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10880 Wilshire Boulevard
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Los Angeles, Calif. 90024
ATTN: Barbara Bail

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CHICAGO TITLE COMPANY
.....*[Signature]*.....

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

MARTINIQUE COMMUNITY ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, made this 30th day of April, 1991, by Pardee Construction Company, a California corporation, hereinafter called "Declarant".

This Declaration is made with reference to the following

RECITALS:

A. Declarant is the owner of the real property located in the City of San Diego, County of San Diego, State of California, hereinafter called the "Condominium Property" described as follows:

Parcels 1, 2 and 3 of Parcel Map No. 16170 filed in the Office of the County Recorder of San Diego County, California on July 31, 1990.

B. Declarant has filed a Condominium Plan with the Office of the County Recorder of San Diego County, California recorded as File/Page No. 91-0200776 on May 1, 1991.

C. Declarant has or intends to improve the Condominium Property and any additional real property which is annexed thereto pursuant to this Declaration, as a Common Interest Development, and as a "Condominium Project" as defined in Civil Code Section 1351(f). The Condominium Property shall consist of a maximum of sixty-four (64) Living Units.

Said sixty-four (64) Living Units will be located in five (5) eightplex buildings and two (2) twelveplex buildings of conventional wood frame style with

stucco and wood trim exteriors and concrete roof tiles and gravel flat roof areas. The Common Area of the Condominium Property shall be improved with the following recreational facilities and amenities:

1. Landscaped open areas with meandering concrete walk-ways, and perimeter slump block wall and/or wrought iron fences;
2. Asphalt driveways and parking areas;
3. One (1) parking space for each Living Unit;
4. One (1) combination laundry room and restrooms;
5. One (1) swimming pool with concrete pool deck; and
6. One (1) spa with concrete deck.

D. The Owners of a Condominium in the Condominium Property, which comprises the first phase of the Project will receive title to the Living Unit, plus an undivided interest, based on the ratio the square footage of the floor area of each individual Living Unit bears to the square footage of the floor area of all Living Units in the first phase, as Tenant in Common in the Common Area of the Condominium Property as follows:

- (i) The owner or owners of each 1 bedroom/1 bath Plan 1 (one-story) Living Unit in the first phase shall receive an undivided .01 interest for each Plan 1 Living Unit owned;
- (ii) The owner or owners of each 1 bedroom/1 bath Plan 1A (one story) Living Unit in the first phase shall receive an undivided .01 interest for each Plan 1A Living Unit owned.
- (iii) The owner or owners of each 2 bedroom/2 bath Plan 2 (one-story) Living Unit in the first phase numbered 9, 10, 11, 12 shall receive an undivided .01 interest for each Plan 2 Living Unit owned.
- (iv) The owner or owners of a 2 bedroom/2 bath Plan 2 (one-story) Living Unit in the first phase numbered 13 through 18 inclusive, 27 through 46 inclusive, 55 through 64 inclusive, shall receive an undivided .02 interest for each Plan 2 Living Unit owned.

The Living Units are numbered as follows on the Condominium Plan:

Plan 1 Living Units:

1 through 8, inclusive; 21 through 24, inclusive; and 49 through 52, inclusive

There are sixteen (16) Plan 1 Living Units.

Plan 1A Living Units:

19, 20, 25, 26, 47, 48, 53, 54

There are eight (8) Plan 1A Living Units.

Plan 2 Living Units:

9 through 18, inclusive; 27 through 46, inclusive; 55 through 64, inclusive;

There are forty (40) Plan 2 Living Units.

For purposes of this Declaration it is hereby determined and agreed that, irrespective of any actual deviation therefrom, the total square footage of the floor area of all Living Units in the first phase shall be 48,952 square feet and that the square footage of the floor area of each Living Unit in the first phase shall be as follows:

Each Plan 1 Living Unit shall consist of 568 square feet.

Each Plan 1A Living Unit shall consist of 618 square feet.

Each Plan 2 Living Unit shall consist of 873 square feet.

The development of the Condominium Property will be consistent with the overall development plan hereinabove described and submitted to and approved by the U. S. Department of Veterans Affairs.

Each Condominium shall have appurtenant to it a membership in Martinique Community Association, a California nonprofit mutual benefit corporation ("Association"), which will be the management body for the overall condominium project.

E. Before selling or conveying any interest in the Condominium Property, Declarant desires to subject the Condominium Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future owners of the Real Property.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the Real Property described above and has fixed and does hereby fix the following protective covenants, conditions and restrictions upon each and every ownership interest in the Condominium Property described above, under which said covenants, conditions and restrictions each ownership interest in the Condominium Property shall be hereafter held, used, occupied, leased, sold, encumbered, conveyed and/or transferred. Each and all of said covenants, conditions and restrictions are for the purpose of protecting the value and desirability of and shall inure to the benefit of all of the Real Property described above and shall run with and be binding upon and pass with the Condominium Property and each and every ownership interest therein and shall inure to the benefit of, apply to and bind the respective successors in title or interest of Declarant.

ARTICLE I

DEFINITIONS

Unless the context otherwise specifies or requires, the terms defined in this ARTICLE I shall, for all purposes of this Declaration, have the meanings herein specified.

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

Section 2. "Association" shall mean and refer to MARTINIQUE COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 3. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

Section 4. "By-Laws" shall mean and refer to the By-Laws of the Association as they may from time to time be amended.

Section 5. "Common Area" means the entire "common interest development" (as defined in Civil Code Section 1351 (b) except the Living Units as shown on the recorded Condominium Plan for the Project. The estate in the Common Area may be a fee, a life estate, an estate for years, or any combination of the foregoing.

Section 6. "Common Expenses" means and includes the actual and estimated expenses of operating the Condominium Property and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the Condominium Documents.

Section 7. "Condominium" shall mean and refer to an estate in real property and as defined in Civil Code Section 1351(f) and shall consist of an undivided interest as tenant-in-common in the portion of the real property coupled with the boundaries of which are described on this Plan.

Section 8. "Condominium Building" shall mean a residential structure containing Living Units.

Section 9. "Condominium Documents" means and includes the Declaration, the Articles, the By-Laws, as they may be amended from time to time, and any exhibits attached thereto; the rules and regulations for the Members as established from time to time by the Board; and the Condominium Plan, as it may be amended from time to time.

Section 10. "Condominium Plan" shall mean and refer to the Condominium Plan consisting of (1) a description or survey map of a Condominium Project which refer to or show monumentation on the ground, (2) a three-dimensional description of the Condominium Project, one or more dimensions of which may extend for an indefinite distance upwards or downwards with sufficient detail to identify the Common Areas and each separate interest, and (3) a certificate consenting to

recording of the Condominium Plan pursuant to the Davis-Stirling Common Interest Development Act and acknowledged by either the Trustee or beneficiary of each recorded Deed of Trust and the Mortgagee of each recorded Mortgage encumbering the Property.

Section 11. "Condominium Property" shall mean and refer to a Common Interest Development on that certain real property located in the County of San Diego, State of California, more particularly described as:

Parcels 1, 2 and 3 of Parcel Map No. 16170 filed in the Office of the County Recorder of San Diego County, California on July 31, 1990.

Section 12. "Declarant" shall mean and refer to Pardee Construction Company, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped parcel in the Real Property from the Declarant for the purpose of development.

Section 13. "Declaration" shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions.

Section 14. "Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor of a first Mortgage on a Condominium who has requested notice of certain matters in accordance with ARTICLE X herein.

Section 15. "Eligible Mortgage Holder" or "Eligible Holder" shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice of certain matters from the Association in accordance with ARTICLE X herein.

Section 16. "Exclusive Use Common Area" shall mean and refer to those portions of the Common Area which are designated by the Declaration of Covenants, Conditions and Restrictions for the exclusive use of one (1) or more, but fewer than all of the Owners of the separate interest in accordance with Civil Code Section 1351(f). The Exclusive Use Common Area as shown and described on the Condominium Plan shall consist of: Balconies, Patios, Storage Areas, Parking Spaces

Section 17. "Fiscal Year" shall mean the year from January 1 of one calendar year through December 31 of the same calendar year. However, the fiscal year of the Association is subject to change from time to time as the Board may determine.

Section 18. "Improvements" shall mean and refer to all structures, construction, and landscaping improvements of every type and kind, whether above or below the land surface, including but not limited to buildings, outbuildings, carports, roads, driveways, fences, screening walls, retaining walls, hedges, windbreaks, plantings, planted trees and shrubs, poles and signs.

Section 19. "Living Unit" shall mean a separate interest in space defined in Civil Code Section 1351(f) and (1) (2). Each of the Living Units shall be a separate freehold estate as separately shown, numbered and designated on this Condominium Plan. The Units in the Project are numbered 1 through 64, inclusive.

A Living Unit consists of all those separate interests in space shown and identified on the Condominium Plan as being part of such Living Unit. The boundaries of each "Living Unit" are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof. And the Living Unit includes both the portions of the building so described and the air space so encompassed as shown on the typical floor plan on the Condominium Plan. The following are not part of the Living Unit: bearing walls, columns, floors, roofs, foundations, pipes, ducts, flues, chutes, conduits, wires, and other utilities installations, except the outlets thereof when located within the Living Unit. In the interpreting deeds and plans, the existing physical boundaries of the Living Unit or of a Living Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of variances between boundaries shown on the plan or in the deed and those of the building.

Section 20. "Map" shall mean and refer to Martinique Phase I Condominium Plan filed in the Office of the County Recorder of County, California on May 1, 1991, File/Page No. 91-0200776.

Section 21. "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

Section 22. "Mortgage" shall mean and refer to a Deed of Trust as well as a mortgage.

Section 23. "Mortgagee" shall mean and refer to a beneficiary under or holder of a Deed of Trust as well as a mortgagee.

Section 24. "Mortgagor" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

Section 25. "Owner" shall mean and refer to the record owners, whether one (1) or more persons or entities, of fee simple title to any Condominium which is a part of the Real Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 26. "Project" shall mean and refer to the entire real property hereinafter described, including all structures and improvements erected or to be erected thereon.

Section 27. "Real Property" shall mean and refer to that real property located in the County of San Diego, California described as: Parcels 1, 2 and 3 of Parcel Map No. 16170 filed in the Office of the County Recorder of San Diego County, California on July 31, 1990.

