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FIRST RESTATED DECLARATION

of

COVENANTS, CONDITIONS & RESTRICTIONS

of

**Fairway Vistas I Owners
Association**



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FIRST RESTATED DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS OF
Fairway Vistas I Owners Association

The Declaration of Covenants, Conditions, and Restrictions for FAIRWAY VISTAS I OWNERS ASSOCIATION, executed by McKellar Development of La Jolla, a California corporation, ("Declarant"), and recorded on June 15, 1984, as Document No. 84-226311, of the Official Records of San Diego County, California ("Original Declaration"), which affects all of the Properties described and commonly known as FAIRWAY VISTAS I OWNERS ASSOCIATION and all subsequent amendments thereto are hereby amended and restated in their entirety to read as follows:

RECITALS

A. Declarant was the original owner of that certain real property ("Properties") located in the City of San Diego, County of San Diego, State of California, which is more particularly described as follows:

Parcels 1, 2 and 3 of Parcel Map No. 13193, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, February 29, 1984.

B. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

C. It was the further intention of the Declarant to sell and convey residential Condominiums, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties in furtherance of a plan of condominium ownership as described in Section 1351(e) of the California Civil Code.

Finally, it was the intention of Declarant that the "Recreational Lot" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

D. There currently exists upon the above-described real property a Common Interest Subdivision subject to the provisions of the Davis-Stirling Common Interest Subdivision Act (California Civil Code Section 1350, et seq.).

E. On _____, 19____, _____ percent of the Owners of Condominiums within the Properties voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of said Owners to replace the Original Declaration, in its entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this First Restated Declaration by duly authorized officers of the Association, as required by California Civil Code Section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1 *Articles* means the Association's Articles of Incorporation and their amendments.

Section 1.2 *Assessment* means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Condominium in accordance with the provisions of Article IV of this Declaration.

Section 1.3 *Association* means the FAIRWAY VISTAS I OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 1.4 *Bernardo Heights Declaration* means the Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights, recorded on September 30, 1980, as File/Page No. 80-319018 in the Office Records for San Diego County, and all amendments thereto.

Section 1.5 *Board* means the board of directors of the Association.

Section 1.6 *Bylaws* means the Association's Bylaws and their amendments.

Section 1.7 *Common Area* means the entire Development except all Units and the Recreational Lot.

Section 1.8 *Condominium* means an estate in real property as defined in California Civil Code Section 783 consisting of (i) an undivided interest as a tenant-in-common in the Common Area of the Development, (ii) a separate, fee interest in a unit shown and described on the Condominium Plan, (iii) membership in the Association and (iv) all exclusive and nonexclusive easements appurtenant to such Unit as set forth herein, including but not limited to Exclusive Use Areas and the right to use the Recreational Lot subject to the provisions hereof.

appurtenant to such Unit as set forth herein, including but not limited to Exclusive Use Areas and the right to use the Recreational Lot subject to the provisions hereof.

Section 1.9 *Condominium Plan* means the condominium plan recorded pursuant to California Civil Code Section 1351 respecting the Development of any of the Condominium Property thereon and any amendments to the plan.

Section 1.10 *Declarant* means McKELLAR DEVELOPMENT OF LA JOLLA, a California corporation, its successors and assigns, if such successors and assigns acquire or hold record title to any portion of the Development for development purposes.

Section 1.11 *Declaration* means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the document referenced in the Preamble to this Declaration together with all amendments and annexations thereto, adopted prior to adoption of this Declaration.

Section 1.12 *Development* or *Project* means the Real Property, and all easements, divided or to be divided into condominiums, including all structures and improvements on it. The Development is a statutory condominium project as defined in California Civil Code Section 1350(3).

Section 1.13 *Exclusive Use Area* shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner as shown and described on the Condominium Plan, and shall consist of patios, porches, and/or balconies.

Section 1.14 *Governing Documents* is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules.

Section 1.15 *Improvement* means and includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, private streets, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term *Improvement* be interpreted to include projects which are restricted to the Unit interior and which do not involve the roof of any load bearing wall thereof.

Section 1.16 *Member* means every person or entity who holds a membership in the Association.

Section 1.17 *Mortgage* means a mortgage or deed of trust encumbering a condominium or other portion of the Development. A Mortgagee shall include the beneficiary under a deed of trust, including assignees of any original beneficiary. An institutional Mortgagee is a Mortgagee that is a bank or savings and loan association or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency. A first Mortgagee is a Mortgagee which is prior and senior to all other Mortgagees encumbering the same property.

Section 1.18 *Owner* means each person or entity holding a record ownership interest in a Condominium. *Owner* shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation or as a contract purchaser.

Section 1.19 *Recreational Lot* means Lot 2 of said County of San Diego Tract 9176, together with the improvements thereon, which include, among other things, a swimming pool, spa, restrooms and similar or related facilities.

Section 1.20 *Unit* means the elements of a Condominium that are not owned in common with the other owners of Condominiums in the Development. Such Units and their respective elements are more particularly described in the Condominium Plan. The boundaries of a Unit are shown and described on the Condominium Plan. The existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries rather than the description expressed in the deed or plans, regardless of minor variance between boundaries shown on the plans or in the deeds and those of the building and regardless of settling or lateral movement of the building. Whenever reference is made in this Declaration, in the Condominium Plan, in any deed or elsewhere, to a Unit, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements, which includes a parking garage appurtenant to each Unit and to any and all exclusive easements appurtenant to such Unit over Common Area, if any.

ARTICLE II

PROPERTY RIGHTS

Section 2.1 Property Subject to Declaration.

All the Real Property previously described in the Preamble and the improvements thereon, shall be subject to this Declaration. The real property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the limitations, restrictions, easements, covenants, conditions, liens and charges as set forth in the Bernardo Heights Declaration. All of the limitations, restrictions, easements, covenants, conditions, liens and charges as set forth in the Bernardo Heights Declaration shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Real Property, and shall be binding upon and inure to the benefit of the successors in interest of such parties.

Section 2.2 Elements of Condominium.

Ownership of each Condominium within the Project shall include a Unit; an undivided interest in the Common Area, as specified in the deed to each owner; exclusive use Common Area as designated in the Condominium Plan; a membership in the Association; and any exclusive or nonexclusive easement or easements appurtenant to such Condominium over the Common Area as described in this Declaration, the Condominium Plan and the deed to the Condominium. No Owner may sell, assign, lease, or convey (i) his interest in the Common Area separate and apart from his Living Unit, nor (ii) his interest in any Exclusive Use Area separate and apart from his interest in the Common Area and his Living Unit, nor (iii) his Living Unit separate and apart from his Exclusive Use Areas.

Section 2.3 Right of Entry by Association.

Each Condominium and its Unit or the Common Area, as the case may be, shall be subject to the following rights of entry and use: The right of the Association, or its agents, to enter any of the Units to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Common Area or the owners in common; watering, planting, cutting, removing, and otherwise caring for the landscaping upon the Common Area, cleaning, repairing, replacing and otherwise maintaining underground utility lines serving each Unit. The rights shall be immediate in case of an emergency originating upon or threatening any Unit, whether or not its owner is present. In the case of a nonemergency entry, the

owner shall be given a minimum of 24 hours notice, and entry shall only be permitted during normal business hours or except as agreed to by the owner.

Section 2.4 Nonexclusive Easements.

Each Member shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to, each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to the right of the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

Section 2.5 Partition Prohibited.

The Common Areas shall remain undivided as set forth above. Except as provided by California Civil Code Section 1359 or authorized under this Declaration, no owner shall bring any action for partition of the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single Condominium is prohibited.

Section 2.6 Encroachments.

If any portion of the Common Area encroaches on any Unit or if any portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements. If any structure containing a Unit is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements.

Section 2.7 Delegation of Use.

Any Owner may delegate his rights of use and enjoyment of the Project, including any recreational facilities, to the members of his family, his guests, tenants, employees, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject however, to this Declaration. However, if an Owner has sold his Condominium to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family guests, tenants, employees, and

invitees shall not be entitled to use and enjoy any of such rights in the Project, including the recreational facilities, while the Owner's Condominium is occupied by the contract purchaser or tenant. Instead, the contract purchaser, or tenant, while occupying such Condominium, shall be entitled to use and enjoy such rights, including the recreational facilities, and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner during the period of his occupancy.

Each Owner shall notify the Secretary of the Association of the names of any contract purchasers or tenants of such Owner's Condominium. Each Owner, contract purchaser, or tenant also shall notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or performance of the covenants, conditions and restrictions contained in this Declaration.

Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Condominium shall require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

Section 2.8 Leasing.

An Owner is permitted to lease or rent Owner's Condominium. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all terms and provisions of this Declaration, the Articles of Incorporation, the Bylaws, and the Association Rules; and any lease or rental agreement shall comply with Section 2.7 of this Declaration and shall specify that failure to abide by such provisions shall be a default under the lease or rental agreement. No property shall be leased or rented for less than a thirty-day period.

Section 2.9 Owners' Right of Entry to Adjacent Units.

Owners or their representatives shall have the right to enter the Unit or Exclusive Use Area of any other Owner to perform permissible installations, alterations or repairs to heating, plumbing, mechanical or electrical services, including installation of television antennas and related cables, if requests for entry are made in advance and such entry is at a time convenient to the Owner whose Unit is being entered. In case of emergency, such right of entry shall be immediate. Such action shall be made with as little inconvenience to the Unit Owner as possible and any damage caused thereby shall be repaired by the entering Owners.

Section 2.10 Recreational Lot.

The Recreational Lot is owned by the Association. Each Owner who has an incident of membership in the Association, shall have the same rights to use and enjoy the Recreational Lot as that Owner has to use and enjoy the Common Area, subject to the same limitations as apply to the Common Area as set out herein, and subject further to the provisions of this Declaration and any rules or regulations adopted from time to time by the Board in regard to the use thereof. The powers and duties and limitations of the Association in regard to such Recreational Lot shall likewise be the same as set out in this Declaration in regard to the Common Area. A transfer or conveyance (by operation of law or otherwise) of a Condominium shall transfer or convey the transferor's rights to use and enjoy the Recreational Lot.

ARTICLE III

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Association to Manage Common Areas.

The management of the Common Area shall be vested in the Association in accordance with its Governing Documents. The members covenant and agree that the administration of the project shall be in accordance with the provisions of this Declaration, the Articles, Bylaws and Rules of the Association.

Section 3.2 Membership.

The owner of a Condominium shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with this Declaration, the Articles, and Bylaws of the Association.

Section 3.3 Transfer.

The Association membership held by any owner in the property shall not be transferred, pledged or alienated in any way except upon the sale of an ownership interest and then only to the purchaser. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the owner should fail or refuse to transfer the membership registered in his name to the purchaser of such Unit, the Association shall have the right to record the transfer upon the books of the Association.

Section 3.4 Voting Rights.

The Association shall have one class of membership. When more than one person holds an interest in any Condominium, all such persons shall be members. Each Condominium in the property is entitled to one vote. The vote for such Condominium shall be exercised as the owners of interest therein decide, but in no event shall more than one vote be cast with respect to any Condominium.

Section 3.5 Joint Owner Disputes.

The vote for each such Condominium may be cast only 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 or owners cast a vote representing a certain Condominium, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other owners of the same Condominium. In the event more than one vote is cast for a particular Condominium, none of said votes shall be counted and all of said votes shall be deemed void.

ARTICLE IV

ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation of Assessments.

Each owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for purposes permitted herein, and (3) individual assessments (as more fully described in Section 4.9 herein); such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the separate interest against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment lien. Each such assessment together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such Unit at the time when the assessment fell due. No member may exempt himself from liability for this contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Unit.

Section 4.2 Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the economic interest, recreation, health, safety, and welfare of all the residents in the entire Project and for the improvement and maintenance of the Common Area and those other portions of the property for which the Association is responsible and for the common good of the Project.

Section 4.3 Annual Assessment.

The Board of Directors shall determine and fix the amount of the annual assessment against each Unit in accordance with the procedures described below.

Section 4.3.1 Preparation of Annual Budget

Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the

Common Facilities) by preparing and distributing to all Association Members a budget. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase regular assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association.

Section 4.3.2 Limits for Increases of Annual and Special Assessments.

The Board of Directors of the Association 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 aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of owners casting a majority of the votes at a meeting or election of the Association at which a quorum is present.

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 Area for which the Association is responsible where a threat to personal safety is discovered.
- (3) An extraordinary expense necessary to repair or maintain the Common Area that could have not been reasonably foreseen by the Board in preparing and distributing the current year's operating budget.

Section 4.3.3 Required Notice of Assessment Increases.

Whenever there is an increase in regular or special assessments of the Association, all members shall be notified by first-class mail, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

Section 4.4 Special Assessments for Capital Improvements or Extraordinary Expenses; Reserves for Replacement.

Section 4.4.1 Right of Board to Levy Special Assessments.

The Board of Directors may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for extraordinary expenses incurred by the Association, provided that in the event special assessments exceed in the aggregate five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the vote or written consent of a majority of those voting of the Association where a quorum is represented shall be required. A special assessment levied pursuant Civil Code Section 1365.5(c) for the purpose of restoring reserve funds transferred to operating accounts is not subject to the five percent limitation noted herein or in Section 4.3.

Section 4.4.2 Reserve Contributions and Accounts.

As part of the regular annual assessments for maintenance authorized above, the Board of Directors shall annually fix the amount to be contributed pro rata by each member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. The Board shall maintain a separate account for those funds. The Board shall fix the method of payment of such assessments and shall be empowered to permit either lump sum or monthly payments. Separate records shall be maintained for all funds deposited to the said account, which shall be designated as a Reserve Account.

Amounts received by the Association as contributions, assessments or dues from the members shall be held in one or more accounts. Deposits shall be made, and funds accounted for so that reserves for capital improvements and for replacement, can be clearly separated from funds for operating expenses or repair and maintenance funds. Capital improvement and replacement funds shall be used solely for capital improvements and replacements of those areas within the Project for which the association has the responsibility to maintain.

Section 4.5 Uniform Rate of Assessment.

Except as provided in this Declaration, regular and special assessments must be fixed at a uniform rate for all Condominiums. A special assessment against Members to raise funds for the rebuilding or major repair of a portion of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit of the Condominium to be assessed to the total square footage of the aggregate floor area of Units in all Condominiums to be assessed.

Section 4.6 Effect of Nonpayment of Assessments.

Regular and special assessments are delinquent fifteen (15) days after they become due. A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater shall be imposed upon any delinquent payment. Interest on delinquent assessments and late charges shall be imposed at an annual percentage rate of twelve percent (12%) interest commencing thirty (30) days after the assessments become due. Late charges and interest on past due amounts may be modified by the board in accordance with any changes permitted by state law.

Section 4.7 Transfer of Unit by Sale or Foreclosure.

Sale or transfer of any Unit shall not affect the assessment lien. However, the sale of any Unit pursuant to mortgage foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.8 Enforcement; Remedies.

If any annual or special assessment is delinquent, the Association may record a notice of delinquent assessment and establish a lien against the condominium of the delinquent owner, notwithstanding any provision of this Declaration to the contrary, the lien of the assessment lien provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust upon any condominium. The notice of delinquent assessment shall state the amount of the assessment, collection costs, attorney's fees, late charges, and interest, a description of the condominium against which the assessment and other sums are levied, the name of the record owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any agent designated by the Association.

An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to California Civil Code Sec. 2934(a). Any sale shall be conducted in accordance with the provisions of Secs. 2924, 2924(b), 2924(c), 2924(f), 2924(g), and 2924(h) of the California Civil Code, or any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly against an owner for breach of the personal obligation to pay assessments.

The Association, acting on behalf of the condominium owners, shall have the power to bid for the condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Section 4.9 Individual Assessments.

In addition to the special assessments levied against all Owners in accordance with for in Section 4.4 above, the Board of Directors may impose individual assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, provided that no individual assessments may be imposed against an Owner pursuant to this Section 4.9 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 7.5 of the Bylaws, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for individual assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of the Unit which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as an individual assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, to accomplish (a) the payment of delinquent Assessments, (b) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (c) to otherwise bring the Owner and/or his Condominium into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as an individual assessment.

(iii) Move-in/Move-out Charges. In addition to the annual assessments and special assessments levied on each condominium, an assessment entitled a "move-in/move-out" charge shall be assessed against each condominium at the time escrow closes on the conveyance of title to such condominium, if title is transferred, or as of the date a new tenant takes possession of the Unit, if the Unit is leased. The move-in/move-out charge shall be for the purpose of covering the reasonable and necessary expenses incurred by the association as a result of the change of ownership or possession of the condominium. The move-in/move-out charge shall be in an amount to be reasonably determined from time to time by the Board.

Section 4.9.1 Levy of Individual Assessment and Payment.

Once an individual assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in this Section 4.9, such individual assessment shall be recorded on the Owner's account, notice thereof shall be mailed to the affected Owner and the individual assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 4.9.2 Limitation on Right to Lien for Special Individual Assessments. With the exception of individual assessments imposed by the Association's Board of Directors to recover reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for its reasonable costs (including attorneys' fees) of collecting delinquent Assessments, individual assessments shall not be recoverable through the imposition of a lien against the Owner's Condominium enforceable through foreclosure, but the same may be recovered by the Association through other legal processes. Individual assessments relating to delinquent Assessments shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in this Article IV, Section 4.8.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

Section 5.1 General Powers and Authority.

