accordance with California Civil Code Section 1359, the Common Area and the Undivided Interest Common Area shall remain undivided, and there shall be no judicial partition thereof. Nothing in this section shall be deemed to prohibit partition of a co-tenancy in a Condominium. The Owner of a Condominium in the Project may maintain a partition action as to the entire Project as if the Owners of all of the Condominiums in the Project were tenants in common in the entire Project in the same proportion as their interests in the Undivided Interest Common Area. The court shall order partition under this subdivision only by sale of the entire Project and only upon a showing of one of the following:

(a) More than three years before the filing of the action, the Project was damaged or destroyed, so that a material part was rendered unfit for its prior use, and the Project has not been rebuilt or repaired substantially to its state prior to the damage or destruction;

(b) Three-fourths or more of the Project is destroyed or substantially damaged and Owners of Condominiums holding in the aggregate more than a fifty percent interest in the Undivided Interest Common Area oppose repair or restoration of the Project; or

(c) The Project has been in existence more than fifty years, is obsolete and uneconomic, and Owners of Condominiums holding in the aggregate more than a fifty percent interest in the Undivided Interest Common Area oppose repair or restoration of the Project.

ARTICLE III

RIGHTS OF ENJOYMENT

Section 3.1. Use of Common Area. All of the Common Area shall be held for the common use, benefit and enjoyment of all Owners, and for such other purposes as may be permitted in this Declaration, except as otherwise provided in this Declaration.

Section 3.2. Members' Rights of Enjoyment. Every Member of the Association shall have, for such Member and his or her family, guests, tenants and invitees, a nonexclusive easement for the use and enjoyment of the Common Area, subject to this Declaration, including, without limitation, the following:

(a) The right of the Association to establish Rules and Regulations pertaining to the use of the Common Area;

(b) The right of the Association, upon the vote or written assent of a majority 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 XIII) to mortgage, pledge, deed in trust, or hypothecate any or all of the Association's real or personal property, including the Common Area, as security for money borrowed or debts incurred;

(c) Subject to the rights of Institutional Holders described in Article XIII, the right of the Association to dedicate, release, alienate, transfer or assign any 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 has been signed and recorded by Members entitled to cast at least a majority of each class of the voting power of the Association agreeing to such dedication, release, alienation or transfer.

(d) 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; such use shall not unreasonably interfere with the rights of enjoyment of the other Owners and will expire as specified in Section 16.5.

(e) The rights and reservations of Declarant as set forth in this Declaration, including the right of Declarant, its affiliated entities, tenants, 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 the units; such use shall not unreasonably interfere with the rights and enjoyment of the other Owners and will expire as specified in Section 16.5.

(f) The right of the Association to suspend the rights to use 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 or her Condominium remains delinquent; and, after Notice and Hearing with an opportunity for such Member to set forth his or her position, to impose monetary penalties or suspend such rights for a reasonable period of time, not exceeding thirty days, for any violation of this Declaration, the Articles, Bylaws or the Rules and Regulations. 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 Rules and Regulations.

(g) The rights of the Owners of Commercial Units to utilize the Common Area are limited as set forth in this Declaration.

Section 3.3. Rights Under Encroachment Agreement. Each Owner acknowledges that the City has certain rights which it may exercise pursuant to an Encroachment Agreement. Each Owner delegates to Declarant and the Association all rights and authority regarding the Encroachment Agreement. Declarant and the Association shall have the right (a) to enter into the area affected as and when necessary, and (b) to negotiate, modify, amend or supplement each Encroachment Agreement without the consent of each of the Owners, so long as such new agreements and modifications, amendments and supplements do not materially and adversely impair the rights and obligations of the Owners affected by the agreements.

Section 3.4. Delegation of Use. Any Member may delegate his or her right to the use and enjoyment of the Common Area to his or her family, guests, tenants and invitees, subject to the Rules and Regulations.

Section 3.5. Waiver of Use. No Member may exempt himself or herself from personal liability for Assessments duly levied by the Association, or effect the release of his or her Condominium from the liens, charges and other provisions of this Declaration, the Articles, Bylaws and the Rules and Regulations.

Section 3.6. Waiver of Easement for Light, Air and View. No Owner shall have an easement for light, air or view. No diminution of light, air or view by any structure or improvement now existing or hereafter erected shall entitle any Owner or any tenant of any Owner to claim any easement for light, air or view within the Project, or damages related to the lack thereof.

Section 3.7. Notice of Airport in Vicinity. The Project is located in the vicinity of an airport, and although probably not located within an area currently designated as an "airport influence area" by the San Diego Land Use Commission, the following notice is included as provided in Section 11010 of the California Business and Professions Code:

> The Project is presently located in the vicinity of an airport. The Project may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example, noise, vibration, and odors). Individual sensitivities to those annoyances can vary from person to person. A purchaser of a Unit may wish to consider what airport annoyances, if any, are associated with

the Project before such party completes its purchase and determine whether they are acceptable.

ARTICLE IV

USE RESTRICTIONS

Section 4.1. Use Restrictions. All of the Project, including the Condominiums and the Common Area, shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemption of Declarant set forth herein. The Association may waive any of the following limitations and restrictions if the strict application thereof could be unreasonably or unduly harsh under the circumstances. Any such interpretation or waiver of the following provisions shall be in writing or shall be contained in the Rules and Regulations.

Section 4.2. Use of Condominiums. Each Living Unit shall be used only for residential purposes, except that a Townhome Unit may be used for live/work purposes as long as such uses: (a) are in conformance with local governmental ordinances; (b) are merely incidental to use of the subject Living Unit as a single family residence; (c) operate solely within the subject Townhome Unit; (d) are limited to arts and crafts, professional services or similar lawful business related activities; (e) are operated by the Owner or tenant of the subject Townhome Unit or by an adult member of such Owner's or tenant's family whose principal residence is the subject Townhome Unit; (f) do not disturb or interfere with the quiet enjoyment of the Project by other Owners; (g) do not result in unreasonable increases in pedestrian or vehicular ingress and egress to the Project or parking within the Project; (h) do not result in violation of any other provision of this Declaration or the Rules and Regulations; and (i) do not include entry into the Project by customers, clients, patients, suppliers, vendors, invitees or employees in conjunction with the operation of the business.

Section 4.3. Use by Declarant. Declarant and its agents may use the Common Area and any Condominiums owned by Declarant for a model site or sites and a display and sales office for the Project or other project being developed by Declarant. The use of the Common Area by Declarant, its affiliated entities and tenants and their respective agents shall not unreasonably interfere with the use thereof by the Class A Members of the Association.

Section 4.4. Nuisances. No noxious or offensive activities shall be carried on in any Condominium, the Common Area or in any part of the Project. Nothing shall be done thereon which may be or may become an annoyance or a nuisance to, or which may in any way interfere with, the quiet enjoyment of any Owner of his or her Condominium or of the Common Area, which shall make it impossible for the Association to carry insurance required or reasonably deemed to be necessary by the Board, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of the Project. To the extent any such activity by an Owner increases the rate of insurance for the Project, such Owner shall be responsible for paying to the Association such additional cost. Each Owner shall promptly and fully comply with all applicable laws, rules, ordinances, statutes, regulations and requirements of any governmental agency or authority with respect to the occupancy and use of any Condominium.

Section 4.5. Vehicle Restrictions. No trailer, camper, mobile home, commercial vehicle, utility or other truck (other than standard size pickup truck or van), inoperable automobile, boat, aircraft or similar equipment shall be permitted to remain upon any area within the Project, other than temporarily (less than two successive days and less than four total days in any calendar month) within an Owner's Parking Space, or for the purpose of loading or unloading. No Owner, or any member of his or her family, or his or her tenants, guests, invitees, agents, licensees, servants or employees shall park or cause to be parked any vehicle in such a manner as to impede or prevent ready access to any entrance or exit of the Project or any of the Parking Spaces designated in the Condominium Plan. No Owner shall permit any member of his or her family, or his or her tenants, guests, invitees, agents, licensees, servants or employees to use any Parking Space, which has been assigned to another Owner. Commercial vehicles shall not include sedans or standard size pickup trucks or vans which are used both for business and personal use, as long as the signs or markings of a commercial nature on such vehicles are unobtrusive and inoffensive, as determined by the Board. No automobile, recreational vehicle or equipment, commercial vehicle or any other motorized vehicle may be dismantled, rebuilt, repaired, serviced or repainted in the Project.

Section 4.6. Rental of Condominium. An Owner shall be entitled to rent his or her Condominium subject to the restrictions set forth herein. Any rental or leasing agreement shall be in writing, shall provide that the lease or rental is subject to the Condominium Documents, shall be for a period of not less than three months, and shall provide that any failure to comply with any provisions of the Condominium Documents shall be a default under the rental or lease agreement. Any Owner who shall lease his or her Condominium shall be responsible for assuring compliance by the lessee with the Condominium Documents. If any such lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be part of the lease and binding upon the lessee by reason of their being stated in this Declaration. Copies of all leases and rental agreements shall be delivered by the Owner of a Condominium to the Board before the tenancy commences.

Section 4.7. Signs. Unless otherwise permitted under applicable law, no sign or billboard of any kind shall be displayed to the public view in the Project with the following exceptions:

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

(b) Signs, flags, banners, mannequins, statues and other identifying features as may be used by Declarant or its sales agents in connection with the development of the Project and the sale and marketing of portions thereof;

(c) Signs on the Project which Declarant deems necessary for the construction of any Improvements and identification signs regarding financing and construction;

(d) Signs on the Project as may be required for traffic control and regulation of open areas therein;

(e) Identification signs on the Project as may be deemed appropriate by the Board to designate facilities within the Project;

(f) Signs on or related to the Commercial Units so long as such signs satisfy the restrictions set forth in the Building Signage and Exterior Criteria; and

(g) In accordance with the provisions of California Civil Code Section 713, an Owner may display on Owner's Condominium not more than one "for sale" or "for lease" sign.

All signs displayed in the Project shall be subject to the approval of the Board or the Architectural Committee.

Section 4.8. Hazardous Materials. No hazardous, toxic or contaminated materials which are regulated by any federal, state or local agency shall be stored, placed or used on the Project except that the Association and the Owners of the Commercial Units shall be entitled to use appropriate cleaning supplies and business materials in their respective Units which contain hazardous materials so long as such cleaning supplies and housing materials are utilized and promptly disposed of in accordance with applicable laws. Within ten days of receipt of written notice from the Association specifying any item which violates such restriction, the Owner involved shall cause such item to be removed at such Owner's sole cost and expense. In the event such item is not timely removed, the Association may remove or cause to be removed such item and assess the Owner the amount of all costs and expenses therefor.

Section 4.9. Animals. No animals shall be kept in any Condominium, except that no more than two domestic cats, dogs or other household pets may be kept within each Condominium, as long as such pets are not kept, bred, or maintained for any commercial purpose. The Association shall have the right, in its sole discretion, to ban any so-called "aggressive breeds" such as pit bulls or rottweilers. No animals may be kept in a Condominium which, in the good faith judgment of the Board, will result in an unreasonable annoyance or will be obnoxious to other Owners. Pets shall not be permitted in the courtyard at any time. Pets shall not be permitted in other Common Areas unless expressly allowed by the Rules and Regulations. The Owner of any pet(s) shall be responsible for the immediate removal and clean-up of the waste of such pet(s). No Owner shall allow his or her pet(s) to run unrestrained within the Project and each Owner shall at all times have full and complete control over his or her pet(s). The Board shall have the right, after notice and hearing, to remove any animal from the Project that it deems to constitute a continuing nuisance to the other Owners. Domestic birds and fish (in an aquarium) are permitted to be kept as household pets in a Condominium as long as such animals: (a) are kept within the interior portions of the Condominium and are not permitted in the Common Area; (b) do not disturb any Owner's quiet enjoyment of his or her Condominium or the Common Area (including, but not limited to, disturbances generated by excessive noisiness); (c) are not bred, kept or raised for commercial purposes or, as determined by the Board in its sole discretion, kept in unreasonable numbers; (d) do not constitute a nuisance or threat to the personal safety of other Owners and their invitees in the Project; and (e) with respect to fish, are kept in an aquarium or other container that holds or contains no more than thirty gallons of water.

Section 4.10. Unsightly Items and Trash Disposal. All rubbish, debris, or unsightly materials or objects of any kind shall be regularly removed from the Condominiums and shall not be allowed to accumulate thereon. Rubbish, refuse, debris and unsightly materials or objects may only be kept in covered, sanitary containers which comply with the Rules and Regulations for the Project. No Owner shall permit or cause any rubbish or debris to be kept in any portion of the Project, except in receptacles customarily used for storage of rubbish or debris. Each Owner of a Commercial Unit which generates wet trash shall be required to maintain it in a separate area in a manner which complies with applicable health standards. Each Owner of a Commercial Unit shall pay for the collection of its wet trash, which shall be collected on a regular basis.

Section 4.11. Antennae. No television, radio, satellite dish or other electronic antenna or device with a diameter or diagonal measurement in excess of one meter shall be erected, constructed, placed or permitted to remain on the Project by any Owner. Except as installed by the Declarant or as to an approved Small Antenna (defined below), no cable, television or radio system or other equipment for the purpose of emitting or receiving or distributing any form of electromagnetic emission in any form shall be permitted in the Project. An Owner's installation of a satellite dish, video antenna, television antenna, or any similar electronic antenna or device with a diameter or diagonal measurement of one meter or less ("Small Antenna") is not permitted until and unless the Architectural Committee has approved plans for such Small Antenna. In its approval process, the Architectural Committee shall have the right to establish reasonable guidelines for the installation of Small Antenna on or about individual Units, including but not limited to, the right to regulate the location and color and(or) require screening so as to minimize visibility of such Small Antenna from the Common Area, adjacent streets and other Units in the Project while still allowing for adequate reception

The Architectural Committee shall have the right to restrict or prohibit any Small Antenna which: (a) is intended to be installed on a separate interest owned by another Owner or owned in common with another Owner, unless each such other Owner has given written approval thereof at the time the application is made to the Architectural Committee; or (b) is intended to be installed upon any roof area or other portion of the Common Area. The Architectural Committee must be satisfied that any installation of a Small Antenna upon any roof area or other portion of the Common Area: (i) has appropriate provisions for the ongoing maintenance, repair or replacement of roofs or other building components that will be affected by the installation and maintenance of the Small Antenna; and (ii) will be the subject of an indemnity or reimbursement agreement by the installer in favor of the Association or the Members for all losses or damages caused by the installation, maintenance or use of the Small Antenna.

Section 4.12. No Obstruction. There shall be no obstruction of the Common Area (including the garage parking spaces assigned to individual Units but not including the storage spaces designated on the Condominium Plan), except as permitted herein. Nothing shall be placed or stored in such areas, except as allowed by the Board.

Section 4.13. Compliance With Laws. No Owner shall permit anything to be done or kept in a Condominium that violates any laws, ordinances, statutes, rules or regulations.

Section 4.14. Fires. There shall be no exterior fires in the Common Area, except barbecue fires contained within receptacles provided or approved by the Board.

Section 4.15. No Subdivision of Condominium. No Condominium shall be further subdivided nor shall less than all of any Condominium be conveyed by an Owner.

Section 4.16. Windows. No window opening of a Living Unit visible from the street or the Common Area shall have affixed to it or be otherwise lined with any non-transparent foil, paper or similar material. All window coverings inside a Living Unit visible from the street or Common Area shall be white, off-white, beige or other neutral color approved by the Board. No temporary window covering shall be placed by an Owner on any windows inside a Living Unit for more than ten days, except that Owners who are original purchasers from Declarant shall be allowed to place temporary window coverings on any windows within the Project for up to forty-five days. Acceptable window coverings shall be determined by the Board. The Association shall be responsible for cleaning the exteriors of the windows of the Living Units, except for such portions of the windows which are not easily accessible to the window cleaners such as windows which are accessed through exclusive use balcony areas and exclusive use deck areas. The Owners of the Living Units shall be responsible for cleaning the interiors of their respective windows. The Owners of the Commercial Units shall be responsible for cleaning the interiors and exteriors of their respective windows.