Section 28. "Record" and "Recordation" shall mean, with respect to any document, the recordation of said document in the Office of the County Recorder of the County of San Diego, State of California.

Section 29. "Rules" shall mean the rules adopted by the Board for the regulation of the Common Area, and the Association Property as they may be amended from time to time.

Section 30. "State" shall mean the State of California.

Section 31. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the first floor of the dwelling thereon.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION

Section 1. Qualifications and Voting. Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration, the Articles and By-Laws and the rules and regulations adopted thereunder from time to time by the Board and officers of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium shall fail or refuse to transfer the membership registered in his/her name to the purchaser of his/her unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners of a Condominium with the exception of Declarant, and shall be entitled to one (1) vote for each Condominium owned. When more than one person holds an interest in any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

Class B. Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall forever cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier.

(a) On a date two (2) years from the anniversary of the original issuance of the most-recently issued Subdivision Public Report for a phase of the overall Project; or

(b) On a date four (4) years from the anniversary date of the original issuance of the Subdivision Public Report for the first phase of the overall Project.

Section 2. Common Area. Except as otherwise provided herein, the Association acting through the Board and officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration, the Articles and the By-Laws.

Section 3. Rules. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Common Area, the Association Property, and the recreational and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. Such rules may provide that the Owner of a Condominium whose occupant leave property on the Common Area or the Association Property in violation of the rules may be assessed after appropriate notice and an opportunity for a hearing before the Board which satisfies the requirements of Section 7341 of the California Corporations Code as set forth in ARTICLE XVI of the By-Laws and a two-thirds (2/3) vote of approval by the Board to cover the expense incurred by the Association in removing such property and storing or disposing thereof. The Board may suspend the voting rights and right to use the recreational facilities located on the Common Area or the Association Property of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its rules and regulations after reasonable written notice and an opportunity for a hearing before the Board which satisfies the requirements of Section 7341 of the California Corporations Code as set forth in ARTICLE XVI of the By-Laws.

Section 4. Association's Right of Entry. For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Living Unit or upon any portion of the Common Area to effect emergency repairs. For other than emergency repairs, the Association's agents or employees shall have the right to enter any Living Unit or any portion of the Common Area to effect repairs, improvements, re placements or maintenance which the Association, after approval by two-thirds (2/3) vote of the Board, reasonably deems necessary; provided, however, that the Owner's consent shall be necessary to enter a Living Unit for other than emergency repairs, which consent shall not be unreasonably withheld. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association. Further, such entry for other than emergency repairs shall be made only after not less than three (3) days' notice has been given to the Owner.

Section 5. No Liability. In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Association which acts on behalf of and as representative of the Owners, and no Member thereof shall be individually or personally liable or obligated for performance or failure of

performance of such duties or responsibilities unless he fails to act in good faith.

Section 6. Joint Owner Disputes. The vote for each such Condominium must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Condominium, it will thereafter be conclusively presumed for all purposes that he/she or they were acting with the authority and consent of all other Owners of the same Condominium.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION

Section 1. Covenant to Pay Assessments. The Declarant, for each Condominium owned within the Project, hereby covenants and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (1) regular assessments which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area, and (2) special assessments for capital improvements and such other purposes as set forth herein, such assessments to be established and collected as hereinafter provided. Except as otherwise provided in ARTICLE III, Section 8 hereof, the regular and special assessments, together with interest, costs, penalties and reasonable attorney's fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, penalties and reasonable attorney's fees shall also be the personal obligation of the person or persons who were the Owner(s) of such Condominium at the time when the assessment fell due. Each Owner shall be responsible for (i) notifying the Association of any pending change or transfer of title to his/her Condominium and (ii) paying any and all due and unpaid assessments, including interest, costs, penalties and attorneys' fees related thereto, if any, levied against his/her Condominium prior to and/or concurrent with any such transference of title. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner of a Condominium may exempt himself/herself from liability for his/her contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Area, the Association Property or by abandonment of his/her Condominium.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire project and for the improvement and maintenance of the Common Area for the common good of the Project. An assessment, penalty or fee shall not be levied by the Association which exceeds the amount necessary for the purpose or purposes for which it was levied.

Section 3. Regular Assessments. Until July 1st of the year immediately following conveyance of the first Condominium to an Owner, the maximum annual regular assessment shall be \$1,557.00 per condominium.

Annual increases in regular assessments for any fiscal year shall not be imposed unless the Board has complied with subdivision (a) of Civil Code Section 1365 with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purpose of this section, "quorum" means more than fifty percent (50%) of the owners of the Association.

Notwithstanding any other provision in this Declaration to the contrary, the board of directors may not impose a regular assessment that is more than twenty percent (20%) greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than fifty percent (50%) of the owners of an association.

This Section does not limit assessment increases necessary for emergency situations. For purposes of this Section, an emergency situation is any one of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.
- (3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the proforma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this Subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the members with the notice of assessment.

Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due. If an assessment is delinquent the association may recover all of the following:

- (1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.
- (2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars (\$10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any late charge imposed shall not exceed the amount specified in the declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessment, reasonable costs of collection, and late charges, at an annual percentage rate not to exceed 12 percent interest, commencing 30 days after the assessment becomes due.

Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this Section.

Section 4. Special Assessment. The Association may also levy a special assessment against any Member to reimburse the Association for costs incurred in bringing a Member and his Condominium into compliance with the provisions of this Declaration, the Articles, the By-Laws, and the Association's rules and regulations, and any amendments thereto, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporations Code, as set forth in ARTICLE XVI of the By-Laws.

Section 5. Membership Approval. Any action authorized under Section 3 or 4 above shall be taken at a meeting called for that purpose, written notice of which shall be given to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting; provided, however, if notice is given by mail and the notice is not mailed by first-class, registered or certified mail, then notice shall be given not less than twenty (20) days before the meeting. A quorum for such meeting shall be a majority of the voting power of the membership of the Association. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be twenty-five percent (25%) of the voting power of the membership of the Association; provided, however, if (i) the meeting so adjourned is an annual meeting and (ii) the adjourned annual meeting is actually attended, in person or by proxy, by less than thirty-three and one-third percent (33-1/3%) of the voting power of the membership of the Association, then the only matters which may be voted upon thereat, are matters notice of the general nature of which was duly given. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%), Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

Section 6. Uniform Rate. Both regular assessments and special assessments shall be fixed at a uniform rate for all Condominiums; provided, however, that (a) special assessments to raise funds for the rebuilding or major repair of the Common Area shall be based on the ratio of the square footage of the floor area of the Living Unit to be assessed to the total square footage of floor area of all Living Units to be assessed, with the square footage to be as determined and set forth in Recital D and Section 16 of ARTICLE XIII of this Declaration, and (b) special assessments shall not be levied uniformly where special assessments are a remedy utilized by the Board to reimburse the Association for costs incurred in bringing a Member into compliance with provisions of this Declaration, the Articles, By-Laws and rules and regulations of the Association.

Such assessments may be collected on a monthly basis or otherwise as determined by the Board.

Section 7. Commencement of Assessments. The annual assessments provided for herein shall commence as to all condominiums in each phase of the Project on the first day of the month following the conveyance of the first Condominium to an Owner in that phase. The first annual assessment shall be prorated according to the number of months remaining in the fiscal year. Voting rights attributable to subdivision interests shall not vest until assessments against those interests have been levied by the Association. The Board shall determine convey the same. Suit to recover a money judgement for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 8. Subordinate to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title to the same as a result of foreclosure, such acquirer of title, his/her successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Condominiums including such acquirer, his/her successors and assigns.

Section 9. Assessment for Taxes. In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the individual Condominiums, said taxes shall be added to the annual regular assessments and, if necessary, a special assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in two (2) installments. Assessments levied under this Section shall not be subject to the provisions of Section 3 of Article III of this Declaration.

Section 10. Enforcement by Suit. The Board may cause an action at law to be commenced and maintained in the name of the Association in any court of competent jurisdiction, including, but not limited to, an action in a small claims court, to enforce each such assessment obligation. Any judgement rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of ten percent (10%) per annum from the date of delinquency, court costs, and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Owner (including Declarant).

Section 11. Deposit. Upon acquisition of record title to a Condominium from Declarant, each Owner shall make a contribution to the capital of the Association in an amount equal to one-sixth (1/6) the amount of the maximum annual regular assessment per Condominium initially established, as set forth in

ARTICLE III, Section 3 hereof. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. Prior to the date of the conveyance of the first Condominium, Declarant shall deposit into an escrow for each and every Condominium not yet sold an amount equal to one-sixth (1/6) the amount of the maximum annual regular assessment per Condominium initially established, as set forth in ARTICLE III, Section 3 hereof. Escrow shall remit these funds to the Association. Upon the close of escrow of any Condominium for which the capitalization fund was prepaid by Declarant, escrow shall remit to the Declarant the capitalization fee collected from the buyer. Said capital contributions shall be limited to the first sales of Condominium by Declarant and shall not apply to any resale of Condominium.

Section 12. Assessment Certificate. A certificate executed under penalty of perjury by any two (2) members of the Board and acknowledged shall be conclusive upon the Association and the Owners in favor of any and all persons who rely thereon in good faith as to the matters therein contained, and any Owner (including Declarant) shall be entitled to such a certificate setting forth the amount of any due and unpaid assessments with respect to his/her Living Unit (or the fact that all assessments due are paid if such is the case) within ten (10) days after demand therefor and upon payment of a reasonable fee, not to exceed Ten Dollars (\$10.00), which may be fixed by the Board.

ARTICLE IV

POWERS AND DUTIES OF ASSOCIATION

Subject to other provisions of this Declaration and to the limitations of the Articles, the By-Laws and the California Corporations Code as to action to be authorized or approved by the Members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by, the Board. Without prejudice to such general powers but subject to the same limitations, it is hereby expressly declared that the Directors shall have the following powers and duties:

Section 1. Elect Officers. To select and remove all the officers, agents and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with law, the Articles, the By-Laws or this Declaration, and, subject to the provisions of Section 3(b) of Article VIII of the By-Laws, to fix their compensation.

Section 2. Management and Control. To conduct, manage and control the affairs and business of the Association, and to make such rules and regulations therefor not inconsistent with law, the Articles, the By-Laws or this Declaration as they deem best, including rules and regulations for the operation of the Common Area, the Association Property and other facilities owned or controlled by the Association.