The Association shall have all the powers of a nonprofit corporation under California law, subject only to the limitations in the Governing Documents of the Association. It may perform all acts which may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Documents. Its powers shall include, but are not limited to, the following:

Section 5.1.1 Assessments.

The Association shall have the power to establish, fix, and levy assessments against the members in accordance with the procedures set out in this Declaration and subject to the limitations therein.

Section 5.1.2 Adoption of Rules.

The Association shall have the power to adopt reasonable operating rules governing the use of the Common Area and any facilities located thereon, and of any other Association property. Such rules may include, but are not limited to, reasonable restrictions on use by the members and their guests, rules of conduct, and the setting of reasonable fees for the use of recreational facilities. A copy of the current Association rules shall be given to each member.

Section 5.1.3 Enforcement of Violations.

In addition to any other enforcement rights described in this Declaration and the Bylaws, or authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements, imposed by this Declaration, the Bylaws, or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws, or Association Rules:

- (i) impose monetary penalties, including late charges and interest,

- (ii) suspend voting rights in the Association,
- (iii) suspend use privileges for the Common Area, and,
- (iv) pursue mediation, arbitration, and/or injunctive relief in accordance with Section 13.2 of this Declaration.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees. The Association, in its sole discretion, may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate.

The enforcement of monetary penalties is subject to the restrictions described in the Bylaws, Section 7.5.

Section 5.1.4 Delegation of Authority.

The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to such committees, officers, or employees as are allowed under the Governing Documents. The Board of Directors may contract for the assistance of a reputable property management agent to assist it and its officers in carrying out its duties.

Section 5.1.5 Right of Entry.

The Association's agents or employees shall have the right to enter any Unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the member as is practicable, and in accordance with Section 2.3 of this Declaration.

Section 5.1.6 Easements.

The Association shall have the authority, by document signed or approved by a majority of the total voting power of the Association, to grant easements in addition to those shown on the map, where necessary for utilities, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the condominiums.

Section 5.1.7 Acquisition and Disposition of Property.

The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association.

Section 5.1.8 Loans.

The Association shall have the power to borrow money in accordance with the provisions contained in its Bylaws, Section 7.3.

Section 5.1.9 Dedication.

The Association shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication shall be effective unless approved by three-fourths (3/4) of the total voting power of the Association.

Section 5.1.10 Contracts.

The Association shall have the power to contract for goods and/or services for the Common Area(s) facilities and interests, or for the Association, subject to limitations of the Governing Documents.

Section 5.1.11 Expenditure of Reserve Funds.

The Board of Directors may only expend funds designated as reserve funds for the purpose of repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

Section 5.1.12 Transfer of Reserve Funds.

The Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the common interest development, delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of

these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is not subject to the limitations imposed by Sections 4.3 and 4.4 of this Declaration.

Section 5.1.13 Cable Television.

The Board has the authority, if it deems it in the best interests of the Association, to contract and pay for bulk rate cable television services to be provided to the individual members on such terms and conditions as the Board deems proper. The cost of said bulk rate cable television services may be paid for out of the general operating funds of the Association and included in the Association's operating budget.

Section 5.1.14 Prosecution and Defense of Lawsuits.

The Board has the authority to prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area or property owned by the Association, and any action in which all or substantially all the Owners have an interest.

Section 5.1.15 Control of Guest and Unassigned Parking.

The Board has the right to assign, rent, or otherwise designate and control use of guest and unassigned parking within the Common Area to Owners only (other than those portions subject to exclusive easements appurtenant to Condominiums, if any.) The Board shall have the right to revoke any such assignments.

Section 5.2 Duties of the Association.

In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Documents, the Association shall be responsible for the following:

Section 5.2.1 Maintenance and Operation of Common Areas.

The Association, acting through the Board, shall operate and maintain the Common Areas and the facilities located thereon; such duty shall include providing maintenance of the Common Areas as provided in Article VI.

Section 5.2.2 Financial Statements.

The Association shall regularly prepare, review and distribute financial statements to the members in accordance with the Bylaws.

Section 5.2.3 Insurance.

The Association shall maintain such policy or policies of insurance as are required by this Declaration.

Section 5.2.4 Discharge of Liens.

The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the member or members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

Section 5.2.5 Assessments

The Association shall fix, levy, collect, and enforce assessments.

Section 5.2.6 Payment of Expenses.

The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business, including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association.

Section 5.2.7 Enforcement.

The Association shall enforce this Declaration.

Section 5.2.8 Limitation on Board Authority.

Except with the vote or written assent of owners casting a majority of the votes at a meeting or through a mail ballot where a quorum is represented, the Board shall not take any of the following actions:

(i) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(ii) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member for expenses incurred in carrying on the business of the Association; or

(iii) Enter into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one year, with the following exceptions:

(a) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(b) Prepaid casualty or liability insurance policies not to exceed three years' duration provided the policy permits for short rate cancellation by the insured.

Section 5.2.9 Conduct Reserve Studies.

At least once every three years the Board of Directors shall cause a study of the reserve account requirements of the common interest development to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. The study required by this subdivision shall at a minimum include:

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

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

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

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

Section 5.2.10 Bernardo Heights Declaration.

The Association shall fulfill its obligations under the Bernardo Heights Declaration and collect assessments provided for under the Bernardo Heights Declaration if so requested by the Community Board (as defined in the Bernardo Heights Declaration).

Section 5.3 Limitation on Liability of Officers and Directors.

No director, officer, committee member, employee, or other agent of the Association, when acting in such capacity, shall be liable to any owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

ARTICLE VI

MAINTENANCE RESPONSIBILITIES

Section 6.1 Association Maintenance Responsibilities.

The Association shall maintain and repair the Common Area and all improvements, landscaping, equipment, furnishings and facilities thereon, except any Exclusive Use Areas for which the respective Owners thereof have the duty to maintain and repair.

Section 6.2 Owner Maintenance Responsibilities

Each Owner at his own expense shall be responsible for the maintenance and repair of the interior of his Unit, his Exclusive Use Areas (if any), the windows of his Unit, and the plumbing, heating and cooling systems servicing his Unit, whether such systems are located within, above or underneath the Unit or within the exterior or interior bearing walls of such Unit. The Association shall be responsible for the maintenance and repair of any of the above-described systems if such work would affect the structural integrity of any portion of the Common Area or if such work involves equipment or facilities used in common by all or any of the Owners; provided, however, that in the event such maintenance or repair is attributable to the extraordinary use or abuse of an Owner or a few Owners, the cost of such work may be assessed to such Owner or Owners.

Section 6.3 Recovery of Costs of Certain Repairs and Maintenance.

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Article IV, Section 4.9 hereof.

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Article II, Section 2.3, to enter the Owner's Unit/Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing.

Section 6.4 Cooperative Maintenance Obligations.

To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

ARTICLE VII

USE RESTRICTIONS

Each Owner of a Condominium shall be responsible for ensuring that the Owner's family, guests, tenants and all occupants of the Owner's condominium comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. In addition to any rights the Association may have against the Owner's family, guests, tenants or occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or occupants.

Section 7.1 Residential Use.

Units shall be used for residential purposes only. In no event shall a residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. An owner is permitted to lease or rent his or her unit subject to the provisions of Sections 2.7 and 2.8 of this Declaration.

Section 7.2 Right to Decorate; Maintenance of Interior Fixtures.

Each owner shall have the right at his sole expense to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim, perimeter walls of the Units and surfaces of the bearing walls and the partitions located within such Unit. Each Owner shall also have the right to substitute new finished surfaces in place of those existing on the ceilings, floors and walls. The Owner shall have the right to maintain floors and walls and to maintain, repair, paint, finish, alter, substitute and add or remove any fixtures attached to such ceiling, floors and walls. Notwithstanding the foregoing, windows can be covered only by drapes and shades and cannot be painted or covered by foil, paper or other similar materials.

Section 7.3 Offensive Conduct; Nuisances.

No noxious or offensive activities, including, but not limited to, repair of automobiles or other motorized vehicles (other than emergency repairs), shall be carried on within the Development. Nothing shall be done on or within the Development that may be or may become an annoyance or nuisance to the residents of the Development, or that in any way interferes with the quiet enjoyment of occupants of Condominiums. Unless otherwise permitted by the Association, no Owner shall (i) use power tools or maintain a hobby shop and/or (ii) serve food or beverages, cook, barbecue, or

engage in similar activities, except within such Owner's Unit, or (subject to Association's rules) any Exclusive Use Area appurtenant to such Unit.

Section 7.4 Parking Restrictions; Use of Parking Area.

Unless otherwise permitted by the Board, no automobile, boat, trailer, recreational vehicle, camper, truck in excess of 3/4 tons, or commercial vehicle shall be parked or left on any street or any part of the Development other than in any parking area designated by the Board for the parking and storage of such vehicles, including the garage area of a Unit. However, parking (i) for passenger vans and trucks not larger than the garage included for each Unit, and (ii) by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association rules. Garages shall be used for parking automobiles only and shall not be converted for living or recreational purposes, except that garages may be used for storage along the walls, so long as adequate space is left for parking of two vehicles. Except with the written consent of the Board, no Owner shall park anywhere in the Development more motor vehicles than there are parking spaces or garage spaces owned by, or assigned to such Owner.

Section 7.5 Signs.

No sign of any kind shall be displayed to the public view on or from any Condominium or the Common Area without the approval of the Board, except, one sign of customary size and reasonable dimensions advertising a Condominium for sale or for rent may be placed within each Unit or within the Common Area immediately adjacent thereto by the Owner of such Unit, the location and design of it to be subject to approval by the Board.

Section 7.6 Antennas, External Fixtures, Etc.

No television or radio poles, antennas, satellite dishes, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or approved by the Board and any replacements shall be constructed, erected or maintained on or within the Common Area or any structures on it. No wiring, insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Board and their replacements shall be constructed, erected or maintained on or within the Common Area, including any structures on it.

Section 7.7 Fences, Etc.

No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Development except those that are within the Unit, or are installed in accordance with the original construction of the Development, and their replacements, or as are authorized and approved by the Board.

Section 7.8 Pets.

No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any Condominium or elsewhere within the Development except that (i) two (2) domestic dogs or two (2) cats, or a combination thereof, not to exceed two such animals, or (ii) fish in aquariums and birds inside bird cages may be kept as household pets within any Unit. Pets must not be kept, bred or raised for commercial purposes, and their maintenance must be approved by the Board. The Board shall have the right to establish and enforce additional rules and regulations and impose standards for the reasonable control in keeping household pets in, upon, and around the Properties to insure the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents. The Board may prohibit the continued residence of any pet or animal in the Properties which so interferes with the quiet enjoyment of other Owners that its continued presence is a nuisance. Any Owner whose pet is subject to such removal shall have the right to a hearing before the Board of Directors. Each person bringing or keeping a pet on the Development shall be liable pursuant to laws of the State of California to other Owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests, and invitees for any damage to persons or property caused by any pet brought on or kept on the Development by such person or by members of his family, his guests or invitees.

Section 7.9 Restricted Use of Recreational Vehicles.

No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while located on the Development.

Section 7.10 Trash Disposal.

Trash, garbage or other waste shall be kept only in sanitary containers. No Owner of a Condominium shall permit or cause any trash or refuse to be kept on any portion of the Development other than in the receptacles customarily used for it, which shall be located only in places specifically designated for such purpose or within the Owner's Unit (except on the scheduled day for trash pickup).

Section 7.11 Outside Drying and Laundering.

No exterior clothesline shall be erected or maintained, and there shall be no exterior drying or laundering of clothes on balconies, patios, porches, railings or other areas.

Section 7.12 Structural Alterations.

No structural alterations to the interior of any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be made by any Owner or permitted to be made, without the prior written consent of the Board and the Architectural Committee.

Section 7.13 Exterior Alterations.

No owner shall at his expense or otherwise make or permit to be made any alterations or modifications (including painting) to the exterior of the buildings, fences, railings or walls or landscaping situated within the Development without the prior written consent of the Architectural Committee as provided in Article VIII (which shall consider harmony with external design, color, and location with the Development as a whole) and the Board.

Section 7.14 Patios, Porches, and Balconies.

The Development has been designed to include in the Common Area an open patio, porches and/or a balcony appurtenant to some of the Units. The Owner of each such Unit shall have an exclusive appurtenant easement to use such patios, porches and/or balcony Exclusive Use Area, and such easement shall be specifically described in the deed for such Unit as an Exclusive Use Area. The general location and numerical designation of such patios, porches and/or balconies are set forth on the Condominium plan. Such Exclusive Use Area shall be subject to the terms of this Declaration. Each Owner shall have the right to place furniture and potted plants upon his patio, porch and balcony Exclusive Use Area, if any (subject to current rules and regulations of the Association.) Except as provided in this section, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Areas without the prior written consent of the Board.

Section 7.15 Right of Entry.

In making repairs or effecting maintenance, each Owner and the Association shall have the rights of entry on the terms and in the manner provided in Paragraphs 2.3 and 2.9 herein.

Section 7.16 Indemnification.

Each owner shall be liable pursuant to the laws of the State of California to the remaining Owners for any damage to the Development that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, tenants, guests or invitees.

Section 7.17 Owner's Obligation for Taxes.

To the extent allowed by law, each Unit (including the pro rata undivided interest in the Common Area and the membership of an Owner in the Association) shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to the first Mortgages under local law shall relate only to the individual Units and not to the Condominium Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor of said County against his or her Condominium and against his or her personal property.

Section 7.18 Compliance with Laws.

No Owner shall permit anything to be done or kept in his Unit that violates any permit, law, ordinance, statute, rule or regulation of any local, county, state or federal body.

Section 7.19 Insurance.

Nothing shall be done or kept in any Unit or in the Development that might increase the rate of, or cause the cancellation of, insurance on the Development, or any portion of the Development, without the prior written consent of the Board.

Section 7.20 No Personal Property in Common Areas.

No Owner shall allow furniture, furnishings, or other personal property belonging to such Owner to remain within any portion of the Common Area except the Exclusive Use Area appurtenant to such Owner's Unit and except as may otherwise be permitted by the Board.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 8.1 Architectural Control.

No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Architectural Committee appointed by the Board and the Board.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Architectural Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an owner to paint the interior of his Unit any color desired.

Section 8.2 Architectural Committee.

The committee for the control of structural and landscaping architecture and design (Architectural Committee) within the subdivision shall consist of three members appointed by the Board or shall consist of the currently elected Board of Directors if a committee has not been previously appointed.

In the event the Committee fails to approve or disapprove plans and specifications within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Section 8.3 Bernardo Heights Declaration.

In addition to obtaining approval of the Architectural Committee, all members shall be required to obtain approvals required under the Bernardo Heights Declaration.

ARTICLE IX

INSURANCE

Section 9.1 Liability Insurance.

The Association shall obtain and maintain comprehensive public liability insurance including property damage insuring the Association, any manager, the Declarant and the Owners and occupants of Condominiums, and their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area and any transportation vehicle owned by the Association and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

Section 9.2 Fire and Extended Coverage Insurance.

The Association also shall obtain and maintain a master or blanket policy of fire insurance for 100% of the current replacement cost of all of the improvements within the Development. The form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional First Mortgagees. If more than one institutional First Mortgagee has a loan of record against the Development, or any part of it, the policy and endorsements shall meet the maximum standards of the various institutional Mortgagees represented in the Development. The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent, and extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction, and a decision not to rebuild. The policy shall be in the amounts as shall be determined by the Board. The policy shall name as insured the Association and the Owners, and all institutional First Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described in this Declaration.

Section 9.3 Individual Fire Insurance Limited.

Except as provided in this Section, no Owner can separately insure his Unit or any part of it against loss by fire or other casualty covered by any insurance carrier under Section 9.2. If any Owner violates this provision, such Owner will be liable for any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 9.4 that result from the existence of such other insurance to the Association to the extent of any such diminution. An Owner can, however, insure his personal property against loss. In addition, any improvements made by an Owner within his Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as tenant's improvements. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association and Declarant.

Section 9.4 Trustee.

All insurance proceeds payable under Sections 9.2 and 9.3, and subject to the rights of the Mortgagees under Section 9.8, may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in San Diego County that agrees in writing to accept such trust.

Section 9.5 Other Insurance.

The Board may and, if required by any Mortgagee, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild. The Board also shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees of the Development. The Board shall purchase and maintain fidelity bonds or insurance covering Members of the Board, officers, and employees of any management agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least one hundred and fifty percent (150%) of the estimated annual operating expenses of the Association including reserves. The Board shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance, that it deems necessary or that is required by any Mortgagee.

Section 9.6 Owner's Insurance.

An Owner may carry whatever personal liability and property damage liability insurance with respect to his Condominium that he desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any Mortgagee.

Section 9.7 Adjustment of Losses.

The Board is appointed attorney-in-fact by each Owner (with the exception of the Administrator of Veterans Affairs, an officer of the United States of America) to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Sections 9.1, 9.2 and 9.5. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Section 9.8 Distribution to Mortgagees.

Any Mortgagee has the option to apply insurance proceeds payable on account of a Condominium, in reduction of the obligation secured by the Mortgage of such Mortgagee.