Section 4.17. Clothes Lines. No exterior clothes lines shall be erected or maintained outside any Condominium, and there shall be no outside laundering or drying of clothes in the Project.

Section 4.18. Liability of Owners for Damage to Common Area. Each Owner shall be liable to the Association for all damages to the Project or Common Area and liable to such other Owner(s) for all damages to another Unit(s), caused by such Owner or his or her invitees, licensees or tenants, except for that portion of said damage, if any, covered and paid for by insurance, to the extent that such Owner is legally responsible under the laws of the State of California. Notwithstanding the foregoing, the Association shall not hold an Owner liable for damage to the Project, the Common Area or another Unit(s) caused by such Owner or his or her invitees, licensees or tenants, until the Board has conducted a hearing, upon ten days prior written notice to the affected Owner, to determine whether such damage was in fact caused by said Owner or his or her invitees, licensees or tenants.

Section 4.19. Personal Injury. In the event of personal injury or property damage sustained by any person while physically within the Owner's Unit, the Owner of the Unit in which the injury or damage occurs shall indemnify and hold harmless all such other Owners and the Association against which a claim may be made and shall further defend all such other Owners and the Association, at his or her own expense (to the extent such expense is not covered by his or her insurance) in the event of litigation relating to the claim. Such protection shall not extend to any other Owner whose own negligence or willful misconduct may have caused or contributed to the cause of the injury or damage.

Section 4.20. Exclusive Use Common Area and Outdoor Space Restrictions. Wherever Outdoor Space is appurtenant to a Living Unit, the Owner shall not have the right, without the prior written approval of the Architectural Committee, to paint, alter, remodel or enclose any such Outdoor Space, and then only in a manner which does not impair the uniform appearance of such Outdoor Space with other Outdoor Space within the Project. Each Owner of a Living Unit which has Outdoor Space appurtenant to it shall have the right to furnish such Outdoor Space with outdoor furniture in keeping with the architecture of the Project, and shall keep such Outdoor Space in a clean and sanitary condition. In no event shall any wearing apparel, or any unsightly objects be placed or stored in Outdoor Space appurtenant to a Living Unit where they may be seen by other Owners from their Units or when using the Common Area. In no event shall any Owner of a Living Unit install or place, or allow to be installed or placed, any item upon any Outdoor Space with a live load in excess of fifty pounds per square foot without the prior written consent of the Board. Should landscaping be placed in an Outdoor Space appurtenant to a Living Unit, the Owner must take adequate steps to capture water from such plants and to prevent any damage to the Project or unsightly conditions. The Board shall have the right to restrict pots or other items from being placed on top of any railing, or to allow potted plants to grow on the exterior of an Outdoor Space railing, or wall or portions of the Buildings. Each Owner of a Living Unit shall be responsible to pay for the repairs of any damage which may be caused by the placing of landscaping (including potted plants) in his or her Outdoor Space. No Owner of a Living Unit shall make any Improvements to his or her Outdoor Space or other Exclusive Use Common Area unless and until the Architectural Committee has approved plans for such Improvements showing such detail as the Architectural Committee deems appropriate. The Architectural Committee shall have the right to restrict or prohibit any items from being placed in an Outdoor Space appurtenant to a Living Unit which are within view of other Owner(s) and which the Architectural Committee deems to be unattractive. No Owner of a Living Unit shall interfere with the surface or any subsurface drainage of his or her Exclusive Use Common Area as established by Declarant nor shall any Owner of a Living Unit install any Improvements which would make it impractical to repair or replace any drainage facilities installed by Declarant. All Improvements installed by an Owner of a Living Unit in his or her Outdoor Space shall provide for proper and adequate drainage. The Board and the Architectural Committee shall have the right to allow Owners to exclusively use portions of the Association Common Area above or below the vertical limits of any Exclusive Use Common Area. This Section 4.20 shall not apply to Owners of Commercial Units.

Section 4.21. Floor Covering. All floor areas within Units shall be covered with materials designed and installed for the purpose of minimizing noise transmission, and all flooring materials shall conform to guidelines established by the Architectural Committee. Any Owner who intends to install or alter hard flooring materials shall submit to the Architectural Committee, for its prior approval, specifications (including sound attenuation ratings) for all such hard surface flooring materials prior to installation. Failure on the part of an Owner to insure that flooring material and installation procedures adhere to these requirements and restrictions shall subject the Owner to sanctions which may include removal, at said Owner's sole expense, of any flooring material that is in violation of the requirements and restrictions set forth herein.

Section 4.22. No Hot Tubs. No Owner shall install any jacuzzi, hot tub or whirlpool unless approved in writing by the Architectural Committee. In all events, such Owner shall obtain a proper building permit prior to any such installation.

Section 4.23. No Timeshare. A Condominium may not be divided or conveyed upon any form of time increment basis (commonly referred to as "time sharing").

Section 4.24. Odorous Matter. No Person shall emit odorous matter upon or about the Project in such quantity as to be readily detectable.

Section 4.25. Air Pollution. No air pollutants or contaminants sufficient to create a nuisance shall be discharged, and no processes which by their nature are likely to cause air pollution shall be undertaken or permitted unless there is available an adequate, economically feasible method of controlling the omission or contaminants, and such controls are applied.

Section 4.26. Combination of Units. An Owner shall have the right to combine contiguous Living Units, provided:

(a) The Owner obtains prior written approval of the Architectural Committee; such approval shall not be required if such combination occurs during the initial construction of the Project by Declarant;

(b) The Owner's plans and specifications for the combination of such Living Units are approved in writing by a certified architect and structural engineer, who shall be retained by the Association at the Owner's sole cost;

(c) Said combination shall not effect the obligation of Owner to pay Assessments attributable to each of the Living Units so combined;

(d) Once so combined, said Living Units shall not be separately conveyed or encumbered; and

(e) No action, in so combining the Living Units, shall adversely impact the Unit(s) above or below such Living Units or the Common Area, including encroaching thereon or changing or modifying building systems or the load-bearing components thereof or impairing or interfering with the structural integrity or mechanical systems of the Project.

An Owner shall have the right to combine contiguous Commercial Units, as long as doing so does not adversely impact the structural integrity of a Building.

Section 4.27. Vibrations. No Owner shall allow any action to take place within his or her Unit which causes vibrations to emanate therefrom which affect, impact or are otherwise felt within other Units or the Common Area. Such vibrations may be so caused by excessively loud noises or by the excessively jarring or shaking movements of people or objects.

Section 4.28. No Drilling. NO OWNER SHALL HAVE THE RIGHT TO DRILL INTO THE WALLS, FLOOR OR CEILING OF ANY UNIT FOR ANY REASON WITHOUT THE PRIOR WRITTEN CONSENT OF THE ARCHITECTURAL COMMITTEE.

Section 4.29. Utilities. Each Owner shall be obligated to pay all costs and assessments for electricity, other utilities (telephone, cable television and internet service), taxes and other charges assessed individually against his or her Condominium. Charges for gas, water and sewage for each Condominium will not be separately billed directly to the Owners but will be included within the Common Expenses. Notwithstanding the foregoing, gas service will be separately billed directly to the Owners of the Townhome Units.

Section 4.30. Maintenance of Condominiums. Each Owner shall be responsible for repairing and maintaining his or her Condominium and for keeping such Condominium in good and attractive condition at all times. Should the activities of any Owner or the family, guests, tenants or invitees of such Owner result in damage to or destruction of any portion of the Common Area or any Improvements thereon, that Owner shall be held responsible for all costs associated with the repair or replacement of that portion of the Common Area, which expense may be enforced as a Reimbursement Assessment. Subject to the provisions of the Condominium Documents, each Owner shall maintain, repair and replace in new condition the following items in his or her own Condominium: (a) all portions of the Condominium, including, without limitation, the interior wall, floor and ceiling surfaces of the Condominium; (b) the utility systems and equipment, including, without limitation, gas, plumbing, electrical, air-conditioning, heating, telephone, water heating equipment, and cable television servicing such Condominium and located within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common with other Owners; (c) windows enclosing such Condominium, window frames, tracks and exterior screens of glass doors and windows (however, the Association shall clean the exterior of any windows within or bordering any Condominium which are not located or bordering such Owner's Outdoor Space); (d) the interior of the doors enclosing the Condominium; (e) all appliances within the Condominium, whether built-in or freestanding; (f) the interior of and the lock for the Owner's designated Storage Space, if applicable; and (g) the maintenance of the decking or balcony surfaces and other areas in a clean and neat condition, including the interior surfaces of any Outdoor Space. Notwithstanding the foregoing, the Association shall maintain, repair, and replace the exterior of any wall, fence, railing, or roof bordering any Outdoor Space (other than interior surfaces which shall be maintained by the Owner) and any trellises covering such Outdoor Space.

Section 4.31. Failure to Maintain Condominium. If any Owner does not maintain his or her Condominium and the improvements located therein as described above or make repairs thereto in a manner deemed necessary in the judgment of the Board to preserve the attractive appearance thereof and to protect the value thereof, the Board shall give written notice to such Owner of such violation. The notice shall state with particularity the work of maintenance or repair which the Board finds to be required and shall request that such maintenance or repair be carried out within thirty days (or such additional time as may be reasonably necessary to complete the required repairs or maintenance) from the Board's written notice to the Owner. If the Owner fails to complete such maintenance or repair within the designated time period, the Association shall cause such work to be completed without the necessity of further notice to the Owner, subject to the provisions of Section 7.3(b). The Association's cost for completion of such work and maintenance shall be assessed to the Owner as a Reimbursement Assessment and payable to the Association as provided in Section 6.11.

Section 4.32. No Storage. No Outdoor Space shall be used for storage purposes, including, without limitation, the storage of bicycles.

Section 4.33. No Waterbeds. No waterbeds shall be installed or maintained within any Condominium.

Section 4.34. Special Use Restrictions and Rights for Commercial Units. The following shall apply with respect to the Commercial Units:

(a) To the extent required by law, proper business licenses must be obtained by the Owner or its tenant, and, upon request, a copy submitted to the Association and the management company, if any.

(b) Neither the Owner nor employees, licenses and invitees of the businesses conducted thereon shall be entitled to use the Common Area that is designated on the Condominium Plan for residential use (including the residential lobby, the fitness center, fitness area and pool area restrooms, the pool and the courtyard).

(c) The Owner shall use commercially reasonable efforts to prevent the discharge of air pollutants and contaminants in excess of what is permitted under applicable law.

(d) No activities shall be carried on by an Owner upon its Commercial Unit, the Common Area or in any part of the Project, which constitutes a violation of any law, ordinance or regulation, now or hereafter in effect, imposed by any governmental entity having jurisdiction over the Project, or which will impair the structural integrity of a Building, or which shall make it impossible for the Association to carry insurance required by the Board, or cause any insurance policy to be cancelled or cause a refusal to renew the same. To the extent any such activity by an Owner increases the rate of insurance for the Project, such Owner shall be responsible for paying to the Association such additional cost. Each Owner shall promptly and fully comply with all applicable laws, rules, ordinances, statutes, regulations and requirements of any governmental agency or authority with respect to the occupancy and use of any Commercial Unit.

(e) The Owner shall be responsible for maintaining its Commercial Unit in such a manner as is necessary to preserve the attractive appearance thereof. The Owner shall be responsible for those expenses that are directly allocable to its Unit.

(f) The Commercial Units in the Project are intended for and restricted to use as retail, sales, office or commercial uses, as permitted under applicable City of San Diego ordinances and zoning, except:

(i) The Commercial Units shall not be converted to Living Units.

(ii) The Commercial Units shall not be used for conducting: smoke shop; tattoo parlor; body piercing; head shop-drug-related paraphernalia; resale; thrift shop; liquidation or discount store; massage parlor (provided, however, a day spa is permissible); medical laboratory; food processing (except as may be incidental to the operation of a restaurant); manufacturing activities; wholesale or retail sale of pornographic literature, photographs or movies; card room; pool hall; video arcade or other similar form of amusement center; musical school or studio; adult motion picture theater; dyeing or rug cleaning plant; jail; hotel, apartment hotel or motel; taxidermy shop; animal clinic; work release center, drug rehabilitation center or social service agency.

(iii) Live entertainment shall be allowed within a Commercial Unit, so long as:

(1) The decibel level of a performance, whether by amplification or otherwise, shall not exceed 65 decibels and 35 CNEL (community noise equivalent level) and shall not, in any case, be audible from the Units above the Commercial Unit; and

(2) The performances shall occur, if at all, no earlier than 11:00 a.m. local time each day and end no later than 11:00 p.m. local time each day.

(iv) Except as permitted in Section 4.34(f)(iii) above, the Owner of a Commercial Unit shall not allow or permit any continuing vibration ("Vibration") or any offensive or obnoxious and continuing noise ("Noise") or any offensive or obnoxious and continuing odor ("Odor") to emanate from the Commercial Unit into the Common Area, Living Units, or other Commercial Units, nor shall Owner allow or permit any machine or other installation thereon or the conduct of its business to constitute a nuisance or otherwise to unreasonably interfere with the safety or comfort of any of the Owner of other Units. Construction, remodeling and maintenance of a Commercial Unit and activities reasonably necessary to accomplish the same shall not be deemed to be a Vibration, Noise or Odor within the meaning of this subsection.

(g) Subject to the provisions of the Condominium Documents, an Owner of a Commercial Unit shall be entitled to make improvements and alterations within the boundaries of such Owner's Commercial Unit to include its exterior storefront, doors and windows, (and also including, without limitation, the creation of separate, leasable spaces designed to be leased for multiple users). In addition, subject to the provisions of the Condominium Documents (including, without limitation, the Building Signage and Exterior Criteria), an Owner of a Commercial Unit shall be entitled to establish and modify the exterior design of the storefront, awning or signs within the Common Area. An Owner of a Commercial Unit shall, at its sole cost and expense, be responsible for maintaining, cleaning, and if necessary, replacing the exterior storefront, awnings and signs associated with its Commercial Unit in accordance with the Building Signage and Exterior Criteria.

(h) The Owner of a Commercial Unit shall not be required to obtain the prior written approval of the Board or the Architectural Committee in order to make interior improvements or alterations, or to change the exterior storefront, doors and windows provided (i) such improvements or alterations will not adversely affect the structural integrity of a Building or the systems of the Project (i.e., electrical, sewer, plumbing, drainage, communication and data systems or other systems of the Project) and (ii) such improvements or alterations are in compliance with applicable law and building code requirements.

(i) An Owner of a Commercial Unit shall be entitled to rent all or any part of its respective Commercial Unit. Any such rental, leasing or license agreement shall be in writing, shall provide that the lease, rental or license is subject to the Condominium Documents and shall provide that any failure to comply with any provisions of the Condominium Documents shall be a default under the rental, lease or license agreement. If any such lease, rental or license agreement does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be part of the lease, rental or license agreement and binding upon the lessee/licensee by reason of their being stated in this Declaration.