Section 3. Principal Office. To change the principal office for the transaction of the business of the Association from one location to another within the same County and to designate a place within the Project or as close thereto as possible within the County of San Diego, State of California, for the holding of any membership meeting or meetings.

Section 4. Incur Indebtedness. To borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor, with the vote or written assent of two-thirds (2/3) of the voting power of each class of Members of the Association.

Section 5. Obtaining Insurance. To obtain and maintain in force the following policies of insurance:

- (1) Master policy of condominium casualty insurance covering fire and extended coverage insurance and any other perils that the Association shall deem advisable on all improvements, buildings and structures in the Project, the amount of such insurance to be not less than the aggregate full insurable value, meaning actual replacement value exclusive of the cost of excavating, foundations and footings, together with an agreed value endorsement and with such other coverage and amounts of coverage as shall be required by Federal National

Mortgage Association and Government National Mortgage Association from time to time so long as Federal National Mortgage Association or Government National Mortgage Association is a mortgagee or beneficiary under a deed of trust of a Condominium within Project;

- (2) Bodily injury liability insurance, with limits of not less than \$200,000 per person and \$1,000,000 per occurrence, and property damage liability insurance with a deductible of not more than \$1,500 and a limit of not less than \$500,000 per accident, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction.
- (3) Fidelity insurance in the form of a bond in an amount equal to one hundred fifty percent (150%) of the Association's annual assessments including reserves. The bond shall protect against misuse and misappropriation of Association property by members of the Board, officers, trustees and employees of the Association, and any management agent and its officers, agents and employees whether or not such persons are compensated for their services.
- (4) Workmen's Compensation Insurance covering any employee of the Association.
- (5) Such other insurance, including errors and omissions coverage for Officers' and Directors' indemnity and other bonds, as the Board shall deem necessary or expedient to carry out the

Association functions as set forth in this Declaration, the Articles and the By-Laws.

The liability insurance referred to above shall name as separately protected insureds Declarant, the Association, the Board, and their representatives, members and employees, and the Association Members (as a class), with respect to any liability arising out of the maintenance or use of any Common Areas or other Recreational facilities, if any, under the jurisdiction of the Association. Such policy or policies shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insurers to pay any amount in excess of the maximum limits stated therein.

Every policy of insurance obtained by the Association, whether or not required to be obtained pursuant to the provisions of this Declaration, shall expressly waive any and all rights of subrogation against Declarant, its representatives and employees, and all Members.

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

Each owner shall be responsible to pay any deductible amount for any loss to his Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within his Condominium. No owner shall insure his Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any owner violate this provision he shall be responsible to the Association for any such diminution.

Section 6. Notice of Cancellation of Insurance or Fidelity Bond. Upon written request to the Association identifying (i) the name and address of the holder, insurer or governmental guarantor of any first Mortgage encumbering any Condominium and (ii) the number or address of such Condominium, to notify the same in writing at least ten (10) days prior to any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

Section 7. Utilities. To pay all charges for water, electricity, gas, and other utility services for the Common Area and, to the extent not separately metered or charged, for each Living Unit.

Section 8. Common Area. To manage, operate, maintain and repair the Common Area and all improvements located thereon, including the restoration and replacement of any or all of the buildings, structures or improvements which are part of the Common Area at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of the Association with the vote or written assent of a majority of the voting power of each class of Members of the Association.

Section 9. Right of Entry. To enter onto any Exclusive Use Area subject to the limitations set forth in the Declaration.

Section 10. Enforcement. To enforce the provisions of the Declaration, the Articles and By-Laws of the Association, the rules and regulations adopted by the Board and the provisions of any agreement to which the Association is a party.

Section 11. Services and Supplies. To contract and pay for maintenance, gardening, utilities, materials, supplies and services relating to the Common Area, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services; provided, however, that the term of any contract with a third person for supplying goods or services to the Common Area or for the Association shall not exceed a term of one (1) year unless a longer term is approved by a majority of the voting power of each class of Members of the Association, except that (a) a contract with a public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility will contract at the regulated rate, (b) a contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association, (c) a management contract, the terms of which have been approved by the U. S. Department of Veterans Affairs may not exceed a term of one (1) year and (d) a lease agreement for laundry room fixtures and equipment may be for a term of not to exceed five (5) years, provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more. Anything contained herein to the contrary notwithstanding, the Board shall not terminate professional management of the Condominium Property and assume self-management without the prior written approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders and the prior consent (by vote or written consent) of Members representing sixty-seven percent (67%) or more of the voting power of each class of Members; provided, however, in the event the Class B membership has been converted to Class A membership, then sixty-seven percent (67%) or more of the total voting power of the Association comprised of at least sixty-seven percent (67%) of the votes of Members other than Declarant. Any agreement for management of the Condominium Property and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, or fewer, written notice and shall have a term of not more than three (3) years, renewable with the consent of the Association and the management agent. No contract with the Association negotiated by Declarant shall exceed a term of one (1) year.

Section 12. Employment of Agents. To employ the services of any person or corporation as Manager, and other employees, to manage and conduct the business of the Association, and to the extent not inconsistent with the laws of the State and upon such conditions as are otherwise deemed advisable by the Association, to delegate to the Manager any of its powers; provided that any agreement for management or person hired as Manager shall not exceed one year, renewable by agreement of the parties for successive one (1) year periods and shall be terminable by the Association upon thirty (30) days written notice.

Section 13. Maintenance Contract. To enter into a maintenance service contract with any person, corporation or other entity for the maintenance of the Common Area, including materials and/or services for the Common Area, the Association, provided that any such contract shall be for a period of one (1) year, renewable by agreement of the parties for successive one (1) year periods and any such contract shall be terminable by the Association upon thirty (30) days written notice.

Section 14. Taxes. To pay any taxes and governmental special assessments which are or could become a lien on the Common Area or any portion thereof.

Section 15. Discipline. To initiate and execute disciplinary proceedings against Members of the Association for violations of the provisions of the Articles and By-Laws, this Declaration and the rules and regulations adopted by the Board.

Section 16. Budget. To prepare budgets and financial statements for the Association as provided by the By-Laws. The budget shall contain two parts. The first part shall be for operating expenses and shall include the estimate for the day to day costs of operation and maintenance. The second part shall include reserves for items of repair and maintenance that are major items and, although not made every year, money must be accumulated each year to insure sufficient funds when these repairs and maintenance are necessary. The original budget includes the following items as reserves:

1. Alterations
2. Painting
3. Roof Replacement and maintenance for roofs which have a 10 year life expectancy.
4. Recap, restripe and seal coating of all asphalt
5. Inflation Reserve

The Board shall maintain the integrity of the budget by maintaining reserves for the items set out above and these reserves shall not be used for operating expenses nor shall operating funds be used to pay for an expenditure covered by a reserve. Reserves for a specific item shall only be expended for that particular item.

Section 17. Notice of Default. Upon the written request of any holder, insurer or governmental guarantor of a first Mortgage encumbering any Condominium, to notify the same in writing of any default by the Owner of such Condominium in the performance of the Owner's obligations under the By-Laws or this Declaration which is not cured within thirty (30) days.

Section 18. Notice of Taking. The Association shall give, if required by the Federal Home Loan Mortgage Corporation or Federal National Mortgage Association, notice in writing at the addresses to be supplied to the Association by Federal Home Loan Mortgage Corporation for that organization and Federal National Mortgage Association for that organization of any loss to or taking of any Living Unit, the Common Area owned by the Association and/or its Members if such loss or taking exceeds \$10,000.00, and of any damage to a Living Unit if such damage exceeds \$1,000.00.

Section 19. Notice of Damage. Upon the written request of any holder, insurer or governmental guarantor of a first Mortgage encumbering any Condominium, to give timely written notice to the same of any substantial damage to or destruction of any Living Unit or any portion of the Common Area and, if any Living Unit, or any portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, to give timely written notice to the same of any such proceeding or proposed acquisition.

Section 20. Defense. To prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area or other property owned by the Association, and any action in which all or substantially all of the Owners have an interest.

Section 21. Delegation of Powers. To delegate any of its powers hereunder to others, including Committees, officers and employees.

Section 22. Rules. To adopt, amend and repeal rules and regulations known as the "Rules", governing, among other things, use of any Common Areas under the jurisdiction of the Association. Said Rules may restrict and govern the use of Common Areas by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that with respect to use of such Areas, the Rules may not discriminate among Owners. Said Rules may also include parking restrictions and limitations, limitations upon vehicular travel, restrictions on the type or types of vehicles which may be permitted to use such Common Areas, architectural controls and restrictions on the maintenance of landscaping or other improvements on any property which obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic.

A copy of said Rules, as they may from time to time be adopted, amended or repealed shall be posted at a prominent place or places within the Common Area and shall be given to each Member and, upon written request therefor, to all first Mortgagees either personally or mailed by first-class, registered or certified mail, postage prepaid to his address appearing on the books of the Association or supplied by him to the Association. If no address is supplied, a copy of said Rules shall be deemed given if mailed to the address of the Living Unit owned by such Member. Copies of such Rules shall be posted and circulated to each Member in the manner set forth above not less than ten (10) days and not more than sixty (60) days before said rules may be deemed to be in full force and effect. A copy of said Rules, as adopted, amended or repealed, may be recorded and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 23. Right to Grant Easements. To grant permits, licenses and easements under, through and over the Common Area for utilities, roads and other purposes which are reasonably necessary or useful for the proper maintenance and operation of the Project.

Section 24. Availability of Documentation. To make available to any prospective purchaser of a Condominium, any Owner of a Condominium, any first Mortgagee and the holders, insurers and guarantors of a first Mortgage on any condominium, current copies of the Declaration, the Articles, the By-Laws, the

rules and regulations governing the Condominium and all other books, records and financial statements of the Association. "Available" as used in this section shall at least mean available for inspection upon request during normal business hours or under other reasonable circumstances.