Section 9.9 Additional Insurance--FNMA.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for Condominium projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Condominium within the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

Section 9.10 Notice of Lapse, Cancellation or Modification.

Each policy of insurance shall provide that notice shall be given to the Association and each First Mortgagee listed as a scheduled holder of a first mortgage in said insurance policy at least ten (10) days prior to cancellation or substantial modification of any policy or fidelity bond, and upon lapse of any policy or fidelity bond.

ARTICLE X

DAMAGE OR DESTRUCTION

Section 10.1 Destruction; Proceeds 95% or More of Reconstruction Costs.

If there is a total or partial destruction of the improvements in the Development, and if the available proceeds of the insurance carried pursuant to Article IX are sufficient to cover not less than ninety-five percent (95%) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, Members then holding at least seventy-five percent (75%) of the total voting power of each class of Members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the Office of the San Diego County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 10.2 Destruction; Proceeds Less Than 95% of Reconstruction Costs.

If the proceeds of insurance are less than ninety-five percent (95%) of the costs of repair and reconstruction, repair and reconstruction may nevertheless take place if, within ninety (90) days from date of destruction, Members then holding at least fifty-one percent (51%) of the total voting power of each class of Members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction will take place. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the office of the San Diego County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 10.3 Rebuilding Procedures.

If the Members determine to rebuild, pursuant to Sections 10.1 or 10.2, the owner of each Unit located within a structure that has been totally or partially destroyed shall be obligated to contribute his proportionate share of the cost of reconstruction or restoration of the structure containing his Unit, over and above the available insurance proceeds. All Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area not comprising the structure within which a Unit is located. The proportionate share of each Owner shall be equal to the ratio of the square footage of the floor area of said Owner's Units to the

total square footage of the floor area of all Units. If any Owner fails or refuses to pay his proportionate share, the Board may levy a special assesment against the Condominium of such Owner which may be enforced under the lien provisions contained in Article IV or in any other manner provided in this Declaration. If any Owner disputes the amount of his proportionate liability under this section, such Owner may contest the amount of his liability by submitting to the Board within ten (10) days after notice to the Owner of his share of the liability written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which he may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting for Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by a majority of the total voting power of the Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 10.4 Rebuilding Contract.

If the Members determine to rebuild, the Board or its authorized representative shall obtain bids from at least three reputable contractors and shall award the repair and reconstruction work to the best qualified bidder as determined by the Board of Directors. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 10.5 Rebuilding Not Authorized or Permitted.

If the Members determine not to rebuild or if the Development cannot legally be reconstructed, then, subject to the rights of Mortgagees under Section 9.8, any insurance proceeds then available for such rebuilding shall be distributed to the Owner of each Condominium in proportion to his respective percentage interest in the Development determined by reference to an appraisal of the value of all Units immediately prior to the destruction prepared by an independent appraiser selected by the Board, to be completed within sixty (60) days of the recordation of the certification not to rebuild. The Board shall have the duty, within one hundred twenty days (120)

days from the date of such destruction, to execute, acknowledge and record in the office of the County Recorder of said County, a certificate declaring the intention of the Members not to rebuild.

Section 10.6 Minor Repair and Reconstruction.

In any case, the Board shall have the duty to repair and reconstruct improvements, without the need for consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Twenty Thousand Dollars (\$20,000). The Board is expressly empowered to levy a special assessment for the cost of repairing and reconstructing the improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in Section 10.3 (but without the consent or approval of Members despite any contrary provisions) in this Declaration.

Section 10.7 Revival of Right to Partition.

On recordation of a certificate described in Section 10.5, the right of any Owner to partition through legal action as described in Section 11.4 shall revive immediately.

ARTICLE XI

CONDEMNATION

Section 11.1 Sale by Unanimous Consent.

If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, timely written notice shall be given all first Mortgagees. On unanimous written consent of all the Owners and after written notice to all Mortgagees, the Development, or a portion of it may be sold.

Section 11.2 Distribution of Proceeds of Sale or Award.

On a sale or award occurring under Section 11.1 or 11.3 (below), the proceeds shall be distributed to the Owner and the Mortgagees of each Condominium affected as their respective interest may appear in proportion to the relative value of each affected Unit as determined by reference to an appraisal of the value of all such affected Units (as of the date immediately prior to the condemnation), conducted by an independent appraiser selected by the Board. The cost of such appraisal shall be deducted from the proceeds or award.

Section 11.3 Distribution of Condemnation Award.

If the Development, or a portion of it, is not sold but is instead taken, the judgment or agreement of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees, and if it does not, then the proceeds shall be apportioned pursuant to Section 11.2 above.

Section 11.4 Revival of Right to Partition.

On sale or on taking that renders more than fifty percent (50%) of the Units in the Development uninhabitable, the right of any Owner to partition through legal action shall revive immediately.

ARTICLE XII

PROTECTION OF MORTGAGEES

Section 12.1 Mortgage Permitted.

Any owner may encumber his Condominium with a mortgage(s).

Section 12.2 Subordination.

The lien of the assessments including interest, costs, and attorneys fees as provided for herein, shall be subordinate to the lien of any first Mortgage upon any Condominium.

Section 12.3 Amendment.

The prior written consent of (i) seventy-five percent (75%) of the holders of all first Mortgages (based upon one vote for each Mortgage held) and (ii) so long as there is a Class B membership in the Association any amendment to this Declaration shall require the prior approval of the Veterans Administration, and/or (iii) so long as a loan secured by the Veterans Administration (U.S.A.), or any Unit is owned by the United States pursuant to foreclosure thereunder the consent of Administrator of Veterans Affairs, an officer of the United States of America, shall be required for any material amendment to this Declaration, to the Articles and to the Bylaws. As used in this Section 12.3, the term "any material amendment" is defined to mean amendments to provisions of this Declaration, to the Articles, or to the Bylaws governing the following subjects:

12.3.1 The purpose for which the Development may be used;

12.3.2 Voting;

12.3.3 Assessments, collection of assessments, creation and subordination of assessment liens;

12.3.4 Reserves for repair and replacement of Common Area or Recreational Lot improvements;

12.3.5 Maintenance of Common Area or the Recreational Lot and improvements thereon;

12.3.6 Casualty and liability insurance and Fidelity Bonds:

12.3.7 Rebuilding or reconstruction of Common Area or the Recreational Lot and improvements thereon, in the event of damage or destruction:

12.3.8 Rights of use to and in the Common Area and the Recreational Lot;

12.3.9 Annexation of additional property; and

12.3.10 Any provision, which by its terms, is specifically for the benefit of first Mortgagees, or specifically confers rights on first Mortgagees.

Section 12.4 Restrictions on Certain Changes.

Unless at least seventy-five percent (75%) of the first Mortgagees of Mortgages encumbering Condominiums (based upon one [1] vote for each Mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled:

12.4.1 By act or omission to seek to abandon or terminate the Condominium project, except for abandonment provided by statute in case of substantial loss to the Development;

12.4.2 To change the pro rata Interest or obligations of any Unit for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Unit in the Common Area;

12.4.3 To partition or subdivide any Unit;

12.4.4 By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or the Recreational Lot. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area or the Recreational Lot by the Association or the Owners shall not be deemed a transfer within the meaning of this clause;

12.4.5 To use hazard insurance proceeds for losses in the Development for other than the repair, replacement or reconstruction of improvements, except as provided by statute in case of substantial loss to the Units Development;

12.4.6 To terminate professional management and commence self-management of the Project, if professional management has previously been required by any first mortgagee.

Section 12.5 Right to Examine Books and Records.

First Mortgagees can examine the books and records of the Association or the Condominium project as provided in Section 11.1 of the Bylaws and can require the submission of financial data concerning the Association or the Condominium project, including annual audit reports and financial statements as furnished to the Owners.

Section 12.6 Distribution of Insurance and Condemnation Proceeds.

No Unit Owner, or any other party, shall have priority over any right of first Mortgagees of Units pursuant to their Mortgages in case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Condominium Development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees naming the Mortgagees as their interest may appear.

Section 12.7 Amenities.

All amenities shall be available for use by Owners and all such amenities with respect to which regular or special assessments for maintenance or other uses may be levied shall constitute Common Area or the Recreational Lot. All such amenities shall be owned (i) in fee by the Owners in undivided interests or (ii) by the Association free of encumbrances except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Association.

Section 12.8 Notices to Mortgagees of Record.

On any loss to, or taking in condemnation of, any Unit covered by a Mortgage, if such loss exceeds One Thousand Dollars (\$1,000), or on any loss to the Common Area, if such loss exceeds Ten Thousand Dollars (\$10,000), or on any taking of the Common Area, notice in writing of such loss or taking shall be given to each Mortgagee of record if such Mortgagee has filed a written

request for such notice with the Association. If any Owner of a Unit is in default under any provision of these covenants, conditions and restrictions, or under any provision of the Bylaws or the rules and regulations adopted by the Association, which default is not cured within thirty (30) days after written notice to such Owner, the Association shall give to the Mortgagee of record of such Owner written notice of such default and of the fact that said thirty (30) day period has expired, if such Mortgagee has filed a written request for such notice with the Association.

Section 12.9 Payments by Mortgagees.

Mortgagees of Condominiums may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area or Recreational Lot improvements or other insured property of the Association and, upon making any such payments, such Mortgagees shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying the provisions of this Article XII.

Section 12.10 Effect of Breach.

No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any Mortgage in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

Section 12.11 Effect of Foreclosure.

If any condominium is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the first Mortgage. On foreclosure of the first Mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure purchaser taking title to the Condominium free of the lien for assessments, or installments that has accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure purchaser acquired title to the Condominium. The subsequently levied assessments or other charges may include previously unpaid assessments provided all Owners, including the

foreclosure purchaser, and his successors and assigns, are required to pay their proportionate share as provided in this Section.

Section 12.12 Non-Curable Breach.

Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is noncurable or of a type that is not practical or feasible to cure.

Section 12.13 Loan to Facilitate.

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

Section 12.14 Appearance at Meetings.

Because of its financial interest in the Development, any first Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

Section 12.15 Right to Furnish Information.

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

Section 12.16 Inapplicability of Right of First Refusal to Mortgagee.

No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Unit that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Unit, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the Unit pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed (or assignment) in lieu of foreclosure.

Section 12.17 Contracts With Declarant.

Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days written notice and shall have a maximum contract term of one (1) year; provided that the Board can renew any such contract on a year-to-year basis.

Section 12.18 Approval by FHA and VA.

So long as there is a Class B membership in the Association, the following action shall require the prior approval of the Veterans Administration: mergers and consolidations, special assessments, any amendment and any annexation.

Section 12.19 Conflicts.

In the event of any conflict between any of the provisions of this Article XII and any other provisions of this Declaration, the provisions of this Article XII shall control.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1 Enforcement.

The Association, or any member, or the successor in interest of any member shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, Association Bylaws and rules and regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Restated Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations, the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Should the Association incur attorneys' fees in order to enforce the covenants, conditions and restrictions or the Association Bylaws or rules and regulations, it shall be entitled to recover such expenses from the responsible members.

Prior to the commencement of a civil action to enforce the Governing Documents, the party initiating the case shall comply with Civil Code Section 1354(b) by serving a Request for Resolution on the other party in accordance with this statute.

The Association and members' right of enforcement shall be subject to the provisions of Section 13.2 of this Declaration.

Section 13.2 Court Actions, Mediation, Arbitration.

Section 13.2.1

Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board.

Section 13.2.2

Before instituting any judicial action, arbitration, or other proceeding arising out of any Owner's or resident's failure or alleged failure to comply with any provision of Section 2.7, ("Delegation of Use"), Article VIII ("Architectural Control"), or Article VII ("Use

Restrictions"), the Association or Owner who desires to initiate such action ("Complaining Party") must make a good faith attempt to mediate the dispute.

Section 13.2.3

If mediation is unsuccessful at resolving any failure or alleged failure to comply with any provision of Section 2.7 ("Delegation of Use"), Article VIII ("Architectural Control"), or Article VII ("Use Restrictions"), the dispute shall be submitted to, and conclusively determined by, binding arbitration in accordance with this subparagraph, provided, however, that the provisions of this subparagraph shall not preclude any party from seeking injunctive or other provisional or equitable relief in order to preserve the status quo of the parties pending resolution of the dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that party's arbitration rights.

The arbitrator shall be selected and the arbitration conducted in accordance with the Commercial Arbitration rules of the American Arbitration Association.

The arbitrator's decision shall pertain, and shall be limited to the granting of damages not to exceed any party's actual out-of-pocket expenses and the costs of undertaking any repairs, maintenance, or reconstruction relating to the dispute, the award of any injunction or other equitable relief, and award of reasonable attorney's fees and costs to the prevailing party. In no event shall the arbitrator's award include any component for punitive or exemplary damages. Costs of the arbitration proceeding shall be borne as determined by the arbitrator.

Section 13.3 Severability.

Invalidation of any one of these covenants, conditions and restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.4 Term.

The covenants, conditions and restrictions of this Declaration shall run with and bind the Units, and shall inure to the benefit of and be enforceable by the Association or the owner of any Unit subject to this Restated Declaration, their respective legal representatives, heirs, successors, and assigns.

Section 13.5 Construction.

The provisions of this Restated Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the maintenance of a residential community of common recreational facilities and common areas. Paragraph headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 13.6 Amendments.

This Restated Declaration of Covenants, Conditions and Restrictions may be amended by the affirmative assent or vote of a majority of the Owners of Units in the Property. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by an authorized officer of the Association and recorded in the County Recorder's Office of the County of San Diego. The prior written consent of First Mortgagees to any material amendments to the Declaration as defined in Section 12.3 shall be required to be obtained.

Section 13.7 Singular Includes Plural.

Whenever the context of this Restated Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 13.8 Nonliability of Association for Water Damage.

The Association shall not be liable for damage to property in the project resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipe, drains, conduits, appliances or equipment, or from any other place or cause, unless caused by the gross negligence of the Association, its Board, officers, the manager or their staff.

Section 13.9 Notice of Breach

In the event of a breach of the Declaration, the Association may, but is not required as a prerequisite to pursuing enforcement, record with the County Recorder's Office a Notice of Breach. The Notice shall contain the name of the owner of the property, address and legal description along with a brief description of the breach making specific reference to that portion of the Declaration which is alleged to have been breached by the owner. The Notice shall specify additionally the actions necessary on the part of the owner to cure the breach. If the owner complies with the actions listed in the Notice of Breach, they will be entitled to have it immediately released by the Association.

Section 13.10 Bernardo Heights Declaration

If a provision of this Declaration should conflict with a provision of the Bernardo Heights Declaration, the provision of the Bernardo Heights Declaration shall take precedence over the conflicting provision in this Declaration and shall control.

IN WITNESS WHEREOF, FAIRWAY VISTAS I OWNERS ASSOCIATION, by and through its Board of Directors, hereby certifies that this Restated Declaration of Covenants, Conditions and Restrictions was duly adopted.

FAIRWAY VISTAS I OWNERS ASSOCIATION

By: Oliver Galbraith III
President

OLIVER GALBRAITH III
[Name Printed]

By: Donald W. Taylor
Secretary

DONALD W. TAYLOR
[Name Printed]

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May 12, 1995

REPLY TO:

La Mesa

To All Members Of Fairway Vistas I Owners Association:

I am general counsel for Fairway Vistas I Owners Association. I have been working with the Board for several months now to completely revise and update your governing documents to bring them into conformance with all new case law and statutes.

Enclosed are copies of the revised CC&Rs and Bylaws for your review. In order for the new documents to take effect, it is required that 75% of the membership approve them and that the CC&Rs be recorded. Enclosed also is a ballot which should be completed and returned to the Association in the enclosed envelope as soon as possible.

In order to assist you in reviewing the lengthy documents which are enclosed, I've prepared a brief synopsis. Additionally, each of the documents contains a detailed and descriptive table of contents which will enable you to review the contents of each section. Lastly, the CC&Rs contain an index to assist you in locating specific information or topics of interest.

Sincerely yours,

A handwritten signature in black ink that reads "Joel Kriger".

JOEL M. KRIGER

JMK/nrs
Encls.

Summary of Revisions to CC&RS of **Fairway Vistas I Owners Association**

Your old CC&Rs have been completely rewritten and updated. Some of the changes have been made in response to recent legislation, other changes have been made to improve the form and readability of the document, while still other changes were to clarify those areas that commonly cause problems. This summary will explain the overall purpose of each article of the Declaration.

Preamble

The preamble is contained in the first two pages of the document. It has several purposes. First, it provides some historical information regarding the original developer and the CC&R's it recorded. Under "*Recitals*" a legal description of the project is provided along with standard language regarding the purposes of the CC&R's and describing this community as a condominium project. Lastly, it memorializes the date on which the requisite number of owners approved the new CC&R's.

Article I Definitions

These are fairly self-explanatory. For the most part, we have used the existing definitions from the original CC&Rs' with little or no changes.

Article II Property Rights

Section 2.1 simply provides that the entire Association is subject to the CC&R's, while Section 2.2 describes the elements of the condominium. Sections 2.3, 2.4, 2.5 and 2.6 are standard sections which provide the Association the legal right to enter into an owner's unit under certain circumstances, provides all owners with the right to use common areas, prohibits actions for partition of the common areas, and lastly, provides an encroachment easement in the event there was an error in the original construction and one owner's improvements slightly encroach on common or restricted common areas. Section 2.7, 2.8 and 2.9 discuss delegating rights of use and enjoyment of the property and common areas and an owner's right of entry to adjacent units. Section 2.10 describes the Recreational Lot and its use.