(j) Each Owner of a Commercial Unit shall have the right to utilize the sidewalk area in the public right of way adjacent to its respective Commercial Unit for outdoor seating or otherwise, provided that: (i) such Owner(s) of the Commercial Unit(s) shall have first obtained the written consent of the City of San Diego, and any other applicable governmental authority; (ii) all designs and plans and specifications for such sidewalk area shall be consistent with the Building Signage and Exterior Criteria or, if not, shall otherwise be approved by the Board; (iii) the use of the sidewalk area shall be in compliance with applicable law and ordinances and any permits granted by the applicable governmental authorities; (iv) the Owner(s) of the Commercial Unit(s) shall be responsible for maintaining and cleaning the sidewalk area on a regular basis and ensure that it is free of rubbish and debris. Unless otherwise specifically stated in the Association's budget, the Association shall have no responsibility or obligation with respect to the maintenance and cleaning of the sidewalk areas so utilized by the Owner(s) of the Commercial Unit(s).

(k) The following provisions and conditions shall additionally apply to the Commercial Units:

(i) Each Owner of a Commercial Unit shall have a nonexclusive easement over, through and across the ground floor level of the Common Area to collect and maintain trash in the trash area serving the Commercial Units, and to access the storage areas, and to make deliveries to the Commercial Units. The delivery or shipment of merchandise, supplies, and fixtures to and from the Commercial Units shall be accomplished in a manner that shall not unreasonably interfere with the Living Units.

(ii) Each Owner of a Commercial Unit shall have a nonexclusive easement over, through and across the Common Area for structural support, and for ingress, egress and access to and for the installation, maintenance, repair, replacement and use of utility lines and connections, electrical, gas, plumbing, heating ventilation and air conditioning, mechanical ducts and shafts, and electronic, communication and data conduits serving the Commercial Units. Access and use shall include entry to and use of all mechanical, electrical and related rooms associated with the Commercial Unit.

(iii) In the event of an emergency, each Owner of a Commercial Unit shall have a nonexclusive easement for ingress and egress through all accessible, designated emergency exits and pathways within the Project as may be required by applicable law or otherwise.

(iv) The foregoing nonexclusive easements set forth in subsections (l)(i) through (iii) shall:

(1) be deemed appurtenant to the Commercial Units;

(2) run in favor of the Owners of the Commercial Unit and their respective successors, assigns, invitees, licensees, employees, agents or lessees;

(3) be in addition to any other easements granted in this Declaration; and

(4) not be utilized in a manner or way which unreasonably and materially interferes, obstructs or otherwise restricts the rightful use by any other Owner in the Project, or their successors, invitees, licensees, agents and employees of such portions of the Common Area of the Project, or their respective Unit in the Project.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

Section 5.1. Organization of the Association. The Association is organized as a California corporation under the California Nonprofit Mutual Benefit Corporation Law and is charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws and this Declaration. Neither the Articles nor the Bylaws shall be amended to be inconsistent with this Declaration. In the event that there should exist any ambiguity in any provision of the Articles or Bylaws, then the provision shall be construed in a manner consistent with this Declaration.

Section 5.2. Membership. Every Owner, including Declarant, shall automatically be a Member of the Association, and shall remain a Member thereof until his or her ownership ceases for any reason, at which time such Member's membership in the Association shall automatically cease. For each Member there shall be on file with the Association an address of record for the Member (if different from the Unit address) and a telephone number in case of emergency, all of which shall be kept current by the Member. Ownership of a Condominium shall be the sole qualification for membership in the Association; but 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 the Rules and Regulations of the Association. All memberships shall be appurtenant to the Condominium conveyed, and with the exception of Declarant, a Person shall be deemed an Owner of a Condominium only upon recordation of a deed or other document conveying the Condominium to such Person.

Section 5.3. Transfer. A Member's membership in the Association shall not be transferred, pledged or alienated in any way, except upon the conveyance or encumbrance of his or her Condominium, and then only to the transferee or Mortgage holder of the Condominium. Any attempt to make a prohibited transfer is void, and shall not be reflected upon the books and records of the Association. In the event a Member fails or refuses to transfer the membership registered in such Member's name to the transferee of his or her Condominium, the Board may record the transfer upon the books of the Association. The Board shall have the right to impose a reasonable fee chargeable to a selling Member equal to the costs to the Association of effectuating a transfer of the selling Member's membership on the books of the Association.

Section 5.4. Membership and Voting Rights. Membership and voting rights shall be as set forth in the Bylaws. The right of an Owner to exercise voting rights in the Association shall not commence until the first day of the month following the First Conveyance Date.

ARTICLE VI

ASSESSMENTS

Section 6.1. Covenant to Pay Assessments. Commencing on the first day of the month following the First Conveyance Date, each Owner, including Declarant (for each Condominium held by Declarant in the Project) shall pay to the Association: (a) Regular Assessments; (b) Special Assessments; (c) Reimbursement Assessments; and (d) Reconstruction Assessments, in the manner set forth herein. 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 at the time the Assessments became due. The personal obligation for delinquent Assessments shall not pass to any Person's successors in interest unless expressly assumed by them. No Owner may waive or otherwise escape liability for the Assessments described in this Declaration by the non-use of the Common Area or any other part of the Project, or abandonment of such Owner's Condominium.

Section 6.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members as residents of the Project, 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 6.3. Regular Assessments. The Regular Assessments to be assessed against the Owners shall cover all Common Expenses, including without limitation: (a) all costs of management and administration of the Association, including compensation paid to managers, accountants, attorneys and employees; (b) all costs related to the maintenance of the Common Area, including utilities, doormen and other staffing, pool and whirlpool maintenance and cleaning, janitorial services, landscaping, irrigation and gardening services; (c) all costs of insurance; (d) utility services benefiting the Units to the extent such services are paid by the Association and not separately and individually billed directly to the Owners thereof; (e) reasonable reserves as deemed appropriate by the Board; (f) all costs of bonding members of the Board, the Manager or any other Person handling the funds of the Association; (g) all taxes and assessments; (h) all costs incurred by any committee established by the Board pursuant to this Declaration or the Bylaws; and (i) all other costs incurred by the Association in the discharge of its powers and duties under this Declaration, except those costs which are collectible as a Special Assessment, Reimbursement Assessment, or Reconstruction Assessment.

Section 6.4. Date of Commencement of Regular Assessments. The Regular Assessments described herein shall commence on the first day of the month following the First Conveyance Date; the first annual Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year, as set forth in the Bylaws. The Board shall estimate the amount of the annual Regular Assessment to be levied against each Owner at least sixty days in advance of each Regular Assessment period. The estimate shall be based upon the total Common Expenses expected to be incurred by the Association for the upcoming fiscal year. Written notice of any change in the amount of the annual Regular Assessment shall be sent to each Owner at least sixty days prior to the effective date of the change.

Section 6.5. Payment of Regular Assessments. All Regular Assessments shall be due and payable to the Association by the Owners, including Declarant, during the fiscal year, in advance, in monthly installments, on or before the first day of each month.

Section 6.6. Supplemental Regular Assessments. Subject to the provisions of Section 6.10, if the estimated Regular Assessments prove inadequate for any reason, the Board may, from time to time, levy a supplemental Regular Assessment. The supplemental Regular Assessment shall be assessed against each Owner in the same manner as Regular Assessments are assessed. Written notice of the amount of any supplemental Regular Assessment shall be sent to each Owner not less than sixty days prior to the date in which it shall become due.

Section 6.7. Reserve Account. Regular Assessments shall include reasonable amounts as determined by the Board to be collected as reserves for the future periodic maintenance, repair or replacement of 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 interest bearing bank account to be held in trust for the purposes for which they are collected and shall be segregated from other funds of the Association; any interest earned on such funds shall remain in the reserve account.

Section 6.8. Failure to Fix Regular Assessment. The omission by the Board, prior to the expiration of any fiscal year, to fix the Regular Assessment provided for herein for the ensuing year shall not be deemed a waiver or modification of any of the provisions of this Declaration or a relinquishment of the responsibility of each Owner to pay the Regular Assessment for such year. In such event, the Regular Assessment for the preceding fiscal year shall be deemed to continue to be the Regular Assessment. No diminution or abatement of the Regular Assessment shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or Improvements to the Common Area, from any action taken to comply with any law, or any determination of the Board.

Section 6.9. Special Assessments.

(a) Purposes. In addition to the Regular Assessments authorized by this Declaration, the Board may levy, in any fiscal year, a Special Assessment for the following purposes:

(i) To construct or reconstruct, repair or replace capital Improvements upon the Common Area and the Project (to the extent the same is not covered by the provisions affecting Reconstruction Assessments set forth below), including any necessary fixtures and personal property related thereto;

(ii) To add to the Common Area;

(iii) To provide for the necessary facilities and equipment to offer the services authorized herein;

(iv) To repay any debt of or loan made to the Association to enable it to perform the duties and functions authorized herein; and

(v) To raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate.

(b) Payment. The Board shall notify the Owners in writing at the time a Special Assessment is levied of the manner in which and the dates on which the Special Assessment is payable, and the Owners shall pay the Special Assessment in the manner so specified by the Board.

Section 6.10. Assessment Increases. From and after the first day of the fiscal year immediately following the commencement of the Assessments, the Board shall not impose, except as provided in this section, a Regular Assessment that is more than twenty percent greater than the Regular Assessment for the Association's preceding fiscal year nor shall the Board impose any Special Assessments which alone or in the aggregate exceed five percent of the budgeted gross expenses of the Association for that fiscal year without the vote or approval by written ballot of the Members in the manner set forth in the Bylaws, at a meeting at which a quorum is present. For the purposes of this section, "quorum" means Members constituting more than fifty percent of the voting power of the Association. Any meeting of the Association for purposes of complying with this section shall be conducted in accordance with California

Corporations Code Section 7510 et seq. and California Corporations Code Section 7613. The Board may increase annual Assessments by up to twenty percent over the annual Assessment for the immediately preceding fiscal year only if the Board has complied with the provisions of California Civil Code Section 1365, subdivision (a), or has obtained the approval of the increase by the Members in the manner set forth above. The provisions of this section shall not limit Assessment increases for addressing emergency situations, including any one of the following:

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

(ii) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety is discovered; or

(iii) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing its pro forma budget of the Association. Prior to the imposition or collection of an Assessment under this section, the Board shall adopt a resolution containing written findings regarding the necessity of the extraordinary expense and why such expense was not or could not have been reasonably foreseen in the budgeting process, which resolution will be distributed to the Members with the notice of such Assessment.

The Association shall provide notice by first-class mail to the Members of any increase in the Regular and Special Assessments not less than thirty nor more than sixty days prior to the increased Assessment becoming due. This section incorporates the statutory requirements of California Civil Code Section 1366. If that section of the California Civil Code is amended in any manner, this section automatically shall be amended in the same manner without the necessity of amending this Declaration.

Section 6.11. Reimbursement Assessments. The Association may levy a Reimbursement Assessment against any Owner who fails to comply with this Declaration, the determinations of the Architectural Committee, the Articles or Bylaws, or any Rule or Regulation, if such failure results in an expenditure by the Association in carrying out its functions hereunder or for purposes of collecting any fines which may be levied by the Association pursuant to the Condominium Documents. The Board shall notify an Owner in writing at the time the Reimbursement Assessment is levied and such notice shall provide for payment of such Reimbursement Assessment to the Association within thirty days of the date of such notice. Such Assessment may also include reimbursing the Association for any costs incurred by it 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 which could otherwise be enforced by a sale of the Owner's Condominium.

Section 6.12. Reconstruction Assessments. Reconstruction Assessments for reconstruction of Improvements upon the Common Area may be levied in accordance with Section 9.3.

Section 6.13. Uniform Rate of Assessment. Except as otherwise provided for herein, Assessments shall be allocated to each of the Units within the Project in accordance with the allocations set forth in the budget for the Project approved by the DRE. Assessments shall be fixed at a uniform rate for all Units, except for variable costs items (which include those defined in the budget approved by the DRE, which are: insurance, domestic gas, domestic water, common hot water heater, exterior paint of the Buildings and roof of the Buildings and such additional items as the Board may determine in its sole discretion to be variable from time to time) for which the Assessments shall be levied among the Units based on the square footage of each Unit. Notwithstanding the foregoing, the Board shall not allocate Assessments in a manner which is discriminatory against any particular Owner of a Living Unit or a Commercial Unit.

Section 6.14. Certificate of Payment. The Association shall, within ten days after receipt of written request, furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association, stating (as of the date the statement is issued) whether Assessments for such Owner's Condominium have been paid and the amount of delinquency, including penalties, attorneys' fees and other charges, if any. A reasonable charge may be collected by the Board for the issuance of 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 6.15. No Offsets. All Assessments shall be payable in the amount specified and no offset against such amount shall be permitted for any reason.

Section 6.16. Pledge of Assessment Rights. The Association shall have the power to pledge its assessment powers to obtain funds to repay a debt of the Association as long as such pledge has the prior affirmative vote or written assent of not less than a majority 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, pursuant to this Declaration.

Section 6.17. Late Charges; Interest; Attorneys' Fees. If any installment of an Assessment is not paid within fifteen days after it is due, the Owner shall be required to pay a late charge of five percent of the delinquent Assessment. Any installment of an Assessment which is not paid within thirty days after it is due shall, together with reasonable costs of collection and late charges, bear interest, commencing thirty days after from the due date of the installment at an interest rate equal to ten percent per annum. In the event an attorney is employed for collection of any Assessment or to enforce compliance with this Declaration, each Owner which is the object of collection 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.

Section 6.18. Remedies of the Association. If any Assessment or any installment thereof is not paid within thirty days after its due date, the Board may mail a notice of default to the applicable Owner. The notice shall specify, among other things: (a) the fact that the installment is delinquent; (b) the amount of the installment which is delinquent, plus other charges due on account of such delinquency; (c) the action required to cure the default; (d) a date, not less than thirty days from the date the notice is mailed, by which the default must be cured; and (e) failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the Assessment or the installments of the Assessment for the then current fiscal year. The notice shall further inform the Owner of the right to cure the default after acceleration. If the delinquent Assessment or installment and any late charges, interest or reasonable costs of collection (including attorneys' fees) thereon are not paid in full on or before the date specified in the notice, the Board, at its option, may declare all of the unpaid balance of the Assessment to be immediately due and payable without further demand and may enforce the collection of the full Assessment and all charges and interest thereon in any manner authorized by law or in this Declaration, including the following procedures:

(a) Enforcement by Suit. The Association may commence and pursue an action 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 may be maintained without foreclosing or waiving the lien securing the payment of the Assessment hereinafter described.

(b) Enforcement by Lien. The Association may record a Notice of Delinquent Assessment with respect to the Condominium as to which assessments are delinquent. The Notice of Delinquent Assessment shall set forth: (1) a description of the Owner's interest in the Project; (2) the name of the record Owners of that interest; (3) the amount of Assessments (other than Reimbursement Assessments) which are delinquent as of the date of recording; and (4) all costs, attorneys' fees, late charges and interest accrued thereon. The Notice of Delinquent Assessment shall also include the name and address of the trustee authorized by the Association to enforce the lien by sale through nonjudicial foreclosure proceedings as described below and shall be signed by the Person designated by the Board for that purpose (or if no one is designated, by the President of the Association). Immediately upon recordation of a Notice of Delinquent Assessment, the amounts set forth in said notice, together with all amounts accruing thereon or becoming due and payable in accordance with this Declaration after the date of recordation of the Notice of Delinquent Assessment, shall constitute a lien in favor of the Association upon the Condominium, which lien shall be immediately due and payable. This lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Delinquent Assessment, except for liens for real property taxes and assessments on any Condominium and (if applicable) to the lien of a First Mortgage pursuant to Section 6.19. Any such lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the Notice of Delinquent Assessment, or sale by a trustee substituted pursuant to Section 2934a of the California Civil Code. Any sale by a trustee shall be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924(b), 2924(c), 2924(f), 2924(g) and 2924(h) applicable to the exercise of powers of sale in mortgages and deeds of trust or in any other manner permitted by law. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Condominium.