Section 25. Financial Statements. In addition to all other duties of the board as set out in this Declaration and By-Laws, it shall be the duty of the board to have the association prepare financial statements and have them distributed to all its members as follows:

(a) A pro forma operating budget shall be distributed not less than 45 days prior to the beginning of the association's fiscal year. The budget shall include all of the following:

1. The estimated revenue and expenses on an accrual basis.
2. The identification of the total cash revenues currently set aside.
3. The identification of the estimated remaining life of, and the methods of funding used to defray the future repair, replacements, or additions to, those major components which the association is obligated to maintain.
4. A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

(b) A copy of a review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars (\$75,000). The review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(d) In lieu of the distribution of the pro forma operating budget required by subparagraph (a), the Board of Directors may elect to distribute a summary of the pro forma operating budget to all its members with a written notice that the pro forma operating budget is available at the business office of the Association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the Association. If any member requests that a copy of the pro forma operating budget required by subparagraph (a) be mailed to a member, the Association shall provide the copy to the member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that

is distributed to each member shall be in at least 10-point bold type on the front page of the summary of the budget.

Section 26. Additional Duties. The board of directors of the associations shall do the following:

(a) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(b) Review a current reconciliation of the reserve accounts on at least a quarterly basis.

(c) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(d) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(e) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

(f) Inspect and maintain roofs at least twice a year in the spring and fall of each year, or more frequently, if so required, as per specifications to be provided by Declarant.

(g) Inspect and maintain drainage at least once a year in November of each year, or more frequently, if so required, at which time all drain gates, basins and lines shall be cleared and cleaned.

(h) Seal and restripe all asphalt at least every two years, or more frequently, if so required, using two coats of a guard top or walk top type sealer.

(i) Keep all swales and drainage channels clear and free of debris and all drainage facilities functioning as originally designed and not alter grading on project as originally provided.

(j) Replace caulking at least once a year, or more frequently, if so required, around the coping and decking of any swimming pool.

(k) Maintain all landscaping as per the following minimum maintenance standard:

(1) All planting areas shall be kept free of leaves and debris.

(2) Lawn and ground cover shall be kept mowed and/or trimmed regularly

(3) All plantings shall be kept in a healthy and growing condition. Fertilization, cultivation, spraying and

tree pruning are to be performed as a part of a regular maintenance program.

- (4) Stakes, guys and ties on trees shall be checked regularly to ensure the correct function of each. Ties shall be adjusted to avoid creating abrasions or girdling of the trunk or stem.
- (5) Damage to plantings created by vandalism, automobiles or acts of nature shall be corrected within thirty (30) days of occurrence.
- (6) Irrigation systems shall be kept in working condition. Adjustment, replacement of malfunctioning parts, and cleaning of systems, shall be a part of the regular maintenance program.

ARTICLE V

USE OF LIVING UNITS AND COMMON AREA AS DESCRIBED IN CONDOMINIUM PLAN

Section 1. Single Family Residential Use. Each Living Unit shall be improved, used and occupied for private, single-family dwelling purposes only, and no portion shall be used or caused, allowed or authorized to be used in any way whatsoever, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other non-residential purpose; provided, however, Declarant may use any of the Living Units owned by Declarant as model homes and sales offices during that period of time commencing when the Condominiums are first sold or offered for sale to the public and ending when all the Condominiums in the project are sold and conveyed by Declarant to separate Owners thereof or five (5) years from the date of the sale of the first Condominium in the Project, whichever shall first occur.

Section 2. Animals. No animals or birds shall be maintained on any property within Living Units and Exclusive Use Areas unless authorized by the Board and, if authorized by the Board, no animals limited to a maximum of two (2) household pets, shall be maintained on any property within Living Units and then only if they are kept thereon solely as domestic pets and not for commercial purposes. If allowed by the Association, no animal or bird shall be allowed to make an unreasonable amount of noise, or to become a nuisance. If allowed by the Association, no structure for the care, housing or confinement of any animal or bird shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, the Board shall conclusively determine in its sole and absolute discretion whether, for the purposes of this paragraph, a particular animal or bird is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any such property is reasonable. The Board shall have the power to prohibit pets or allow them in any amount desired except that they shall not be allowed in excess of the amounts set out above.

Section 3. Antennas. No Antenna or other device for the transmission or reception of television signals, or any other form of electromagnetic radiation, including, but not limited to, a dish or other device capable of transmitting or

receiving signals for cable, satellite or pay-television systems, shall be erected, used or maintained outdoors, whether attached to a building or structure or otherwise, by any Owner. Notwithstanding the foregoing, nothing herein shall be construed as preventing Declarant or the Association from erecting, using and maintaining a master antenna outdoors in a location determined by Declarant and shown on plans filed by Declarant with the Board.

Section 4. Utility Service. No lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any units, Common Area unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board.

Section 5. Improvements and Alterations. No improvements, excavation or other work which in any way alters the exterior appearance of any property within Common Areas or the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by Declarant to a Public Purchaser or annexed to Project, whichever is later, shall be made or done.

Section 6. Trailers, Boats and Motor Vehicles. No permanent tent or similar structure, boat, mobile home, truck of any kind or recreational vehicle, including but not limited to motor homes, trailers of any kind, and campers, shall be parked, maintained, constructed, reconstructed or repaired nor shall any motor vehicle be constructed, reconstructed or repaired, upon any property or street (public or private) within any Common Area in such a manner as will be Visible From Neighboring Property; provided, however, that the provisions of this paragraph shall not apply to emergency repairs of vehicles. The Board may designate an area for the storage or maintenance or repair of motor homes, trailers, trucks, campers and boats. The Association shall have the right to make such rules and allow or disallow any activity that the Board in its discretion may decide.

Section 7. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Living Units, Common Area, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except approved security devices used exclusively for security purposes, shall be located, used or placed on any such property.

Section 8. Repair of Units. Each Owner shall have the right, at his sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Living Unit, and the surfaces of the bearing walls and partitions located within the Living Unit. Said Owner shall have the

further right to substitute new finished surfaces in place of those existing on said ceiling, floors, walls and doors of the Living Unit; provided, however, no floor surface, or any part thereof, which lies above any other Living Unit shall be made of wood, tile, stone or any other surface capable of producing sound which could disturb occupants of the Living Unit(s) located below.

Section 9. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property within Common Areas except in covered containers of a type, size and style which are approved by the Board. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and, then only the shortest time reasonably necessary to effect such collection.

Section 10. Clothes Drying Facilities. Outside clothes line or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any property within Common Areas unless they are erected, placed and maintained as directed by the Association.

Section 11. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Living Unit except such machinery or equipment as is usual and customary in the County and State in which the Project is located, in connection with the use, maintenance or construction of a private residence or appurtenant structure.

Section 12. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property within a Living Unit which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 13. Restrictions on Further Subdivision. No Condominium shall be further subdivided or partitioned and no portion less than all of any such Condominium, nor any easement or other interest therein shall be conveyed by any Owner without the prior written approval of the Board and Mortgagee or Beneficiary under a Deed of Trust.

Section 14. Signs. No signs whatsoever (including but not limited to commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Living Unit, building, Common Area except with the approval of the Board as to design of the following:

- (1) Such signs as may be required by law;
- (2) A residential identification sign of a combined total face area of seventy-two (72) square inches or less;
- (3) During the time of construction of any improvement, one (1) job identification sign not larger than eighteen (18) by twenty four (24) inches in height and width and having a face area not larger than three (3) square feet; and
- (4) A "for sale", "for rent", or "for exchange" sign, or a sign giving directions to the Living Unit or Project of a reasonable type, size

and appearance, which is similar to other signs customarily used in the County and State in which the Project is located, to advertise the availability of a Living Unit.

Notwithstanding any provision herein to the contrary, any owner may display in his/her Living Unit a sign of reasonable dimensions and design conforming with local ordinances advertising the property for sale, lease or exchange pursuant to the rights given fee owners by California Civil Code Section 712; provided, however, any owner who chooses to display such a sign in his/her Living Unit cannot then place another sign in the Common Area including any area designated by the Board pursuant to the provisions of ARTICLE V, Section 27, for the placement of such signs, without the approval of 100% of the owners.

Section 15. Declarant's Exemption. Nothing contained in the Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of signs necessary or convenient to the development, sale, operation or other disposition of property except such signs shall not be on or within any Living Unit not owned by Declarant and provided, however, that use shall not be a period subject to the time limitation set forth in Article 5, Section 1 herein.

Section 16. Mineral Exploration. No property within Common Areas shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

Section 17. Rental. No Condominium Owner shall lease or rent its Condominium for transient or hotel purposes. No Condominium Owner shall lease less than the entire Condominium. No Owner may lease or rent the parking space(s) he/she has the exclusive right to use separate and apart from the Living Unit to which it is appurtenant. Any lease agreement shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the By-Laws and Rules of this Association and that any failure by the Lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing.

Any such lease which is either for a period of less than thirty (30) days or pursuant to which the Lessor provides any services normally associated with a hotel shall be deemed to be for transient or hotel purposes.

Section 18. Parking Spaces and Carports. No parking space or carport shall be used in such a manner that any such use interferes with the parking of an automobile in such parking space or carport. No parking space or carport shall be used for a living area, including but not limited to sleeping quarters. Only a registered and operable automobile shall be parked in any parking space or carport. No carport, parking space or Common Area shall be used to wash and clean any automobile.

Section 19. Application for Approval of Improvements. Any Owner, except the Declarant and its designated agents, proposing to make any improvements of any kind whatsoever, excepting the replacement of appliances and fixtures which require no structural changes in the building, shall obtain the prior written

approval of the Board, shall apply for approval by delivering to such Board a written application, which the Board shall acknowledge receipt thereof, describing the nature of the proposed improvement together with the following documents and information, in such number of copies as said Board may require:

- (1) Floor plans of the affected property showing the location of existing and proposed improvements.
- (2) Drawings showing all elevations.
- (3) The Owner's proposed construction schedule.

The Board may require that every written application for approval in connection with any proposed improvement be accompanied by an inspection fee to be paid to the Association in an amount not to exceed \$50.00.

Section 20. Basis for Approval of Improvements. The Board shall grant the requested approval only if said Board determines, in its sole and absolute discretion, that:

- (1) The Owner shall have strictly complied with the provisions of Section 19 of this Article;
- (2) The proposed improvement conforms to this Declaration particularly to the requirements and restrictions of this Section, and to the Rules in effect at the time the application for approval was submitted;
- (3) The proposed improvement is compatible with the standards of the Project and the purposes of this Declaration as to quality of workmanship and materials;
- (4) The proposed improvement is compatible with the architectural quality of the Project and will not depreciate the value of the Project.