**Article III
Association, Administration, Membership
and Voting Rights**

This Article establishes the Association as the management body for the property. It also provides automatic membership for owners, along with voting rights. The sections contained in this article are basic and essential to establish the Association. Specifics regarding the manner in which the Association operates, such as meetings, voting, elections, etc., are contained in the Bylaws.

**Article IV
Assessments**

The purpose of this article is to establish the power of the Association to collect assessments in order to have funds with which to fulfill its obligations and manage the community.

Section 4.3 requires distribution of the annual budget and the limits increases of annual and special assessments to 20% and 5% respectively, without membership approval. Finally, it requires thirty to sixty advance notice of assessment increases. These rules are dictated by legislation which the Association has no power to change. Other areas of importance include:

Section 4.5 divides assessments between the members equally.

Section 4.6 provides the penalties for late payment and interest.

Sections 4.7 and 4.8 allow the use of civil actions, recordation of liens, and foreclosure to enforce payment of assessments.

**Article V
Duties and Powers of the Association**

This article defines those actions the Board may take in fulfilling its obligation to protect, enhance and preserve the common areas. Enforcing rules, collecting assessments and entering into contracts are examples of the powers made available to the Board.

Some of these duties and powers are controlled by statute. Sections 5.1.11 and 5.1.12 regarding spending and borrowing reserve funds along with Section 5.2.9 regarding the frequency of conducting reserve studies were paraphrased from the Civil Code.

Article VI Maintenance Responsibilities

This article lists the Association's and individual owners' maintenance responsibilities. One of the most common disputes occurring in homeowner associations is between a member and the board over whose responsibility it is to fix part of the unit or building. This Article defines both the owner's and Association's areas of responsibility for maintenance.

Article VII Use Restrictions

This article regulates the use which the owners can make of the property. The sections for this article have been adopted, for the most part, unchanged from your original CC&R's. These are the "*house rules*" of the Association.

Article VIII Architectural Control

The preservation of the aesthetic appeal of your homes requires control by the Association on all exterior improvements made by owners. This Article creates an Architectural Control Committee whose function is to review and approve plans submitted by members wanting to make exterior improvements to their homes.

Article IX Insurance

The purpose of this article is to cover the insurance requirements for the Association. Basically, this section requires the Association to maintain casualty and liability insurance for the common areas, while the individual owners are responsible to maintain insurance on contents of their homes.

Article X Damage or Destruction

The purpose of this article is to provide guidance to the Association in the event of catastrophic loss. Generally there is no problem as long as the loss is covered by insurance. Should the loss not be fully insured, then decisions whether or not to rebuild and how the reconstruction will be funded need to be addressed.

**Article XI
Condemnation**

The purpose of this article is simply to empower the Association to act on behalf of all the owners should the common area be condemned.

**Article XII
Protection of Mortgagees**

This article was included in your original CC&Rs and simply sets forth the rights of the holders of all first mortgages in the Association.

**Article XIII
General Provisions**

This article covers several different topics which are generally self-explanatory. A significant area regarding enforcement of the CC&Rs is covered in Sections 13.1 and 13.2 as follows:

Section 13.1 provides that the Association or the individual members have the right to enforce the CC&R's and that the prevailing party is entitled to attorney's fees. Section 13.2 requires the Association or an owner who desires to initiate litigation regarding enforcement of any provision of the CC&Rs to first make a good faith effort to mediate the dispute through Alternative Dispute Resolution as set forth in Civil Code Section 1354(b). Additionally, disputes over the use restrictions or architectural issues must be resolved through binding arbitration.

Section 13.6 reduces the requirement of seventy-five percent membership approval for CC&R amendments to that of a simple majority.

Written Ballot of Member of
FAIRWAY VISTAS I
OWNERS ASSOCIATION
A California Nonprofit Mutual Benefit Corporation

CONCERNING

APPROVAL OF THE RESTATED AND AMENDED BYLAWS AND THE
FIRST RESTATED DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS OF FAIRWAY VISTAS I OWNERS ASSOCIATION.

The undersigned, as a record holder of a membership of the above-named corporation, hereby takes the following action concerning approval of the restated and amended Bylaws and CC&Rs of the Association:

APPROVE

DISAPPROVE

Response must be received to meet the quorum requirement of the corporation. The percentage of approvals necessary to pass said action is 75% of the total voting power of the Association.

This ballot must be received by _____ in order to be counted. The Board of Directors reserves the right to extend the close of balloting twice upon Board approval for such periods of time as the Board believes appropriate and reasonable.

Dated: _____
[Signature]

[PRINT or TYPE Name]

[Address]

[Unit Number]

PLEASE COMPLETE THIS BALLOT, DATE, SIGN
AND RETURN IT IN THE ENVELOPE PROVIDED.

Recording Requested by:
JOEL M. KRIGER, ESQ.

When Recorded, Mail to:
FAIRWAY VISTAS I OWNERS ASSOC.
c/o Strom Management
7920 Miramar Rd., Ste. 113
San Diego, CA 92126
Attn: Linda Strom

(Space Above for Recorder's Use)

FIRST RESTATED DECLARATION

of

COVENANTS, CONDITIONS & RESTRICTIONS

of

**Fairway Vistas 1 Owners
Association**



FIRST RESTATED DECLARATION OF
COVENANTS, CONDITIONS & RESTRICTIONS OF
Fairway Vistas I Owners Association

The Declaration of Covenants, Conditions, and Restrictions for FAIRWAY VISTAS I OWNERS ASSOCIATION, executed by McKellar Development of La Jolla, a California corporation, ("Declarant"), and recorded on June 15, 1984, as Document No. 84-226311, of the Official Records of San Diego County, California ("Original Declaration"), which affects all of the Properties described and commonly known as FAIRWAY VISTAS I OWNERS ASSOCIATION and all subsequent amendments thereto are hereby amended and restated in their entirety to read as follows:

RECITALS

A. Declarant was the original owner of that certain real property ("Properties") located in the City of San Diego, County of San Diego, State of California, which is more particularly described as follows:

Parcels 1, 2 and 3 of Parcel Map No. 13193, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, February 29, 1984.

B. Declarant conveyed the Properties, subject to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

C. It was the further intention of the Declarant to sell and convey residential Condominiums, subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in this Declaration and which are intended to be in furtherance of a general plan for the subdivision, development, sale and use of the Properties in furtherance of a plan of condominium ownership as described in Section 1351(e) of the California Civil Code.

Finally, it was the intention of Declarant that the "Recreational Lot" be owned and maintained by the Association, but reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of the Governing Documents.

D. There currently exists upon the above-described real property a Common Interest Subdivision subject to the provisions of the Davis-Stirling Common Interest Subdivision Act (California Civil Code Section 1350, et seq.).

E. On _____, 19____, _____ percent of the Owners of Condominiums within the Properties voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in the Original Declaration. It was the intention of said Owners to replace the Original Declaration, in its entirety, with the recordation of this Declaration. The Owners' action to amend and restate the Original Declaration as set forth herein and the fact that the requisite percentage of affirmative votes required in the Original Declaration was achieved, is attested by the execution of this First Restated Declaration by duly authorized officers of the Association, as required by California Civil Code Section 1355(a). As so amended and restated, the easements, covenants, restrictions and conditions set forth herein shall run with the Properties and shall be binding upon all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1 *Articles* means the Association's Articles of Incorporation and their amendments.

Section 1.2 *Assessment* means any Regular, Special or Special Individual Assessment made or assessed by the Association against an Owner and his or her Condominium in accordance with the provisions of Article IV of this Declaration.

Section 1.3 *Association* means the FAIRWAY VISTAS I OWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, its successors and assigns.

Section 1.4 *Bernardo Heights Declaration* means the Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights, recorded on September 30, 1980, as File/Page No. 80-319018 in the Office Records for San Diego County, and all amendments thereto.

Section 1.5 *Board* means the board of directors of the Association.

Section 1.6 *Bylaws* means the Association's Bylaws and their amendments.

Section 1.7 *Common Area* means the entire Development except all Units and the Recreational Lot.

Section 1.8 *Condominium* means an estate in real property as defined in California Civil Code Section 783 consisting of (i) an undivided interest as a tenant-in-common in the Common Area of the Development, (ii) a separate, fee interest in a unit shown and described on the Condominium Plan, (iii) membership in the Association and (iv) all exclusive and nonexclusive easements appurtenant to such Unit as set forth herein, including but not limited to Exclusive Use Areas and the right to use the Recreational Lot subject to the provisions hereof.

Section 1.9 *Condominium Plan* means the condominium plan recorded pursuant to California Civil Code Section 1351 respecting the Development of any of the Condominium Property thereon and any amendments to the plan.

Section 1.10 *Declarant* means McKELLAR DEVELOPMENT OF LA JOLLA, a California corporation, its successors and assigns, if such successors and assigns acquire or hold record title to any portion of the Development for development purposes.

Section 1.11 *Declaration* means this instrument, as it may be amended from time to time. The "Original Declaration" means and refers to the document referenced in the Preamble to this Declaration together with all amendments and annexations thereto, adopted prior to adoption of this Declaration.

Section 1.12 *Development* or *Project* means the Real Property, and all easements, divided or to be divided into condominiums, including all structures and improvements on it. The Development is a statutory condominium project as defined in California Civil Code Section 1350(3).

Section 1.13 *Exclusive Use Area* shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner as shown and described on the Condominium Plan, and shall consist of patios, porches, and/or balconies.

Section 1.14 *Governing Documents* is a collective term that means and refers to this Declaration and to the Articles, the Bylaws, and the Association Rules.

Section 1.15 *Improvement* means and includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, decks, fences, private streets, swimming pools, landscaping, landscape structures, skylights, solar heating equipment, spas, antennas, utility lines, or any structure of any kind. In no event shall the term *Improvement* be interpreted to include projects which are restricted to the Unit interior and which do not involve the roof of any load bearing wall thereof.

Section 1.16 *Member* means every person or entity who holds a membership in the Association.

Section 1.17 *Mortgage* means a mortgage or deed of trust encumbering a condominium or other portion of the Development. A Mortgagee shall include the beneficiary under a deed of trust, including assignees of any original beneficiary. An institutional Mortgagee is a Mortgagee that is a bank or savings and loan association or established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency. A first Mortgagee is a Mortgagee which is prior and senior to all other Mortgagees encumbering the same property.

Section 1.18 *Owner* means each person or entity holding a record ownership interest in a Condominium. *Owner* shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation or as a contract purchaser.

Section 1.19 *Recreational Lot* means Lot 2 of said County of San Diego Tract 9176, together with the improvements thereon, which include, among other things, a swimming pool, spa, restrooms and similar or related facilities.

Section 1.20 *Unit* means the elements of a Condominium that are not owned in common with the other owners of Condominiums in the Development. Such Units and their respective elements are more particularly described in the Condominium Plan. The boundaries of a Unit are shown and described on the Condominium Plan. The existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries rather than the description expressed in the deed or plans, regardless of minor variance between boundaries shown on the plans or in the deeds and those of the building and regardless of settling or lateral movement of the building. Whenever reference is made in this Declaration, in the Condominium Plan, in any deed or elsewhere, to a Unit, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements, which includes a parking garage appurtenant to each Unit and to any and all exclusive easements appurtenant to such Unit over Common Area, if any.

ARTICLE II

PROPERTY RIGHTS

Section 2.1 Property Subject to Declaration.

All the Real Property previously described in the Preamble and the improvements thereon, shall be subject to this Declaration. The real property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the limitations, restrictions, easements, covenants, conditions, liens and charges as set forth in the Bernardo Heights Declaration. All of the limitations, restrictions, easements, covenants, conditions, liens and charges as set forth in the Bernardo Heights Declaration shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the Real Property, and shall be binding upon and inure to the benefit of the successors in interest of such parties.

Section 2.2 Elements of Condominium.

Ownership of each Condominium within the Project shall include a Unit; an undivided interest in the Common Area, as specified in the deed to each owner; exclusive use Common Area as designated in the Condominium Plan; a membership in the Association; and any exclusive or nonexclusive easement or easements appurtenant to such Condominium over the Common Area as described in this Declaration, the Condominium Plan and the deed to the Condominium. No Owner may sell, assign, lease, or convey (i) his interest in the Common Area separate and apart from his Living Unit, nor (ii) his interest in any Exclusive Use Area separate and apart from his interest in the Common Area and his Living Unit, nor (iii) his Living Unit separate and apart from his Exclusive Use Areas.

Section 2.3 Right of Entry by Association.

Each Condominium and its Unit or the Common Area, as the case may be, shall be subject to the following rights of entry and use: The right of the Association, or its agents, to enter any of the Units to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Common Area or the owners in common; watering, planting, cutting, removing, and otherwise caring for the landscaping upon the Common Area, cleaning, repairing, replacing and otherwise maintaining underground utility lines serving each Unit. The rights shall be immediate in case of an emergency originating upon or threatening any Unit, whether or not its owner is present. In the case of a nonemergency entry, the

owner shall be given a minimum of 24 hours notice, and entry shall only be permitted during normal business hours or except as agreed to by the owner.

Section 2.4 Nonexclusive Easements.

Each Member shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to, each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to the right of the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

Section 2.5 Partition Prohibited.

The Common Areas shall remain undivided as set forth above. Except as provided by California Civil Code Section 1359 or authorized under this Declaration, no owner shall bring any action for partition of the Common Areas, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the Project. Judicial partition by sale of a single Condominium owned by two (2) or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single Condominium is prohibited.

Section 2.6 Encroachments.

If any portion of the Common Area encroaches on any Unit or if any portion of a Unit encroaches on the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements. If any structure containing a Unit is partially or totally destroyed and then rebuilt and any encroachment on the Common Area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Area are made subject to such easements.

Section 2.7 Delegation of Use.

Any Owner may delegate his rights of use and enjoyment of the Project, including any recreational facilities, to the members of his family, his guests, tenants, employees, and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules, subject however, to this Declaration. However, if an Owner has sold his Condominium to a contract purchaser or has leased or rented it, the Owner, members of the Owner's family guests, tenants, employees, and

invitees shall not be entitled to use and enjoy any of such rights in the Project, including the recreational facilities, while the Owner's Condominium is occupied by the contract purchaser or tenant. Instead, the contract purchaser, or tenant, while occupying such Condominium, shall be entitled to use and enjoy such rights, including the recreational facilities, and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were an Owner during the period of his occupancy.

Each Owner shall notify the Secretary of the Association of the names of any contract purchasers or tenants of such Owner's Condominium. Each Owner, contract purchaser, or tenant also shall notify the Secretary of the Association of the names of all persons to whom such Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or performance of the covenants, conditions and restrictions contained in this Declaration.

Any lease, rental agreement or contract of sale entered into between an Owner and a tenant or contract purchaser of a Condominium shall require compliance by the tenant or contract purchaser with all of the covenants, conditions and restrictions contained in this Declaration, which provision shall be for the express benefit of the Association and each Owner. The Association and each Owner shall have a right of action directly against any tenant or contract purchaser of an Owner, as well as against the Owner, for nonperformance of any of the provisions of this Declaration to the same extent that such right of action exists against such Owner.

Section 2.8 Leasing.

An Owner is permitted to lease or rent Owner's Condominium. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all terms and provisions of this Declaration, the Articles of Incorporation, the Bylaws, and the Association Rules; and any lease or rental agreement shall comply with Section 2.7 of this Declaration and shall specify that failure to abide by such provisions shall be a default under the lease or rental agreement. No property shall be leased or rented for less than a thirty-day period.

Section 2.9 Owners' Right of Entry to Adjacent Units.

Owners or their representatives shall have the right to enter the Unit or Exclusive Use Area of any other Owner to perform permissible installations, alterations or repairs to heating, plumbing, mechanical or electrical services, including installation of television antennas and related cables, if requests for entry are made in advance and such entry is at a time convenient to the Owner whose Unit is being entered. In case of emergency, such right of entry shall be immediate. Such action shall be made with as little inconvenience to the Unit Owner as possible and any damage caused thereby shall be repaired by the entering Owners.

Section 2.10 Recreational Lot.

The Recreational Lot is owned by the Association. Each Owner who has an incident of membership in the Association, shall have the same rights to use and enjoy the Recreational Lot as that Owner has to use and enjoy the Common Area, subject to the same limitations as apply to the Common Area as set out herein, and subject further to the provisions of this Declaration and any rules or regulations adopted from time to time by the Board in regard to the use thereof. The powers and duties and limitations of the Association in regard to such Recreational Lot shall likewise be the same as set out in this Declaration in regard to the Common Area. A transfer or conveyance (by operation of law or otherwise) of a Condominium shall transfer or convey the transferor's rights to use and enjoy the Recreational Lot.

ARTICLE III

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

Section 3.1 Association to Manage Common Areas.

The management of the Common Area shall be vested in the Association in accordance with its Governing Documents. The members covenant and agree that the administration of the project shall be in accordance with the provisions of this Declaration, the Articles, Bylaws and Rules of the Association.

Section 3.2 Membership.

The owner of a Condominium shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with this Declaration, the Articles, and Bylaws of the Association.

Section 3.3 Transfer.