The Association may accept a deed in lieu of foreclosure. Upon the timely curing of any default for which a Notice of Delinquent 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. 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 Delinquent Assessment, whether judicially, by power of sale, or otherwise, until the expiration of ten 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.

Fines and penalties for violation of restrictions are not "Assessments" and are not enforceable by assessment lien, but are enforceable by court proceedings; provided, however, pursuant to California Civil Code Section 1367(b), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Area or facilities for which Owners or their tenants or guests were responsible may become the subject of a lien.

Section 6.19. Subordination to Certain Mortgages. The lien for the Assessments described herein shall 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 Delinquent 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. The sale or transfer of any Condominium pursuant to a judicial foreclosure or foreclosure by power of sale of a first Mortgage shall, however, extinguish any assessment lien recorded prior to the time of such sale or transfer. Following a foreclosure, the rights of any purchaser at such foreclosure to all Assessments becoming due after the date of such sale or transfer, 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, 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.

Section 6.20. Capitalization of the Association. Upon acquisition of record title to a Condominium, each Owner shall contribute to the capital of the Association an amount equal to one month's Assessment payment for that Condominium, as determined by the Board. The Owners' respective initial capital contributions are not a prepayment of Assessments or part of the purchase price for a Condominium. The initial capital contribution amount will be deposited by the Owners into the escrows utilized for the purchase and sale of the Condominiums, and distributed through escrow to the Association. Declarant shall either post a bond with escrow to secure the obligation of Declarant to pay Association start-up fees allocable to unsold Condominiums in the Project or pay such fees to escrow up-front. Declarant shall pay through escrow to the Association, as a contribution to the capital of the Association, a sum equal to one month's Assessment payment for all Condominiums in the Project not yet sold to a purchaser within six months following the First Conveyance Date. Upon the Close of Escrow of any Condominium in the Project for which the capitalization fund was prepaid by Declarant, escrow shall remit to Declarant the capitalization fee collected from the buyer.

Section 6.21. Exemptions from Assessment. The Declarant and any other Owner of a Condominium are exempt from the payment of that portion of any Assessment that is for the purpose of defraying expenses and reserves directly attributable to the existence and use of a common facility that is not complete when Assessments commence. This exemption from the payment of Assessments shall be in effect until the earliest of the following events:

(a) A notice of completion of the common facility has been recorded; or

(b) The common facility has been placed into use.

ARTICLE VII

MANAGEMENT OF THE ASSOCIATION AND THE PROJECT

Section 7.1. General Powers of the Association. All powers relating to the management, operation and maintenance of the Project and the Common Area shall be vested in the Association, which shall act by and through the Board. The specific and primary purposes and powers of the Association and the Board are to provide architectural control, manage and maintain the Project and the Common Area and enforce the provisions of this Declaration, the Articles and Bylaws, and any other instruments relating to the management and control of the Association. The Association may do 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. Whenever this Declaration or the Bylaws require or permit the approval, consent or action of the Association, such approval, consent or action shall be that of the Board, unless otherwise provided in this Declaration or the Bylaws. The Association, through the Board, shall also have the authority to delegate its powers to committees (including, but not limited to, the Architectural Committee), officers of the Association and its employees.

Section 7.2. Duties of The Association. The Association shall have the obligation, subject to and in accordance with this Declaration, to perform, by action of the Board, each of the following duties:

(a) Maintenance of the Common Area. The duty to maintain, repair and otherwise manage the Common Area, including all common facilities (including, on-site private water facilities that serve more than one Unit), Improvements, furnishings, equipment, landscaping, gardening and irrigation thereon. All grass, trees and ornamental vegetation shall be properly irrigated, trimmed and in all respects cared for in a manner so as to provide a well maintained appearance. Any Improvements located within the Common Area shall be maintained in a neat, clean, orderly, safe, sanitary and attractive condition so as to be usable and enjoyable by the Members.

(b) Payment of Taxes. The duty to pay all taxes and assessments levied upon the Association or the Common Area, to the extent not assessed to or paid by the Owners. The Association may contest or compromise any taxes or assessments, provided that if the

Association contests any taxes or assessments, a bond insuring the payment thereof is posted prior to the delinquency date thereof.

(c) Insurance. The duty to obtain and maintain in force, to the extent reasonably obtainable, policies of insurance as described in Article VIII.

(d) Enforcement of Declaration and Rules and Regulations. The duty to perform such other acts as may be reasonably necessary to enforce this Declaration, the Articles, the Bylaws, and the Rules and Regulations, as set forth in Section 18.1.

(e) Financial Statements. The duty to provide for annual budgets and financial statements for the Association as prescribed in the Bylaws.

(f) Annual Meetings. The duty to hold meetings of the Association not less frequently than once each calendar year at a time and place prescribed by the Bylaws.

(g) Other. The duty to carry out the obligations of the Association as set forth in this Declaration, the Articles, the Bylaws and any other instruments pertaining to the ownership, management or control of the Common Area.

Section 7.3. Power and Authority of the Association. The Association shall have the following power and authority, which may be exercised by the Board:

(a) Assessments. The power to levy Assessments and to enforce payment of the Assessments in accordance with Article VI.

(b) Right of Entry and Enforcement. The power to exercise a limited right of entry in all Condominiums for the purpose of inspection and taking whatever corrective action may, after approval by the Board, be deemed necessary or proper, consistent with this Declaration. This right of entry shall include the right to enter a Condominium for purposes of construction, maintenance or repair for the benefit of the Common Area or the Owners. Nothing in this section shall in any manner limit the right of an Owner to the exclusive occupancy and control of such Owner's Condominium. Entry into a Condominium by the Association for other than emergency repairs shall be made only after three 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 party causing such damage. In the case of an emergency, the right of the Association to enter upon a Condominium 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 party causing such damage. Nothing herein shall be construed to impose any obligation upon the Association to maintain or repair any property or portion of a Condominium to be maintained or repaired by its Owner. The Association shall not be liable for failing to exercise this right of entry during an emergency or otherwise.

(c) Conveyance of Certain Easements. Subject to the provisions of Article XVII, the power to grant, dedicate or convey easements, licenses, rights-of-way, in, on, over or under any Common Area to any public agency, governmental entity, public utility, or other person for purposes not inconsistent with the use of such portion of the Common Area.

(d) Manager. Except to the extent prohibited by California law, the power to retain and pay for the services of a Person as Manager to undertake any of the management or administrative functions for which the Board has responsibility hereunder to the extent deemed advisable by the Board, to engage such other personnel as the Board shall determine may be necessary or proper for the performance of such management or administrative functions, and to delegate any of its duties, powers, or functions to any such Manager. Any contract with any Manager or other personnel as described above shall not have a renewable term of more than one year and shall be terminable: (i) for cause, upon not more than thirty days' written notice by the Board; and (ii) without cause, upon ninety days' written notice by the Board. Notwithstanding any such delegation, the activities and affairs of the Association shall be managed and all powers of the Association shall be exercised under the ultimate direction of the Board. The Board shall not be liable for any omission or the improper exercise by any such Manager of any such duty, power or function as delegated.

(e) Public Functions. The power to perform, provide, maintain and pay for any of the public services for the Association that are commonly associated with municipal or other local governments, to the extent, if any, deemed desirable or appropriate by the Board.

(f) Legal and Accounting Services. The power to retain and pay for legal and accounting services as may be necessary or proper.

(g) Board Rules and Regulations. The power to adopt any Rules and Regulations as the Board deems proper concerning the Association and relating to the use of the Common Area and its facilities and the conduct of Owners and their tenants and guests with respect to the Project and other Owners, including, without limitation, the power to amend or repeal any previously adopted Rules and Regulations. Notice of adoption of Rules and Regulations, and of any change, amendment or repeal thereof, shall be given in writing to each Member and copies of each notice shall be kept at the principal office of the Association. The Rules and Regulations, as they may be amended from time to time, shall have the same force and effect as if they were set forth in and were a part of this Declaration and shall be binding upon the Owners whether or not actually received by them. In the event of any conflict between the Rules and Regulations and this Declaration, this Declaration shall control.

(h) Other Services and Fees. The power to provide other services, do acts and charge fees as may be necessary or proper to carry out the Association's obligations, rights and business under this Declaration so as to enhance the enjoyment by the Members of the Common Area.

(i) Construction on Common Area. The power to acquire interests in personal property, and to construct and operate landscaping and Improvements on or additions to the Common Area, or demolish existing Improvements, provided that any Special Assessment required in connection with any such construction shall be in accordance with the provisions of Section 6.9.

(j) Power to Borrow Money. The power, in accordance with the Articles and Bylaws, to borrow money from any lender for the purpose of improving or maintaining the Project and the Common Area and providing services authorized herein.

(k) Contracts. The power to enter into any contracts or agreements necessary or convenient for the performance of the Association's obligations, rights and business. The power of the Association to enter into such contracts shall include, without limitation, the power to enter into contracts with any other homeowner associations or similar entities (regardless of whether or not the real property governed by the homeowner association or similar entity is included within the boundaries of the Common Area) for the purpose of providing, on a shared-cost basis, any of the facilities, goods or services required or permitted under this Declaration, the Rules and Regulations, or the Bylaws; as long as the Association is obligated to pay only those costs attributable to facilities, goods or services provided to or for the benefit of the Association or the Common Area. The Association shall not enter into any contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association which would bind the Association or the Board for a period in excess of one year (except as may be provided in Section 7.7(i) and the Bylaws), without the vote of the Members.

Section 7.4. Availability of Documents. The Association shall, upon request, make available during normal business hours to any prospective purchaser of a Condominium, any Owner of a Condominium, and any Institutional Holder of a First Mortgage, current copies of the Declaration, the Articles, the Bylaws, the Rules and Regulations, and financial records of the Association.

Section 7.5. Agents. Any power or authority vested in the Board pursuant to this Declaration shall be exercisable by the Board directly or through its authorized agents, including any committees, officers or employees of the Association.

Section 7.6. Liability. Neither any member of the Board nor the Declarant shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, Declarant, or any other representative or employee of the Association; as long as the Board, or the Declarant has, upon the basis of such information as may be possessed by such person, acted in good faith. The Association shall and hereby agrees to indemnify the Board (and each director thereof) and each of the officers of the Association and any members of a committee created by the Board pursuant to this Declaration, from all claims, causes of action, expenses and liabilities (including attorney's fees) incurred in connection with any proceeding to which such Person is a party by reason of being a member of the Board or of a committee, or an officer of the Association, except in cases of willful misfeasance or malfeasance in the performance of his or her duties.

Section 7.7. Requirement for Approval by Members. Notwithstanding any other provision of this Declaration, the Board shall not do any of the following, except with the vote or approval by the Members in the manner set forth in the Bylaws, at a meeting at which a quorum is present, which meeting shall comply with the provisions of California Corporations Code Section 7513:

(a) Amend the Articles of Incorporation;

(b) Amend the Bylaws, except as provided in the Bylaws;

(c) Amend this Declaration, except as provided in Section 18.6;

(d) Increase Regular Assessments by more than twenty percent over Regular Assessments for the preceding year;

(e) Levy any Special Assessments under Section 6.9 which alone or in the aggregate exceed five percent of the budgeted gross expense of the Association for that fiscal year;

(f) Sell during any fiscal year personal property of the Association having an aggregate fair market value greater than five percent of the budgeted gross expenses of the Association for that fiscal year;

(g) Incur aggregate expenditures for capital Improvements to any portion of the Common Area in any fiscal year in excess of five percent of the budgeted gross expenses of the Association for that fiscal year;

(h) Pay compensation to directors or officers of the Association for services performed in the conduct of the Association's business (the Board may cause a director or officer to be reimbursed for expenses incurred in carrying on the business of the Association);

(i) Enter into contracts for goods and services to benefit the Common Area or the Association for a term longer than one year, with the following exceptions:

(i) A management contract which has been approved by the Federal Housing Administration or Veterans Administration (if either has jurisdiction over the Project) or by the DRE during the period the DRE has jurisdiction over the sale of the Project pursuant to a public report;

(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 or liability insurance policies of not to exceed three years duration, provided that the policy provides for short rate cancellation by the insured;

(iv) Lease agreements for laundry room fixtures and equipment of no more than five 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 or more;

(v) Agreements for cable television services and equipment or satellite dish television services and equipment of no more than five years duration, as long as the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent or more;

(vi) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation, and services of no more than five years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent or more; or

(vii) A contract for a term not to exceed three years that is terminable by the Association after no longer than one year without cause, penalty or other obligation upon ninety days written notice of termination to the other party.

ARTICLE VIII

INSURANCE

Section 8.1. Insurance. The Association shall cause to be obtained and maintained the following insurance:

(a) Fire and Extended Coverage Insurance. The Association shall obtain and maintain standard all-risk of loss or perils insurance coverage under an extended coverage casualty policy covering:

(i) All Improvements owned or maintained by the Association in the Project (but excluding land, foundations, excavations, and other items typically excluded from property insurance coverage), with limits of not less than one hundred percent of the actual current replacement cost thereof, without deduction for depreciation;

(ii) All interior walls and doors, ceilings, fixtures, floor coverings, cabinets, built-in appliances, and utility, mechanical and electrical fixtures and systems in the standard Units (as described in the original plans and specifications for the Project Units), with limits of not less than one hundred percent of the actual current replacement cost thereof, without deduction for depreciation, but excluding any personal property located in the Units or any designated Exclusive Use Common Areas and any Upgrades and additional Improvements and fixtures installed in the Units or any designated Exclusive Use Common Areas; and

(iii) All personal property in the Project owned or maintained by the Association, with limits of the maximum insurable fair market value of such personalty, as determined by the Association's insurance carrier.

The policy shall be primary and non-contributing with any other insurance policy covering the same loss. The policy shall provide coverage against losses caused by fire and all other hazards normally covered by a "special form" policy or its equivalent. The policy shall be maintained for the benefit of the Association, the Owners and Institutional Holders, and shall name, as an additional insured, Declarant. The insurance proceeds for the property described in subsections (i), (ii) and (iii) shall be payable to the Association; provided that the 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 Institutional Holders as their interests may appear.

(b) Commercial General Liability Insurance. If obtainable, the Association shall obtain and maintain an occurrence version comprehensive general liability policy and, if necessary to provide the required limits, an occurrence version umbrella liability policy, insuring against liability incident to the ownership or use of the Common Area or any other Association-owned or maintained real or personal property. The limits of such insurance shall be not less than the minimum amounts designated in California Civil Code Sections 1365.7 and 1365.9, and in any event shall have policy limits of no less than $3,000,000 per occurrence and $5,000,000 in the annual aggregate. Such policy or policies shall name as separately protected insureds Declarant, the Association, the Board, and their respective representatives, members and employees; the Owners and their family members; and Institutional Holders as their interests may appear.

(c) Workers Compensation Insurance. The Association shall obtain and maintain workers' compensation insurance to the extent required by law, or any greater amount as the Board deems necessary. The Association shall obtain a Certificate of Insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of the certificate is practicable.

(d) Fidelity Bonds. The Association shall obtain and maintain fidelity bonds or insurance covering Association officers, directors, and employees having access to any Association funds. Such insurance shall name the Association as obligee and shall be written in an amount equal to at least three months of Assessments on all Units in the Project, including the amount of any reserves. Persons serving without compensation shall be covered by endorsement to the policy if not otherwise covered by the policy.

(e) Flood Insurance. The Association shall obtain and maintain flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area.

(f) Director & Officer Liability Insurance. The Association shall obtain and maintain officers and directors liability insurance in the minimum amounts designated in California Civil Code Section 1365.7.

(g) Auto Insurance. The Association shall obtain and maintain insurance against liability for non-owned and hired automobiles, and such other related insurance as the Board in its discretion considers necessary or advisable.