Section 21. Form of Approval. All approvals given under the foregoing Section 20 shall be in writing; provided, however, that any such application for approval which has not been rejected within sixty (60) days from the date of receipt thereof by the Board shall be deemed approved. One set of plans as finally approved shall be retained by the Board as a permanent record.

Section 22. Proceeding with Work. Upon receipt of approval from the Board pursuant to Sections 20 or 21 of this Article, the Owner shall, as soon as practicable, satisfy all terms and conditions thereof and diligently proceed with the commencement and completion of all construction, refinishing, alterations pursuant to said approval; provided, however, such commencement shall occur, in all cases, within one (1) year from the date of such approval.

If the Owner shall fail to comply strictly with this paragraph, any approval given pursuant to Sections 20 or 21 of this Article shall be deemed revoked unless the Board, upon written request of the Owner made prior to the

expiration of said one (1) year period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board, in its sole and absolute discretion, that there has been no change in the circumstances under which the original approval was granted.

Section 23. Failure to Complete Work. The Owner shall in any event complete the construction, reconstruction, refinishing, or alteration of any such improvement within one (1) year after commencing construction thereof, except and for so long as such completion is rendered objectively impossible or would result in great hardship to the Owner due to labor disputes, fires, national emergencies, natural calamities or other supervening forces beyond the reasonable control of the Owner or his/her agents.

If the Owner fails to comply strictly with this paragraph, the Association shall proceed in accordance with the provisions of the following Section 24 as though the failure to complete the improvement constituted a non-compliance with approved plans.

Section 24. Inspection of Work. Inspection of work and correction of defects therein shall proceed as follows:

- (1) Upon the completion of any construction or reconstruction or the alteration or refinishing of the interior of any improvement, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice of completion to the Board.
- (2) Within sixty (60) days thereafter, the Board, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Board finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) days period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance.
- (3) If upon the expiration of thirty (30) days from the date of such notification, the Owner shall have failed to remedy such non-compliance, the Board shall then set a date on which a hearing shall be held before it regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after notice of non-compliance is given to the Owner by the Board. Written notice of the hearing date shall be given at least ten (10) days in advance thereof by the Association to the Owner, and, in the discretion of the Board, to any other interested party.
- (4) At the hearing the Owner, the Board and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a

non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same.

If a non-compliance exists, the Board shall announce its ruling at the conclusion of the hearing and, promptly thereafter, shall direct the Owner in writing to remedy or remove the same within a period of not more than forty-five (45) days from the date of announcement of the Board ruling.

If the Owner does not comply with the Board ruling within such period or within any extension of such period as the Board in its discretion may grant, the Association, after approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents and employees, to either remove the non-complying improvement or remedy the non-compliance. The cost of such actions by the Association shall be added to and become part of the assessment to which such Living Unit is subject.

- (5) If for any reason the Board fails to notify the Owner of any non-compliance within ninety (90) days after receipt of said written notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

Section 25. Completion Bond. The Association shall have the right to require a bond or other assurance that all work shall be completed and that no lien shall attach to the Common Area or the Association Property.

Section 26. Use Resulting in Uninsurability Prohibited. No Living Unit or improvements situated therein shall be occupied or used for any purpose or in any manner which shall cause such improvements to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be canceled or suspended, or the company issuing the same to refuse renewal thereof.

Section 27. Improvements and Uses of Common Areas and Association Property. Except as otherwise provided herein, the Common Area and the Association Property shall be improved and used only for the following purposes:

- (i) affording vehicular passage and pedestrian movement within the Condominium Property; including access to the Living Units;
- (ii) recreational use by the Owners and occupants of Living Units in the Condominium Property and their guests, subject to Rules established by the Board;
- (iii) beautification of the Common Area and the Association Property, and providing privacy to the residents of the Condominium Property through landscaping and such other means as the Board shall deem appropriate;

- (iv) parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions and for such fees as may from time to time be determined by the Board;
- (v) as Exclusive Use Common Areas to be used in the manner hereinafter described. Nothing herein contained shall be deemed to allow persons other than the Owner of a Living Unit to which an Exclusive Use Area is appurtenant (or his tenants and licensees) to enjoy the use thereof.

Without the approval of 100% of the owners, nothing shall be erected, placed or installed in the Common Area except in those areas, if any, designated by the Board of Directors, for the erection, placement or installation of such item, object, material or improvement.

Section 28. Owner's Liability for Damages to Common Area. Each Owner shall be legally liable to the Association for all damages to the Common Area or to any improvements to either thereof or thereto, including but not limited to the buildings, recreation facilities and landscaping caused by such Owner, his licensee(s) or any occupancy of such Owner's Living Unit as such liability may be determined under California law.

Section 29. Exclusive Use Common Area. Each Exclusive Use Common Area shall be (i) appurtenant to the Condominium and the Living Unit of which bear the same number as the Exclusive Use Common Area, with the exception of parking spaces and storage areas which may not bear the same number as the Condominium and Living Unit to which it is appurtenant, as set forth in the Condominium Plan and (ii) used only for the purposes set forth in this Declaration. The right to so use an Exclusive Use Common Area shall be exercisable only by the Owner(s) of the condominium appurtenant thereto and/or said Owner(s)' tenants and licensee(s). Conveyance of a Condominium shall affect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer of all rights thereto to the vested Owner of the Condominium. Any licensee(s) thereto shall be terminated upon such conveyance. No Exclusive Use Common Area or any right thereto (other than said revokable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which it is appurtenant.

Section 30. Owners Rights to Exclusive Use Common Areas. Each Owner shall have the following rights with regard to the patio which he has the exclusive right to use: (i) to place furniture and potted plants upon said area and (ii) to landscape and plant flowers and shrubs which do not unreasonably interfere with the enjoyment of adjacent Living Units and patios.

Each owner shall have the right to park and store one (1) standard automotive vehicle in the Parking Space, if any, which he has the exclusive right to use.

Each owner shall have the right to place furniture and potted plants upon the deck, if any, which he has the exclusive right to use.

Except as provided in this Section 30, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Areas or any other part of the Common Area without the prior written consent of the Board.

Section 31. Prohibited Activities. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted on the Real Property except with prior written approval of the Board. Approval shall not be unreasonably withheld and, in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. No Solar equipment, including but not limited to solar collectors and solar panels, shall not be installed until approval of the Board has been obtained as to (i) type of solar equipment to be installed and (ii) location thereof.

Section 32. Right of Ingress and Egress. Each Owner of a Condominium shall have an unrestricted right of ingress and egress over the Common Area to the Condominium which shall be appurtenant to said Condominium and shall pass with any transfer of title to the Condominium.

ARTICLE VI

RESPONSIBILITIES OF OWNERS

Section 1. Maintenance of Living Unit. Each Owner of a Condominium shall be responsible for the maintenance and repair of the glass doors and windows enclosing his/her Living Unit, the interior of his/her Living Unit, and all appliances whether "built-in" or free-standing within the Living Unit, the interior surfaces of the living Unit, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his/her Living Unit and located within the outside perimeter of the exterior bearing walls thereof, including television cable equipment and connections, and all appliances and equipment located in said Living Unit. Each Owner shall also be responsible for the maintenance and repair of the patios, decks and storage areas, which he/she has the exclusive right to use, including the interior, interior surfaces of fences and railings and any windows, and shall make repairs in such manner as shall be deemed necessary in the judgement of the Board to preserve the attractive appearance thereof and protect the value thereof. The Association shall maintain and repair all Parking spaces which are Exclusive Use Common Areas.

Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of the separate interest are contained within a building, the owner of the separate interest may do the following:

(1) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(2) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to these

persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

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

(b) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

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

(d) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the association of the condominium project to review to determine whether the modifications will comply with the provisions of this paragraph. The association shall not deny approval of the proposed modifications under this paragraph without good cause.

Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

Section 2. Owner's Grant of Easement. Each Owner hereby grants easements to other Owners and to the Owner's Association, to enter onto each Condominium, or to have utility companies enter onto each Condominium to repair the plumbing, heating and electrical systems located thereon, subject to the following limitations. Entry into a Living Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry into a Living Unit for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner and the Owner has consented thereto which consent shall not be unreasonably withheld and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party.

Section 3. Separation of Interest. No Owner may sell, assign, lease or convey (i) his/her interest in the Common Area separate and apart from his/her Living Unit, nor (ii) his/her interest in any Exclusive Use Area separate and apart from his/her interest in the Common Area and his/her Living Unit.

Section 4. Owner's Duty Upon Sale. Owners are required to do certain things by Section 1368 of the Civil Code upon sale of a Condominium. Section 1368 reads as follows:

"1368. Owners of separate interests; provision of specified items to prospective purchasers; copies; violations; payment of penalty

and attorney's fees; validity of title; additional requirements."

(a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provided the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent financial statement distributed pursuant to Section 1365.

(4) A true statement in writing from an authorized representative of the association as to the amount of any assessments levied upon the owner's interest in the common interest development which are unpaid on the date of the statement. The statement shall also include true information on 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 interest in a common interest development pursuant to Section 1367.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1), (2), (3) and (4) of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars (\$500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134."

ARTICLE VII

COMMON AREAS PERMITTED USES.

CONSTRUCTION AND ALTERATION OF IMPROVEMENT

Section 1. Easement for Maintenance. The Association is hereby granted a right and easement over, under, upon and across the Common Area for the purpose of planting and maintaining grass, flowers, shrubs, trees and irrigation and other landscaping appurtenances, and for the purpose of maintaining fences and retaining and other walls, utility transmission facilities (including television cables), antennas for reception of television signals or other forms of electromagnetic radiation, sidewalks, paths and steps, directional signs, lighting facilities and any other appurtenances permissible by law and not prohibited by existing easements. Any portion of the Common Area designated for parking and any plot plan or other instruments submitted to the City or County within which the Project is located shall be used for parking motor vehicles and for no other purposes.

Section 2. Restrictions on Change. The right and easement to the Common Areas shall be held, maintained and used by the Association to enhance Owners' enjoyment of the natural environment of Project and for no other purposes. No improvement, excavation or work which in any way alters any Common Area from its natural or existing state on the date such Area was transferred to or otherwise came under the jurisdiction of the Association shall be made or done except upon strict compliance with and within the restriction and limitations of the following provisions of this Section.