The Association membership held by any owner in the property shall not be transferred, pledged or alienated in any way except upon the sale of an ownership interest and then only to the purchaser. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the owner should fail or refuse to transfer the membership registered in his name to the purchaser of such Unit, the Association shall have the right to record the transfer upon the books of the Association.

Section 3.4 Voting Rights.

The Association shall have one class of membership. When more than one person holds an interest in any Condominium, all such persons shall be members. Each Condominium in the property is entitled to one vote. The vote for such Condominium shall be exercised as the owners of interest therein decide, but in no event shall more than one vote be cast with respect to any Condominium.

Section 3.5 Joint Owner Disputes.

The vote for each such Condominium may be cast only 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 or owners cast a vote representing a certain Condominium, it will thereafter be conclusively presumed for all purposes that he or they were acting with the authority and consent of all other owners of the same Condominium. In the event more than one vote is cast for a particular Condominium, none of said votes shall be counted and all of said votes shall be deemed void.

ARTICLE IV

ASSESSMENTS

Section 4.1 Creation of the Lien and Personal Obligation of Assessments.

Each owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments for purposes permitted herein, and (3) individual assessments (as more fully described in Section 4.9 herein); such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Unit and shall be a continuing lien upon the separate interest against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment lien. Each such assessment together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such Unit at the time when the assessment fell due. No member may exempt himself from liability for this contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Unit.

Section 4.2 Purpose of Assessments.

The assessments levied by the Association shall be used exclusively to promote the economic interest, recreation, health, safety, and welfare of all the residents in the entire Project and for the improvement and maintenance of the Common Area and those other portions of the property for which the Association is responsible and for the common good of the Project.

Section 4.3 Annual Assessment.

The Board of Directors shall determine and fix the amount of the annual assessment against each Unit in accordance with the procedures described below.

Section 4.3.1 Preparation of Annual Budget

Not less than 45 nor more than 60 days prior to the beginning of the Association's fiscal year, the Board shall estimate the total amount required to fund the Association's anticipated Common Expenses for the next succeeding fiscal year (including additions to any reserve fund established to defray the costs of future repairs, replacement or additions to the

Common Facilities) by preparing and distributing to all Association Members a budget. If the Board fails to distribute the budget for any fiscal year within the time period provided for in this section, the Board shall not be permitted to increase regular assessments for that fiscal year unless the Board first obtains the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association.

Section 4.3.2 Limits for Increases of Annual and Special Assessments.

The Board of Directors of the Association 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 aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of owners casting a majority of the votes at a meeting or election of the Association at which a quorum is present.

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 Area for which the Association is responsible where a threat to personal safety is discovered.
- (3) An extraordinary expense necessary to repair or maintain the Common Area that could have not been reasonably foreseen by the Board in preparing and distributing the current year's operating budget.

Section 4.3.3 Required Notice of Assessment Increases.

Whenever there is an increase in regular or special assessments of the Association, all members shall be notified by first-class mail, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

Section 4.4 Special Assessments for Capital Improvements or Extraordinary Expenses; Reserves for Replacement.

Section 4.4.1 Right of Board to Levy Special Assessments.

The Board of Directors may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for extraordinary expenses incurred by the Association, provided that in the event special assessments exceed in the aggregate five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, the vote or written consent of a majority of those voting of the Association where a quorum is represented shall be required. A special assessment levied pursuant Civil Code Section 1365.5(c) for the purpose of restoring reserve funds transferred to operating accounts is not subject to the five percent limitation noted herein or in Section 4.3.

Section 4.4.2 Reserve Contributions and Accounts.

As part of the regular annual assessments for maintenance authorized above, the Board of Directors shall annually fix the amount to be contributed pro rata by each member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. The Board shall maintain a separate account for those funds. The Board shall fix the method of payment of such assessments and shall be empowered to permit either lump sum or monthly payments. Separate records shall be maintained for all funds deposited to the said account, which shall be designated as a Reserve Account.

Amounts received by the Association as contributions, assessments or dues from the members shall be held in one or more accounts. Deposits shall be made, and funds accounted for so that reserves for capital improvements and for replacement, can be clearly separated from funds for operating expenses or repair and maintenance funds. Capital improvement and replacement funds shall be used solely for capital improvements and replacements of those areas within the Project for which the association has the responsibility to maintain.

Section 4.5 Uniform Rate of Assessment.

Except as provided in this Declaration, regular and special assessments must be fixed at a uniform rate for all Condominiums. A special assessment against Members to raise funds for the rebuilding or major repair of a portion of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit of the Condominium to be assessed to the total square footage of the aggregate floor area of Units in all Condominiums to be assessed.

Section 4.6 Effect of Nonpayment of Assessments.

Regular and special assessments are delinquent fifteen (15) days after they become due. A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater shall be imposed upon any delinquent payment. Interest on delinquent assessments and late charges shall be imposed at an annual percentage rate of twelve percent (12%) interest commencing thirty (30) days after the assessments become due. Late charges and interest on past due amounts may be modified by the board in accordance with any changes permitted by state law.

Section 4.7 Transfer of Unit by Sale or Foreclosure.

Sale or transfer of any Unit shall not affect the assessment lien. However, the sale of any Unit pursuant to mortgage foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 4.8 Enforcement; Remedies.

If any annual or special assessment is delinquent, the Association may record a notice of delinquent assessment and establish a lien against the condominium of the delinquent owner, notwithstanding any provision of this Declaration to the contrary, the lien of the assessment lien provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust upon any condominium. The notice of delinquent assessment shall state the amount of the assessment, collection costs, attorney's fees, late charges, and interest, a description of the condominium against which the assessment and other sums are levied, the name of the record owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any agent designated by the Association.

An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to California Civil Code Sec. 2934(a). Any sale shall be conducted in accordance with the provisions of Secs. 2924, 2924(b), 2924(c), 2924(f), 2924(g), and 2924(h) of the California Civil Code, or any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly against an owner for breach of the personal obligation to pay assessments.

The Association, acting on behalf of the condominium owners, shall have the power to bid for the condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

Section 4.9 Individual Assessments.

In addition to the special assessments levied against all Owners in accordance with for in Section 4.4 above, the Board of Directors may impose individual assessments against an Owner in any of the circumstances described in subparagraphs (i) through (iii) below, provided that no individual assessments may be imposed against an Owner pursuant to this Section 4.9 until the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Section 7.5 of the Bylaws, and, if appropriate, has been given a reasonable opportunity to comply voluntarily with the Association's Governing Documents. Subject to the foregoing, the acts and circumstances giving rise to liability for individual assessments include the following:

(i) Damage to Common Area or Common Facilities. In the event that any damage to, or destruction of, any portion of the Common Area or the Common Facilities, including any portion of the Unit which the Association is obligated to repair and maintain is caused by the willful misconduct or negligent act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated by insurance proceeds) shall be assessed and charged solely to and against such Owner as an individual assessment.

(ii) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, to accomplish (a) the payment of delinquent Assessments, (b) any repair, maintenance or replacement to any portion of the Properties that the Owner is responsible to maintain under the Governing Documents but has failed to undertake or complete in a timely fashion, or (c) to otherwise bring the Owner and/or his Condominium into compliance with any provision of the Governing Documents, the amount incurred by the Association (including reasonable fines and penalties duly imposed hereunder, title company fees, accounting fees, court costs and reasonable attorneys' fees) shall be assessed and charged solely to and against such Owner as an individual assessment.

(iii) Move-in/Move-out Charges. In addition to the annual assessments and special assessments levied on each condominium, an assessment entitled a "move-in/move-out" charge shall be assessed against each condominium at the time escrow closes on the conveyance of title to such condominium, if title is transferred, or as of the date a new tenant takes possession of the Unit, if the Unit is leased. The move-in/move-out charge shall be for the purpose of covering the reasonable and necessary expenses incurred by the association as a result of the change of ownership or possession of the condominium. The move-in/move-out charge shall be in an amount to be reasonably determined from time to time by the Board.

Section 4.9.1 Levy of Individual Assessment and Payment.

Once an individual assessment has been levied against an Owner for any reason described, and subject to the conditions imposed, in this Section 4.9, such individual assessment shall be recorded on the Owner's account, notice thereof shall be mailed to the affected Owner and the individual assessment shall thereafter be due as a separate debt of the Owner payable in full to the Association within 30 days after the mailing of notice of the Assessment.

Section 4.9.2 Limitation on Right to Lien for Special Individual Assessments. With the exception of individual assessments imposed by the Association's Board of Directors to recover reasonable late payment penalties for delinquent Assessments and/or charges to reimburse the Association for its reasonable costs (including attorneys' fees) of collecting delinquent Assessments, individual assessments shall not be recoverable through the imposition of a lien against the Owner's Condominium enforceable through foreclosure, but the same may be recovered by the Association through other legal processes. Individual assessments relating to delinquent Assessments shall be subject to imposition of a lien and enforceable through foreclosure or sale under a power of sale for failure of an Owner to pay such Assessment, all as more particularly provided in this Article IV, Section 4.8.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

Section 5.1 General Powers and Authority.

The Association shall have all the powers of a nonprofit corporation under California law, subject only to the limitations in the Governing Documents of the Association. It may perform all acts which may be necessary for or incidental to the performance of the obligations and duties imposed upon it by this Declaration or the other Governing Documents. Its powers shall include, but are not limited to, the following:

Section 5.1.1 Assessments.

The Association shall have the power to establish, fix, and levy assessments against the members in accordance with the procedures set out in this Declaration and subject to the limitations therein.

Section 5.1.2 Adoption of Rules.

The Association shall have the power to adopt reasonable operating rules governing the use of the Common Area and any facilities located thereon, and of any other Association property. Such rules may include, but are not limited to, reasonable restrictions on use by the members and their guests, rules of conduct, and the setting of reasonable fees for the use of recreational facilities. A copy of the current Association rules shall be given to each member.

Section 5.1.3 Enforcement of Violations.

In addition to any other enforcement rights described in this Declaration and the Bylaws, or authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements, imposed by this Declaration, the Bylaws, or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws, or Association Rules:

- (i) impose monetary penalties, including late charges and interest,

- (ii) suspend voting rights in the Association,
- (iii) suspend use privileges for the Common Area, and,
- (iv) pursue mediation, arbitration, and/or injunctive relief in accordance with Section 13.2 of this Declaration.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees. The Association, in its sole discretion, may resolve or settle any dispute, including any legal action, under such terms and conditions as it considers appropriate.

The enforcement of monetary penalties is subject to the restrictions described in the Bylaws, Section 7.5.

Section 5.1.4 Delegation of Authority.

The Association, acting through the Board, shall have the power to delegate its authority, duties, and responsibilities to such committees, officers, or employees as are allowed under the Governing Documents. The Board of Directors may contract for the assistance of a reputable property management agent to assist it and its officers in carrying out its duties.

Section 5.1.5 Right of Entry.

The Association's agents or employees shall have the right to enter any Unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the member as is practicable, and in accordance with Section 2.3 of this Declaration.

Section 5.1.6 Easements.

The Association shall have the authority, by document signed or approved by a majority of the total voting power of the Association, to grant easements in addition to those shown on the map, where necessary for utilities, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the condominiums.

Section 5.1.7 Acquisition and Disposition of Property.

The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association.

Section 5.1.8 Loans.

The Association shall have the power to borrow money in accordance with the provisions contained in its Bylaws, Section 7.3.

Section 5.1.9 Dedication.

The Association shall have the power to dedicate all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication shall be effective unless approved by three-fourths (3/4) of the total voting power of the Association.

Section 5.1.10 Contracts.

The Association shall have the power to contract for goods and/or services for the Common Area(s) facilities and interests, or for the Association, subject to limitations of the Governing Documents.

Section 5.1.11 Expenditure of Reserve Funds.

The Board of Directors may only expend funds designated as reserve funds for the purpose of repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.

Section 5.1.12 Transfer of Reserve Funds.

The Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within one year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the common interest development, delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of

these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this section. This special assessment is not subject to the limitations imposed by Sections 4.3 and 4.4 of this Declaration.

Section 5.1.13 Cable Television.

The Board has the authority, if it deems it in the best interests of the Association, to contract and pay for bulk rate cable television services to be provided to the individual members on such terms and conditions as the Board deems proper. The cost of said bulk rate cable television services may be paid for out of the general operating funds of the Association and included in the Association's operating budget.

Section 5.1.14 Prosecution and Defense of Lawsuits.

The Board has the authority to prosecute or defend, in the name of the Association, any action affecting or relating to the Common Area or property owned by the Association, and any action in which all or substantially all the Owners have an interest.

Section 5.1.15 Control of Guest and Unassigned Parking.

The Board has the right to assign, rent, or otherwise designate and control use of guest and unassigned parking within the Common Area to Owners only (other than those portions subject to exclusive easements appurtenant to Condominiums, if any.) The Board shall have the right to revoke any such assignments.

Section 5.2 Duties of the Association.

In addition to the duties delegated to the Association or its agents and employees elsewhere in these Governing Documents, the Association shall be responsible for the following:

Section 5.2.1 Maintenance and Operation of Common Areas.

The Association, acting through the Board, shall operate and maintain the Common Areas and the facilities located thereon; such duty shall include providing maintenance of the Common Areas as provided in Article VI.

Section 5.2.2 Financial Statements.

The Association shall regularly prepare, review and distribute financial statements to the members in accordance with the Bylaws.

Section 5.2.3 Insurance.

The Association shall maintain such policy or policies of insurance as are required by this Declaration.

Section 5.2.4 Discharge of Liens.

The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the member or members responsible for the existence of the lien (after notice and a hearing, as provided in the Bylaws).

Section 5.2.5 Assessments

The Association shall fix, levy, collect, and enforce assessments.

Section 5.2.6 Payment of Expenses.

The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business, including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association.

Section 5.2.7 Enforcement.

The Association shall enforce this Declaration.

Section 5.2.8 Limitation on Board Authority.

Except with the vote or written assent of owners casting a majority of the votes at a meeting or through a mail ballot where a quorum is represented, the Board shall not take any of the following actions:

(i) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;

(ii) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member for expenses incurred in carrying on the business of the Association; or

(iii) Enter into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one year, with the following exceptions:

(a) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

(b) Prepaid casualty or liability insurance policies not to exceed three years' duration provided the policy permits for short rate cancellation by the insured.

Section 5.2.9 Conduct Reserve Studies.

At least once every three years the Board of Directors shall cause a study of the reserve account requirements of the common interest development to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. The study required by this subdivision shall at a minimum include:

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

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

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

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

Section 5.2.10 Bernardo Heights Declaration.

The Association shall fulfill its obligations under the Bernardo Heights Declaration and collect assessments provided for under the Bernardo Heights Declaration if so requested by the Community Board (as defined in the Bernardo Heights Declaration).

Section 5.3 Limitation on Liability of Officers and Directors.

No director, officer, committee member, employee, or other agent of the Association, when acting in such capacity, shall be liable to any owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person has acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association.

ARTICLE VI

MAINTENANCE RESPONSIBILITIES

Section 6.1 Association Maintenance Responsibilities.

The Association shall maintain and repair the Common Area and all improvements, landscaping, equipment, furnishings and facilities thereon, except any Exclusive Use Areas for which the respective Owners thereof have the duty to maintain and repair.

Section 6.2 Owner Maintenance Responsibilities

Each Owner at his own expense shall be responsible for the maintenance and repair of the interior of his Unit, his Exclusive Use Areas (if any), the windows of his Unit, and the plumbing, heating and cooling systems servicing his Unit, whether such systems are located within, above or underneath the Unit or within the exterior or interior bearing walls of such Unit. The Association shall be responsible for the maintenance and repair of any of the above-described systems if such work would affect the structural integrity of any portion of the Common Area or if such work involves equipment or facilities used in common by all or any of the Owners; provided, however, that in the event such maintenance or repair is attributable to the extraordinary use or abuse of an Owner or a few Owners, the cost of such work may be assessed to such Owner or Owners.

Section 6.3 Recovery of Costs of Certain Repairs and Maintenance.

(a) In the event that the need for maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association through the imposition of a Special Individual Assessment against the offending Owner in accordance with Article IV, Section 4.9 hereof.

(b) In the event that an Owner fails to perform maintenance functions for which he or she is responsible, the Association may give written notice to the offending Owner with a request to correct

the failure within 15 days after receipt thereof. If the Owner refuses or fails to perform any necessary repair or maintenance, the Association may exercise its rights under Article II, Section 2.3, to enter the Owner's Unit/Lot and perform the repair or maintenance so long as the Owner has been given notice and the opportunity for a hearing.

Section 6.4 Cooperative Maintenance Obligations.

To the extent necessary or desirable to accomplish the Association's maintenance obligations hereunder, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

ARTICLE VII

USE RESTRICTIONS

Each Owner of a Condominium shall be responsible for ensuring that the Owner's family, guests, tenants and all occupants of the Owner's condominium comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. In addition to any rights the Association may have against the Owner's family, guests, tenants or occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or occupants.

Section 7.1 Residential Use.

Units shall be used for residential purposes only. In no event shall a residence be occupied by more individuals than permitted by applicable zoning laws or governmental regulations. An owner is permitted to lease or rent his or her unit subject to the provisions of Sections 2.7 and 2.8 of this Declaration.

Section 7.2 Right to Decorate; Maintenance of Interior Fixtures.

Each owner shall have the right at his sole expense to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim, perimeter walls of the Units and surfaces of the bearing walls and the partitions located within such Unit. Each Owner shall also have the right to substitute new finished surfaces in place of those existing on the ceilings, floors and walls. The Owner shall have the right to maintain floors and walls and to maintain, repair, paint, finish, alter, substitute and add or remove any fixtures attached to such ceiling, floors and walls. Notwithstanding the foregoing, windows can be covered only by drapes and shades and cannot be painted or covered by foil, paper or other similar materials.

Section 7.3 Offensive Conduct; Nuisances.

No noxious or offensive activities, including, but not limited to, repair of automobiles or other motorized vehicles (other than emergency repairs), shall be carried on within the Development. Nothing shall be done on or within the Development that may be or may become an annoyance or nuisance to the residents of the Development, or that in any way interferes with the quiet enjoyment of occupants of Condominiums. Unless otherwise permitted by the Association, no Owner shall (i) use power tools or maintain a hobby shop and/or (ii) serve food or beverages, cook, barbecue, or

engage in similar activities, except within such Owner's Unit, or (subject to Association's rules) any Exclusive Use Area appurtenant to such Unit.

Section 7.4 Parking Restrictions; Use of Parking Area.

Unless otherwise permitted by the Board, no automobile, boat, trailer, recreational vehicle, camper, truck in excess of 3/4 tons, or commercial vehicle shall be parked or left on any street or any part of the Development other than in any parking area designated by the Board for the parking and storage of such vehicles, including the garage area of a Unit. However, parking (i) for passenger vans and trucks not larger than the garage included for each Unit, and (ii) by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association rules. Garages shall be used for parking automobiles only and shall not be converted for living or recreational purposes, except that garages may be used for storage along the walls, so long as adequate space is left for parking of two vehicles. Except with the written consent of the Board, no Owner shall park anywhere in the Development more motor vehicles than there are parking spaces or garage spaces owned by, or assigned to such Owner.

Section 7.5 Signs.

No sign of any kind shall be displayed to the public view on or from any Condominium or the Common Area without the approval of the Board, except, one sign of customary size and reasonable dimensions advertising a Condominium for sale or for rent may be placed within each Unit or within the Common Area immediately adjacent thereto by the Owner of such Unit, the location and design of it to be subject to approval by the Board.

Section 7.6 Antennas, External Fixtures, Etc.

No television or radio poles, antennas, satellite dishes, flag poles, clotheslines, or other external fixtures other than those originally installed by Declarant or approved by the Board and any replacements shall be constructed, erected or maintained on or within the Common Area or any structures on it. No wiring, insulation, air conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the Board and their replacements shall be constructed, erected or maintained on or within the Common Area, including any structures on it.

Section 7.7 Fences, Etc.

No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Development except those that are within the Unit, or are installed in accordance with the original construction of the Development, and their replacements, or as are authorized and approved by the Board.

Section 7.8 Pets.

No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any Condominium or elsewhere within the Development except that (i) two (2) domestic dogs or two (2) cats, or a combination thereof, not to exceed two such animals, or (ii) fish in aquariums and birds inside bird cages may be kept as household pets within any Unit. Pets must not be kept, bred or raised for commercial purposes, and their maintenance must be approved by the Board. The Board shall have the right to establish and enforce additional rules and regulations and impose standards for the reasonable control in keeping household pets in, upon, and around the Properties to insure the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents. The Board may prohibit the continued residence of any pet or animal in the Properties which so interferes with the quiet enjoyment of other Owners that its continued presence is a nuisance. Any Owner whose pet is subject to such removal shall have the right to a hearing before the Board of Directors. Each person bringing or keeping a pet on the Development shall be liable pursuant to laws of the State of California to other Owners, their family members, guests, invitees, tenants, and contract purchasers, and their respective family members, guests, and invitees for any damage to persons or property caused by any pet brought on or kept on the Development by such person or by members of his family, his guests or invitees.

Section 7.9 Restricted Use of Recreational Vehicles.

No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while located on the Development.

Section 7.10 Trash Disposal.

Trash, garbage or other waste shall be kept only in sanitary containers. No Owner of a Condominium shall permit or cause any trash or refuse to be kept on any portion of the Development other than in the receptacles customarily used for it, which shall be located only in places specifically designated for such purpose or within the Owner's Unit (except on the scheduled day for trash pickup).

Section 7.11 Outside Drying and Laundering.

No exterior clothesline shall be erected or maintained, and there shall be no exterior drying or laundering of clothes on balconies, patios, porches, railings or other areas.

Section 7.12 Structural Alterations.

No structural alterations to the interior of any Unit shall be made and no plumbing or electrical work within any bearing or common walls shall be made by any Owner or permitted to be made, without the prior written consent of the Board and the Architectural Committee.

Section 7.13 Exterior Alterations.

No owner shall at his expense or otherwise make or permit to be made any alterations or modifications (including painting) to the exterior of the buildings, fences, railings or walls or landscaping situated within the Development without the prior written consent of the Architectural Committee as provided in Article VIII (which shall consider harmony with external design, color, and location with the Development as a whole) and the Board.

Section 7.14 Patios, Porches, and Balconies.

The Development has been designed to include in the Common Area an open patio, porches and/or a balcony appurtenant to some of the Units. The Owner of each such Unit shall have an exclusive appurtenant easement to use such patios, porches and/or balcony Exclusive Use Area, and such easement shall be specifically described in the deed for such Unit as an Exclusive Use Area. The general location and numerical designation of such patios, porches and/or balconies are set forth on the Condominium plan. Such Exclusive Use Area shall be subject to the terms of this Declaration. Each Owner shall have the right to place furniture and potted plants upon his patio, porch and balcony Exclusive Use Area, if any (subject to current rules and regulations of the Association.) Except as provided in this section, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Areas without the prior written consent of the Board.

Section 7.15 Right of Entry.

In making repairs or effecting maintenance, each Owner and the Association shall have the rights of entry on the terms and in the manner provided in Paragraphs 2.3 and 2.9 herein.

Section 7.16 Indemnification.

Each owner shall be liable pursuant to the laws of the State of California to the remaining Owners for any damage to the Development that may be sustained by reason of the negligence of that Owner, members of his family, his contract purchasers, tenants, guests or invitees.

Section 7.17 Owner's Obligation for Taxes.

To the extent allowed by law, each Unit (including the pro rata undivided interest in the Common Area and the membership of an Owner in the Association) shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to the first Mortgages under local law shall relate only to the individual Units and not to the Condominium Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor of said County against his or her Condominium and against his or her personal property.

Section 7.18 Compliance with Laws.

No Owner shall permit anything to be done or kept in his Unit that violates any permit, law, ordinance, statute, rule or regulation of any local, county, state or federal body.

Section 7.19 Insurance.

Nothing shall be done or kept in any Unit or in the Development that might increase the rate of, or cause the cancellation of, insurance on the Development, or any portion of the Development, without the prior written consent of the Board.

Section 7.20 No Personal Property in Common Areas.

No Owner shall allow furniture, furnishings, or other personal property belonging to such Owner to remain within any portion of the Common Area except the Exclusive Use Area appurtenant to such Owner's Unit and except as may otherwise be permitted by the Board.

ARTICLE VIII

ARCHITECTURAL CONTROL

Section 8.1 Architectural Control.

No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Architectural Committee appointed by the Board and the Board.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Architectural Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of an owner to paint the interior of his Unit any color desired.

Section 8.2 Architectural Committee.

The committee for the control of structural and landscaping architecture and design (Architectural Committee) within the subdivision shall consist of three members appointed by the Board or shall consist of the currently elected Board of Directors if a committee has not been previously appointed.

In the event the Committee fails to approve or disapprove plans and specifications within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

Section 8.3 Bernardo Heights Declaration.

In addition to obtaining approval of the Architectural Committee, all members shall be required to obtain approvals required under the Bernardo Heights Declaration.

ARTICLE IX

INSURANCE

Section 9.1 Liability Insurance.

The Association shall obtain and maintain comprehensive public liability insurance including property damage insuring the Association, any manager, the Declarant and the Owners and occupants of Condominiums, and their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area and any transportation vehicle owned by the Association and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for nonowned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use.

Section 9.2 Fire and Extended Coverage Insurance.

The Association also shall obtain and maintain a master or blanket policy of fire insurance for 100% of the current replacement cost of all of the improvements within the Development. The form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional First Mortgagees. If more than one institutional First Mortgagee has a loan of record against the Development, or any part of it, the policy and endorsements shall meet the maximum standards of the various institutional Mortgagees represented in the Development. The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent, and extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction, and a decision not to rebuild. The policy shall be in the amounts as shall be determined by the Board. The policy shall name as insured the Association and the Owners, and all institutional First Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described in this Declaration.

Section 9.3 Individual Fire Insurance Limited.

Except as provided in this Section, no Owner can separately insure his Unit or any part of it against loss by fire or other casualty covered by any insurance carrier under Section 9.2. If any Owner violates this provision, such Owner will be liable for any diminution in insurance proceeds otherwise payable pursuant to the provisions of Section 9.4 that result from the existence of such other insurance to the Association to the extent of any such diminution. An Owner can, however, insure his personal property against loss. In addition, any improvements made by an Owner within his Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as tenant's improvements. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association and Declarant.

Section 9.4 Trustee.

All insurance proceeds payable under Sections 9.2 and 9.3, and subject to the rights of the Mortgagees under Section 9.8, may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in San Diego County that agrees in writing to accept such trust.

Section 9.5 Other Insurance.

The Board may and, if required by any Mortgagee, shall purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild. The Board also shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees of the Development. The Board shall purchase and maintain fidelity bonds or insurance covering Members of the Board, officers, and employees of any management agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least one hundred and fifty percent (150%) of the estimated annual operating expenses of the Association including reserves. The Board shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance, that it deems necessary or that is required by any Mortgagee.

Section 9.6 Owner's Insurance.

An Owner may carry whatever personal liability and property damage liability insurance with respect to his Condominium that he desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any Mortgagee.

Section 9.7 Adjustment of Losses.

The Board is appointed attorney-in-fact by each Owner (with the exception of the Administrator of Veterans Affairs, an officer of the United States of America) to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Sections 9.1, 9.2 and 9.5. The Board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Section 9.8 Distribution to Mortgagees.

Any Mortgagee has the option to apply insurance proceeds payable on account of a Condominium, in reduction of the obligation secured by the Mortgage of such Mortgagee.

Section 9.9 Additional Insurance--FNMA.

Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for Condominium projects established by Federal National Mortgage Association and Government National Mortgage Association, so long as either is a Mortgagee or Owner of a Condominium within the project, except to the extent such coverage is not available or has been waived in writing by Federal National Mortgage Association or Government National Mortgage Association.

Section 9.10 Notice of Lapse, Cancellation or Modification.

Each policy of insurance shall provide that notice shall be given to the Association and each First Mortgagee listed as a scheduled holder of a first mortgage in said insurance policy at least ten (10) days prior to cancellation or substantial modification of any policy or fidelity bond, and upon lapse of any policy or fidelity bond.

ARTICLE X

DAMAGE OR DESTRUCTION

Section 10.1 Destruction; Proceeds 95% or More of Reconstruction Costs.

If there is a total or partial destruction of the improvements in the Development, and if the available proceeds of the insurance carried pursuant to Article IX are sufficient to cover not less than ninety-five percent (95%) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, Members then holding at least seventy-five percent (75%) of the total voting power of each class of Members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the Office of the San Diego County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 10.2 Destruction; Proceeds Less Than 95% of Reconstruction Costs.

If the proceeds of insurance are less than ninety-five percent (95%) of the costs of repair and reconstruction, repair and reconstruction may nevertheless take place if, within ninety (90) days from date of destruction, Members then holding at least fifty-one percent (51%) of the total voting power of each class of Members present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction will take place. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the office of the San Diego County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

Section 10.3 Rebuilding Procedures.

If the Members determine to rebuild, pursuant to Sections 10.1 or 10.2, the owner of each Unit located within a structure that has been totally or partially destroyed shall be obligated to contribute his proportionate share of the cost of reconstruction or restoration of the structure containing his Unit, over and above the available insurance proceeds. All Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area not comprising the structure within which a Unit is located. The proportionate share of each Owner shall be equal to the ratio of the square footage of the floor area of said Owner's Units to the

total square footage of the floor area of all Units. If any Owner fails or refuses to pay his proportionate share, the Board may levy a special assesment against the Condominium of such Owner which may be enforced under the lien provisions contained in Article IV or in any other manner provided in this Declaration. If any Owner disputes the amount of his proportionate liability under this section, such Owner may contest the amount of his liability by submitting to the Board within ten (10) days after notice to the Owner of his share of the liability written objections supported by cost estimates or other information that the Owner deems to be material and may request a hearing before the Board at which he may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the notice shall schedule a special meeting for Members for the purpose of acting on the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by a majority of the total voting power of the Members. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

Section 10.4 Rebuilding Contract.

If the Members determine to rebuild, the Board or its authorized representative shall obtain bids from at least three reputable contractors and shall award the repair and reconstruction work to the best qualified bidder as determined by the Board of Directors. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of the agreement. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

Section 10.5 Rebuilding Not Authorized or Permitted.

If the Members determine not to rebuild or if the Development cannot legally be reconstructed, then, subject to the rights of Mortgagees under Section 9.8, any insurance proceeds then available for such rebuilding shall be distributed to the Owner of each Condominium in proportion to his respective percentage interest in the Development determined by reference to an appraisal of the value of all Units immediately prior to the destruction prepared by an independent appraiser selected by the Board, to be completed within sixty (60) days of the recordation of the certification not to rebuild. The Board shall have the duty, within one hundred twenty days (120)

days from the date of such destruction, to execute, acknowledge and record in the office of the County Recorder of said County, a certificate declaring the intention of the Members not to rebuild.

Section 10.6 Minor Repair and Reconstruction.

In any case, the Board shall have the duty to repair and reconstruct improvements, without the need for consent of Members and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed Twenty Thousand Dollars (\$20,000). The Board is expressly empowered to levy a special assessment for the cost of repairing and reconstructing the improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in Section 10.3 (but without the consent or approval of Members despite any contrary provisions) in this Declaration.

Section 10.7 Revival of Right to Partition.

On recordation of a certificate described in Section 10.5, the right of any Owner to partition through legal action as described in Section 11.4 shall revive immediately.

ARTICLE XI

CONDEMNATION

Section 11.1 Sale by Unanimous Consent.

If an action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, timely written notice shall be given all first Mortgagees. On unanimous written consent of all the Owners and after written notice to all Mortgagees, the Development, or a portion of it may be sold.

Section 11.2 Distribution of Proceeds of Sale or Award.

On a sale or award occurring under Section 11.1 or 11.3 (below), the proceeds shall be distributed to the Owner and the Mortgagees of each Condominium affected as their respective interest may appear in proportion to the relative value of each affected Unit as determined by reference to an appraisal of the value of all such affected Units (as of the date immediately prior to the condemnation), conducted by an independent appraiser selected by the Board. The cost of such appraisal shall be deducted from the proceeds or award.

Section 11.3 Distribution of Condemnation Award.

If the Development, or a portion of it, is not sold but is instead taken, the judgment or agreement of condemnation shall by its terms apportion the award among the Owners and their respective Mortgagees, and if it does not, then the proceeds shall be apportioned pursuant to Section 11.2 above.

Section 11.4 Revival of Right to Partition.

On sale or on taking that renders more than fifty percent (50%) of the Units in the Development uninhabitable, the right of any Owner to partition through legal action shall revive immediately.

ARTICLE XII

PROTECTION OF MORTGAGEES

Section 12.1 Mortgage Permitted.

Any owner may encumber his Condominium with a mortgage(s).

Section 12.2 Subordination.

The lien of the assessments including interest, costs, and attorneys fees as provided for herein, shall be subordinate to the lien of any first Mortgage upon any Condominium.

Section 12.3 Amendment.

The prior written consent of (i) seventy-five percent (75%) of the holders of all first Mortgages (based upon one vote for each Mortgage held) and (ii) so long as there is a Class B membership in the Association any amendment to this Declaration shall require the prior approval of the Veterans Administration, and/or (iii) so long as a loan secured by the Veterans Administration (U.S.A.), or any Unit is owned by the United States pursuant to foreclosure thereunder the consent of Administrator of Veterans Affairs, an officer of the United States of America, shall be required for any material amendment to this Declaration, to the Articles and to the Bylaws. As used in this Section 12.3, the term "any material amendment" is defined to mean amendments to provisions of this Declaration, to the Articles, or to the Bylaws governing the following subjects:

12.3.1 The purpose for which the Development may be used;

12.3.2 Voting;

12.3.3 Assessments, collection of assessments, creation and subordination of assessment liens;

12.3.4 Reserves for repair and replacement of Common Area or Recreational Lot improvements;

12.3.5 Maintenance of Common Area or the Recreational Lot and improvements thereon;

12.3.6 Casualty and liability insurance and Fidelity Bonds;

12.3.7 Rebuilding or reconstruction of Common Area or the Recreational Lot and improvements thereon, in the event of damage or destruction;

12.3.8 Rights of use to and in the Common Area and the Recreational Lot;

12.3.9 Annexation of additional property; and

12.3.10 Any provision, which by its terms, is specifically for the benefit of first Mortgagees. or specifically confers rights on first Mortgagees.

Section 12.4 Restrictions on Certain Changes.

Unless at least seventy-five percent (75%) of the first Mortgagees of Mortgages encumbering Condominiums (based upon one [1] vote for each Mortgage) have given their prior written approval, neither the Association nor the Owners shall be entitled:

12.4.1 By act or omission to seek to abandon or terminate the Condominium project, except for abandonment provided by statute in case of substantial loss to the Development;

12.4.2 To change the pro rata Interest or obligations of any Unit for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Unit in the Common Area;

12.4.3 To partition or subdivide any Unit;

12.4.4 By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area or the Recreational Lot. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area or the Recreational Lot by the Association or the Owners shall not be deemed a transfer within the meaning of this clause;

12.4.5 To use hazard insurance proceeds for losses in the Development for other than the repair, replacement or reconstruction of improvements, except as provided by statute in case of substantial loss to the Units Development;

12.4.6 To terminate professional management and commence self-management of the Project, if professional management has previously been required by any first mortgagee.

Section 12.5 Right to Examine Books and Records.

First Mortgagees can examine the books and records of the Association or the Condominium project as provided in Section 11.1 of the Bylaws and can require the submission of financial data concerning the Association or the Condominium project, including annual audit reports and financial statements as furnished to the Owners.

Section 12.6 Distribution of Insurance and Condemnation Proceeds.

No Unit Owner, or any other party, shall have priority over any right of first Mortgagees of Units pursuant to their Mortgages in case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the Condominium Development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees naming the Mortgagees as their interest may appear.

Section 12.7 Amenities.

All amenities shall be available for use by Owners and all such amenities with respect to which regular or special assessments for maintenance or other uses may be levied shall constitute Common Area or the Recreational Lot. All such amenities shall be owned (i) in fee by the Owners in undivided interests or (ii) by the Association free of encumbrances except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Association.

Section 12.8 Notices to Mortgagees of Record.

On any loss to, or taking in condemnation of, any Unit covered by a Mortgage, if such loss exceeds One Thousand Dollars (\$1,000), or on any loss to the Common Area, if such loss exceeds Ten Thousand Dollars (\$10,000), or on any taking of the Common Area, notice in writing of such loss or taking shall be given to each Mortgagee of record if such Mortgagee has filed a written

request for such notice with the Association. If any Owner of a Unit is in default under any provision of these covenants, conditions and restrictions, or under any provision of the Bylaws or the rules and regulations adopted by the Association, which default is not cured within thirty (30) days after written notice to such Owner, the Association shall give to the Mortgagee of record of such Owner written notice of such default and of the fact that said thirty (30) day period has expired, if such Mortgagee has filed a written request for such notice with the Association.

Section 12.9 Payments by Mortgagees.

Mortgagees of Condominiums may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area or Recreational Lot improvements or other insured property of the Association and, upon making any such payments, such Mortgagees shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying the provisions of this Article XII.

Section 12.10 Effect of Breach.

No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any Mortgage in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

Section 12.11 Effect of Foreclosure.

If any condominium is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the first Mortgage. On foreclosure of the first Mortgage, the lien for assessments or installments that has accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure purchaser taking title to the Condominium free of the lien for assessments, or installments that has accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure purchaser acquired title to the Condominium. The subsequently levied assessments or other charges may include previously unpaid assessments provided all Owners, including the

foreclosure purchaser, and his successors and assigns, are required to pay their proportionate share as provided in this Section.

Section 12.12 Non-Curable Breach.

Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is noncurable or of a type that is not practical or feasible to cure.

Section 12.13 Loan to Facilitate.

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

Section 12.14 Appearance at Meetings.

Because of its financial interest in the Development, any first Mortgagee may appear (but cannot vote) at meetings of the Members and the Board to draw attention to violations of this Declaration that have not been corrected or made the subject of remedial proceedings or assessments.

Section 12.15 Right to Furnish Information.

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

Section 12.16 Inapplicability of Right of First Refusal to Mortgagee.

No right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey the Owner's Condominium shall be granted to the Association without the consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Unit that may be granted to the Association (or other person, firm or entity) shall not apply to any conveyance or transfer of title to such Unit, whether voluntary or involuntary, to a Mortgagee which acquires title to or ownership of the Unit pursuant to the remedies provided in its Mortgage or by reason of foreclosure of the Mortgage or deed (or assignment) in lieu of foreclosure.

Section 12.17 Contracts With Declarant.

Any agreement between the Association and Declarant pursuant to which the Declarant agrees to provide services shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days written notice and shall have a maximum contract term of one (1) year; provided that the Board can renew any such contract on a year-to-year basis.

Section 12.18 Approval by FHA and VA.

So long as there is a Class B membership in the Association, the following action shall require the prior approval of the Veterans Administration: mergers and consolidations, special assessments, any amendment and any annexation.

Section 12.19 Conflicts.

In the event of any conflict between any of the provisions of this Article XII and any other provisions of this Declaration, the provisions of this Article XII shall control.

ARTICLE XIII

GENERAL PROVISIONS

Section 13.1 Enforcement.

The Association, or any member, or the successor in interest of any member shall have the right to enforce by proceedings at law or in equity, all restrictions, conditions, covenants, Association Bylaws and rules and regulations, reservations, liens and charges now or hereafter imposed by the provisions of this Restated Declaration or any amendment thereto, including the right to prevent the violation of any such restrictions, conditions, covenants or reservations, the right to recover damages or other dues for such violation; provided, however, that with respect to assessment liens, the Association shall have the exclusive right to the enforcement thereof. Failure to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Should the Association incur attorneys' fees in order to enforce the covenants, conditions and restrictions or the Association Bylaws or rules and regulations, it shall be entitled to recover such expenses from the responsible members.

Prior to the commencement of a civil action to enforce the Governing Documents, the party initiating the case shall comply with Civil Code Section 1354(b) by serving a Request for Resolution on the other party in accordance with this statute.

The Association and members' right of enforcement shall be subject to the provisions of Section 13.2 of this Declaration.

Section 13.2 Court Actions, Mediation, Arbitration.

Section 13.2.1

Court actions to enforce the Governing Documents may only be initiated on behalf of the Association upon approval of the Board.

Section 13.2.2

Before instituting any judicial action, arbitration, or other proceeding arising out of any Owner's or resident's failure or alleged failure to comply with any provision of Section 2.7, ("Delegation of Use"), Article VIII ("Architectural Control"), or Article VII ("Use

Restrictions"), the Association or Owner who desires to initiate such action ("Complaining Party") must make a good faith attempt to mediate the dispute.

Section 13.2.3

If mediation is unsuccessful at resolving any failure or alleged failure to comply with any provision of Section 2.7 ("Delegation of Use"), Article VIII ("Architectural Control"), or Article VII ("Use Restrictions"), the dispute shall be submitted to, and conclusively determined by, binding arbitration in accordance with this subparagraph, provided, however, that the provisions of this subparagraph shall not preclude any party from seeking injunctive or other provisional or equitable relief in order to preserve the status quo of the parties pending resolution of the dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that party's arbitration rights.

The arbitrator shall be selected and the arbitration conducted in accordance with the Commercial Arbitration rules of the American Arbitration Association.

The arbitrator's decision shall pertain, and shall be limited to the granting of damages not to exceed any party's actual out-of-pocket expenses and the costs of undertaking any repairs, maintenance, or reconstruction relating to the dispute, the award of any injunction or other equitable relief, and award of reasonable attorney's fees and costs to the prevailing party. In no event shall the arbitrator's award include any component for punitive or exemplary damages. Costs of the arbitration proceeding shall be borne as determined by the arbitrator.

Section 13.3 Severability.

Invalidation of any one of these covenants, conditions and restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.4 Term.

The covenants, conditions and restrictions of this Declaration shall run with and bind the Units, and shall inure to the benefit of and be enforceable by the Association or the owner of any Unit subject to this Restated Declaration, their respective legal representatives, heirs, successors, and assigns.

Section 13.5 Construction.

The provisions of this Restated Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the maintenance of a residential community of common recreational facilities and common areas. Paragraph headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

Section 13.6 Amendments.

This Restated Declaration of Covenants, Conditions and Restrictions may be amended by the affirmative assent or vote of a majority of the Owners of Units in the Property. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by an authorized officer of the Association and recorded in the County Recorder's Office of the County of San Diego. The prior written consent of First Mortgagees to any material amendments to the Declaration as defined in Section 12.3 shall be required to be obtained.

Section 13.7 Singular Includes Plural.

Whenever the context of this Restated Declaration requires same, the singular shall include the plural and the masculine shall include the feminine.

Section 13.8 Nonliability of Association for Water Damage.

The Association shall not be liable for damage to property in the project resulting from water which may leak or flow from outside of any Unit or from any part of the building, or from any pipe, drains, conduits, appliances or equipment, or from any other place or cause, unless caused by the gross negligence of the Association, its Board, officers, the manager or their staff.

Section 13.9 Notice of Breach

In the event of a breach of the Declaration, the Association may, but is not required as a prerequisite to pursuing enforcement, record with the County Recorder's Office a Notice of Breach. The Notice shall contain the name of the owner of the property, address and legal description along with a brief description of the breach making specific reference to that portion of the Declaration which is alleged to have been breached by the owner. The Notice shall specify additionally the actions necessary on the part of the owner to cure the breach. If the owner complies with the actions listed in the Notice of Breach, they will be entitled to have it immediately released by the Association.

Section 13.10 Bernardo Heights Declaration

If a provision of this Declaration should conflict with a provision of the Bernardo Heights Declaration, the provision of the Bernardo Heights Declaration shall take precedence over the conflicting provision in this Declaration and shall control.

IN WITNESS WHEREOF, FAIRWAY VISTAS I OWNERS ASSOCIATION, by and through its Board of Directors, hereby certifies that this Restated Declaration of Covenants, Conditions and Restrictions was duly adopted.

FAIRWAY VISTAS 1 OWNERS ASSOCIATION

By: _____
President

[Name Printed]

By: _____
Secretary

[Name Printed]

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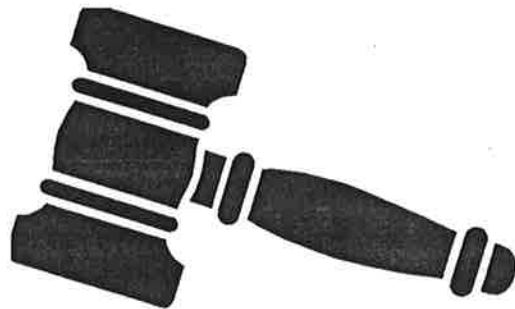
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RESTATED AND AMENDED

BYLAWS

OF

**Fairway Vistas 1
Owners Association**



Approved by the Membership on _____

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ARTICLE I

NAME AND LOCATION

The name of the corporation is FAIRWAY VISTAS I OWNERS ASSOCIATION, hereinafter referred to as the *Association*. The principal office of the Association shall be located in the County of San Diego, California.

ARTICLE II

DEFINITIONS

Section 2.1 The definitions contained in the Declaration are incorporated by reference herein.

Section 2.2 *Declaration* shall mean and refer to the Covenants, Conditions and Restrictions applicable to the property recorded on the 15th day of June, 1984, as File/Page Number 84-226311, Official Records, San Diego County, all subsequent amendments thereto, and the First Restated Declaration of Covenants, Conditions and Restrictions upon its recordation by the County Recorder of San Diego County.

ARTICLE III

MEETING OF MEMBERS AND VOTING

Section 3.1 **Annual Meetings.**

Regular annual meetings of the Association shall be held within thirty (30) days of the same day of the same month of each year at a time and place designated by the Board of Directors.

Section 3.2 **Special Meetings.**

Special meetings of the members shall be called at any time by a majority of the Board of Directors, or by the president, or upon written request of the members representing five percent (5%) of the total voting power of the Association.

Section 3.3 Notice and Place of Meetings.

Written notice of each meeting of the members shall be given by, or at the direction of, the secretary when the meeting has been called pursuant to Section 3.2 above, by mailing a copy of such notice, first class mail, postage prepaid, at least ten (10) but not more than ninety (90) days before such meeting to each first lender who has requested notice and to all members, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, along with those matters the Board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. Except as otherwise provided by law, members at special meetings may only act on those matters which have been listed in the meeting's notice.

If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposal(s): (a) removing a Director without cause; (b) filling vacancies in the Board of Directors by the members; (c) amending the Articles of Incorporation; (d) approving a contract or transaction in which a Director has a material financial interest. Meetings shall be held within the project or at a meeting place within the same county, as close to the project as possible.

Section 3.4 Quorum.

The presence either in person or by proxy, at any meeting, of members entitled to cast a majority of the total voting power of the Association shall constitute a quorum for any action except as otherwise provided in the Declaration, or these Bylaws.

If, however, such quorum shall not be present or represented at any meeting, a majority of the members entitled to vote thereat shall have power to adjourn the meeting to a date not less than five (5) days and not more than thirty (30) days later, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present. A duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum; provided that at least twenty-five (25%) percent of the total voting power of the Association remains present in person and/or by proxy and provided further that any action taken shall be approved by at least a majority of the members required to constitute a quorum.

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

Section 3.5 Proxies.

At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary at or before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the members of his Unit, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a member prior to the counting of the vote, or upon the expiration of eleven (11) months from the date of the proxy.

Section 3.6 Membership and Voting.

Membership shall be held as provided in the Declaration. The members shall be owners and shall be entitled to (1) vote per each Unit. Only members in good standing and not delinquent in dues or fines shall be entitled to vote. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot. The vote of a majority of a quorum present, in person or proxy, shall decide any question brought before such meeting, unless the question is one upon which, by the express provision of statute or the Declaration, the Articles of Incorporation or these Bylaws, a different vote is required, in which case such express provision shall govern and control.

Section 3.7 Action Without Meeting.

Any action that may be taken at any annual or special meeting of members (except the election of Directors) may be taken without a meeting in accordance with the provision of California Corporations Code Section 7513. Written ballots must be solicited from all members and received from a number of members at least equal to the quorum applicable to a meeting of members. All such written ballots shall be filed with the secretary of the Association and maintained in the Association's records. All solicitations of ballots shall indicate the time by which the ballot must be returned to be counted.

Section 3.8 Parliamentary Procedure.

Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt.

ARTICLE IV

BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

Section 4.1 Number.

The affairs of this Association shall be managed by a Board of Five (5) Directors, all of whom must be members of the Association.

Section 4.2 Term of Office.

The term of office for Directors shall be two (2) years. The Directors shall serve staggered terms with two or three Directors being elected in alternate years. Unless sooner vacated, each Director shall hold office until the Director's term expires and a successor is elected.

Section 4.3 Removal; Vacancies.

Unless the entire Board is removed from office by the vote of Association members, an individual director shall not be removed prior to the expiration of his term of office if the votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire number of directors authorized at the time of the most recent election of directors were then being elected. In the event of death or resignation of a director, his successor shall be filled by approval of the Board at a duly held meeting or by a sole remaining director, and shall serve for the unexpired term of his predecessor. The members may elect a director at any time to fill any vacancy not filled by the directors. A vacancy created by removal of a director can be filled only by election of the members. Additionally, any member of the Board of Directors who has been absent without being excused by the Board from three (3) consecutive

Board meetings may be removed by the Board by a majority of Board members present at a Board meeting, a quorum being had.

Section 4.4 Compensation.

No director shall receive compensation for any service he may render to the Association. Any director may be reimbursed for his actual expenses, if reasonable, incurred in the performance of his duties.

Section 4.5 Indemnification of Officers and Directors.

Each director, officer, and committee member shall be indemnified by the Association and the members against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him by judgment or settlement in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a director, officer, or committee member of the Association, except in cases of fraud, gross negligence or bad faith of the director, officer, or committee member in the performance of his duties.

ARTICLE V

NOMINATION AND ELECTION OF DIRECTORS

Section 5.1 Nomination.

Nomination for election to the Board of Directors shall be made pursuant to reasonable procedures adopted by the Board of Directors from time to time. Nominations may also be made from the floor at the annual meeting. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

Section 5.2 Election.

The election of the Board shall be conducted at the annual meetings of the Association. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. All members shall be entitled to cumulate their votes for one (1) or more candidates for the Board. Voting for directors shall be by secret written ballot.

ARTICLE VI

MEETINGS OF DIRECTORS

Section 6.1 Regular Meetings.

Regular meetings of the Board of Directors shall be held monthly at such place and at such hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, excluding Saturday and Sunday.

Section 6.2 Special Meetings.

Special meetings of the Board of Directors shall be held when called by written notice signed by the president of the Association, or by any three (3) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by any one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication or facsimile, either directly to the director or to a person at the director's office who would reasonably be expected to communicate such notice promptly to the director, or (d) by telegram, charges prepaid. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Such notice shall be posted at a prominent place within the Common Area not less than seventy-two (72) hours prior to the scheduled time of the meeting. Notices sent by first class mail shall be deposited into the United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting. However, notice of the meeting need not be given to any governing body member who signed a waiver of notice or a written consent to holding of the meeting.

Section 6.3 Quorum.

A majority of the directors then in office shall constitute a quorum for the transaction of business. Every act performed or decision made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by a majority of the required quorum for that meeting.

Section 6.4 Open Meetings.

With the exception of Executive Sessions in accordance with paragraph 6.5 herein, all meetings of the Board shall be open to all members of the association. Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board; however, subject to reasonable rules and time limitations, the Board shall provide, at each meeting, an opportunity for members of the Association to address the Board.

Section 6.5 Executive Session.

The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, matters that relate to the formation of contracts with third parties, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. Any matter discussed in executive session shall be generally noted in the minutes of the Board of Directors. In any matter relating to the discipline of an Association member, the Board of Directors shall meet in executive session if requested by that member, and the member shall be entitled to attend the executive session.

Section 6.6 Telephone Meetings.

Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors participating in the meeting can hear one another, and all such directors shall be deemed to be present in person at such meeting.

Section 6.7 Waiver of Notice.

The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 6.8 Notice of Adjourned Meeting.

Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the directors who were not present at the time of adjournment, and shall be posted at a prominent place within the Common Area.

Section 6.9 Action Without Meeting.

Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

ARTICLE VII

POWER AND DUTIES OF THE BOARD OF DIRECTORS

Section 7.1 Powers and Duties.

The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the properties and may do all such acts and things as are not prohibited by the Declaration, Articles of Incorporation, or these Bylaws. The Board shall have the power to adopt, modify, and repeal such reasonable rules and regulations as it deems necessary and appropriate for the governance of the properties or the administration of the affairs of the Association and to impose sanctions for violations thereof, including without limitation, monetary fines and suspension of voting rights and right to use recreational facilities. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, by way of illustration, but not limitation:

(a) preparation and adoption of an annual budget, in which there shall be established the contribution of each member to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the assessments. Unless otherwise determined by the Board of Directors, the annual assessment against the proportionate share of the common expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(c) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve and using the proceeds to administer the Association;

(d) opening of bank accounts on behalf of the Association and designating the signatories required;

(e) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The books and vouchers accrediting the entries thereupon shall be

available for examination by the Members and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the times and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Members. All books and records shall be kept in accordance with generally accepted accounting practices;

(f) establishing and maintaining an adequate reserve fund for capital improvements, replacements and repairs;

(g) providing for the operation, care, upkeep, and maintenance of the area of common responsibility;

(h) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the Association, its property and the areas over which the Association is responsible and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(i) making, or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Area in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

(j) entering onto any Unit when necessary in connection with maintenance or reconstruction in accordance with the Declaration and these Bylaws;

(k) paying the costs of all services rendered to the Association or its members;

(l) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(m) enforcing by legal means the provisions of the Declaration, these Bylaws and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members concerning the Association;

(n) to adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the owners and their guests thereon, and to establish and impose monetary penalties, temporary suspensions of an owner's rights as a member, or other appropriate discipline for the infractions thereof or for violations of provisions of governing documents.

Section 7.2 Management Agent.

The Board of Directors shall have the power to employ a professional management agent or agents, at a compensation established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. The Board shall use every effort to secure a management contract that contains a termination clause permitting termination, with or without cause, upon no more than sixty (60) days' written notice. No management contract shall have a term in excess of one (1) year.

Section 7.3 Borrowing and Expenditures.

The Board of Directors shall have the power to borrow money and to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for the money borrowed or debts incurred so long as the vote or written consent of a majority of those voting of the Association where a quorum is represented has been obtained.

Section 7.4 Delegation.

The Board of Directors has the power to delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate to any nonboard member the authority to make expenditures for capital additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an owner or his tenant, lessee, guest or invitee with the Declaration or rules and regulations promulgated by the Board, or to make a decision to levy monetary fines, impose special assessments against individual Units, temporarily suspend an owner's rights as a member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy regular or special assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of assessments. The Board may delegate to a manager any of its other duties, powers or functions. Any such delegation shall be revocable by the Board at any time. Any such manager may be either a person or firm. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

Section 7.5 Procedure for Disciplinary Action.

In addition to the general powers of enforcement as described in the Declaration, the Association may discipline its members for violation of any of the provisions of the governing documents or Association Rules by suspending the violators' voting rights, privileges for use of the Common Area, and/or by imposing monetary penalties for such violations as long as the Association follows the following procedures prior to imposition of discipline:

(a) Any member or agent of the Association has the authority to request that a member or resident cease or correct any act or omission which appears to be in violation of the rules and regulations as set forth in the governing documents. Such informal request may be made before the formal disciplinary process is initiated.

(b) If the actions described in Section (a) prove unsuccessful, a written or oral complaint shall be made to the Board or manager specifying the details of the violation.

(c) At least fifteen (15) days prior to the next regular meeting of the Board of Directors, the Board shall send a letter to the violator and the owner of the Unit (if different parties), advising them of the complaint and their right to be heard.

(d) At the hearing before the Board of Directors any and all witnesses of the violation shall be present and state what they observed. The violators shall have the opportunity to cross-examine these witnesses and testify on their own behalf. The Board, after considering all evidence presented, shall decide whether or not a violation occurred.

(e) If the Board determines that a violation occurred, the Board may impose a fine. Any fine imposed by the Board may be suspended on reasonable conditions.

(f) The person filing the complaint and the violator will be informed in writing of the action taken by the Board within thirty (30) days of the date of the hearing.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 8.1 Enumeration of Officers.

The officers of this Association shall be a president and first and second vice-president who shall at all times be members of the Board of Directors, a secretary, a chief financial officer, and such other officers as the Board may from time to time by resolution create.

Section 8.2 Election of Officers.

The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 8.3 Term.

The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 8.4 Special Appointments.

The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 8.5 Resignation and Removal.

Any officer may be removed from office (but not from the Board, if he is also a Board member) by the Board with or without cause. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 8.6 Vacancies.

A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 8.7 Duties.

The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. He shall have the general powers and duties of management usually vested in the office of the President of a California nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

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

(c) Second Vice-President. The second vice-president shall act in the place and stead of the first vice-president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(d) Secretary. The secretary shall record or cause to be recorded the votes and keep or cause to be kept the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with the addresses; and shall perform such other duties as required by the Board.

(e) Chief Financial Officer. The chief financial officer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all promissory notes of the Association; shall keep proper books of account; shall prepare and shall distribute financial statements to each member as set forth in Article IX.

(f) Delegation of Duties. The foregoing duties may be delegated to a manager appointed by the Board.

Section 8.8 Agreements, Contracts, Deeds, Leases, etc.

All agreements, contracts, deeds, leases, promissory notes and other instruments of the Association shall be executed by the president and or by such other person or persons as may be designated by resolution of the Board of Directors.

ARTICLE IX

FINANCIAL STATEMENTS, OPERATING AND RESERVE ACCOUNTS

Section 9.1 Distribution of Financial and Other Statements to Members.

Financial statements and other information shall be distributed by the Association to all of its Members as described below:

(a) A pro forma operating budget shall be distributed not less than forty-five (45) days nor more than sixty (60) 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. A summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in bold type and include all of the following:

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

(ii) As of the end of the fiscal year for which the study is prepared:

a. The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

b. The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

3. The percentage of actual cash reserves set aside in relation to the estimate of reserves necessary.

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 (\$75,000.00). The review of the financial statement shall be distributed within one hundred twenty (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 sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

(d) Members of the Association shall be notified in writing at the time that the pro forma budget is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of the meetings of the Board of Directors and how and where those minutes may be obtained.

(e) A summary of the provisions of Civil Code Section 1354(b), requiring the offer or use of alternative dispute resolution prior to the initiation of litigation, either by the Association or an Owner, for enforcement of the governing documents shall be annually delivered to the Members.

Section 9.2 Review of Operating and Reserve Accounts.

The Board of Directors of the Association shall do all of 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 Association's 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) Review the reserve study annually and consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

Section 9.3 Signatories of Reserve Accounts.

The signatures of at least two (2) persons, who shall be members of the Association's Board of Directors shall be required for the withdrawal of monies from the Association's reserve accounts.

ARTICLE X

COMMITTEES

The Board may appoint committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (a) take any final action on matters which, under the Nonprofit Corporation Law of California, also require members' approval; (b) fill vacancies on the Board of Directors or in any committee; (c) amend or repeal Bylaws or adopt new Bylaws; (d) amend or repeal any resolution of the Board of Directors; (e) appoint any other committees of the Board of Directors or the members of those committees; (f) approve any transaction to which the Association is a party and in which one (1) or more directors have a material financial interest.

ARTICLE XI

BOOKS AND RECORDS

Section 11.1 Inspection by Members.

The membership register, books of account and minutes of meetings of the members, of the Board, and of committees shall be made available for inspection and copying by any member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the project as the Board shall prescribe.

Section 11.2 Rules for Inspection.

The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the member desiring to make the inspection.
- (b) Hours and days of the week when such an inspection may be made.
- (c) Payment of the cost of reproducing copies of documents requested by a member.

Section 11.3 Availability of Minutes to Members.

The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board of Directors of the Association, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes, shall be distributed to any member of the Association upon request and upon reimbursement of the Association's costs in making that distribution.

Section 11.4 Inspection by Directors.

Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents, at the expense of the Association.

ARTICLE XII

AMENDMENTS

Section 12.1 Procedure.

These Bylaws may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of a quorum of the Association. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Section 12.2 Conflict Between Documents.

In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control. In case any of these Bylaws conflict with the provisions of the California Common Interest Subdivision Act or the Mutual Benefit Nonprofit Corporations Code, the provisions of said statutes shall control.

CERTIFICATION OF SECRETARY

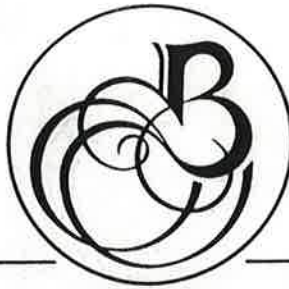
KNOW ALL MEN BY THESE PRESENTS;

The undersigned, Secretary of FAIRWAY VISTAS I OWNER ASSOCIATION, a California nonprofit corporation, does hereby certify that the above and foregoing Bylaws were duly adopted by the Board of Directors and Members of the Corporation on the _____ day of _____, 19____, and that they now constitute the Bylaws of said Corporation.

Dated: _____

Secretary of FAIRWAY VISTAS I OWNERS ASSOCIATION

[Name Printed]



THE COMMUNITY ASSOCIATION OF BERNARDO HEIGHTS

October 20, 1995

Ms. Linda Strom
Strom Management
7920 Miramar Road #113
San Diego, CA 92126

Re: Fairway Vistas I Document Revision

Dear Linda,

Please be advised that we have received Mr. Kriger's certification letter as requested, and his reference that the revised Fairway Vistas I Owners Association's CC&R's and By-Laws already state that the Community Association of Bernardo Heights' CC&R's and By-Laws have precedence. The Board reviewed this matter at it's October 18th meeting and voted to approve the documents upon receipt of this letter. Therefore, please consider this letter as the Community Association of Bernardo Heights' approval of the revised Fairway Vistas I Owners Association's CC&R's and By-Laws.

Sincerely,

FOR THE BOARD OF DIRECTORS



Paulette Hawley
General Manager

cc: File



Anderson & Kriger

Received
10-19-95

Clayton M. Anderson
Joel M. Kriger

Irene S. Giuseppini
Kent H. Thaeler
Jerry Paulk

A Professional Law Corporation
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Riverside County Office:
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Temecula, CA 92591
(909) 695-1399
(800) 483-6529
(909) 695-3389 Fax

OF COUNSEL
Joseph Fox

October 14, 1995

Community Association of Bernardo Height
Bernardo Heights Community Center
16150 Bernardo Heights Parkway
San Diego, CA 92128

Attn: Paulette Hawley

Re: CABH Approval of Fairway Vistas I Owners Association Governing
Documents Revisions

Dear Members of the Board of Directors:

I represent Fairway Vistas I Owners Association and am writing you on their behalf to seek approval of the First Restated Declaration of Covenants, Conditions and Restrictions and the Restated and Amended Bylaws for Fairway Vistas. The Board of Directors, working with me, has developed a complete revision of the governing documents which has now been approved by the required percentage of the membership.

The last step in the approval process requires written consent of the Community Board per Section 6.1 of the First Amendment to the CABH Master Association Documents.

I have been informed that CABH has requested that I certify that the revised governing documents for Fairway Vistas I do not conflict with the Master Association documents. I have completed my review of the Master Association documents and hereby certify that there is no conflict. Even if there were a conflict, Section 13.10 of the revised Fairway Vistas I CC&Rs provide that in the event of a conflict with a provision of the Bernardo Heights Declaration, the Bernardo Heights Declaration will take precedence. This section, therefore, will eliminate any conflicts in these governing documents.

CABH
October 14, 1995
Page 2

Should you require any further information from me or have any questions, please do not hesitate to contact me. Thank you in advance for your cooperation in this matter.

Sincerely yours,



JOEL M. KRIGER

JMK/nrs
cc: Fairway Vistas I Owners Association



Strom Management, Inc.

received
9-28-95

September 21, 1995

Paulette Hawley
CABH
16150 Bernardo Heights Parkway
San Diego, CA 92128

Dear Paulette,

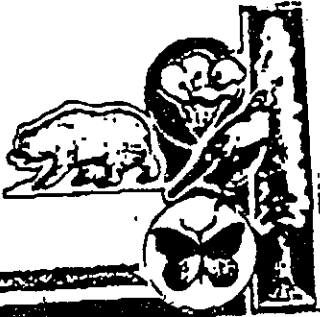
Enclosed are finalized copies of the CC&R's and By-Laws approved by 75% of the Fairway Vistas I Owners Association. I was told the CABH needed to also approve the documents before they can be recorded.

Please let me know when the documents are approved.

Sincerely,

Linda Strom CCAM, PCAM

1248260



State
of
California
OFFICE OF THE SECRETARY OF STATE

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this

JUN 6 1984



March Fong Eu

Secretary of State

**ENDORSED
FILED**

in the office of the Secretary of State
of the State of California

JUN 10 1984

BARCY FONG EI, Secretary of State

Leslie Glenn
Deputy

**ARTICLES OF INCORPORATION
OF
FAIRWAY VISTAS I OWNERS ASSOCIATION**

ONE: The name of this corporation is FAIRWAY VISTAS I OWNERS ASSOCIATION.

TWO: This corporation is a Nonprofit Mutual Benefit Corporation organized under the Nonprofit Mutual Benefit Corporation Law. The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under such law. The specific purpose of the corporation is to provide for management, administration, maintenance, preservation and architectural control of the Units and common area within that certain real property situated in the County of San Diego, California, more particularly described as:

Parcels 1, 2 and 3 of Parcel Map No. 13193, in the City of San Diego, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County, February 29, 1984.

The corporation will fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the Declaration of Covenants, Conditions and Restrictions, to be recorded in the Office of the County Recorder of San Diego County, and all amendments thereto, and will promote the health, safety and welfare of all of its Members who shall be owners of Condominiums (as defined in the Declaration) within the above-described property.

THREE: The name and address in this state of the corporation's initial agent for service of process is: Victoria A. Carlson, McKellar Development of La Jolla, 1250 Prospect Street, Suite 103, La Jolla, California, 92037.

FOUR: Amendment to these Articles of Incorporation shall require the assent (by vote or written consent) of a majority of the Board of Directors and of Members representing seventy-five percent (75%) or more of the voting power of each class of Members; provided, however, that after conversion of Class B membership to Class A membership, amendment to these Articles of Incorporation shall require the assent (by vote or written consent) of (i) seventy-five percent (75%) or more of the total voting power of Members of the Association,

(ii) seventy-five percent (75%) or more of the voting power of Members other than declarant (as defined in the declaration). So long as a Class B membership is outstanding, and so long as a loan secured by any Unit is guaranteed by the Veterans Administration, or any Unit is owned by the United States of America pursuant to foreclosure thereunder, amendment shall also require the consent of the Administrator of Veterans affairs, an officer of the United States of America.

FIVE: Each Owner of a Condominium, including Declarant, shall be a Member of the Association. No Owner shall hold more than one Membership in the Association even though such Owner may own, or own an interest in more than one Condominium. Ownership of a Condominium or interest in it shall be the sole qualification for membership in the Association. Each Member shall remain a Member in the Association until his ownership or ownership interest in all Condominiums in the Development ceases, at which time his membership in the Association shall automatically cease. Persons or entities who hold an interest in a Condominium merely as security for performance of an obligation are not to be regarded as Members. The Association membership of each person or entity who owns, or owns an interest in one or more Condominium(s) shall be appurtenant to such Condominium and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such Condominium or interest in it and then only to the transferee.

SIX: The corporation shall have two classes of voting membership:

Class A. Class A Members shall be all owners with the exception of declarant (as defined in the Declaration) and shall be entitled to one (1) vote for each Condominium owned. When more than one Class A Member owns an interest in a Condominium, the vote for such Condominium shall be exercised as they among themselves determine, but in no case shall more than one (1) vote be cast with respect to any one Condominium.

Class B. Class B Members shall be the Declarant who shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall cease and be converted to Class A membership with only one vote for each Condominium owned on the first to occur of the following events:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On the second anniversary of the original issuance of the most recently issued Public Report for the Development by the Commissioner of Real Estate of California; or

(c) On the second anniversary of the date of the first conveyance to a Unit purchaser; or

SEVEN: Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation.

Dated: June 6, 1984

Sally Ladden
Sally Ladden, Incorporator

I declare that I am the person who executed the above Articles of Incorporation, and that this instrument is my act and deed.

Sally Ladden
Sally Ladden