(h) Earthquake Insurance. The Association shall obtain and maintain earthquake insurance, to the extent required by law, and if not required by law, then to the extent determined by the Board.

(i) Other Insurance. The Association may purchase such other insurance as it deems necessary, including, without limitation, plate glass insurance, medical payments insurance, and malicious mischief and vandalism insurance.

(j) Endorsements Required. The Association shall obtain and maintain the following endorsements on the foregoing insurance policies, as applicable, unless the provisions are otherwise included in the basic policies:

(i) Changes in building codes, and demolition coverage (sometimes referred to as a "building ordinance or law endorsement");

(ii) Inflation guard coverage;

(iii) "Agreed-amount" endorsement (eliminating co-insurance requirement);

(iv) Replacement cost endorsement (full replacement cost, with no deduction for depreciation);

(v) Primary/non-contributing language endorsement; and

(vi) Thirty days prior written notice of cancellation or significant modification provided to Declarant, the Association, the Owners, and Institutional Holders, provided written requests for such notice have been filed with the insurer.

(k) Additional Insureds. So long as Fremont Investment & Loan, a California industrial bank, in its individual capacity or as an agent ("Fremont") is an Institutional Holder of a Mortgage securing a loan (the "Fremont Loan") from Fremont to Declarant, Fremont and any other co-lender under the Fremont Loan, including Corus Bank, N.A., shall be named as additional insureds on all of the foregoing insurance policies and the Association shall carry such additional insurance as is required by Fremont pursuant to the Fremont Loan documents.

Section 8.2. Limitations on Individually Owned Insurance Policies.

(a) Owners' Insurance. Each Owner shall maintain property insurance covering losses of personal property, Upgrades and additional Improvements and fixtures installed in such Owner's Unit and any designated Exclusive Use Common Area, and shall maintain personal liability insurance for damages and injuries occurring within the Owner's Unit and any designated Exclusive Use Common Area. Additionally, each Owner may maintain property insurance and personal liability insurance with regard to any other elements of his or her Condominium which are not covered by the insurance described above. The Association policies will not provide coverage for any of the foregoing.

(b) Owner Policies Not to Diminish Association Coverage. No Owner may separately insure his or her Unit, designated Exclusive Use Common Area, or any other element of such Owner's Condominium against loss by fire or other casualty covered by any insurance maintained by the Association. If any Owner violates this provision and, as a result, there is a diminution in insurance proceeds otherwise payable to the Association, the Owner will be liable to the Association to the extent of the diminution. The Association may levy a Reimbursement Assessment against the Owner's Condominium to collect the amount of the diminution.

(c) Association Policies Available. The Association shall make available to all Owners copies of the Association's insurance policies to enable Owners to insure their Condominiums without duplicating insurance carried by the Association and inadvertently triggering the co-insurance clause in the policy referred to in Section 8.1(a).

Section 8.3. Waivers.

(a) Association Policy Requirements. All insurance policies maintained by the Association shall contain the following provisions as applicable:

(i) A "waiver of subrogation" provision as to Declarant, the Association, the Board, and their respective representatives, members and employees, and as to the Owners, their family members, and Institutional Holders.

(ii) A "cross-liability" or "severability of interest" endorsement insuring each insured against liability to each other insured.

(iii) Waiver of defense based on co-insurance.

(iv) Waiver of any right of set-off, counterclaim, apportionment, proration or contribution by reason of any other insurance not carried by the Association.

(v) Waiver of any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by Declarant, the Association, any Owner or any tenant of any Owner, or arising from any act, neglect or omission of any named insured, or the respective agents, contractors or employees of any insured.

(vi) Waiver of any right of the insurer to repair, rebuild or replace, and, in the event any Improvement 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.

(vii) Waiver of any notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Condominium.

(viii) Waiver of any right to require any assignment of any Mortgage to the insurer.

(b) Owner Policy Requirements. All policies of insurance maintained by Owners shall contain a "waiver of subrogation" provision as to Declarant, the Association, the Board, and their respective representatives, members and employees, and as to the Owners, their family members, and Institutional Holders.

(c) Owners Waive Claims in Excess of Insurance Coverage. With regard to loss or liability covered by insurance, all Owners hereby waive and release all claims against Declarant, the Association, Board, and their respective representatives, members and employees, except to the extent that insurance benefits or proceeds actually are available for such loss or liability, regardless of whether the damage or injury is caused by the negligence of or breach of any agreement by the Person released.

Section 8.4. Additional Insurance Provisions.

(a) Insurance Premiums. Premiums for insurance coverage obtained by the Association shall be a Common Expense to be included in the Regular 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.

(b) Trustee for Policies. The Board is hereby appointed trustee for all matters relating to insurance purchased or maintained by the Association. Except as otherwise specifically provided in this Declaration, the Board shall have exclusive power and authority to: negotiate for and purchase insurance as authorized herein; modify, surrender, or cancel insurance policies purchased or maintained by the Association; investigate claims; complete and submit insurance claim forms and respond to insurer inquiries concerning claims; negotiate and settle claims submitted to insurers; receive proceeds from insurance claims; and disburse insurance proceeds to extinguish the liabilities for which liability insurance was purchased or to repair or replace property or Improvements for which property insurance was carried. Notwithstanding the foregoing, the signature of at least two officers of the Association shall be required to submit any claim, release, or settlement form in connection with any claim. Any claim, release or settlement signed by two such officers shall be binding on all insureds.

(c) Periodic Insurance Review. The Association shall periodically, and not less than once every year, review all insurance policies maintained by the Association to determine the adequacy of the coverage and shall adjust the policies as necessary. The Board may obtain a current appraisal of the full replacement value of any Improvements within the Common Area, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each annual review. Notwithstanding the requirement for annual review, the insurance policies carried by the Association shall, to the extent possible, provide for automatic adjustments of coverage levels to reflect the changes in costs resulting from inflation.

(d) Blanket Policies Permitted. The fire and liability insurance policies may be blanket policies covering the Association properties and any property of Declarant, in which case the Association and Declarant each shall pay its proportionate share of the premiums.

(e) Additional Requirements for Certain Lenders. In addition to any other requirement herein, the amount, term, and coverage of any policy required under this Declaration (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by FNMA or any successor to this entity (except for earthquake insurance, the purchase of which is within the discretion of the Board, as provided in Section 8.1(h)). If FNMA does not impose requirements on any policy required under this Declaration, the term, amount, and coverage of the policy shall be no less than what is customary for similar policies on similar projects in the area.

(f) Limitation of Liability. Neither Association nor the Board shall have any liability to any Owner or Institutional Holder if, after a good faith effort, they are unable to obtain the insurance required under this Declaration because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any Assessment increase needed to fund the insurance premiums. In this event, the Board shall immediately notify each Member and any Institutional Holder entitled to notice that the insurance will not be obtained or renewed.

ARTICLE IX

DESTRUCTION OF COMMON AREA IMPROVEMENTS

Section 9.1. Reconstruction Without Election. In the event of a total or partial destruction of any portion of the Common Area, if available insurance proceeds are sufficient to cover not less than ninety percent of the cost of repair or reconstruction, such Common Area shall be promptly repaired and rebuilt unless, within sixty days from the date of such destruction, Declarant and not less than seventy-five percent of the Members entitled to vote, including seventy-five percent of the voting power of the Association held by Members other than Declarant (after there is no longer a Class B membership) at a duly called and noticed annual or special meeting of the Members at which a quorum is present, determine that such reconstruction shall not be undertaken. If reconstruction is to take place, the Board shall cause to be executed, acknowledged and recorded in the Office of the County Recorder a certificate declaring its intention to rebuild, such certificate to be executed by any officer or agent of the Association duly authorized to do so by the Board.

Section 9.2. Reconstruction By Consent. If the proceeds of such insurance are less than ninety percent of the cost of reconstruction, such reconstruction may nevertheless be undertaken if a majority of the voting power of the Association, present either in person or by proxy and entitled to vote, at a duly called and noticed annual or special meeting of the Members at which a quorum is present, elects to rebuild the Common Area. In the event of an election to rebuild, a certificate shall be executed, acknowledged and recorded as described in Section 9.1.

Section 9.3. Assessments. In the event of a determination to rebuild the Common Area pursuant to Section 9.1 or Section 9.2, the Board shall determine the amount (in excess of available insurance proceeds, if any) necessary in order to effect such reconstruction. The amount of deficiency in the insurance proceeds determined by the Board shall be levied against the Owners as a Reconstruction Assessment, payable upon such terms and conditions as the Board may deem appropriate.

Section 9.4. Board Responsibility. The Board shall take all steps necessary to assure the timely commencement and completion of any reconstruction of the Common Area. All amounts collected as Reconstruction Assessments shall be used only for the purposes set forth in Section 9.3, 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.

Section 9.5. Determination Not to Rebuild. If a certificate of intention to rebuild the Common Area has not been executed, acknowledged and recorded in accordance with Section 9.1 or Section 9.2, within nine months from the date of any partial or total destruction of the Common Area, or if reconstruction and rebuilding has not actually commenced within such period, any insurance proceeds available for such reconstruction shall be used to clear and landscape the affected areas. Any deficiency in the cost of clearing and landscaping the affected areas may be raised by a Reconstruction Assessment in an amount to be determined by the Board. In the event any excess insurance proceeds remain, the Board, in its sole discretion, may retain such amounts in the general funds of the Association or distribute proportionately all or a portion thereof to the Members, subject to: (a) the rights of Institutional Holders; and (b) any unpaid Assessments of any Owner, together with any interest and fees attributable thereto.

ARTICLE X

PROPERTY TAXES

Section 10.1. Real Property Taxes. Real property taxes, levies and assessments shall be separately and individually billed by the County Assessor's office to the Owners of individual Condominiums; provided, however, that if real property taxes, levies and assessments applicable to the Condominiums are billed to the Association (and the Project as a whole), the Association shall have the power to pay such tax bill and assess the cost thereof to each Owner based upon a reasonable allocation of the relative values of the respective Condominiums in the Project. Payment of such taxes shall be the sole responsibility of the Owner of each 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 Owners on account of their Condominiums. Real property taxes and assessments levied against the Common Area or personal property of the Association shall constitute a Common Expense which shall be paid by the Association through the Regular Assessment process, and, if necessary, a Special Assessment may be levied against the Condominiums in an amount equal to such taxes and assessments.

ARTICLE XI

PROHIBITION AGAINST PARTITION OR SEVERANCE OF CONDOMINIUM FROM INTEREST IN UNDIVIDED INTEREST COMMON AREA

Section 11.1. Prohibition Against Partition. The Undivided Interest Common Area shall remain undivided and each Owner irrevocably waives the right to bring any action to partition the Undivided Interest Common Area. The rights in the Undivided Interest Common Area and title to the respective Condominiums, together with any exclusive easements or rights appurtenant to each Condominium, shall not be separated, severed or separately conveyed, assigned, encumbered or otherwise transferred. All rights in the Undivided Interest 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 Condominium.

ARTICLE XII

ARCHITECTURAL CONTROL

Section 12.1. 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 written approval of the Architectural Committee.

Section 12.2. Architectural Committee. An Architectural Committee, consisting of not less than three nor more than five members shall be established for the Project. The Declarant may appoint all of the original members of the Architectural Committee and retains the right to appoint or replace Architectural Committee members until ninety percent 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 year following the date of issuance of the original Public Report for the Project, the Board shall have the right to appoint one member to the Architectural Committee until ninety percent of all Condominiums have been sold or until the fifth anniversary date of the original issuance of the Public Report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all members of the Architectural Committee. Architectural Committee members appointed by Declarant need not be Members of the Association. Architectural Committee members appointed by the Board shall be Members of the Association.

Section 12.3. Meetings of Architectural Committee. The Architectural Committee shall meet from time to time as necessary to properly perform its duties. The vote or written consent of any two members of a three member Architectural Committee or any three members of a five member Architectural Committee shall constitute an act by the Architectural Committee. The

Architectural Committee shall keep and maintain a written record of all actions taken by it at meetings or otherwise.

Section 12.4. 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 or other structure shall be commenced, erected, altered or maintained within the Project, nor shall any exterior addition, change, alteration, or change in original exterior color to any Unit or Outdoor Space 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: (i) a notice of noncompletion or nonconformance identifying the violating Unit and its Owner and specifying the reason for the notice, executed by the Architectural Committee, has been recorded in the San Diego County Recorder's Office and given to such Owner within thirty days of the expiration of the time limitation described above; or (ii) legal proceedings have been instituted to enforce compliance or completion within that thirty day period, the completed Improvements shall be deemed to be in compliance with plans and specifications approved by the Architectural Committee; and

(c) Such other limitations and restrictions as the Board shall adopt, including, without limitation, regulation of construction, reconstruction, exterior addition, change, alteration to or maintenance of any Improvement, with regard to the nature, kind, shape, height, materials, exterior color and surface, sound transmission characteristics and location of such Improvement.

Section 12.5. Delegation. The Architectural Committee may delegate its plan review responsibilities to one or more members of the Architectural 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 Architectural Committee.

Section 12.6. 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 days following the final decision of the Architectural Committee. The Board shall submit such request to the Architectural Committee for comment and the Architectural Committee's written comments will be submitted to the Board. Within forty-five 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 day period shall be deemed a decision in favor of the party making such submission.

Section 12.7. General Provisions. Operation of the Architectural Committee shall be subject to the following general provisions:

(a) The Architectural Committee may establish reasonable procedural rules and may assess a reasonable fee (including, without limitation, fees of outside consultants such as architects, engineers and contractors) 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 forty-five days after such submission, then such failure to approve or disapprove such plans or other requests shall be deemed disapproval of such plans or such other requests.

(b) Review and approval by the Architectural Committee of plans and specifications does not constitute approval of engineering design, and by approving such plans and specifications, neither the Architectural 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 Architectural Committee does not relieve the Owner of the responsibility to obtain necessary building permits and approvals from the City.

(c) The address of the Architectural Committee shall be the principal office of the Association, as designated by the Board. Such address shall be the place for submission of plans and specifications and the place where the current Architectural Standards, if any, shall be kept.

(d) 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 or modify or otherwise have control over their Condominiums as may otherwise be specified in this Declaration, the Bylaws or the Rules and Regulations.

Section 12.8. Nonapplicability to Declarant. This Article shall not apply to any Condominium owned by Declarant prior to its first conveyance to an Owner.

Section 12.9. Reconstruction of Units. The reconstruction of any Unit after destruction, which is accomplished in substantial compliance with the original building plans for such Unit, shall not require compliance with the provisions of this Article.

Section 12.10. No Liability. Neither Declarant nor the Architectural Committee, nor any member thereof, nor their duly authorized representatives, shall be liable to the Association or to any Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee. The Architectural Committee's review of plans submitted to it will be based solely on aesthetic considerations and the overall benefit or detriment which might result to the immediate vicinity and the Project generally. The

Architectural Committee will not be responsible for reviewing any plan or design from the standpoint of structural safety or conformance with building or other codes.

ARTICLE XIII

RIGHTS OF INSTITUTIONAL HOLDERS OF MORTGAGES

Section 13.1. Rights of Institutional Holders. The following provisions are for the benefit of Institutional Holders, insurers and guarantors of First Mortgages within the Project 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 13.2. Notices of Actions.

(a) Any Institutional Holder, insurer or guarantor of a First Mortgage who provides written request to the Association, stating the name and address of such Institutional Holder, insurer or guarantor and the address or legal description of the particular Condominium encumbered (thus becoming an "Eligible Holder"), will be entitled to timely written notice of:

(i) Any default by the Owner of the encumbered Condominium in the performance of such Owner's obligations under the Declaration or Bylaws which is not cured within sixty days from the date of such default;

(ii) Any condemnation proceedings affecting the Project;

(iii) Any substantial damage to or destruction of any significant portion of the Common Area;

(iv) Any proposed termination of the Association;

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

(vi) Any proposed action which would require the consent of Eligible Holders as further described in this Article XIII; or

(vii) Any default in performance of obligations under the Condominium Documents or delinquency in the payment of assessments or charges owed by an Owner of a Condominium subject to a First Mortgage held by such Eligible Holder where such default remains uncured for a period of sixty (60) days.