Section 3. Limitation on Construction. No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub, or other vegetation from any Common Area excepting therefrom all Exclusive Use Areas.

The Association may, at any time, as to any Common Area:

- (1) Reconstruct, replace or refinish any improvement or portion thereof upon any such Area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such Area), in accordance with the plans filed by Declarant with the Board pursuant to the following Section 4.
- (2) Construct, reconstruct, replace or refinish any road improvement or surface upon any portion of such Area used as a road, driveway or parking area in accordance with the plans filed by Declarant with the Board pursuant to the following Section 4.
- (3) Replace injured or diseased trees, shrubs or other vegetation in any such Area, and plant trees, shrubs and other vegetation to the extent that the Association deems necessary for the conservation of

water and soil or for aesthetic purposes; and

- (4) Place and maintain upon any such Area such signs as the Association may deem appropriate for the proper identification, use and regulation thereof.

Notwithstanding the foregoing, no change, alteration or modification to either the Common Area, including the removal of trees, shrubs or other vegetation thereon or any pruning or trimming thereof which would alter height or width by more than five percent (5%), shall be made which is not in accordance with the plans filed by Declarant with the Board pursuant to the following Section 4 without the affirmative vote of fifty-one percent (51%) of each class of Members at a special meeting thereof, duly called and held, notice of which shall specifically state the proposed change, alteration or modification to be made to either the Common Area.

- Section 4. Declarant's Plans and Specifications. Declarant shall from time to time file with the Board such plans and specifications as it may have in its possession for the purpose of maintaining a permanent record of improvements constructed on any Common Areas.

Section 5. Owner's Easement of Enjoyment. Every Owner is hereby granted a right and easement of ingress to and egress from and enjoyment of the Common Areas, except as to Exclusive Use Areas as shown on the Condominium Plan and reserved for the use of specific Living Units shown on the Condominium Plan, and such easements shall be appurtenant to and shall pass with title to every Condominium subject to the following provisions:

- (1) The right of the Association to limit the number of guests of Owners using the recreational facilities located on the Common Areas.
- (2) The right of the Association to establish uniform rules and regulations pertaining to the recreational facilities located on the Common Areas.
- (3) The right of the Association to suspend the voting rights and right to use of any of the recreational facilities by an Owner for any period during which any assessment against his/her Condominium remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of By-Laws, Declaration, Rules and Regulations of the Association provided that any suspension of such voting rights or right to use any facilities, except for failure to pay assessments, shall be made only by the Association after notice and hearing given and held in accordance with ARTICLE XVI of the By-Laws of the Association.
- (4) The right of Declarant and its successors and assigns together with the employees, agents and representatives thereof, to the non-exclusive use of the Common Areas, other than Exclusive Use Areas and the facilities or each thereof, in connection with the display and sale of residential units within the Project, which right Declarant hereby reserves; provided, however, that such use

shall be subject to the time limitation set forth in Article 5, Section 1 herein; provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise restrict the Owners in their use and enjoyment of either the Common Areas excepting Exclusive Use Common Areas.

Section 6. Exclusive Use Common Areas. There are balconies, patios, storage areas and parking spaces attached to or appurtenant to each Living Unit. Said balconies, patios, storage areas and parking spaces are for the exclusive use of the Owner of Living Units to which they are attached or appurtenant. These areas are shown on the Condominium Plan marked "B" for balconies, "P" for patios, "S" for Storage and "P. S." for parking spaces.

Notwithstanding any provision herein to the contrary, (i) internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are Exclusive Use Common Areas allocated exclusively to that separate interest; and (ii) the owner of a separate interest is entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone wiring made part of the Exclusive Use Common Areas of a separate interest. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include the Association's approval of telephone wiring upon the exterior of the common areas, and other conditions as the Association determines reasonable.

Section 7. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws his right of enjoyment to the Common Areas and facilities to the members of his/her family, his/her tenants or contract purchasers who reside on the property.

Section 8. Waiver of Use. No Owner may exempt himself/herself from personal liability for assessments duly levied by the Association, nor release the Living Unit owned by him/her from the liens and charges hereof, by waiver of the use and enjoyment of either the Common Areas or by abandonment of his/her Living Unit.

Section 9. Damage by Wood-Destroying Pests. The Association is responsible for the repair and maintenance of the Common Area occasioned by the presence of wood-destroying pests or organisms.

The cost of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the owner of the separate interest affected. The Association may cause the temporary, summary removal of any occupant of a common interest development for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The Association shall give notice of the need to temporarily vacate a separate interest to the occupants and to the owners, not less than 15 days nor more than 30 days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation.

Notice by the Association shall be deemed complete upon either:

(a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

(b) By sending a copy of the notice to the occupants at the separate interest address and a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid, at the most current address shown on the books of the Association.

For purpose of this Section, "occupant" means an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession on the separate interest.

ARTICLE VIII

PARTITION PROHIBITED

Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that: (i) three (3) years after damage or destruction to the Project which renders a material part thereof unfit for its use prior thereto the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (ii) three-fourths (3/4) or more of the Project is destroyed or substantially damaged and Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, or (iii) that the Project has been in existence in excess of fifty (50) years, that it is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project in which case, the net proceeds of the sale and the proceeds, if any of insurance carried by the Association on Condominium Property so partitioned shall be divided among the Living Units within Project based on the ratio that the square footage of the floor area of each individual Living Unit bears to the total square footage of the floor area of all Living Units with the square footage to be as determined and set forth in Recital D and Section 16 of ARTICLE XIII of this Declaration; provided, however, that if any Condominium shall be owned by two (2) or more co-tenants as tenants-in-common or as joint tenants, nothing herein shall be deemed to prevent a judicial partition as between such co-tenants. No Condominium may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first Mortgage on that Condominium.

ARTICLE IX

POWER OF ATTORNEY

The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when partition

of the Owners' interests in said Condominium Property may be had pursuant to Article VIII above. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area by any two (2) members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder, San Diego County which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Secretary, Department of Veterans Affairs, an officer of the United States of America.

ARTICLE X

RIGHTS OF ELIGIBLE MORTGAGE HOLDERS AND ELIGIBLE INSURERS OR GUARANTORS

Section 1. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, any such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of:

- a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable;
- b) Any delinquency in the payment of assessments or charges owed by an Owner of a Condominium subject to a first Mortgage held, insured or guaranteed by such Eligible Holder or Eligible Insurer or Guarantor, which remains uncured for a period of thirty (30) days;
- c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as specified in Section 2 of this ARTICLE X or in Section 3 of ARTICLE XIII herein.

Section 2. Other Provisions for Eligible Mortgage Holders. To the extent permitted by applicable law, Eligible Mortgage Holders shall also be afforded the following rights:

- a) Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with this Declaration and the original plans and specifications, unless other action is approved by at least fifty-one percent (51%) of the Eligible Mortgage Holders and the prior consent (by vote or written consent) of Members representing sixty-seven percent (67%) or more of the voting power of each class of Members; provided, however, in the event the Class B membership has been converted to Class A membership, then sixty-seven percent (67%) or more of the total voting power of the Association comprised of at least sixty-seven percent (67%) of the votes of Members other than Declarant.

- b) Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project property shall require the approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders and the prior consent (by vote or written consent) of Members representing sixty-seven percent (67%) or more of the voting power of each class of Members; provided, however, in the event the Class B membership has been converted to Class A membership, then sixty-seven percent (67%) or more of the total voting power of the Association comprised of at least sixty-seven percent (67%) of the votes of Members other than Declarant.
- c) No reallocation of interests in the Common Areas resulting from a partial condemnation or partial destruction of the Project may be effected without the prior approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders holding Mortgages on all remaining Condominiums whether existing in whole or in part and the prior consent (by vote or written consent) of Members representing sixty-seven percent (67%) or more of the voting power of each class of Members; provided, however, in the event the Class B membership has been converted to Class A membership, then sixty-seven percent (67%) or more of the total voting power of the Association comprised of at least sixty-seven percent (67%) of the votes of Members other than Declarant.
- d) When professional management has been previously required by any Eligible Mortgage Holder or Eligible Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder or Eligible Insurer or Guarantor at that time or later, any decision to establish self management by the Association shall require the prior written approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders and the prior consent (by vote or written consent) of Members representing sixty-seven percent (67%) or more of the voting power of each class of Members; provided, however, in the event the Class B membership has been converted to Class A membership, then sixty-seven percent (67%) or more of the total voting power of the Association comprised of at least sixty-seven percent (67%) of the votes of Members other than Declarant.

ARTICLE XI

DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA

Section 1. Damage and Destruction Affecting the Common Area. If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

- (a) if
 - (1) the available insurance proceeds initially offered or paid by the insurer do not exceed the sum of Five Thousand Dollars

(\$5,000.00), such insurance proceeds shall be paid to the Board; and

- (2) the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Five Thousand Dollars (\$5,000.00),

then the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board shall levy a special assessment on all Owners to make up any deficiency, which assessment shall be determined as set forth in ARTICLE III, Section 6.(a) herein.

- (b) if the foregoing is inapplicable, then

- (1) all insurance proceeds shall be paid to a bank or trust company to be held for the benefit of the Owners and their Mortgagees and the holders of, or under their sales contract, as their interests shall appear. The Board is authorized on behalf of the Owners, to enter into an agreement, consistent with this Declaration, with such insurance trustee, relating to its powers, duties and compensation, as the Board may approve;
- (2) The Board shall proceed under Section 2 and Section 3 below.