(b) In addition, All Eligible Holders shall be given at least thirty (30) days' written notice prior to the effective date of:

(i) Any proposed material amendment to this Declaration or the Condominium Plan;

(ii) Any termination of an agreement for professional management of the Project following any decision of the Owners to assume self-management of the Project; or

(iii) Any proposed termination of the Property as a condominium project.

(c) As of the Effective Date, Fremont and Lehman are Eligible Holders. All notices to Fremont and Lehman shall be provided as follows:

Fremont:	Fremont Investment & Loan 2727 E. Imperial Highway Brea, California 92821 Attn: Commercial Real Estate Asset Management Loan No. 950114569
With a copy to:	Fremont Investment & Loan 2425 Olympic Boulevard, 3rd Floor Santa Monica, California 90404 Attn: Alec Nedelman, Esq. Loan No. 950114569
Lehman:	Lehman Brothers Holdings Inc. 1100 Glendon Avenue, 11th Floor Los Angeles, California 90042 MTS # VE38 / Loan No. 1104301
With a copy to:	Mr. David S. Broderick Lehman Brothers Holdings Inc. 399 Park Avenue, 8th Floor New York, New York 10022 MTS # VE38 / Loan No. 1104301
With a copy to:	Mr. J. Gregory Winchester Trimont Real Estate Advisors, Inc. 3424 Peachtree Avenue, N.E., Suite 2200 Atlanta, Georgia 30326

Section 13.3. Rights of Institutional Holders Upon Foreclosure. Any Institutional Holder of a First Mortgage which comes into possession of a Condominium pursuant to judicial foreclosure or foreclosure by power of sale shall:

(a) Acquire title to 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 any Institutional Holder to: (i) foreclose upon 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 Institutional Holder; or (iii) sell or lease a Condominium acquired by the Institutional Holder.

Section 13.4. <u>Consent of Eligible Holders</u>. The consent of Eligible Holders shall be required in order to take the following actions with respect to the Association and rights and obligations of Members and Eligible Holders:

(a) Any restoration or repair of the Common Area after a partial condemnation or damage due to an insurable hazard shall require the approval of the Eligible Holders of first encumbrances on Condominiums to which at least fifty-one percent of the votes of the Owners are allocated;

(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 of the votes of Owners of Condominiums, subject to first encumbrances held by such Eligible Holders, are allocated;

(c) Unless at least seventy-five percent 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 all or any part of the Common Area or Undivided Interest Common Area of the Project; (iii) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or Undivided Interest Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area shall not be deemed a transfer within the meaning of this provision); or (iv) use hazard insurance proceeds for losses to any portion of the Common Area for other than the repair, replacement or reconstruction of such Improvements, except as provided by statute.

Section 13.5. <u>Amendments to Documents</u>. The following provisions contained in this section do not apply to amendments to the Bylaws or this Declaration or termination of the Association as a result of destruction, damage or condemnation pursuant to Section 13.4.

(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 Condominiums to which at least sixty-seven percent of the votes of Members owning Condominiums subject to such encumbrances pertain, shall be required to terminate the Association.

(b) The consent of at least sixty-seven percent 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 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, the Common Area or the Undivided Interest Common Area; (ix) leasing and sale of Condominiums; (x) imposition of any right of first refusal or similar restrictions on the right of any Owner to sell, transfer or otherwise convey his or her 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, insurers or guarantors of first encumbrances on Condominiums.

Section 13.6. Additional Rights of Institutional Holders. Any Institutional Holder of a Mortgage will, upon request, be entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual audited financial statement of the Association within ninety 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 13.7. Information. Each Institutional Holder is authorized to furnish information to the Board concerning the status of any loan encumbering a Condominium within the Project.

Section 13.8. Priority of Mortgage Lien. No breach of or default under this Declaration, 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 13.9. Priority on Distribution of Proceeds. No Owner or any other party shall have priority over the Institutional Holder of a Mortgage on his or her Condominium in the case of a distribution of insurance proceeds or condemnation awards for losses to or a taking of the Condominium or the Common Area.

Section 13.10. Special FNMA Provisions. So long as required by FNMA, the following provisions shall apply in addition to and not in lieu of the foregoing provisions contained in this Article XIII.

(a) Unless two-thirds 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 Project 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 FNMA or its designated representative of any loss to, or taking of, the Common Area if such loss or taking exceeds $15,000.

(c) If any loan secured by a Mortgage encumbering a Condominium is owned by FNMA, or its successors or assigns or is tendered to FNMA, or 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 be required by FNMA, or its successors or assigns and shall otherwise comply in all respects with all insurance requirements of FNMA which may be in effect at any time.

Section 13.11. Consent. An Eligible Holder which receives a written request to consent to an amendment or to any other action to which the Eligible Holders' consent is required or permitted by this Declaration, and which does not respond negatively within thirty days after having received the request, shall be deemed to have consented to the amendment or other action, but only if such written request for consent identifies in bold type that "YOUR FAILURE TO RESPOND WITHIN THIRTY DAYS OF RECEIPT OF THIS REQUEST FOR CONSENT SHALL BE DEEMED YOUR CONSENT UNDER THE DECLARATION."

Section 13.12. Cure Rights. Any Institutional Holder shall have the right, but not the obligation, at any time prior to the termination of this Declaration, and without payment of any penalty, to do any act or thing required of any party hereunder, and to do any act or thing which may be necessary or proper to be done in the performance and observance of the agreements, covenants and conditions hereof. All payments so made and all things so done and performed by any Institutional Holder shall be effective to prevent a default under this Declaration as the same would have been if made, done and performed by any party hereto instead of by said Institutional Holder. Any event of default under this Declaration which in the nature thereof cannot be remedied by Institutional Holder shall be deemed to be remedied if: (a) within thirty (30) days after receiving written notice from the non-defaulting party setting forth the nature of such event of default, or prior thereto, the Institutional Holder shall have acquired the property owned by the defaulting party (the "Collateral") or shall have commenced foreclosure or other appropriate proceedings in the nature thereof, (b) the Institutional Holder diligently prosecutes any such proceedings to completion, (c) the Institutional Holder shall have fully cured any default in the payment of any monetary obligations owed the non-defaulting party hereunder within such thirty

(30) day period and shall thereafter continue to perform faithfully all such non-monetary obligations which do not require possession of the Collateral, and (d) after gaining possession of the Collateral following a foreclosure or deed in lieu thereof, the Institutional Holder performs all other obligations of the defaulting party hereunder as and when the same are due.

Section 13.13. Institutional Holder Requirements. The Association and the Board agree to cooperate reasonably with any requesting party in regard to the satisfaction of requests or requirements by any Institutional Holder(s) holding Mortgages on 51% or more of the Condominiums in the Project; provided, however, such cooperation shall be at the sole cost and expense of the requesting party, and provided, further, that no party shall be deemed obligated to accede to any request or requirement that materially and adversely affects its rights under this Declaration.

Section 13.14. Priority of Rights. No provision of the Declaration shall be construed or applied to give any Owner, or any other party, priority over any rights of any Institutional Holder in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to, or taking of, a Condominium Unit and/or Common Area.

ARTICLE XIV

ENFORCEMENT OF BONDED OBLIGATIONS

Section 14.1. Bonded Obligations. In the event that at any time any of the Improvements to the Common Area have not been completed and the Association is protected by a Bond or other arrangement with respect to 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 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 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 days nor more than forty-five days after receipt by the Board of a petition for such meeting, signed by Members representing five percent or more 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.

ARTICLE XV

EMINENT DOMAIN

Section 15.1. Representation by Association in Condemnation Proceeding. In the event of a Taking, the Association shall, subject to the right of all Institutional Holders who have requested the right to join the Association 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 XV. The Association is further designated as the sole representative of the Members, in all aspects of condemnation proceedings not specifically covered herein.

Section 15.2. Award for Common Area. In the event of a Taking of all or any part of the Common Area, the Association 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 Association 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 Association shall distribute the award among the Owners on a pro rata basis, based upon the relative value of such Owner's Condominium in the Project.

Section 15.3. Inverse Condemnation. The Association is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article XV shall apply with equal force.

Section 15.4. Notice to Members. The Association, immediately upon having knowledge of any Taking or threat thereof, shall promptly notify all Members.

ARTICLE XVI

EASEMENTS

Section 16.1. Easement for Association Maintenance and Use. The Association, for itself, its successors and assigns, and its and their agents, employees, contractors, subcontractors, and other authorized personnel, shall have the right and is hereby granted, for so long as the Association or its successors and assigns shall be required hereunder to manage and maintain the Common Area, an exclusive easement in gross in, over and through the Project and any private ownership interest contained therein for the construction, repair and maintenance of the Common Area and any Improvements thereon, or appurtenant or adjacent thereto; provided, however, that use of such easement shall not unreasonably interfere with or diminish the rights of Members to occupy the Units or use any part of the Common Area as otherwise provided in this Declaration. In amplification and not limitation thereof, the Association and its successors and assigns shall have the right to enter upon any portion of the Project for any purpose reasonably related to the performance by the Association of its duties and obligations under this Declaration.

Section 16.2. Utility Easements. Easements under, on or over the Common Area 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 or the Common Area, or any portion of the Property, are hereby created and reserved by Declarant for the benefit of each Owner and the Association.

Section 16.3. Common Area Easements. Subject to the provisions hereof, each Living Unit is hereby declared to have an easement over all of the Common Area, for the benefit of the Living Unit, the Owners thereof, and for their respective families, guests, tenants and invitees, for all of the purposes and uses described herein, including ingress and egress over and through the Common Area.

Section 16.4. Utilities. Wherever sewer connections, water connections, electricity, gas, telephone and cable television lines or drainage facilities are installed within the Project or the Common Area, any Owner, or the Association shall have an easement to the full extent necessary for the use and enjoyment of that portion of the connections which service their Condominiums, and to enter upon or have utility companies enter upon the Common Area where said connections, lines or facilities, or any portion thereof, lie to repair, replace and generally maintain those connections necessary, provided that such Owners or entities or utility company shall promptly repair any damage to the Common Area or any Improvement thereon caused by such entry as promptly as possible.

Section 16.5. Construction and Sales Easements. Declarant reserves easements over the Common Area and the Project, for construction and sales and purposes in connection with the construction and sale of Condominiums, and in connection with the development, construction and sale or lease of other Improvements within the Property, together with the right to grant and transfer the same to Declarant's sales agents and representatives and prospective purchasers of Condominiums; such reserved easements shall remain in effect only for a period expiring: (a) ten years from the First Conveyance Date; or (b) the conveyance by Declarant of all Condominiums whichever first occurs.

Section 16.6. Access Easements. Declarant, on behalf of itself, its successors, assigns, agents, customers, guests, permitees, invitees and vendors, hereby reserves and creates the following easement: An easement for ingress, egress and public utility purposes over, under, across and through the Common Area for the benefit of any portion of the Property controlled by Declarant.

Section 16.7. 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.

ARTICLE XVII

DECLARANT'S RIGHTS AND RESERVATIONS

Section 17.1. Rights and Reservations. From the date of the recordation of this Declaration, until such time as Declarant has conveyed all Condominiums to Owners, Declarant retains and reserves the rights set forth herein in and to and with respect to the Project, the Association, and the Common Area. The rights, reservations and easements contained in this Article XVII shall be prior and superior to any of the other provisions of this Declaration and may not, without Declarant's prior written consent, be affected by any amendment of this Declaration. Declarant's consent to any one such amendment shall not be construed as consent to any other or subsequent amendment.

Section 17.2. Rights to Common Area.

(a) Construction of Additional Improvements. Declarant reserves for itself the right at any time and from time to time to construct at its expense additional Improvements on the Common Area. The Association shall, upon completion of any such Improvements, undertake the care and maintenance thereof, subject to the provisions of this Declaration. Prior to the commencement of construction of any such Improvements, Declarant shall obtain a Bond or make other arrangements approved by the DRE, under which the Association is obliged to secure the performance of the commitment of Declarant to complete the Improvements.

(b) Promotional Functions. Declarant reserves for itself the right to refer to the Common Area and the services offered by the Project in connection with the promotion and marketing of Condominiums within the Project. Declarant may also permit prospective purchasers of Condominiums who are not Members to use the Common Area at reasonable times and in reasonable numbers. Declarant and its duly authorized agents may: (i) erect and maintain on any part of the Common Area such signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper to the development and marketing of Condominiums in the Project; and (ii) use equipment on the Common Area for promotional purposes.

(c) Approval of Conveyances. The Association shall not, without first obtaining the prior written consent of Declarant, grant, dedicate or convey any interest in the Common Area.

(d) Approval of Changes in Use or Function. Except as otherwise set forth in this Declaration, the Common Area shall be used solely for the benefit of Members, and the

Association shall not change or alter the use of the Common Area without the prior written consent of Declarant.

(e) Drainage Easements. Declarant hereby reserves for itself easements for and the right to use and maintain drainage courses of all kinds in all areas of the Common Area and within the Project. Within the areas subject to these easements, no structure, planting or other material shall be placed which may damage or interfere with drainage courses, create erosion or sliding problems or obstruct, retard or change the direction of the flow of water through such drainage courses.

(f) Utility Easements. Declarant hereby reserves for itself easements for and the right to install and maintain utilities over and under any areas of the Common Area designated as streets, roads, roadways and drainage courses. For the purpose of this section, the term "utilities" shall include any public or quasi-public facility or Improvement deemed by Declarant to be necessary or desirable for the comfort, safety and convenience of residents of the Project.

(g) Other Easements. Declarant hereby reserves for itself a nonexclusive easement for ingress and egress over the Project for the purpose of performing any of Declarants' rights or obligations under this Declaration.

Section 17.3. Other Rights.

(a) Completion of Development. No provision of this Declaration shall be construed to prevent or limit the right of Declarant to complete development of the Project, or the construction or alteration of Improvements thereon owned by Declarant, nor the right of Declarant to maintain models or construction, sales or leasing offices or similar facilities on any portion of the Project controlled by Declarant or the Association, nor the right of Declarant to post signs incidental to construction, sales or leasing. In exercising its rights under this section, Declarant shall not unreasonably interfere with any Member's use of either the Common Area or his or her Condominium.

(b) Exemption of Declarant. Nothing in this Declaration shall limit, and neither any Owner nor the Association shall do anything to interfere with, the right of Declarant to complete construction of Improvements to and on any portion of the Project controlled by Declarant, to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Project. Such right shall include, without limitation, erecting, constructing and maintaining on the Project any structures and displays as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title to a Condominium by an Owner to establish on that Condominium additional licenses, easements, reservations and rights of way as may from time to time be reasonably necessary for the proper development and disposal of the Project, subject to the rights of the DRE to approve such grants as provided herein. Prospective purchasers and Declarant shall have the right to use the

Common Area for access to the sales facilities of Declarant. Declarant may use any structures owned by Declarant in the Project as model complexes or real estate sales offices. Declarant need not seek or obtain Association approval for any Improvement constructed or placed by Declarant on any portion of the Project controlled by Declarant.

Section 17.4. Time Limitation. The rights of Declarant set forth in this Article XVII shall terminate when all of the Condominiums in the Project have been sold and conveyed to Owners thereof, or ten years from the date this Declaration is recorded, whichever shall first occur.

ARTICLE XVIII

GENERAL PROVISIONS

Section 18.1. 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, the other Condominium Documents, or any amendment hereto or thereunder. With respect to Assessment liens, the Association shall have the exclusive right of enforcement. The Association shall not, however, be empowered to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of such Owner's Condominium on account of the failure by the Owner to comply with the provisions of any Condominium Document, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay Assessments duly levied by the Association. 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 18.2. Severability of Covenants. Invalidation 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 18.3. Term. The covenants and restrictions of this Declaration shall run with and bind 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 December 31, 2072, after which time the term shall be automatically extended for successive periods of ten years, unless an instrument in writing signed by a majority of the then Owners of the Condominiums has been recorded within the year preceding the beginning of each successive ten year period agreeing to change this Declaration, in whole or in part, to terminate the same.

Section 18.4. Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a Planned Development and for the maintenance of the Common Area. 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 18.5. Notices. Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given either when delivered personally at the appropriate address set forth below (in which event such notice shall be deemed effective only upon such delivery) or forty-eight hours after deposit of same in any United States post office box, postage prepaid, addressed as set forth below. Any notice to an Owner required under this Declaration shall be addressed to the Owner at the last address for such Owner appearing in the records of the Association or, if there be none, at the address of the Owner's Unit. Notices to Declarant shall be addressed to:

The Mark Condominiums LLC
c/o Douglas Wilson Companies
450 "B" Street, Suite 1900
San Diego, California 92101.

The addresses and addressees for purposes of this section may be changed by giving notice of such change in the manner herein provided for giving notice. Unless and until such notice is received, the last address and addresses as stated by the notice or as provided herein, if no notice of change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

Section 18.6. Amendments. Subject to the rights of Institutional Holders described in Section 13.5, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of both (i) Members representing a majority of the voting power of the Association; and (ii) a majority of the voting power of Members other than Declarant; or when the two-class voting structure is still in effect (as provided in the Bylaws), by the vote or written consent of a majority of the voting power of each class of Members. However, 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. Notwithstanding any other provision of this Declaration, (i) 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 modifications may be effected by an amendment executed and recorded by the Class B Member (as defined in the Bylaws) alone (so long as there exist two classes of memberships and such modifications are for the benefit of and do not impose any increased burden upon the Owners), (ii) any proposed amendment to this Declaration which impairs the rights or obligations of Declarant must be approved in writing by Declarant, (iii) any proposed amendment to the Building Signage and Exterior Criteria must be approved by the Owners of the Commercial Units in addition to the percentage requirements set forth above, provided, however, the Building Signage and Exterior Criteria shall be automatically modified (without the need for the consents provided for herein) in such respects as are necessary to ensure compliance of the Building Signage and Exterior Criteria with any applicable laws or ordinances governing the Project, and (iv) the following sections, to the extent they relate to the Commercial Units, shall not be modified without the prior unanimous written approval of the Owners of the Commercial Units: Section 1.16 and Section 4.34.

Any such modifications to this Declaration shall also require approval by the DRE. 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 San Diego County.

Section 18.7. Dissolution. So long as there is any Condominium or Common Area 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 of the Members.

Section 18.8. Nonliability of Officials. To the fullest extent permitted by law, neither the Board, the Architectural Committee, any other committees of the Association nor any member of the Board or committees 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 18.9. 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 18.10. Statutory References; Fixed Amounts. References in this Declaration or the Bylaws to specific statutes or provisions of California law shall include those statutes or provisions as they may be modified or amended from time to time. References in this Declaration or the Bylaws to specific dollar amounts or percentage rates shall be modified from time to time as the dollar figures or percentage rates in statutes upon which they are based are modified. Any modification of the Declaration or Bylaws resulting from the application of this section may be affected by a validly adopted resolution of the Board, without utilizing the formal amendment procedures contained herein or in the Bylaws.

Section 18.11. Information to Purchasers and Owners. Owners shall, as soon as practicable prior to the transfer of title to their Condominium or execution of an installment land sale contract conveying an equitable interest in such Condominium, provide the following to the prospective purchaser:

(a) A copy of the Articles, Bylaws and this Declaration;

(b) If there is a restriction in the Bylaws or this Declaration limiting occupancy, residency or use of a Condominium on the basis of age in a manner different from that provided in Section 51.3 of the California Civil Code, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and specifying the applicable provisions of Section 51.3;

(c) A copy of the most recent financial statement distributed pursuant to the requirements of the Bylaws; and

(d) A true statement in writing from an authorized representative of the Association stating the amount of any Assessments levied upon the Owner's Condominium which are unpaid as of the date of the statement. This statement will also include true information regarding late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Condominium pursuant to the provisions hereof.

Upon request, the Association shall, within ten days after the mailing or delivery of a request, provide the Owner of a Condominium with a copy of the requested items specified in subparagraphs (a) through (d) above. The Association may charge a fee for this service, which will not exceed its reasonable cost to prepare and reproduce such items.

Section 18.12. Attorneys' Fees. Any judgment rendered in any action or proceeding hereunder to enforce this Declaration or to collect Assessments shall include an amount in favor of the prevailing party, for attorneys' fees and expenses, together with any interest, late charges and court costs.

Section 18.13. No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Declarant or its agents or employees in connection with the Project or any portion of the Project, or any Improvements thereon, its physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a Planned Development, except as specifically and expressly set forth in this Declaration and except as may be filed by Declarant from time to time with the DRE or any other government agency.

Section 18.14. Alternative Dispute Resolution. THE BOARD IS AUTHORIZED TO RESOLVE, ON BEHALF OF THE ASSOCIATION, ANY CIVIL CLAIM OR ACTION RELATING TO THE ASSOCIATION, THE CONDOMINIUM DOCUMENTS, AND THE PROJECT THROUGH ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS, SUCH AS MEDIATION, BINDING ARBITRATION, OR NONBINDING ARBITRATION PROCEEDINGS. ANY CLAIM BY THE ASSOCIATION OR ANY OWNER OF A CONDOMINIUM IN THE PROJECT AGAINST DECLARANT, OR ANY ARCHITECT, ENGINEER, OR OTHER CONSULTANT, OR ANY CONTRACTOR, SUBCONTRACTOR, OR MATERIALS SUPPLIER ENGAGED BY OR ON BEHALF OF DECLARANT FOR THE DESIGN OR CONSTRUCTION OF THE PROJECT OR ANY ELEMENT OF THE PROJECT, SHALL BE SUBMITTED TO JUDICIAL REFERENCE, AS SET FORTH IN SECTION 18.14(C).

(A) SUMMARY OF CIVIL CODE SECTION 1354. THE BOARD SHALL COMPLY WITH THE REQUIREMENTS OF CALIFORNIA CIVIL CODE SECTION 1354, SUBDIVISION (I) BY PROVIDING MEMBERS OF THE ASSOCIATION ANNUALLY WITH A SUMMARY OF THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1354, INCLUDING THE FOLLOWING LANGUAGE: "FAILURE BY ANY MEMBER OF THE ASSOCIATION TO COMPLY WITH THE PRE-FILING REQUIREMENTS OF SECTION 1354 OF THE CALIFORNIA CIVIL CODE MAY RESULT IN THE LOSS OF YOUR RIGHTS TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS."

(B) ARBITRATION. IF A DISPUTE IS THE SUBJECT OF ARBITRATION UNDER THIS SECTION, THE FOLLOWING SHALL APPLY:

(I) COSTS AND FEES OF THE ARBITRATION, INCLUDING ONGOING COSTS AND FEES OF THE ARBITRATION, SHALL BE PAID AS AGREED BY THE PARTIES, AND, IF THE PARTIES CANNOT AGREE, AS DETERMINED BY THE ARBITRATOR(S), WITH THE COSTS AND FEES OF THE ARBITRATION TO ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR(S); PROVIDED, HOWEVER, IF DECLARANT IS A PARTY TO THE ARBITRATION, THEN ANY FEE TO INITIATE ARBITRATION SHALL BE PAID BY DECLARANT, BUT THE COST OF THE ARBITRATION SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR(S);

(II) NEUTRAL AND IMPARTIAL INDIVIDUAL(S) SHALL BE APPOINTED TO SERVE AS ARBITRATOR(S), WITH THE ARBITRATOR(S) TO BE APPOINTED WITHIN A REASONABLE PERIOD OF TIME, WHICH IN NO EVENT SHALL BE MORE THAN SIXTY DAYS FROM THE ADMINISTRATOR'S RECEIPT OF A WRITTEN REQUEST FROM A PARTY TO ARBITRATE THE CLAIM OR DISPUTE. AN ARBITRATOR MAY BE CHALLENGED FOR ANY OF THE GROUNDS LISTED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1297.121 OR SECTION 1297.124;

(III) VENUE OF THE ARBITRATION SHALL BE IN THE COUNTY, UNLESS THE PARTIES AGREE TO SOME OTHER LOCATION;

(IV) THE ARBITRATION SHALL COMMENCE IN A PROMPT AND TIMELY MANNER IN ACCORDANCE WITH: (1) THE RULES OF THE ARBITRATION, OR, IF THE RULES DO NOT SPECIFY A DATE BY WHICH ARBITRATION IS TO COMMENCE, THEN (2) A DATE AS AGREED BY THE PARTIES, AND IF THEY CANNOT AGREE AS TO A COMMENCEMENT DATE, (3) A DATE DETERMINED BY THE ARBITRATOR(S).

(V) THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH RULES AND PROCEDURES THAT ARE REASONABLE AND FAIR TO THE PARTIES;

(VI) THE ARBITRATION SHALL CONCLUDE IN A PROMPT AND TIMELY MANNER;

(VII) THE ARBITRATORS SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF ARBITRATION; PROVIDED, HOWEVER, THAT THERE SHALL IN NO EVENT BE ANY AWARD OF PUNITIVE DAMAGES; AND

(VIII) A JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

(C) <u>JUDICIAL REFERENCE FOR CERTAIN DISPUTES</u>. ANY CLAIM BY THE ASSOCIATION OR ANY OWNER OF A CONDOMINIUM IN THE PROJECT AGAINST DECLARANT OR ANY ARCHITECT, ENGINEER, OR OTHER CONSULTANT, OR ANY CONTRACTOR, SUBCONTRACTOR, OR MATERIALS SUPPLIER ENGAGED BY OR ON BEHALF OF DECLARANT FOR THE DESIGN OR CONSTRUCTION OF THE PROJECT OR ANY ELEMENT OF THE PROJECT ("DEVELOPER PARTIES") SHALL BE SUBMITTED TO JUDICIAL REFERENCE AS PROVIDED BY THE FOLLOWING:

(I) EXCEPT AS REQUIRED BY THE MANDATORY ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS SET FORTH IN CALIFORNIA CIVIL CODE SECTIONS 1354 AND 1375, ET SEQ., ALL DISPUTES BETWEEN OR AMONG THE ASSOCIATION, ANY OWNERS, AND THE DEVELOPER PARTIES (EXCEPTING DISPUTES WITH DECLARANT FOR DELINQUENT ASSESSMENTS) SHALL BE RESOLVED IN ACCORDANCE WITH THE PROVISIONS OF SECTION 18.14(C)(II).

(II) ALL UNRESOLVED DISPUTES UNDER SECTION 18.14(C)(I) SHALL BE SUBMITTED TO GENERAL JUDICIAL REFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 641 THROUGH 645.1, OR ANY SUCCESSOR STATUTES. THE PARTIES SHALL COOPERATE IN GOOD FAITH TO ENSURE THAT ALL NECESSARY AND APPROPRIATE PARTIES ARE INCLUDED IN THE JUDICIAL REFERENCE PROCEEDING. THE PARTIES SHALL SHARE EQUALLY IN THE FEES AND COSTS OF THE REFEREE, UNLESS THE REFEREE ORDERS OTHERWISE. ANY OF DECLARANT, THE ASSOCIATION OR AN OWNER, AS APPLICABLE IN A PARTICULAR JUDICIAL REFERENCE PROCEEDING (INDIVIDUALLY, "PARTY" OR COLLECTIVELY, THE "PARTIES"), SHALL NOT BE REQUIRED TO PARTICIPATE IN THE JUDICIAL REFERENCE PROCEEDING IF (1) ALL PARTIES AGAINST WHOM THE APPLICABLE PARTY WOULD HAVE CROSS-CLAIMS OR COUNTERCLAIMS NECESSARY TO AFFORD COMPLETE RELIEF TO SUCH PARTY CANNOT BE JOINED IN THE JUDICIAL REFERENCE PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY OF THE DEVELOPER PARTIES (COLLECTIVELY, "NECESSARY PARTY"), OR (2) THE ENFORCEMENT OF THE PROVISIONS OF THIS SECTION WOULD IMPAIR THE INSURANCE COVERAGE OF A PARTY OR DECLARANT FOR ANY CLAIM ARISING OUT OF THE DISPUTE THAT

WOULD OTHERWISE PROVIDE COVERAGE FOR SUCH CLAIM. IF A PARTY DETERMINES THAT IT CANNOT JOIN ALL NECESSARY PARTIES OR THAT ITS INSURANCE COVERAGE WOULD BE IMPAIRED WITH RESPECT TO THE DISPUTE, OR IF DECLARANT IS ADVISED BY ANY OF THE DEVELOPER PARTIES THAT IT CONTENDS ITS INSURANCE COVERAGE WILL BE IMPAIRED BY ENFORCEMENT OF THIS SECTION, SUCH PARTY MAY ELECT NOT TO PARTICIPATE IN THE JUDICIAL REFERENCE PROCEEDING. IF A PARTY ELECTS NOT TO PARTICIPATE IN THE JUDICIAL REFERENCE PROCEEDING, SUCH PARTY WILL PROVIDE NOTICE TO CLAIMANT(S) AND THE OTHER PARTIES TO THE JUDICIAL REFERENCE PROCEEDING THAT THE DISPUTE WILL NOT BE RESOLVED BY JUDICIAL REFERENCE. IN SUCH CIRCUMSTANCES, THE OTHER PARTIES MAY SEEK DETERMINATION OF THE PARTY'S RIGHT NOT TO PARTICIPATE BY WAY OF A MOTION UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 AND 641 THROUGH 645.1, OR ANY SUCCESSOR STATUTES. IF A DETERMINATION IS MADE AS A RESULT OF SUCH MOTION THAT A PARTY IS NOT REQUIRED TO PARTICIPATE IN THE JUDICIAL REFERENCE PROCEEDING, UNLESS THE REMAINING PARTIES AGREE OTHERWISE, THE DISPUTE SHALL NOT BE RESOLVED BY JUDICIAL REFERENCE AND THE CLAIMANT(S) MAY PROCEED WITH AN ACTION WITH RESPECT TO THE SUBJECT DISPUTE IN AN APPROPRIATE COURT OF LAW. IN THE EVENT THAT CLAIMANT(S) ARE PERMITTED TO PURSUE LEGAL PROCEEDINGS AS PROVIDED HEREIN, SUBSECTIONS (III) THROUGH (IV) OF THIS SECTION WILL NOT APPLY IN SUCH LEGAL PROCEEDING, PROVIDED THAT THE LEGAL PROCEEDING SHALL BE TRIED BY A JUDGE AND NOT A JURY AND CLAIMANT(S) AND ALL PARTIES SHALL WAIVE THEIR RIGHTS TO A JURY (UNLESS ALL PARTIES TO SUCH PROCEEDING MUTUALLY CONSENT OTHERWISE).

(III) THE GENERAL REFEREE SHALL HAVE THE AUTHORITY TO TRY ALL ISSUES, WHETHER OF FACT OR LAW, AND TO REPORT A STATEMENT OF DECISION TO THE COURT. THE PARTIES SHALL USE THE PROCEDURES ADOPTED BY JUDICIAL ARBITRATION AND MEDIATION SERVICES ("JAMS") FOR JUDICIAL REFERENCE (OR ANY OTHER ENTITY OFFERING JUDICIAL REFERENCE DISPUTE RESOLUTION PROCEDURES AS MAY BE MUTUALLY ACCEPTABLE TO THE PARTIES), PROVIDED THAT THE FOLLOWING RULES AND PROCEDURES SHALL APPLY IN ALL CASES UNLESS THE PARTIES AGREE OTHERWISE:

(1) IF DECLARANT IS A PARTY TO THE JUDICIAL REFERENCE, THEN ANY FEE TO INITIATE THE JUDICIAL REFERENCE SHALL BE PAID BY DECLARANT; PROVIDED, HOWEVER, THAT THE COST OF THE JUDICIAL REFERENCE SHALL ULTIMATELY BE BORNE AS DETERMINED BY THE REFEREE;

(2) THE PROCEEDINGS SHALL BE HEARD IN THE COUNTY;

(3) THE REFEREE MUST BE A NEUTRAL AND DISINTERESTED PARTY WHO IS A RETIRED JUDGE OR A LICENSED ATTORNEY WITH AT LEAST TEN YEARS EXPERIENCE IN RELEVANT REAL ESTATE MATTERS;

(4) ANY DISPUTE REGARDING THE SELECTION OF THE REFEREE SHALL BE RESOLVED BY JAMS OR THE ENTITY PROVIDING THE REFERENCE SERVICES, OR, IF NO ENTITY IS INVOLVED, BY THE COURT WITH APPROPRIATE JURISDICTION;

(5) THE REFEREE MAY REQUIRE ONE OR MORE PRE-HEARING CONFERENCES;

(6) THE PARTIES SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE;

(7) A STENOGRAPHIC RECORD OF THE TRIAL SHALL BE MADE, PROVIDED THAT THE RECORD SHALL REMAIN CONFIDENTIAL, EXCEPT AS MAY BE NECESSARY FOR POST-HEARING MOTIONS AND ANY APPEALS AND FOR INSURERS AND INDEMNITORS;

(8) THE REFEREE'S STATEMENT OF DECISION SHALL CONTAIN FINDINGS OF FACT AND CONCLUSIONS OF LAW TO THE EXTENT APPLICABLE;

(9) THE REFEREE SHALL HAVE THE AUTHORITY TO RULE ON ALL POST-HEARING MOTIONS IN THE SAME MANNER AS A TRIAL JUDGE; AND

(10) THE REFEREE SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE JUDICIAL REFERENCE; PROVIDED, HOWEVER, THAT THERE SHALL IN NO EVENT BE ANY AWARD OF PUNITIVE DAMAGES.

THE STATEMENT OF DECISION OF THE REFEREE UPON ALL OF THE ISSUES CONSIDERED BY THE REFEREE SHALL BE BINDING UPON THE PARTIES, AND UPON FILING OF THE STATEMENT OF DECISION WITH THE CLERK OF THE COURT, OR WITH THE JUDGE WHEN THERE IS NO CLERK, JUDGMENT MAY BE ENTERED ON THE DECISION. THE DECISION OF THE REFEREE SHALL BE APPEALABLE AS IF RENDERED BY THE COURT. THIS PROVISION SHALL IN NO WAY BE CONSTRUED TO LIMIT ANY VALID CAUSE OF ACTION THAT MAY BE BROUGHT BY ANY OF THE PARTIES. THE PARTIES ACKNOWLEDGE AND AGREE THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

[Signature on Next Page]

THE MARK CONDOMINIUMS LLC,
a California limited liability company

By: WLB Mark Holding LLC,
a Delaware limited liability company

By: Douglas Wilson Development, LLC,
a California limited liability company,
Managing Member

By: ______________________________
Douglas Wilson, Managing Member

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN DIEGO)

On March 30 2005, before me, Robyn Lamb Notary Public personally appeared Douglas Wilson personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

ESI1
ROBYN LAMB
COMM. #1309709
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. July 17, 2005
ESI1

WITNESS my hand and official seal.

Robyn Lamb

SUBORDINATION

The undersigned, as the holder of the beneficial interest under that certain Deed of Trust and Fixture Filing dated September 10, 2004, and recorded on September 17, 2004, as File No. 2004-886563 of the Official Records in the Office of the County Recorder of San Diego County, California ("Deed of Trust") hereby subordinates the lien and charge of said Deed of Trust to the covenants and provisions set forth in this Declaration.

Dated: April 1, 2005

FREMONT INVESTMENT & LOAN,
a California industrial bank

By: [signature]
Name: Rory A Gibbs
Its: Assistant Vice President

STATE OF CALIFORNIA)
) ss
COUNTY OF ~~SAN DIEGO~~ Orange)

On April 1, 2005, before me, Trisha Nguyen personally appeared Rory A Gibbs personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he~~/she executed the same in ~~his~~/her authorized capacity, and that by ~~his~~/her signature on the instrument the person, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

TRISHA NGUYEN
Commission # 1486612
Notary Public - California
Orange County
My Comm. Expires Apr 29, 2008

[signature]

EXHIBIT A

Property Legal Description

That certain property situated in the City of San Diego, County of San Diego, State of California described as follows:

Parcel 1 of Parcel Map 19679, in the City of San Diego, County of San Diego, State of California, recorded in the Office of the County Recorder of San Diego County on March 22, 2005 as File 2005-232715 in the Official Records.

Accessor's Parcel Numbers: 535-113-01 through 08

EXHIBIT B

Building Signage and Exterior Criteria

1. Compliance with Chapter 10, Article 3, Division 19.1 of the San Diego Municipal Code (Centre City Planned District Ordinance), as the same may be amended from time to time.

2. Signage/Awnings:

   (a) Compliance with Chapter 12, Article 9, Division 8 (Sign Permit Procedures) and Chapter 14, Article 12, Division 12 (Sign Regulations), each as may be amended or supplemented from time to time.

   (b) Compliance with Declarant's comprehensive sign plan to be submitted to the Center City Development Corporation.

3. Sidewalks: Compliance with San Diego Municipal Code, Chapter 14, Article 1, Division 6, as the same may be amended or supplemented from time to time.

DOC# 2018-0045838

Feb 05, 2018 12:46 PM
OFFICIAL RECORDS
Ernest J. Dronenburg, Jr.,
SAN DIEGO COUNTY RECORDER
FEES: $104.00 (SB2 Atkins: $75.00)

PAGES: 6

Recording Requested by and when Recorded Mail to:

PETERS & FREEDMAN, L.L.P.
191 Calle Magdalena, Suite 220
Encinitas, California 92024
Telephone: (760) 436-3441

(Above Space for Recorder's Use)

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE MARK CONDOMINIUM OWNERS ASSOCIATION

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

RECITALS

A. The Mark Condominium Owners Association is the association established to maintain, operate and manage the residential project known as The Mark;

B. A Declaration of Covenants, Conditions and Restrictions ("Declaration") was recorded on April 5, 2005, as Instrument No. 2005-0273376, in the Office of the County Recorder of the County of San Diego, making the property legally described in Exhibit "A" hereto subject to same;

C. The membership of the Association hereby approves this First Amendment to the Declaration as follows:

Additions\Amendments to the Declaration are indicated by underline and *italics* in the text below:

I. Article I, Section 1.18 Common Expenses.
The actual and estimated costs of the following:

(m) Such other costs or expenses incurred by the Association in connection with Common Area, this Declaration, the Articles, or the Bylaws in furtherance of the purposes of the Association, or in the discharge of any obligations imposed upon the Association by this Declaration. *As authorized under this section, the Association shall incur costs to: (1) ensure heat pumps and heat pump assemblies are maintained, modified, replaced and\or reconfigured to prevent damage to Association Common Area, Association maintenance responsibilities and to other Units. (2) replace, modify and\or repair bathtubs in Units to prevent damage to Common Area, Association maintenance responsibilities and to other Units. The Association's determination as to how to effectuate these responsibilities shall be governed by the Judicial Deference standard as set forth in Lamden v. La Jolla Shores Clubdominium Homeowners Association, (1999) 21 Cal. 4th 249, 87 Cal. Rptr. 2d 237.*

II. *Article I, Section 1.70 Reconstruction*
Reconstruction is defined as major repairs to the Project that the Association is obligated and\or determines to undertake upon completion of the construction defect litigation, Case No. 37-2013-00049168-CU-CD-CTL, or at any future point in time. Reconstruction replacement and repairs shall include, but not necessarily limited to: (1) damage, repair or replacement of Common area; (2) damage, repairs or replacement to a separate interest that the Association is obligated to maintain or repair; and (3) damage, repair or replacement to a separate interest that arises out of, or is integrally related to, damage to the Common Area or a Separate Interest\Unit that the Association is obligated to maintain or repair. Example: Replacement of cast iron pipe inside the bearing or interior walls near, within or adjacent to Units. Under the existing Declaration, part of cast iron pipe replacement within the perimeter and interior walls are deemed both the Association's maintenance responsibility and the Owners' maintenance responsibility under the Declaration. See Article IV, Section 4.30.

III. Section 7.2 Duties of the Association. The Association shall have the obligation, subject to and in accordance with this Declaration, to perform, by action of the Board, each of the following duties:

(h) *The Association shall manage and effectuate Reconstruction of the Project, including aspects of Separate Interests\Units as defined also in Article I, Section 1.70. As part of the Reconstruction process, Owners\occupants may be obligated to vacate their Unit to effectuate Reconstruction. During Reconstruction, the Association shall have the responsibility for reasonable relocation costs to Owners\occupants who are temporarily displaced from their Unit(s). The contemplated relocation and relocation costs are due to major Plumbing replacement\repairs to the Project and major repairs to exterior of the building, e.g. the window wall system. The Association's determination as to how to effectuate these responsibilities shall be governed by the Judicial Deference standard as set forth in Lamden v. La Jolla Shores Clubdominium Homeowners Association, (1999) 21 Cal. 4^{th} 249, 87 Cal. Rptr. 2d 237.*

All other provisions of the Declaration shall remain in full force and effect.

CERTIFICATE OF AMENDMENT

I, **Valerie Hansen** declare:

1. I am the duly elected and acting Secretary of THE MARK CONDOMINIUM OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation; and

2. The foregoing FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE MARK CONDOMINIUM OWNERS ASSOCIATION was duly adopted by a vote of majority of the voting power of the Association.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this 10th day of January, 2018.

THE MARK CONDOMINIUM OWNERS ASSOCIATION

By: Valerie Hansen
Valerie Hansen, Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)ss
County of San Diego)

On January 10, 2018 before me PAUL YOUNG a Notary Public, personally appeared **VALERIE HANSEN** who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(~~ies~~), and that by his/her/their signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Paul Young

(seal)

PAUL YOUNG
Notary Public - California
San Diego County
Commission # 2165397
My Comm. Expires Oct 20, 2020

CERTIFICATE OF AMENDMENT

I, **Hoang RisonChu**, declare:

1. I am the duly elected and acting President of THE MARK CONDOMINIUM OWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation; and

2. The foregoing FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE MARK CONDOMINIUM OWNERS ASSOCIATION was duly adopted by a vote of majority of the voting power of the Association.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this 9 day of January, 2018.

THE MARK CONDOMINIUM OWNERS ASSOCIATION

By: ______________________
Hoang RisonChu, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)ss
County of San Diego)

On January 9, 2018 before me Paul Young a Notary Public, personally appeared **HOANG RISONCHU** who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Paul Young

PAUL YOUNG
Notary Public - California
San Diego County
Commission # 2165397
My Comm. Expires Oct 20, 2020

EXHIBIT "A"

Legal Description of Property

That certain property situated in the City of San Diego, County of San Diego, State of California described as follows:

Parcel 1 of Parcel Map No. 19679, in the City of San Diego, County of San Diego, State of California, recorded in the Office of the County Recorder of San Diego County on March 22, 2005 as File 2005-232715 in the Official Records.

Assessors' Parcel Numbers 535-113-01 through 08

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

The Mark Condominium
Owners Association
c/o Community Legal Advisors Inc.
509 N. Coast Highway
Oceanside, CA 92054

DOC# 2023-0106367

Apr 24, 2023 02:18 PM
OFFICIAL RECORDS
JORDAN Z. MARKS,
SAN DIEGO COUNTY RECORDER
FEES: $101.00 (SB2 Atkins: $75.00)

PAGES: 5

(SPACE ABOVE FOR RECORDER'S USE)

Second Amendment To Declaration of Covenants, Conditions and Restrictions For The Mark Condominium Owners Association

If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

RECITALS

A. The Mark Condominium Owners Association ("Association") was established to maintain, operate and manage the residential project known as "The Mark";

B. A Declaration of Covenants, Conditions and Restrictions for The Mark Condominium Owners Association (the "Declaration") was recorded on April 5, 2005, as Instrument Number 2005-0273376, in the Office of the County Recorder of the County of San Diego, making the property legally described in Exhibit "A" hereto subject to the same;

C. A First Amendment to Declaration of Covenants, Conditions and Restrictions for The Mark Condominium Owners Association was recorded on February 5, 2018, as Instrument Number 2018-0045838, in the Office of the County Recorder of the County of San Diego, making the property legally described in Exhibit "A" hereto subject to the same;

D. The membership of the Association hereby approves this Second Amendment to the Declaration as follows:

Additions and amendments to the Declaration and indicated by underline, *italics*, and ~~strikethrough~~ in the text below:

I. Article IV, Section 4.14: Fires: ~~There shall be no exterior fires in the Common Area, except barbecue fires contained within receptacles provided or approved by the Board.~~ *The Board shall have the sole authority and discretion to approve or deny exterior fires in the Common Area. Such exterior fires include, but are not limited to, barbecue fires, fire pits, heat lamps, and pizza ovens.*

All other provisions of the Declaration shall remain in full force and effect.

CERTIFICATE OF AMENDMENT

I, Judith Berg, declare:

1. I am the duly elected and acting President of The Mark Condominium Owners Association, a California Nonprofit Mutual Benefit Corporation; and
2. The foregoing Second Amendment To Declaration of Covenants, Conditions and Restrictions for The Mark Condominium Owners Association was duly adopted by a vote of the majority of the voting power of the Association.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this 10th day of APRIL, 2023.

The Mark Condominium Owners Association

By: Judith Berg

________________, President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On APRIL 10, 20 23, before me, PAUL YOUNG, Notary Public, personally appeared JUDITH BERG, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Paul Young
Notary Public

(Seal)

PAUL YOUNG
Notary Public - California
San Diego County
Commission # 2349373
My Comm. Expires Feb 28, 2025

CERTIFICATE OF AMENDMENT

I, Michael Stiefel, declare:

1. I am the duly elected and acting Secretary of The Mark Condominium Owners Association, a California Nonprofit Mutual Benefit Corporation; and

2. The foregoing Second Amendment To Declaration of Covenants, Conditions and Restrictions for The Mark Condominium Owners Association was duly adopted by a vote of the majority of the voting power of the Association.

IN WITNESS WHEREOF, I hereunto subscribe my name and affix the seal of said corporation this 19 day of April, 2023.

The Mark Condominium Owners Association

By: ______________________

______________________, Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On APRIL 19, 20 23, before me, PAUL YOUNG, Notary Public, personally appeared MICHAEL STIEFEL, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: ______________________ (Seal)
Notary Public

PAUL YOUNG
Notary Public - California
San Diego County
Commission # 2349373
My Comm. Expires Feb 28, 2025

Exhibit "A"

Legal Description of Property

That certain property situated in the City of San Diego, County of San Diego, State of California, described as follows:

Parcel 1 of Parcel Map No. 19679, in the City of San Diego, County of San Diego, State of California, recorded in the Office of the County Recorder of San Diego County on March 22, 2005, as File 2005-232715 in the Official Records.

Assessors' Parcel Numbers 535-113-01 through 08.