Section 2. Partial Destruction. In the event of partial destruction of the hereinabove described improvements on said property, it shall be the duty of the Association to restore and repair the same to its former conditions (including any damaged Living Units, and any kitchen or bathroom fixtures initially installed therein by Declarant, but not including all wall, ceiling or floor decoration or covering or other furniture, furnishings, fixtures or equipment installed by Owners in the Living Units and not covered by the Association master insurance policy) as promptly as practicable and in a lawful and workmanlike manner. The proceeds of any insurance written pursuant to Article IV, Section 5 shall be made available for such purpose and the Association or the Insurance Trustee, as the case may be, shall distribute the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments, subject to the prior rights of beneficiaries of deeds of trust whose interest may be protected by said policies. In the event that the amount available from the proceeds of such insurance policies for such partial reconstruction shall be inadequate, the Owners of individual Living Units, by an affirmative vote of not less than fifty-one percent (51%) of the members entitled to vote, in person or by proxy at a duly constituted meeting, shall determine whether the Board shall be authorized to proceed with such partial reconstruction or not, and in the event of an affirmative vote, a special assessment of the Owners, with each Living Unit ownership contributing its share to be determined as set forth in ARTICLE III,

Section 6. (a) herein, may be levied to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event of a determination by the Owners that the cost of such reconstruction would be so substantial that it would not be in their best interests to proceed with same, the Owners shall proceed as provided in Section 3 hereof.

Section 3. Total Destruction. In the event of total destruction of the improvements on said Real Property, the Owners, by said vote as set out in Section 2 above, shall have the authority to determine whether said improvements shall be rebuilt, or whether said Real Property shall be sold. In the event of a determination to rebuild, the necessary funds shall be raised as provided in Section 2 hereof and the Board shall be authorized to have prepared the necessary plans, specifications and maps and to execute the necessary documents to effect such reconstruction as promptly as practicable, under the guidelines set out in Section 2 hereof, and in a lawful and workmanlike manner.

A certificate of the resolution authorizing such reconstruction where required shall be filed with the County Recorder within six (6) months from the date of such destruction, and in the event of a failure to record such certificate within said period, it shall be conclusively presumed that the Owners have determined not to rebuild said improvements. In the event of a determination not to rebuild, the Board shall be authorized to have prepared and to file, as promptly as practicable, a corrected map converting said Real Property into an unimproved parcel of land, which shall be offered for sale at the highest and best price obtainable, either in its damaged condition or after damaged structures have been razed. The net proceeds of such sale as set out above and proceeds, if any, of insurance carried by the Association on said premises shall be divided among the Units within Project as the fair market value, at the time of the destruction of each Living Unit bears to the total fair market value of all Living Units at the time of destruction, and each Unit's share shall be divided among the Owners of each individual Living Unit. For purposes hereof, fair market value shall be determined by a member of the American Institute of Real Estate Appraisers selected by the Board and hired by and at the expense of the Association. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

In all cases above, the balance then due on any individual Living Unit's contract of sale or encumbrance executed in good faith and for value shall be first paid before the distribution of any proceeds to the Owner whose Living Unit is so encumbered.

For the purposes of this agreement "total destruction" means any destruction requiring more than ninety (90) days to repair or any destruction that renders all of the Living Units totally unusable for their intended use.

Section 4. Partition. Six (6) months from the date of any partial or total destruction, if a certificate of a resolution to rebuild where required has not been filed of record as hereinabove provided, or if reconstruction has not

been actually commenced within said period, the covenant against partition hereinabove provided shall terminate and be of no further force or effect.

Section 5. Air Space. In the event of total or partial destruction of said improvements, and in the event of a determination not to rebuild the same, fee title to the air space contained or formerly contained within the Living Units as hereinabove described shall be deemed to merge in the interest of each Owner in the Common Area as tenants-in-common with the remaining Owners; provided, however, that if the provisions of this merger should be held to be violative of the rule against perpetuities, said provisions shall become void and be of no further effect twenty-one (21) years after the death of the survivor of the following named individuals: Ethel Kennedy, the wife of the former Attorney General of the United States, and all their children in being at the time this Declaration is recorded in the County Recorder's Office.

Section 6. Taking of Common Area. In the event the award for taking by eminent domain of a part or all of the Common Areas is not apportioned among the Owners by court judgement or by agreement between the condemning authority and each Owner, then the award for such taking shall be payable to the Association, which shall represent the Owners named in the condemnation proceedings. Said award shall be utilized to the extent possible for the repair, restoration, replacement and/or improvement of the remaining Common Area. Any funds not so utilized shall be divided among the Living Units within Project in the same proportion as insurance proceeds will be distributed pursuant to ARTICLE XI, Section 3. above and each Living Unit's share shall be paid first on the balance then due on any individual Living Unit's contract of sale or encumbrance executed in good faith and for value and then paid to the Owner of each Living Unit.

Section 7. Taking of Living Unit. In the event of any taking of a Living Unit, the Owner (and its Mortgagees as their interests may appear) of the Living Unit shall be entitled to receive the award for such taking and after acceptance thereof he and his Mortgagee shall be divested of any further interests in the Condominium Property if such Owner shall vacate his Living Unit as the result of such taking. In such event said Owner shall grant his remaining interests in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

ARTICLE XII

ENFORCEMENT

Section 1. The Association, Declarant, so long as Declarant owns a Condominium, or any Owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions, restrictions and reservations now or hereafter imposed by the provisions of this Declaration. Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions hereof, or of the Associations's By-Laws or Articles of Incorporation.

Section 2. Failure by the Association, Declarant or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Severability. The Association, Declarant, so long as Declarant owns a Condominium, or any Owner, shall have the right to enforce by any proceedings at law or in equity all covenants, conditions, restrictions and reservations now or hereafter imposed by the provisions of this Declaration. Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions hereof or of the Association By-Laws or Articles of Incorporation.

Section 2. Amendments. This Declaration may be amended at any time and from time to time by an instrument in writing signed by Members representing seventy-five percent (75%) or more of the voting power of each class of Members unless the Class B membership has been converted to Class A membership, in which event, seventy-five percent (75%) of the total voting power of the Association comprised of at least seventy-five percent (75%) of the votes of Members other than Declarant shall be necessary to amend this Declaration. Such amendment shall become effective upon the recording thereof with the Office of the County Recorder of San Diego County, California; provided, however, that no change may be made to material provisions herein without the prior written consent of Eligible Mortgage Holders, all as more particularly set forth below in Section 3 of this ARTICLE XIII. So long as there is a Class B membership, any amendment of the Declaration shall require the prior approval of the U. S. Department of Veterans Affairs. A draft of the amendment should be submitted to the U. S. Department of Veterans Affairs for its approval prior to its approval by the membership.

If in order to amend a declaration, the declaration requires owners having more than fifty percent (50%) of the votes in the association, in a single class voting structure, or owners having more than fifty percent (50%) of the votes in more than one class in a voting structure with more than one class, to vote in favor of the amendment, the association, or any owner of a separate interest, may petition the superior court of the county in which the common interest development is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the association members in the manner provided in the declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing declaration, and other matters the petitioner considers relevant to the court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- (1) The governing documents.
- (2) A complete text of the amendment.

- (3) Copies of any notice and solicitation materials utilized in the solicitation of owner approvals.
- (4) A short explanation of the reason of the amendment.
- (5) Any other documentation relevant to the court's determination.

Notwithstanding the above or any other section of this Declaration, the percentage of the 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 provision herein to the contrary, any addition or amendment made to the Condominium Documents in order to correct a technical error or for clarification purposes may be made by Declarant without membership approval.

Section 3. Material Amendments. The following provisions do not apply to amendments to the Condominium Documents or termination of the condominium regime made as a result of destruction, damage or condemnation pursuant to ARTICLE X herein.

- a) In addition to the consent of the Members in accordance with Section 2 of this ARTICLE XIII, the approval of at least sixty-seven percent (67%) of the Eligible Mortgage Holders shall be required to terminate the legal status of the Project as a Condominium.
- b) In addition to the consent of the Members in accordance with Section 2 of this ARTICLE XIII, the approval of at least fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to add or amend any material provisions of the Condominium Documents. A material provision shall include but not be limited to the following:
 - 1) Voting;
 - 2) Assessments, assessment liens or subordination of such liens;
 - 3) Reserves for maintenance, repair and replacement for the Common Areas (or Living Units if applicable);
 - 4) Insurance or Fidelity Bonds;
 - 5) Rights to use of the Common Areas;
 - 6) Responsibility for maintenance and repair;
 - 7) Expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
 - 8) Boundaries of any Living Unit;

- 9) The interests in the Common Areas;
- 10) Convertibility of Living Units into Common Areas or of Common Areas into Living Units;
- 11) Leasing of Condominiums;
- 12) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium;
- 13) Any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

An addition or amendment to the Condominium Documents shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve proposed additions or amendments not considered material who does not deliver or post to the requesting party a negative response within thirty (30) days after said proposal is made shall be deemed to have approved such request.

Section 4. Extension of Declaration. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2012, after which date they shall automatically be extended for successive periods of ten (10) years unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2012, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2012, or at the end of any such ten (10) year period.

Section 5. Litigation. In the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs and expenses of the suit including reasonable attorney's fees.

Section 6. Encroachment Easements. The Owner of each Condominium is hereby granted an easement over all adjoining Living Units, the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Condominium Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Living Units or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

Section 7. Special Responsibilities of Association. In the event that the improvements to be installed by Declarant to the Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Condominium Property, and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then in either such event, upon petition signed by Members representing five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting, a vote of a majority of the voting power of the Members of the Association, excluding the vote of 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 the decision by initiating and pursuing appropriate action in the name of the Association.

Section 8. Limitation of Restrictions on Declarant. Declarant is undertaking the work of construction of residential condominium dwellings and incidental improvements upon the Condominium Property. The completion of that work, and the sale, rental and other disposal of said condominium dwellings is essential to the establishment and welfare of said Condominium Property as a residential community. In order that said work may be completed and said Condominium Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractors or subcontractors from doing on the Condominium Property or any Living Unit, whatever is reasonably necessary or advisable in connection with the completion of said work; or
- (b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Condominium Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Condominium Property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

- (c) Prevent Declarant from conducting on any part of the Condominium Property its business of completing said work, and of establishing a plan of condominium ownership and of disposing of said Condominium Property in Condominium dwellings by sale, lease or otherwise; or
- (d) Prevent Declarant from maintaining such sign or signs on any of the Condominium Property as may be necessary for the sale, lease or disposition thereof; provided, however, that such use shall be subject to the time limitation set forth in Article 5, Section 1 herein. The maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his/her Living Unit, the Common Area. Declarant shall not have the right to maintain any sign or signs on or within any Living Unit which is not owned by Declarant.

The rights of Declarant provided in subparagraphs (a) through (d) above may be exercised during the period of time commencing when the Condominiums are first sold and offered for sale to the public and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners or five (5) years following the date of conveyance of the first Condominium in the Project to a retail purchaser, whichever shall first occur. So long as Declarant, its successors and assigns owns one (1) or more of the condominiums established as described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration. Declarant, in exercising its rights hereunder, shall not unreasonably interfere with the use of the Common Area or any Living Unit by an Owner.

Except as otherwise provided in Section 15 of ARTICLE V of this Declaration, so long as Declarant, its successors and assigns owns one or more of the Condominiums established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration.

Section 9. Owners' Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

Section 10. Notices. Any Owner who encumbers his/her Condominium shall furnish the Association the name and address of the Mortgagee or Beneficiary under a Deed of Trust, and the Association shall maintain such information in a book entitled "Trust Deed of Condominium". The Association shall report to such Mortgagee or Beneficiary any unpaid assessments due from the Owner of such Condominium at the same time as the Association makes demand of the Owner thereof for the payment of such assessment. Each Mortgagee or Beneficiary shall also be entitled to timely written notification from the Association of any other default by its Owner-Trustor in the performance of such Owner's obligations under the terms and provisions of this Declaration which shall not have been cured within thirty (30) days after written notice to such Owner-Trustor by the Association

specifying such default, timely written notification of any eminent domain proceedings, written notification of any proposed Amendment to the Governing Documents, and written notification of substantial damage to or destruction of any Living Unit or any part of the Common Area as provided for in ARTICLE IV, Section 18, herein.

Section 11. Examination of Books. The representative of any Mortgagee, Beneficiary, or other lender shall have the right to examine the books and records of the Association during reasonable business hours. A copy of the audit required under ARTICLE VIII, Section 2 (1) (2) of the By-Laws shall be mailed to each lender who requests same within the time limit prescribed in said ARTICLE VIII, Section 2. (1) (2) of the By-Laws.

Section 12. Meetings, Notice and Representation. Each Mortgagee or Beneficiary who has furnished the Association with an address as set out in Section 10 above shall be given notice of all meetings of the Association membership on the same basis as Members and shall be permitted to designate a representative to attend all such meetings.

Section 13. Captions. The captions appearing at the commencement of the paragraphs hereof are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the paragraph at the head of which it appears, the paragraph and not the caption shall control and govern in the construction of this Declaration.

Section 14. Vote of Membership. Except as otherwise provided in Section 11 of ARTICLE IV hereof, Sections 2 and 7 of ARTICLE XIII hereof, ARTICLE XIV of the By-Laws and ARTICLE VIII of the Articles, if the Class B membership has been converted to Class A membership, then wherever the provisions of this Declaration, the Articles or the By-Laws call for membership approval of action to be taken by the Association, the vote or written assent of a bare majority of the total voting power of the Association, comprised of at least the percentage of the voting power of members other than Declarant prescribed for action under any such provision, shall be necessary for such approval.

Section 15. Liability Limit. No member of the Board, or the Manager, 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, the Manager, or any other representatives or employees of the Association, or the Architectural Committee, provided that such Board member, or the Manager, has upon the basis of such information as may be possessed by him/her, acted in good faith.

Section 16. Annexation.

(a) The development of the Condominium Property is the first phase of a planned two (2) phase overall Condominium Project. The second phase is planned to be constructed on Parcel 4 of Parcel Map No. 16170 thereof, filed in the Office of the County Recorder of San Diego County, California on July 31, 1990 and to consist of a maximum of fifty-two (52) Living Units. The Living Units in the second phase will be located in five (5) eightplex buildings and one (1) twelveplex building of conventional wood frame style with stucco and/or wood trim

exteriors and concrete roof tiles and gravel flat roof areas. The amenities planned for the second phase are:

1. Landscaped open areas with meandering concrete walkways, and perimeter slump block wall and/or wrought iron fences.
2. Asphalt driveway and parking areas.
3. One (1) parking space for each Living Unit.

The Owners of a Condominium in the second phase of the Project will receive title to the Living Unit, plus an undivided fractional interest, based on the ratio the square footage of the floor area of each individual Living Unit bears to the square footage of the floor area of all Living Units in the second phase, as Tenant in Common in the Common Area of said Parcel 4 which interest has been as rounded off so as to comply with the legal requirement that the undivided interest the Owners of Living Units in the second phase have in the Common Area in the second phase equals one-hundred percent (100%).

- (i) The owner or owners of each 1 bedroom/1 bath Plan 1 (one-story) Living Unit in the second phase shall receive an undivided .02 interest for each Plan 1 Living Unit owned;
- (ii) The owner or owners of each 1 bedroom/1 bath Plan 1A (one-story) Living Unit in the second phase shall receive an undivided .01 interest for each Plan 1A Living Unit owned;
- (iii) The owner or owners of each 2 bedroom/2 bath Plan 2 (one-story) Living Unit in the second phase shall receive an undivided .02 interest for each Plan 2 Living Unit owned.

The Living Units in the second phase are numbered as follows on the Martinique Phase II Condominium Plan:

Plan 1 Living Units:

65 through 72 inclusive; 81 through 88 inclusive; and 109 through 112 inclusive.

There are twenty (20) Plan 1 Living Units in the second phase.

Plan 1A Living Units:

107, 108, 113, 114

There are four (4) Plan 1A Living Units in the second phase.

Plan 2 Living Units:

73 through 80, inclusive; and 89 through 106 inclusive; 115 and 116..

There are twenty-eight (28) Plan 2 Living Units in the second phase.

For purposes of this Declaration it is hereby determined and agreed that, irrespective of any actual deviation therefrom, the total square footage of the floor area of all Living Units in the second phase shall be 38,276 square feet and that the square footage of the floor area of each Living Unit in the second phase shall be as follows:

Each Plan 1 Living Unit shall consist of 568 square feet.

Each Plan 1A Living Unit shall consist of 618 square feet.

Each Plan 2 Living Unit shall consist of 873 square feet

When completed, Declarant contemplates that the entire Project will consist of a maximum of one hundred sixteen (116) Condominiums. Nothing contained herein, however, shall require Declarant to construct or to complete the future phases of the planned overall Project. There is no guarantee that the future phases will be constructed in accordance with the development plan described above in this Subsection (a). Any future improvements to the Project shall be consistent with initial improvements in terms of quality of construction.

(b) If, within three (3) years of the date of the original issuance by the California Department of Real Estate of the most recently issued Final Subdivision Public Report covering a phase of the overall Project, Declarant should develop the property described above in Subsection (a), such additional property may be added to and included within the jurisdiction of the Martinique Community Association by action of the Declarant without the assent of Members of the Association; provided, however, that the development of the additional lands shall be in accord with the plan of development submitted to (i) the Department of Real Estate prior to the time a Final Subdivision Public Report is issued in connection with the Condominium Property, and (ii) to the U. S. Department of Veterans Affairs. Said annexation may be accomplished by the recording of a Condominium Plan on the property to be annexed and by recording a Supplementary Declaration of Covenants, Conditions and Restrictions which annexes the property and requires Owners of Condominiums therein to be members of the Association and make new owners subject to the original Declaration of Covenants, Conditions and Restrictions of Martinique and the close of the first sale of a Condominium by Declarant in the property to be annexed. The obligation of annexed Condominium Owners to pay dues to the Association and the right of such Condominium Owners to exercise voting rights in the Association in such annexed property shall not commence until the first day of the month following close of the first sale of a Condominium by Declarant in that phase of development. Prior to any annexation under this provision, detailed plans for the development of the property to be annexed must be submitted to the U. S. Department of Veterans Affairs, and the U. S. Department of Veterans Affairs must determine that such detailed plans are in accordance with the general plan and so advise Declarant.

(c) Subject to annexation of additional property as set forth above:

(i) Declarant hereby reserves for the benefit of and appurtenant to the Condominiums hereinafter located on Parcel 4 of Parcel Map No. 16170 filed in the Office of the County Recorder of

San Diego County, California, on July 31, 1990, and their respective Owners, nonexclusive easements to use the Common Area in the Condominium Property pursuant to and in the manner set forth in this Declaration to the same extent and with the same effect as if each of the Owners of a Condominium in said Lots owned an undivided interest in the Common Area in the Condominium Property.

- (ii) Declarant hereby grants, for the benefit of the appurtenant to each Condominium in this Condominium Property and their Owners, the nonexclusive easement to use the Common Area in Parcel 4 of Parcel Map No. 16170 filed in the Office of the County Recorder of San Diego County, California, on July 31, 1990, pursuant to the provisions of and in the manner prescribed by this Declaration to the same extent and with the same effect as if each of the Owners of a Condominium in the Condominium Property owned an undivided interest in the Common Areas of the property so annexed.

The reciprocal cross-easements set forth herein shall be effective as to said Parcel 4 of Parcel Map No. 16170, and as to the Condominium Property only at such time as said Parcel 4 of Parcel Map No. 16170 upon (i) the recordation of the Supplementary Declaration of Covenants, Conditions and Restrictions declaring said Lots to be subject to the Declaration of Covenants, Conditions and Restrictions and (ii) the close of the first sale of a Condominium by Declarant on the Lot to the annexed and prior to that time the Condominium Property nor said Lots shall be effected hereby, nor shall the Owners thereof have any such rights in the Common Area within the Condominium Property.

- (e) Upon the approval in writing of the Association, pursuant to a two-thirds (2/3) majority of the voting power of its Members, or the written assent of such Members, excluding the voting power or written assent of Declarant (and the approval of the U. S. Department of Veterans Affairs), the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation.
- (f) This Section 16 of ARTICLE XIII shall not be amended without the written approval of Declarant attached to the instrument of amendment.


Section 17. Conflicting Provisions. In the case of any conflict between this Declaration and the Articles or the By-Laws, this Declaration shall control. In the event of any conflict between the Articles and the By-Laws, the Articles shall control.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the

By-Laws, shall be deemed to be binding on all owners of Condominiums, their successors and assigns.

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

PARDEE CONSTRUCTION COMPANY

By 
C. S. DeLette, Vice President

By 
Barbara Bail, Assistant Secretary

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES

On April 30, 1991, before me, the undersigned, a Notary Public in and for said State, personally appeared C. S. DeLette personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Vice President, and Barbara Bail personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Assistant Secretary of the corporation that executed the within instrument and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature 