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San Diego
8/193-6

This instrument is certified to be a true and exact copy of that certain instrument recorded on September 8, 1981 as File No. 81-286499 in the office of the County Recorder of San Diego, California.

FIRST AMERICAN TITLE INSURANCE & TRUST
Ralph M. Snyder

By Authorized Signature

I N D E X
TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
PALAZZO BERNARDO
A Condominium Project

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DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

FOR

PALAZZO BERNARDO

A Condominium Project

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") made this 10th day of August, 1981, by the Akins Company Venture No. 4, a California limited partnership, hereinafter referred to as "Declarant".

R E C I T A L S:

THIS DECLARATION is made with reference to the following facts:

A. Declarant is the owner of all that certain real property together with the structures and improvements located thereon (the "Subject Property") situated in the City of San Diego, County of San Diego, State of California, described as follows:

Lots 1, 2, and 3, of BERNARDO HEIGHTS UNIT NO. 4, RESUBDIVISION, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 9955, filed in the Office of the County Recorder of San Diego County on December 30, 1980.

B. The Subject Property, together with the Additional Property is intended to be developed in increments or phases as a condominium project within the meaning of California Civil Code Section 1350(3) and is subject to the provisions of the California Condominium Act (Title VI, Part IV, Sections 1350-1370, inclusive). It is the desire and intention of the Declarant to subdivide and develop the Subject Property as a condominium project pursuant to the Map, the Condominium Plan and the development plan (attached hereto as Exhibit "A") therefor and to impose on the Subject Property and the Additional Property as annexed hereunder mutual beneficial restrictions, easements, assessments and liens under a general plan of improvement for the benefit of all of the Units and of the Neighborhood Common Area and the future Owners of said Units and Neighborhood Common Area. The Subject Property shall constitute a Neighborhood in the Community of Bernardo Heights as

defined in the Community Declaration.

C. The Subject Property and the Additional Property are intended to be developed in six (6) or more phases or increments. Phase I shall consist of Lots 1, 2 and 3 as shown on the Map. It is intended that, pursuant to Section 2.5 hereof, Declarant may (but shall have no obligation to) annex all or any portion of the Additional Property to the Project as Phases II through and that said annexed phase or increment of the Additional Property shall thereupon become a part of the Neighborhood and shall be subject to this Declaration.

NOW, THEREFORE, pursuant to California Civil Code, Section 1355 Declarant hereby declares that the Subject Property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following mutual beneficial limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of the plan for the subdivision, improvement and sale of the Subject Property as a Condominium Project and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Subject Property and every part thereof. All of the limitations, easements, uses, obligations, covenants, restrictions and conditions stated herein shall run with the Subject Property, shall be binding on all parties having or acquiring any right, title or interest in the Subject Property or any part thereof, and shall be for the benefit of each Owner of any portion of the Subject Property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the Owners thereof. Each and all of the limitations, easements, uses, obligations, covenants, conditions and restrictions shall be deemed to be, and shall be construed as equitable servitudes, enforceable by any of the Owners of any of the individual Units against any other owner, tenant or occupant of the Subject Property, or any portion thereof. Upon annexation of any of the Additional Property pursuant to Section 2.5, such annexed Additional Property shall become subject to this Declaration to the full and complete extent as if said annexed property were originally subject to this Declaration.

ARTICLE I

DEFINITIONS

Unless the context clearly indicates a different meaning therefor, the terms used herein, in the Plan and in any deeds to Condominiums in the Project shall have the meanings specified in this Article.

1.1 Access Road: The term "Access Road" shall mean and refer to that certain parcel of real property described as such in the Declaration of Annexation recorded to annex Lot 7, as shown on the Map, as a phase of the Neighborhood, including any pavement, sidewalks or other improvements located thereon, a non-exclusive easement for the use and maintenance of which shall be granted by Declarant to the Neighborhood Association prior to the close of escrow of the first Unit sold in Lot 7 and to each Owner of a Unit in Lot 7 in the grant deed conveying a Unit to said Owner.

1.2 Additional Property: The term "Additional Property" shall mean Lots 4, 5, 6, 7 and 8 as shown on the Map together with the buildings and improvements located thereon, all or any portion of which may be annexed to the Project in subsequent phases or increments in accordance with the provisions of Section 2.5.

1.3 Articles: The term "Articles" shall mean the Articles of Incorporation of PALAZZO BERNARDO ASSOCIATION, which are or shall be filed in the Office of the Secretary of State of the State of California.

1.4 Balcony: The term "Balcony" shall mean and refer to those portions of the Building Common Area adjacent to certain Units which are separately designated on the Plan by the letter "B". An exclusive appurtenant easement for the use and possession of each Balcony shall be granted to the Unit adjacent to said Balcony. The boundary lines of each Balcony are to the interior finished surfaces of the walls, fences and/or railings encompassing the same, to the approximate dimensions shown on the Plan, the interior finished surface of the floor thereof where finished and, where unfinished, to the surface of the ground thereof, and the interior finished surface extended to the ceiling of the adjoining Unit as shown on the Plan.

1.5 Beneficiary: The term "Beneficiary" shall mean a Mortgagee.

1.6 Board: The term "Board" or "Neighborhood Board" shall mean the Board of Directors of the Neighborhood Association.

1.7 Building Common Area: The term "Building Common Area" for the initial phase of the Neighborhood shall mean and refer to all of the Project shown on the Plans for Lots 2 and 3, as shown on the Map, not expressly made part of a Unit. Building Common Area shall include, but not be limited to, all roofs, foundations, pipes, ducts, flues, chutes, floors, bearing walls, columns and girders, to the unfinished surfaces thereof, all regardless of location, balconies, patios, parking spaces, garages, roadways, driveways, landscaped and unlandscaped yard areas or slopes, all other improvements which may be placed upon or located on any of

such residential buildings and all other portions of the Neighborhood, excluding Project Common Area, not expressly made part of a Unit. The term "Building Common Area" shall also mean and refer to that portion of the real property on any Plan applicable to Additional Property annexed to the Neighborhood pursuant to Paragraph 2.5 of this Declaration unless said Additional Property is expressly described in the Declaration of Annexation as Project Common Area or made part of a Unit.

1.8 By-Laws: The term "By-Laws" shall mean the By-Laws of the Association which are or shall be adopted by the Board.

1.9 Community: The term "Community" shall mean the Community of Bernardo Heights, of which the Neighborhood is a constituent part, being all of the real property subject to the Community Declaration.

1.10 Community Architectural Committee: The term "Community Architectural Committee" shall mean the Community Architectural Committee established pursuant to Article VIII of the Community Declaration.

1.11 Community Association: The term "Community Association" shall mean the Community Association of Bernardo Heights as defined and established in the Community Declaration.

1.12 Community Board: The term "Community Board" shall mean the Board of Directors of the Community Association.

1.13 Community By-Laws: The term "Community By-Laws" shall mean the By-Laws for the Community Association duly adopted by the Community Board.

1.14 Community Declaration: The term "Community Declaration" or "Community Restrictions" shall mean the Declaration of Covenants, Conditions and Restrictions for Bernardo Heights recorded on September 30, 1980 in the official records of San Diego County, as File Number 80-319018, as the same may be amended.

1.15 Community Rules: The term "Community Rules" shall mean the Rules adopted by the Community Board pursuant to Section 3.8 of the Community Declaration.

1.16 Condominium: The term "Condominium" shall mean a Unit together with an undivided interest in the Building Common Area conveyed in fee to an Owner, and all easements appurtenant thereto, all as more particularly defined in Section 783 of the California Civil Code.

1.17 Declarant: The term "Declarant" shall mean and refer to THE AKINS COMPANY VENTURE NO. 4, a California limited partnership, and all successors and assigns of Declarant, if such successors and assigns acquire any or all of Declarant's interest in the Subject Property or the Additional Property for the purpose of development or sale, and Declarant has expressly transferred or assigned to such successors or assigns its rights and duties as Declarant to a portion or all of the Neighborhood.

1.18 Declaration: The term "Declaration" shall mean the within Declaration of Covenants, Conditions and Restrictions.

1.19 Director: The term "Director" shall mean and refer to a member of the Board of Directors.

1.20 Eligible Holder: The term "Eligible Holder" shall mean any Institutional Mortgagee who has given written notice to the Association specifying its name, address and the number or address of the Condominium encumbered by the Mortgagee and requesting written notice of any or all of the events specified in Section 10.5, below.

1.21 First Mortgage: The term "First Mortgage" shall mean a Mortgage which has priority over all other Mortgages encumbering a specific Condominium in the Project.

1.22 First Mortgagee: The term "First Mortgagee" shall mean the Mortgagee of a First Mortgage.

1.23 Garage: The term "Garage" shall mean and refer to those portions of the Building Common Area which are separately designated on the Plan by the letter "G" followed by a number corresponding to the number of the Unit. An exclusive appurtenant easement for the use and possession of each Garage shall be granted to the Unit with the corresponding number. The boundary lines of each Garage are to the approximate dimensions shown on the Plan and to the airspace encompassed therein.

1.24 Institutional Mortgagee: The term "Institutional Mortgagee" shall mean a First Mortgagee which is a bank, savings and loan association, insurance or mortgage company or other entity chartered under or regulated by federal and/or state law or agency, including a federal or state agency or any other institution regulated by federal or state law; an insurer or governmental guarantor of a First Mortgage, as well as the State of California as the vendor under an installment land sales contract covering a Condominium.

1.25 Manager: The term "Manager" refers to the person or corporation appointed as manager of the Neighborhood pursuant to Section 3.14 hereof.

1.26 Map: The term "Map" refers to that certain Subdivision Map entitled "BERNARDO HEIGHTS-UNIT NO. 4 RESUBDIVISION", filed as File No. 80-437394, San Diego County Records on December 30, 1980. The term "Map" as to any Additional Property annexed to the Neighborhood pursuant to Section 2.5 shall mean the particular Subdivision Map described in the Declaration of Annexation for the Additional Property.

1.27 Member: The term "Member" shall mean and refer to those Unit Owners who are members of the Association pursuant to Article III hereof.

1.28 Mortgage: The term "Mortgage" shall mean any duly recorded mortgage or deed of trust encumbering a Condominium in the Project.

1.29 Mortgagee: The term "Mortgagee" shall mean a mortgagee under a Mortgage as well as a beneficiary under a deed of trust.

1.30 Neighborhood: The term "Neighborhood" shall mean Lots 1, 2 and 3 as described on the Map (including all structures thereon as shown on the Plan), the Access Road and any Additional Property once said property is annexed to the Neighborhood pursuant to Paragraph 2.5 of this Declaration.

1.31 Neighborhood Architectural Committee: The term "Neighborhood Architectural Committee" shall mean and refer to the committee created pursuant to Article VII. The term "Architectural Committee" in this Declaration shall be read as "Neighborhood Architectural Committee" unless the context clearly requires otherwise.

1.32 Neighborhood Association: The term "Neighborhood Association" or "Association" shall mean and refer to PALAZZO BERNARDO ASSOCIATION, its successors and assigns, incorporated as a Nonprofit Mutual Benefit Corporation under the laws of the State of California.

1.33 Neighborhood Common Area: The term "Neighborhood Common Area" refers to all Building Common Area, Project Common Area and the Access Road.

1.34 Parking Space: The term "Parking Space" shall mean any unassigned spaces, not otherwise conveyed to Unit Owners as exclusive easements, designed for the parking of passenger motor vehicles.

1.35 Patio: The term "Patio" shall mean and refer to those portions of the Building Common Area adjacent to certain Units which are separately designated on the Plan by the letter "P". An exclusive appurtenant easement for the use and possession of each Patio shall be granted to the Unit it adjoins. The boundary lines of each Patio are to the interior finished surfaces of the walls, fences and/or railings encompassing the same, to the approximate dimensions shown on the Plan, the interior finished surface of the floor thereof where finished and, where unfinished, to the surface of the ground thereof, and the interior finished surface extended to the ceiling of the adjoining Unit as shown on the Plan.

1.36 Plan: The term "Plan" shall mean that certain Condominium Plan or Plans entitled "Palazzo Bernardo- Phases I and II," in accordance with Section 1351 of the California Civil Code, and recorded in the Official Records of the Recorder of San Diego County, State of California, on the 8th day of September, 1981 as File No. 81-286498, et seq. The term "Plan" shall also refer to any subsequently recorded Condominium Plan for any of the Additional Property which is annexed to the Neighborhood as a subsequent phase of the Neighborhood pursuant to Section 2.5 of this Declaration.

1.37 Project Common Area: The term "Project Common Area" shall mean and refer to Lot 1 as shown on the Map.

1.38 Restricted Common Area: The term "Restricted Common Area" shall mean that portion of the Building Common Area, the exclusive use of which is set aside, allocated and restricted to a particular Unit or Unit Owner. An exclusive easement to such Restricted Common Area shall be specifically granted in the individual Condominium Grant Deed.

1.39 Rules: The term "Rules" shall mean the Rules adopted by the Neighborhood Association pursuant to Section 3.17 of this Declaration.

1.40 Unit: The term "Unit" shall mean that portion of a Condominium which is not owned in common with the Owners of other Condominiums in the Neighborhood or by the Neighborhood Association. Each Unit is an individual residence which is shown, defined and delineated on the Plan as a separate parcel bearing the letters "L-A". The boundaries of each Unit shall be to the dimensions set forth on the Plan and as follows: the interior unfinished surfaces of the floors, ceilings, interior beams and columns, perimeter walls, windows, doors doorframes and trim, and the interior unfinished and/or exposed surfaces of the fireplaces, if any, of said Unit, and excluding, however, all load bearing walls, and all walls containing any utility conduit wherever located to the unfinished surfaces of any such walls.

Each Unit specifically includes the oven, garbage disposal unit, dishwasher, heating conduits, range and fans, interior partitions and plumbing and lighting fixtures installed therein. In interpreting deeds, this Declaration and the Plan, the existing physical boundaries of the Unit, shall be conclusively presumed to be its boundaries rather than the metes and bounds (or other description) expressed in the Plan, this Declaration, or the deed, regardless of settling or lateral movement of the buildings and regardless of variants between boundaries shown on the Plan or the deed and the Declaration and those of the buildings.

1.41 Unit Owner: The term "Unit Owner" or "Owner" shall mean the holder or holders of record fee title to a Condominium, including Declarant with respect to each Condominium owned by Declarant. The term "Owner" shall also include a contract purchaser (Vendee) under an installment land contract but shall exclude those persons having an interest in a Condominium merely as security for performance of an obligation. Every Unit Owner shall be a Member of the Neighborhood Association.

ARTICLE II
THE PROPERTY

2.1 PROPERTY SUBJECT TO DECLARATION: All of the real property shown on the Map as Lots 1, 2 and 3 together with the structures and improvements thereon, is hereby declared to be subject to this Declaration. The Additional Property may be annexed to the Neighborhood in subsequent phases or increments and upon annexation may be made subject to this Declaration pursuant to Section 2.5.

2.2 WAIVER OF PARTITION: There shall be no judicial partition of the Neighborhood or any part thereof. Except as provided in Civil Code Section 1354, each Unit Owner, and the successors of each Unit Owner, whether by deed, gift, devise or operation of law, for their own benefit, for the benefit of their respective Units and for the benefit of all other Unit Owners, specifically waive and abandon all rights, interests and causes of action for judicial partition of the tenancy in common ownership of the Neighborhood. Each Unit Owner, for himself and his successors, further promises and covenants that no action for judicial partition shall be instituted, prosecuted or reduced to judgment until the occurrence of the conditions set forth in Article IX hereof. Notwithstanding the foregoing, however, if any Condominium is owned by two or more Owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-owners of a single Condominium.

The undivided interests in the Building Common Area established herein and to be conveyed with the respective Units cannot be changed. Declarant, its successors, assigns, and grantees covenant and agree that the interest in the Building Common Area appurtenant to a Unit and any rights in the Project Common Area and the Access Road easement appurtenant to a Unit and the fee title to each Unit shall not be separated or separately conveyed and that such interests and rights shall be deemed to be conveyed or encumbered with its respective Unit event though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

2.3 NEIGHBORHOOD COMMON AREA OWNERSHIP:

2.3.1 Project Common Area: Lot 1 as shown on the Map shall be conveyed to the Neighborhood Association prior to or simultaneously with the conveyance to an Owner of the first Unit sold in the Neighborhood.

2.3.2 Building Common Area: An undivided one-fifty-first (1/51st) tenancy-in-common interest in the Building Common Area in Lots 2 and 3 of the Neighborhood, as shown on the Map, shall be conveyed to each Owner of a Unit in said Lots 2 and 3. The Building Common Area in any subsequent phase of the Neighborhood shall be conveyed to the Unit Owners in such phase in the proportionate interests established in the Declaration of Annexation therefore, which proportionate interests shall be calculated based upon a numerator of one (1) and a denominator equal to the number of Units in the subsequent phase.

2.3.3 Access Road: Prior to the close of escrow of the first Unit sold in Lot 7 of the Neighborhood, as shown on the Map, Declarant shall convey to the Neighborhood Association an easement for roadway purposes over and across Lot 6 of the Additional Property for the benefit of the Neighborhood Association and the Members to provide, prior to the annexation of Lot 6 of the Neighborhood, an access roadway from existing roadways in the Project to Lot 7. Said easement has been defined herein as the Access Road. The maintenance of any improvements thereon shall be the responsibility and obligation of the Neighborhood Association.

2.3.4 Rights of Community Association: The ownership and rights of use as to any of the Neighborhood Common Area shall be limited and subject to the rights of the Community Association to (i) enter upon and maintain any portion thereof established as slope maintenance areas, to which areas an easement has been or will be granted to the Community Association, and (ii) any other rights and duties reserved to the Community Association in the Community Declaration.

2.4 RESTRICTED COMMON AREA: The ownership of the Building Common Area shall be subject to the exclusive appurtenant easements granted and reserved in Article VI for the benefit of each Unit for the use and possession of the Patio or Balcony adjacent to the Unit and for the Garage which bears the number which corresponds to the number of the Unit, as shown on the Plan. An exclusive appurtenant easement for the use and possession of not less than one Garage shall be granted and reserved for each Unit, subject in all instances to the Rules regulating the use thereof established by the Board of Directors. All Building Common Area not granted as an easement appurtenant to a Unit or otherwise specifically granted or assigned to an individual Unit Owner shall remain as unrestricted Building Common Area for the use in common of all Unit Owners subject to the Rules regulating its use.

2.5 ANNEXATION OF ADDITIONAL PROPERTY: Additional property may be annexed to the Neighborhood only as specified in the following subsections:

2.5.1 Declarant's Annexation Rights: Declarant may, but shall not be required to, annex all or any portion of the Additional Property to the Neighborhood in subsequent phases or increments without the approval of any other Owners or the Neighborhood Association if any such annexation is effected prior to the third anniversary of the original issuance of the most recently issued State of California Department of Real Estate Final Subdivision Public Report for a phase of the Neighborhood ("Permissible Annexation Period"). Any annexation which is effected after the expiration of the Permissible Annexation Period shall require the vote or written assent of two-thirds (2/3rds) of the votes of Members of the Neighborhood Association other than Declarant. In addition, prior to the expiration of Class B membership as provided in Section 3.2 of this Declaration, the Veteran's Administration shall determine, prior to any annexation of Additional Property, that the annexation is in accord with the general plan previously approved by the Veteran's Administration. The annexation of any portion of the Additional Property by Declarant shall be effected by the fulfillment of the following procedures:

(1) Declarant shall have recorded a final subdivision map(s), or final parcel map(s) applicable to the portion of the Additional Property to be annexed;

(2) Declarant shall have recorded a Condominium Plan for the portion of the Additional Property to be annexed; and

(3) Declarant shall have recorded a Declaration of Annexation describing the portion of the Additional Property to be annexed and imposing such additional covenants, conditions and restrictions on the annexed property as may be necessary to include such property in the Neighborhood and specifying that all of the covenants, conditions and restrictions of the Declaration shall apply to such annexed property in the same manner as if it were originally covered by the Declaration as part of the Neighborhood. No Declaration of Annexation shall in any event revoke, modify or add to the limitations, restrictions and covenants established by this Declaration nor shall it discriminate between the Owners of such property and other Owners of any other property within the Neighborhood, except as otherwise provided herein. No Declaration of Annexation shall alter or change the general common plan or scheme created by this Declaration, nor shall it affect the provisions hereof or thereof as covenants running with the land or equitable servitudes, it being the express desire and intention of Declarant to establish a cohesive plan for such covenants and

servitudes to be uniformly applicable to all portions of the Neighborhood, including subsequent phases or increments added thereto by annexation.

2.5.2 Rights and Obligations of Owners: After the required annexation procedures are fulfilled, Owners of the annexed property shall thereupon become Members of the Neighborhood Association, shall be subject to this Declaration and shall be entitled to use the Project Common Areas as set forth in Section 6.9 hereof. After each annexation, the Association assessments shall be reassessed with the annexed property being assessed for a proportionate share of the total expenses of the Neighborhood on the same basis as the other property in the Neighborhood.

2.5.3 Other Annexation of Property: Other property adjacent to the Neighborhood which does not qualify for annexation pursuant to the terms of Subsection 2.5.1 above and may be annexed to the Neighborhood only with the written vote of consent of not less than two-thirds (2/3rds) of the total votes of the Neighborhood Association Members, excluding the votes of the Declarant, with the written consent of the Owner of such other property and upon the fulfillment by the Owner of such property of procedures substantially similar to those set forth in Subsection 2.5.1 above.

ARTICLE III

NEIGHBORHOOD ASSOCIATION

3.1 THE ORGANIZATION:

3.1.1 The Neighborhood Association is a Nonprofit Mutual Benefit Corporation charged with the duties and empowered with the rights set forth herein and in the Articles. Its affairs shall be governed by this Declaration, the By-Laws and the Rules of the Neighborhood Association.

3.1.2 In the event that the Neighborhood Association as a corporate entity is dissolved, a nonprofit, unincorporated association shall be formed forthwith and without further action or notice to succeed to all the rights and duties of the association hereunder. The affairs of such unincorporated association shall be governed by the laws of the State of California and, to the extent not inconsistent therewith, by this Declaration and the By-Laws of the Neighborhood Association as if they were created for the purpose of governing the affairs of an unincorporated association.

3.2 MEMBERSHIP: Each Unit Owner, including Declarant for so long as Declarant is an Owner, by virtue of being an Owner, shall be a Member of the Neighborhood Association, or, in the event of its dissolution, a Member of the unincorporated association succeeding to the Neighborhood Association; provided, however, that any person or entity who holds an interest in a Unit merely as security for the performance of an obligation shall not be a Member. Each Unit Owner shall be entitled to one (1) membership in the Neighborhood Association for each Unit owned. Neighborhood Association membership is appurtenant to and may not be separated from the ownership of a Unit. Upon termination of Unit ownership, the membership in the Neighborhood Association shall also terminate. Ownership of a Unit shall be the sole qualification for membership in the Neighborhood Association. Except as otherwise provided herein, the rights, duties, privileges and obligations of all Members of the Neighborhood Association shall be as provided in this Declaration, the By-Laws and Rules of the Neighborhood Association. The membership of an Owner shall not be transferred, pledged or alienated in any way except upon transfer of title to the Owner's Unit and then only to the transferee of title to such Unit. Any attempt to make a prohibited transfer is void. Upon annexation of any of the Additional Property pursuant to Section 2.5. the Owners of Units in such annexed property shall become Members in the Neighborhood Association.

3.3 VOTING CLASSES: The Neighborhood Association shall have two (2) classes of Members wherever votes of the Owners are required pursuant hereto.

3.3.1 Class "A" Members: Class A Members shall be all Unit Owners with the exception of Declarant. Class A Members shall have one (1) vote for each Unit owned by such Class A Owner. When more than one person owns a single Unit, all Owners shall be Members of the Neighborhood Association. However, the vote for each Unit must be cast as a Unit. Said vote shall be cast by the designated "Voting Owner" for that Unit as hereafter provided. Fractional votes shall not be allowed and in no event shall more than one vote be cast with respect to any one Unit.

When more than one person owns a single Unit, there shall be one "Voting Owner" for such Unit. The "Voting Owner" shall be designated by the record Owners of the Unit by written notice to the Board. Said designation may be revoked at any time by written notice to the Board given by any of the record Unit Owners and shall be deemed revoked when the Board receives actual notice of the death or judicially declared mental incompetence of any record Unit Owner or of the conveyance by an Owner of his Unit. The power herein conferred to designate a "Voting Owner" and to revoke said designation may be exercised (a) by the Unit Owner's conservator; (b) by the guardian of his estate; (c) by the parent or parents entitled to custody of an Owner in the event the Owner is a minor; or (d) during the administration of a deceased record Owner's estate, by the executor or administrator of such deceased Unit Owner where the Owner's interest in the Unit is subject to administration in his estate. Where no "Voting Owner" has been designated, or where the designation has been revoked as herein provided, the vote for such Unit shall be exercised as the majority of co-owners of the Unit mutually agree. No vote shall be cast for any Unit where there is no designated "Voting Owner" if the majority of co-owners present and representing said Unit cannot agree to said vote or other action.

3.3.2 Class "B" Members: The Class B Member shall be Declarant. The Class B Member shall be entitled to three (3) votes for each Unit owned by it; provided, however, that Declarant's Class B membership shall cease and shall be converted to Class A membership on the first to occur of the following events:

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

(2) The date which is the second anniversary of the original issuance of the California Department of Real Estate of the most recently issued Final Subdivision Public Report for a

phase of the Neighborhood; or

(3) The date which is the fourth (4th) anniversary of the original issuance of the Final Subdivision Public Report for the first phase of the Neighborhood.

(4) July 1, 1986.

3.3.3 Voting After Termination of Two Classes of Membership: Upon the expiration of the Class B membership, with respect to any provision of this Declaration which requires the vote of both classes of Members, such provision shall be read as requiring both (a) the vote of the prescribed percentage of all of the Class A Members and (b) the vote of the prescribed percentage of the Class A Members other than Declarant.

3.4 VOTING PROCEDURES AND MEETINGS: Voting procedures and the notice, quorum requirements and location of meetings of the Neighborhood Association shall be as provided for in the By-Laws.

3.5 BOARD OF DIRECTORS: The Board of Directors of the Neighborhood Association shall undertake all duties and responsibilities of the Neighborhood Association and the management and conduct of its affairs, except as expressly reserved herein to a vote of the Members. The initial Board of the Association consisting of three (3) Directors shall be appointed by Declarant. Such initial Board shall hold office until the first meeting of the Members is held pursuant to the By-Laws. At the first meeting of the Members a new Board of three (3) Directors shall be elected by the Members by secret written ballot to serve until the next regular annual meeting of the Members or until their successors are elected. Upon the annexation to the Neighborhood of Additional Property such that the total number of Units in the Neighborhood aggregates one hundred thirty-seven (137) in number, the size of the Board shall increase to five (5). The number of Directors may be changed by amendment of the By-Laws. At each subsequent annual meeting the Members shall elect a Board of Directors. As long as there are two (2) classes of voting membership outstanding or as long as the majority of voting power of the Association otherwise resides in Declarant, special procedures shall be adopted to assure that not less than twenty percent (20%) of the Directors have been elected solely by the vote of Members other than Declarant.

3.6 NOTICE OF INCUMBENCY: After the first election of the Board, Declarant shall record a Notice of Incumbency in the Office of the Recorder of San Diego County stating the names and addresses of all persons elected to the Board. Thereafter, a majority of the persons who are so designated of record as being members of the most recent Board (regardless of whether or not they shall still be Directors) may execute, acknowledge and record an affidavit stating

the names of all of the members of the then current Board. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Board and shall be conclusive evidence of the validity of the exercise of any authority thereby as to any bona fide purchaser or encumbrancer or other third person who supplies labor or material to the Board, or to any other person who relies thereon in good faith.

3.7 GENERAL POWERS, DUTIES AND AUTHORITY OF THE NEIGHBORHOOD ASSOCIATION: The Neighborhood Association shall have all of the powers set forth in the Articles, By-Laws and this Declaration together with the general power to do any and all things that a corporation organized under the laws of the State of California may lawfully do in operating for the benefit of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in said Articles, By-Laws and this Declaration. The Neighborhood Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Neighborhood Association under and by virtue of this Declaration and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Neighborhood Association or for the peace, health, comfort, safety and/or general welfare of the Owners and guests of the Owners. Except as provided for in Section 3.18 below, the Neighborhood Association may delegate any of its power to such committees, officers or employees thereof as a majority of the Board may deem appropriate.

Without limiting the generality of the foregoing paragraph, the Neighborhood Association, for the benefit of all Unit Owners, including Unit Owners in all subsequent phases or increments of the Neighborhood after annexation, shall have the power, obligation and duty to enforce the provisions of this Declaration, the Articles, By-Laws and Neighborhood Association Rules and shall obtain and pay for out of the maintenance fund all of the following:

3.7.1 Utilities: Water, sewer, garbage, electrical, gas, telephone and other necessary utility services for the Neighborhood Common Area and (to the extent not separately metered or charged) for the Units and portions of the Building Common Area subject to exclusive easements.

3.7.2 Property Insurance: A policy or policies of "all-risk" insurance, including fire, property damages and extended coverage endorsement for the Neighborhood Common Area and Units. Said property insurance shall be for the full insurable replacement value of the Units and Neighborhood Common Area, without deduction for depreciation or coinsurance, including all service equipment and fixtures, and all fixtures or equipment within each Unit, as

originally sold by Declarant. Any blanket policy of fire, property damage and extended coverage insurance shall be in the name of the Neighborhood Association and the proceeds thereof shall be payable to the Neighborhood Association as trustee for the Unit Owners. The Board may obtain such other property and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners and their Mortgagees, as their respective interests may appear. Said policy or policies shall provide for a separate Loss Payable Endorsement in favor of the Mortgagee or Mortgagees of each Condominium, if any.

The Board shall review the limits of such insurance for adequacy at least every year, and shall increase or adjust the same, if necessary, in order to assure that the policy coverage is sufficient.

3.7.3 Liability Insurance: A policy or policies of comprehensive public liability insurance insuring the Neighborhood Association, the Declarant, the Board, the Owners and any Manager appointed as hereinafter provided against any liability to the public, to the Board, or to the Unit Owners and their invitees or tenants, incident to the ownership and/or use of the Neighborhood and to protect against any liability to the public or to any Unit Owner incident to the use of, or resulting from any accident or intentional act occurring in or about, any Unit or the Neighborhood Common Area. The minimum limits of such insurance shall be determined by the Board and established to provide such coverage and protection as is customarily carried by prudent owners of similar property in San Diego County. The Board shall review the limits and coverage of such insurance at least every year and shall increase or adjust the same, if necessary, to provide adequate coverage and protection to the Neighborhood Association, Board, Manager, if any, and Unit Owners. If available, said policy or policies shall contain cross liability endorsement wherein the rights of the named insured thereunder shall not be prejudiced as respects any action by one insured thereunder against another named insured.

3.7.4 Insurance Provision and Limitation: The insurance obtained pursuant to Sections 3.7.2 and 3.7.3 hereof shall be subject to the following provisions and limitations:

(a) The named insured under such policies shall be the Neighborhood Association or its authorized representative, as a trustee for the Owners of the Condominiums (except for all annexed phases or increments);

(b) All policies shall provide that coverage may not be canceled or substantially modified (except for cancellation for nonpayment of premium) without at least thirty (30) days' prior

written notice to any and all insureds named thereon, including the Mortgagees and their servicers;

(c) Each such policy may be for a period of not to exceed three (3) years provided the policy permits short rate cancellation by the Insured.

(d) The Board may acquire any other types of insurance or insurance in amounts in excess of the limits provided above if the Board, in its sole discretion, determines the same to be necessary to fully protect the interests of the Unit Owners.

3.7.5 Worker's Compensation: Worker's Compensation Insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Neighborhood.

3.7.6 Legal and Accounting Services: Legal, accounting and management services necessary or proper for the maintenance and operation of the Neighborhood or the enforcement of this Declaration.

3.7.7 Fidelity Bond: A fidelity bond naming the Board and such other persons as a majority of the Owners may designate as principals, and the Unit Owners and the Neighborhood Association as obligees, in an amount equal to at least one hundred fifty percent (150%) the total sum collected through the annual regular assessment during the preceding year, insuring the Association against misuse and misappropriation of Association property by Directors, officers and employees of the Association and any Manager and his employees. Such fidelity bonds shall contain waivers of any defense based upon the exclusion, from any definition of "employee" or similar expression, of persons who serve without compensation; and such bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days' written notice to any and all insureds named thereon, including the Mortgagees and their servicers.

3.7.8 Taxes, Assessments: All taxes and assessments, if any, levied or assessed separately against the Neighborhood Common Area.

3.7.9 Neighborhood Common Area Maintenance and Landscaping: Painting, maintenance and repair and all landscaping of the Neighborhood Common Area (excluding Restricted Common Area), including, as necessary, replacement of the components thereof on a reasonable and prudent schedule of replacement.

3.7.10 Discharge of Condominium Liens or Assessments: Any lien or encumbrance, including taxes, levied against any Condominium which may constitute a lien against the Neighborhood Common Area rather than merely against the interest therein of a particular Owner(s); provided, however, that the Board shall levy a Reimbursement Assessment against such Condominium and the Unit Owner for the amount thereof. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it.

3.7.11 Maintenance of Units and Restricted Common Area: Maintenance and repair of any Unit or Restricted Common Area to which any Owner has been granted an exclusive easement if such maintenance or repair is necessary, in the discretion of the Board, to protect the Building Common Area or to preserve the appearance and value of the Neighborhood, and if the Owner(s) of said Unit or easement to Restricted Common Area have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity therefor has been delivered and an opportunity to be heard with respect to said necessity has been given by the Board to said Unit Owner. The Board shall levy a Reimbursement Assessment against such Unit owned by said Unit Owner for the cost of said maintenance or repair.

3.7.12 Other Goods and Services: Any other goods, materials, supplies, furniture, labor, services, painting, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Board is authorized to secure and to pay for pursuant to the terms of this Declaration or by law or which in the discretion of the Board are reasonably necessary or proper for the convenient operation of the Neighborhood Common Area.

3.7.13 Costs of Enforcement: All costs of enforcing the provisions of this Declaration, including attorneys' fees and court costs, provided that all costs incurred in the enforcement of the provisions of this Declaration against any Unit Owner shall be assessed specially against the Unit of such Unit Owner.

3.8 CAPITAL IMPROVEMENTS: The Neighborhood Association may purchase or construct capital improvements in the Neighborhood Common Area and assess the Owners for the costs thereof as a Special Assessment pursuant to Section 4.3 hereof; provided, however, that no such capital improvements shall be constructed without obtaining any and all approvals of governmental agencies as may be required by law.

No property owned by the Association having a fair market value in excess of five percent (5%) of the budgeted gross income of the Neighborhood Association shall be sold without the prior affirmative vote or written consent of a majority of the voting

power of the Neighborhood Association residing in Members other than Declarant.

3.9 POWER OF ATTORNEY: Whenever partition may be had pursuant to Civil Code Section 1354 or this Declaration, each Unit Owner (with the exception of the Administrator of Veteran's Affairs, an officer of the United States of America), his successors and assigns, does hereby grant to the Neighborhood Association an irrevocable Power of Attorney to sell the entire Neighborhood for the benefit of all of the Unit Owners, said power of sale to be exercised pursuant to Civil Code Section 1355(b)(9).

3.10 MAINTENANCE OF NEIGHBORHOOD COMMON AREA: The Neighborhood Association shall have full power and authority to act for and on behalf of all of the Unit Owners to keep and maintain the Neighborhood Common Area (including, pursuant to Subsection 3.7.11, Restricted Common Areas) in good condition and repair; shall provide for lighting, landscaping, gardening and janitorial services as needed, and shall cause any and all other acts to be done which may be necessary or proper to assure the maintenance of the Neighborhood Common Area in first class condition and repair, including painting of the exterior of the building(s) and such other portions of the Neighborhood Common Area as the Board, in its discretion, determines to be necessary. Notwithstanding the foregoing, cleaning, repair and upkeep of Restricted Common Area shall be the primary responsibility of the Unit Owner who is granted an exclusive easement for the use thereof. Any costs incurred by the Neighborhood Association in the course of maintaining Restricted Common Area shall be charged as a Reimbursement Assessment, pursuant to Section 4.4 hereof, against the Unit Owner to whom an exclusive easement to said Restricted Common Area has been granted. No contract negotiated by Declarant on behalf of the Association shall exceed one (1) year in duration. No other contract executed by the Board, for materials or services for the Neighborhood Common Area shall exceed one (1) year in duration unless the prior approval of a majority of each class of Members has been first obtained by the Board. Each such contract shall be terminable for cause upon thirty (30) days notice.

3.11 AUTHORITY FOR ENTRY FOR MAINTAINENCE OR CONSTRUCTION: The Neighborhood Association, or its agents, may enter any Unit, and any portion of the Neighborhood Common Area to which a Unit Owner has been granted an exclusive easement or license, without advance notice whenever such entry is necessary in emergency situtation. The Association may enter a Unit or Restricted Common Are appurtenant thereto for non-emergency repairs, maintenance or construction for which the Association is responsible only upon a vote of two-thirds (2/3rds) of the Board and upon three (3) days advance notice to the Owner of said Unit. Any entry into a Unit or Restricted Common Area shall be made with as little inconvenience

to a Unit Owner as practicable. Any damages caused by any such entry shall be repaired by the Association.

3.12 BUDGET AND ANNUAL REPORT: Regardless of the number of Members or the amount of assets of the Neighborhood Association, the Board shall prepare:

3.12.1 A pro forma operating statement (budget), a copy of which shall be distributed to Unit Owners at least sixty (60) days prior to the beginning of each fiscal year.

3.12.2 An annual report to be distributed within one hundred twenty (120) days after the close of the fiscal year consisting of the following: (i) a balance sheet as of the end of the fiscal year; (ii) an operating (income) statement for the fiscal year; (iii) a statement of changes in financial position for the fiscal year; and (iv) any information required to be reported under Section 8322 of the Corporations Code. The annual report shall be prepared by an independent public accountant for each fiscal year. If the report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Neighborhood Association that the statements were prepared without audit from the books and records of the Association.

3.12.3 A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a Unit in the Neighborhood and an operating statement for the period from the date of the first closing to the said accounting date both of which shall be distributed within sixty (60) days after the accounting date. The operating statement shall include a schedule of assessments received and receivable identified by the number of the Unit and the name of the entity assessed.

3.13 ADDITIONAL INSURANCE BY UNIT OWNER: No provision contained in this Declaration shall be construed to prevent any Unit Owner from obtaining such additional insurance coverage as such Owner may consider necessary or desirable to protect himself or his Unit.

3.14 MANAGER: The Board may delegate any of its duties, powers or functions, including, but not limited to, the authority to give the certificates provided for in Section 4.8 and 4.9, hereof, and the authority to give the subordination agreements provided for in Section 4.10.3 hereof (but only with the prior approval of a majority of the Board), to any person or firm, to act as Manager, provided that any such delegation shall be revocable by the Board. The members of the Board shall not be liable in excess of any insurance coverage provided by the Association for any

omission or improper exercise by the Manager of any such duty, power or function so delegated. In the absence of any appointment, the Chairman of the Board shall act as Manager. No employment contract with such Manager shall be for a period longer than one (1) year without the prior approval of a majority of each class of Members.

3.15 CONSOLIDATIONS AND MERGERS: To the extent permitted by law, the Neighborhood Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes as this Association, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the voting power of each class of Members voting in person or by proxy at a meeting duly called for that purpose. Written notice of said meeting (which notice shall set forth the purpose of the meeting) shall be given to all Members at least thirty (30) days in advance of the meeting.

3.16 DEDICATION: The Neighborhood Association, as the agent of all Owners, shall have the power to dedicate any of the Neighborhood Common Area, to an appropriate public authority for public use, provided that any such dedication or grant shall have the assent of one hundred percent (100%) of the voting power of each class of Members. The Association may grant such utility easements under, through and over the Neighborhood as are reasonably necessary to the development and operation of the Neighborhood.

3.17 PROJECT RULES:

3.17.1 The Board may, from time to time, and subject to the provisions of this Declaration, propose such Rules as the Board may deem necessary for the management of the Neighborhood. Said Rules shall become effective and binding on all Unit Owners after adoption by fifty-one percent (51%) of the voting power of each class of Members at a meeting duly called for that purpose, or by the written consent of the same number of Unit Owners appended to a copy of the proposed Rules. Such Rules may concern, but need not be limited to, the following subjects:

(a) Use of the Neighborhood Common Area, including any Restricted Common Area;

(b) Signs;

(c) Collection and disposal of refuse and the use and establishment of centralized trash receptacles;

- (d) Minimum standards of maintenance of the Neighborhood;
- (e) Use of any laundry facilities or equipment located in the Building Common Area;
- (f) Use of Parking Spaces; and
- (g) Any other subject or matter within the jurisdiction of the Neighborhood Association as provided in this Declaration.

3.17.2 Without limitation and to the extent deemed necessary by the Neighborhood Association in order to preserve the benefits of the Neighborhood, the Rules may restrict or govern the use of the Neighborhood Common Area by Owners, or by their families, invitees, licensees, guests and tenants; provided, however, that with respect to use of the Neighborhood Common Area, the Rules may not discriminate between Owners and the families and lessees of Owners.

3.17.3 The Rules may include with respect to the Neighborhood Common Area, but not with respect to any public streets adjacent thereto:

- (a) Parking restrictions and limitations on the Neighborhood Common Area;
- (b) Limitations upon vehicular travel; and
- (c) The types of vehicles which may be permitted to use the Neighborhood Common Area.

3.17.4 A copy of the Rules so adopted shall be furnished to each Unit Owner. Each Unit Owner, his family, guests, employees, invitees, licensees and tenants shall comply with the Rules.

3.18 ENFORCEMENT: The Board shall have the power, obligation and duty to enforce the provisions of this Declaration, the By-Laws and the Rules in any manner provided by law or in equity, including but not limited to appropriate legal action, suspension of an Owner's right to use the common facilities of the Neighborhood or suspension of an Owner's voting rights; provided, however, such suspension may not be for a period in excess of thirty (30) days, after notice and hearing as herein provided, for an infraction of the Rules. In addition to the other remedies herein set forth, the Board may adopt Rules and regulations imposing reasonable monetary penalties for any period of time during which a Member is determined by the Board to be in breach of the provisions of the

Declaration, By-Laws or Rules. The payment of such fine may be enforced in the manner set forth in Article IV hereof. The right to levy fines, hold disciplinary hearings or otherwise impose discipline on Members under this Section is vested solely in the Board and may not be delegated to any Director, officer or manager or other employee of the Neighborhood Association or Declarant.

Prior to making a decision to impose any penalty provided herein, other than suspension of voting rights, the Board shall send written notice to the Unit Owner specifying the nature of the infraction and shall provide the Unit Owner with an opportunity to a hearing before the Board regarding such infraction and the penalty to be imposed. The Board may vote to suspend an Owner's voting rights prior to providing notice of and an opportunity to the Owner to a hearing before the Board, but such suspension shall not become effective until fifteen (15) days after the Owner receives notice of such decision to suspend voting rights and unless the Owner is provided notice of and an opportunity to a hearing before the Board at least five (5) days before the effective date of such suspension. In the event that the Board determines that an infraction has occurred and that a penalty shall be imposed, after a reasonable opportunity for a hearing has been provided, the determination of the Board shall be final.

Notwithstanding anything to the contrary herein contained, neither the Board nor the Neighborhood Association shall have the power to cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his individually owned Unit, including access thereto over and across the Building Common Area, on account of such Owner's failure to comply with the provisions of this Declaration or of the By-Laws or any Rules adopted by the Neighborhood Association relating to the operation of the Building Common Area or Project Common Area facilities except when such loss or forfeiture is the result of a judgment of a court or a decision arising out of arbitration or on account of a foreclosure under the power of sale herein granted for failure of the Owner to pay the assessments levied pursuant to the provisions hereof. In the event legal action is instituted by the Board pursuant to this section, any judgment rendered in any such action shall include costs of collection, court costs and reasonable attorneys' fees.

3.19 ENFORCEMENT OF BONDED OBLIGATIONS: When Neighborhood Common Area improvements have not been completed prior to the issuance of the first Final Subdivision Public Report for any phase of the Neighborhood and the Neighborhood Association is obliged under a bond or other arrangement (hereinafter "Bond") to secure performance of the commitment of Declarant to complete the improvements, the following provisions relative to the initiation of action to enforce the obligations of Declarant and the surety under the Bond shall pertain:

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

3.19.2 If the Board decides not to or fails to initiate enforcement action, notice shall be given to all Members of the Neighborhood Association of such decision and, upon receipt of the petition referred to below, there shall be a special meeting of the Members for the purpose of either voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or to vote whether to do so upon the failure of the Board to consider and vote on the question. The meeting shall be required to be held not less than thirty-five (35) nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing not less than ten percent (10%) of the total voting power of the Neighborhood Association.

3.19.3 There shall be a vote by Members of the Neighborhood Association other than Declarant at the special meeting called for the purpose set forth in Subsection 3.19.2 above.

3.19.4 A vote of a majority of the voting power of the Neighborhood Association residing in Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Neighborhood Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Neighborhood Association.

ARTICLE IV

MAINTENANCE ASSESSMENTS AND NEIGHBORHOOD ASSOCIATION FUNDS

4.1. COVENANTS FOR MAINTENANCE ASSESSMENTS: Declarant hereby covenants and agrees for each Condominium owned by it within the Neighborhood, and each Owner of any Condominium, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Neighborhood Association the assessments levied pursuant to this Article. Declarant and each Owner shall thereby vest in the Neighborhood Association the right, power and authority to bring all actions for the collection of such charges and for the enforcement of the lien created hereby. Such right and power shall continue in the Neighborhood Association, and such obligations shall run with the land so that each successive Owner or Owners of record of a Condominium in the Neighborhood shall in turn become liable to pay all such assessments which shall become a lien thereon during the time they are the record Owner of any Condominium in the Neighborhood.

Each assessment levied by the Neighborhood Association under this Article shall constitute a separate assessment. Each assessment, together with interest thereon, costs of collection including reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made. The Neighborhood Association, as the agent of all Unit Owners, shall have a separate lien, and a separate lien with power of sale is hereby created, upon each Condominium against which an assessment is made to secure the payment of any assessments made under this Article. Each such lien for any particular month's charge shall likewise secure interest and late charges thereon, if the same is not paid when due, and costs of suit and reasonable attorneys' fees to be fixed by the court if action or suit is brought to collect such charge. The priority of all such liens shall be in inverse order so that, upon the foreclosure of the lien for a particular month's charge, any foreclosure sale pursuant thereto will be made subject to all liens securing the respective monthly charges on such Condominium for succeeding months.

Each such assessment, together with such interest, attorneys' fees and costs of collection, shall also be a separate, distinct and personal obligation of the Owner of the Condominium at the time when the assessment fell due and shall bind his heirs, devisees, personal representatives and assigns. The personal obligation for delinquent assessments shall not pass to a Unit Owner's successor in title unless expressly assumed by such successor, but the liability for such delinquent assessment shall remain and, if unpaid by such successive Unit Owner, may be foreclosed as herein provided. No

such assumption of personal liability by a successor Unit Owner shall relieve any Unit Owner personally obligated hereby for such Owner's personal liability for delinquent assessments. After a record Unit Owner transfers record title to his Condominium, he shall not be liable for any charge thereafter assessed against such Condominium. A contract seller of a Condominium shall continue to be liable for all such charges until a conveyance by him of the Condominium subject to the assessment is recorded in the Office of the County Recorder of San Diego County.

4.2 REGULAR ASSESSMENTS:

4.2.1 Regular Assessments: The Board shall levy Regular Assessments for the operation and maintenance of the Neighborhood by the procedures established in this Section. Such Regular Assessment shall be levied on a fiscal year basis. The amount and time of payment for said Regular Assessments shall be determined by the Board. However, unless otherwise specified by the Board, the Regular Assessments shall be due and payable in monthly installments on the first day of each month during the continuance of this Declaration commencing for each phase in the Neighborhood on the first day of the first month following close of escrow of the sale of the first Condominium in that phase.

4.2.2 Budgeting: On or before the first business day of the first month following close of escrow of the sale of the first Condominium in the Neighborhood, the Board shall prepare and distribute to each Member a pro forma operating statement (budget), based upon the budget accepted by the State of California Department of Real Estate. The budget shall estimate the total expenditures to be paid out by the Neighborhood Association for maintenance and operation of the Neighborhood and additionally shall include a reasonable reserve for contingencies and replacement of capital improvements for the remainder of the Neighborhood Association fiscal year.

Not less than sixty (60) days prior to the commencement of each subsequent Neighborhood Association fiscal year, the Board shall estimate the total charges to be paid out of the Neighborhood Association maintenance fund during such year (including a reasonable reserve for contingencies) and shall at that time determine and fix the amount of the Regular Assessments against each Condominium subject thereto for such fiscal year; provided, however, that the Board may not, without the prior vote of a majority of each class of Members of the Neighborhood Association taken at a meeting called for such purpose, impose a Regular Assessment per Condominium which is more than ten percent (10%) greater than the Regular Assessment per Condominium for the immediately preceding fiscal year. Written notice of Regular Assessments shall be sent to every Owner subject thereto at least

sixty (60) days in advance of each fiscal year. All funds budgeted, allocated, assessed and collected for contingencies, deferred maintenance and replacement of capital improvements shall be designated for those specific purposes and shall then be used solely for the specific purpose designated.

Within one hundred twenty (120) days after the end of each fiscal year, the Unit Owners shall receive an accounting of assessment receipts and disbursements for that fiscal year. If such accounting shows that a surplus of cash results, the Unit Owners shall vote to determine whether to refund all or part of such surplus or whether such surplus shall be carried over to future assessment periods and applied to reduce future assessments. Any budget surplus shall be traced back to the specific budget items which created the surplus and the Association shall distribute or allocate such surplus to each Unit Owner in the same proportion as the Unit Owner's respective assessment for those budget items bears to the total assessment for those items.

4.2.3 Allocation of Assessments: Those items in the budget designated as gas, insurance premiums and reserves for painting and the replacement of the hot water heater, heating system and roof, if any, and only insofar as they relate to the maintenance and operation of Building Common Area, shall be allocated to and assessed among the Condominiums and the Unit Owners in the proportions set forth in Exhibit "B" attached hereto. All other items in the budget, including all items pertaining to the maintenance and operation of the Project Common Area, shall be allocated to and assessed among all Unit Owners equally.

Upon annexation of additional Units to the Neighborhood pursuant to Section 2.5 hereof, the allocation and assessment of the total charges for the Neighborhood, including the annexed property, shall be allocated among all Units in the Project in the same manner as set forth herein. Such allocation and assessments shall be specifically set forth as a part of the Declaration of Annexation for each phase of the Neighborhood and Exhibit "B" shall be amended to accurately reflect annexation of the additional Units and Neighborhood Common Area to the Neighborhood.

4.3 SPECIAL ASSESSMENTS: In addition to the Regular Assessments authorized by Section 4.2 hereof, the Board may levy, in any fiscal year, a Special Assessment applicable to that year for capital improvements, for correction of inadequacy of the maintenance fund, for defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Neighborhood Common Area or for such other matters as the Board may deem appropriate; provided, however, that within any fiscal year the aggregate of such special assessments shall not exceed five percent (5%) of the budgeted gross expenses

for said fiscal year without the assent of a majority of the voting power of each class of Members, voting in person or by proxy, at a meeting duly called for that purpose. Any Special Assessment shall be levied equally among all Units except a Special Assessment for major repair or reconstruction of Building Common Area, which shall be based upon the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units to be assessed. Written notice of such meeting shall be given to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. No such Special Assessment shall be levied prior to the commencement of the Regular Assessments provided for herein. The provisions of this Section shall not apply in connection with the levy by the Board of a Reimbursement Assessment against an Owner under Section 4.4 for costs incurred in bringing the Owner and his Unit into compliance with provisions of this Declaration or the Rules.

4.4 REIMBURSEMENT ASSESSMENTS: The Board shall levy a Reimbursement Assessment against any Unit Owner and the Condominium owned by any Owner whose failure to comply with this Declaration or the Rules has necessitated an expenditure of monies by the Neighborhood Association from the maintenance fund to enable the Neighborhood Association to perform its duties hereunder to bring such Owner and the Condominium owned by him into compliance with this Declaration or the Rules. Such Reimbursement Assessment shall be for the purpose of reimbursing the Neighborhood Association, shall be limited to the amount so expended and shall be due and payable to the Association when levied. A Reimbursement Assessment shall be levied by the Neighborhood Association only after notice to the affected Owner and an opportunity for a hearing before the Board satisfying the requirements of Section 7341 of the California Corporation Code.

4.5 NON-WAIVER OF ASSESSMENTS; OFFSETS: The failure or omission by the Board, before the expiration of any year, to fix the Regular Assessment hereunder for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Unit Owner from the obligations to pay the Regular Assessment, or any installment thereof, for that or any subsequent year. Should such an omission occur the assessment fixed for the preceding year shall continue until a new assessment is fixed. No Unit Owner may waive or otherwise escape personal liability for the assessments provided for herein, nor release the Condominium owned by him from the liens and charges hereof, by non-use of the Neighborhood Common Area, abandonment of the Condominium or any other attempt to renounce rights in the Neighborhood Common Area or the facilities or services thereof.

All assessments shall be payable in the amount specified in the levy by the Neighborhood Association, and no offsets against such amounts shall be permitted for any reason, including without limitation, a claim that the Neighborhood Association is not properly exercising its duties of maintenance or enforcements.

4.6 ENFORCEMENT: Each Owner of a Condominium, upon becoming such Owner, is and shall be deemed to covenant and agree to pay to the Neighborhood Association each and every of the assessments provided for in this Declaration and shall be deemed to covenant and agree to the enforcement of all such assessments in the manner herein specified. In the event an attorney(s) is employed for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Unit Owner agrees to pay reasonable attorneys' fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Unit Owner, and the same shall be included in any judgment in any suit or action brought to enforce collection of delinquent assessments. In addition, any assessment not paid when due shall be deemed to be delinquent. Any assessment not paid within thirty (30) days after the date on which it becomes due shall be deemed delinquent. Such delinquent assessment shall thereafter earn interest from the due date at the rate of ten percent (10%) per annum. In addition to any other remedies herein or by law provided, the Neighborhood Association, or its authorized representative, may enforce the obligations of the Owners to pay the assessments provided for in this Declaration, and each of them, in any manner provided by law or in equity, and without any limitation of the foregoing, by either or both of the following procedures:

4.6.1 Enforcement by Suit: The Association may commence and maintain a suit at law against any Unit Owner or Owners personally obligated to pay assessments for such delinquent assessments as to which they are personally obligated, such suit to be maintained in the name of the Neighborhood Association. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest if any, thereon, costs of collection, court costs and reasonable attorneys' fees in such amount as the court may adjudge against the delinquent Unit Owner. Suit to recover judgment for unpaid assessment shall be maintainable without foreclosing or waiving the lien hereinafter provided for.

4.6.2 Enforcement by Lien; Notice of Assessment: The Neighborhood Association may commence and maintain proceedings to foreclose the lien herein provided. There is a present lien, with power of sale, on each Condominium to secure payment to the Neighborhood Association of any and all assessments levied against

such Condominium pursuant to this Declaration, together with interest, if any, thereon, as herein provided, and all costs of collection which may be paid or incurred by the Neighborhood Association in connection therewith, including reasonable attorneys' fees. No action shall be brought to foreclose the lien securing an unpaid assessment until a Notice of Assessment signed by the Board (or by any Unit Owner if the Board fails or refuses to act) has been delivered to the Unit Owner of the Condominium subject to such assessment, and a copy of such Notice of Assessment recorded in the Office of the Recorder of San Diego County. Said Notice of Assessment shall state the amount of the assessment together with the interest, late charges, costs and reasonable attorneys' fees incurred to the date thereof, a description of the Condominium against which the same has been assessed and the name or names of the record Unit Owner(s) thereof. After the expiration of thirty (30) days from the date of recordation of such Notice of Assessment, an action may be commenced by the Neighborhood Association in the name of the Neighborhood Association to foreclose the lien for a delinquent assessment, or such action may be commenced by any Unit Owner if the Neighborhood Association fails to act. Upon the declaration of an assessment and the recordation of a Notice of Assessment, the Neighborhood Association may, at its option, declare the entire unpaid balance of the Assessment and all other sums then due or to become due from the Unit Owner due and payable, which total sum may then be included in any suit, action or proceeding for collection. Notwithstanding anything contained in this Declaration to the contrary, no action may be brought to foreclose the lien created hereunder, whether judicially, by power of sale or otherwise, until the expiration of ten (10) days after a copy of said Notice of Assessment, showing the date of recordation thereof, has been mailed to the Unit Owner of the Condominium which is described in the Notice. Said lien shall continue for a period of one (1) year unless extended for a period of an additional year by the recording of a written extension by the association. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first mortgage or deed of trust of record.

To the extent of any lien created pursuant to this Declaration, whether such lien is now in existence or is created at any time in the future, each Unit Owner does hereby waive the benefit of any homestead or exemption laws of the State of California now in effect, or in effect from time to time hereafter:

4.7 POWER OF FORECLOSURE AND SALE: Each Unit Owner, with the exception of the Administrator of Veterans Affairs, an Officer of the United States of America, hereby appoints the Neighborhood Association, as his trustee, and empowers the Association, as trustee, -to enforce any lien created pursuant to this Declaration and to foreclose such lien by private power of sale as provided in Division III, Part 4, Title XIV, Chapter 2, Article I of the Civil Code of the State of California and Civil Code Section 1356, as such statutes may be revised, amended or altered from time to time, or by judicial foreclosure, and does further grant the Neighborhood Association, as such trustee, the power and authority to sell the Condominium of any such defaulting Unit Owner, or any part thereof, for lawful money of the United States, to the highest bidder to satisfy such lien.

The lien provided for herein shall be in favor of the Neighborhood Association, shall be for the benefit of all Unit Owners and shall secure payment of all sums set forth in the Notice of Assessment together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said Notice of Assessment. The Neighborhood Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any Condominium. In the event such foreclosure is by action in court, reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

4.8 STATUS OF ASSESSMENT LIEN: Upon request the Neighborhood Association shall furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized agent of the Neighborhood Association stating the amount of any Assessment secured by the lien upon a Condominium and whether the Assessments or any portions thereof have been paid. Such certificate shall be conclusive evidence of payment of any Assessments or portions thereof stated therein to have been paid. A reasonable charge not to exceed FIFTEEN DOLLARS (\$15.00) may be made by the Board for the issuance of such certificate.

4.9 CERTIFICATE OF DISCHARGE OF LIEN: Upon payment of the delinquent assessment or other satisfaction thereof, the Neighborhood Association shall cause to be recorded, in the same manner as the Notice of Assessment referred to in Paragraph 4.6, a further certificate stating the satisfaction and release of the assessment lien. A failure to record said certificate of discharge without good cause within thirty (30) days after written demand by the Unit Owner of the affected Condominium shall entitle him to recover a penalty of Three Hundred Dollars (\$300.00) from the Board plus his actual damages.

4.10 SUBORDINATION OF LIEN TO ENCUMBRANCE: Notwithstanding any provision to the contrary herein contained:

4.10.1 Liens: The liens for assessments created by this Declaration shall be subject and subordinate to and shall not affect the rights of the holder of any indebtedness secured by a recorded First Mortgage upon a Condominium made in good faith and for value; provided, however, that after the foreclosure of any such First Mortgage there shall be a lien pursuant to this Declaration on the interest of the purchaser at such foreclosure sale to secure all Assessments, whether Regular, Special or Reimbursement, charged to such Condominium after the date of such foreclosure sale, which lien shall have the same effect and shall be enforced in the same manner as provided herein. For purposes of this subsection, a Mortgage may be given in good faith or for value even though the Mortgagee has constructive or actual knowledge of the assessment lien provisions of this Declaration.

4.10.2 Amendment: No amendment of this subsection shall affect the rights of the holder of any such Mortgage recorded prior to recordation of such amendment unless the Mortgagee thereof joins in the execution of such amendment.

4.10.3 Subordination Agreement: By Subordination Agreement executed by a majority of the Board, the benefits of Section 4.10.1 and 4.10.2 may be extended to the contract of sale utilized by Cal. Vet.

4.10.4 Subordination to Community Assessments: The lien of any assessment imposed on any Condominium pursuant to this Declaration shall be subordinate and inferior to the lien of any Community Assessments imposed upon such Condominium pursuant to the Community Declaration.

4.11 ASSOCIATION FUNDS: Unless otherwise determined by the Board acting by majority vote, the assessments collected by the Association shall be properly deposited into two (2) separate accounts in a bank or other savings institution selected by the Board, which accounts shall be clearly designated as the PALAZZO BERNARDO CURRENT MAINTENANCE AND OPERATION ACCOUNT and the PALAZZO BERNARDO DEFERRED CAPITAL MAINTENANCE AND REPLACEMENT ACCOUNT. The assessments collected by the Neighborhood Association shall be held in trust by the Neighborhood Association for and on behalf of each Unit Owner and shall be used solely for the operation, care and maintenance of the Neighborhood as provided in this Declaration. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Neighborhood and shall allocate a portion of said funds as collected as reserves for contingencies, replacement and deferred maintenance of the capital improvements of the Neighborhood as specified in the annual budget.

Said funds shall be deposited, as allocated, into the appropriate bank accounts and said accounts shall be separately maintained by the Neighborhood Association. Upon sale or transfer of any Unit by any Owner, the Owner's interest in the trust funds shall be deemed automatically transferred to the successor or transferee of such Owner.

In the event that the Board retains a professional management service, the Board may delegate the authority to deposit or withdraw funds to responsible representatives of the professional management agent so retained. Said professional management agent may additionally be authorized to establish a common trustee account for deposit of assessments as collected. Any funds deposited in such a common trustee account shall be allocated as previously specified herein.

4.12 BOOKS OF ACCOUNT: The Board shall maintain full, complete and correct books of account of the operation of the Neighborhood and vouchers supporting expenditure and the same shall be open during all reasonable hours for inspection by any Unit Owner. Any Unit Owner, or the duly authorized representative thereof, may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Association. Said books and records shall accurately detail in chronological order the receipts and expenditures affecting the Neighborhood Common Area, specifying and itemizing the maintenance and repair expenses of the Neighborhood Common Area and any other expenses incurred.

4.13 COMMUNITY ASSOCIATION ASSESSMENTS:

4.13.1 The Declarant, for each Unit owned within the Neighborhood, hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, does and is deemed to covenant and agree to pay to the Community Association and the Community Assessments provided for in the Community Declaration. Such Community Assessments shall be established and collected as provided in the Community Declaration. The Community Assessments allocable to the Neighborhood shall be allocated equally to each Unit in the Neighborhood. The Community Assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such Community Assessment is made. Each such Community Assessment, together with the allowable interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment fell due and remaining due to the extent permitted by the Community Declaration.

4.13.2 The Community Association may elect to require administration and collection of the Community Assessments by the Neighborhood Association, in which event the Neighborhood Association shall levy and collect the Community Assessments due from the Owners of this Neighborhood. Any such funds collected by the Neighborhood Association shall be held in trust by the Neighborhood for the Community Association and shall be disbursed to the Community Association as provided by the Community Declaration.

4.13.3 The Community Assessments provided for in the Community Declaration may preempt the Assessments provided for in Section 4.2 hereof, if the Community Association so elects, pursuant to the provisions of the Community By-Laws and the Community Declaration. If the Community Association elects to preempt the Neighborhood Association Assessments, or any portion of them, such funds shall be utilized in the manner and for the purposes specified herein and in the Community Declaration and Association as well as community-wide needs.

4.14 CAPITALIZATION OF ASSOCIATION: Upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6th) of the amount of the then annual assessment for that Condominium as determined by the Association. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. Prior to the expiration of six (6) months after the close of escrow for the first Condominium sold in each phase, Declarant shall deposit into an escrow an amount equal to one-sixth (1/6th) of the then annual assessment for any and all Condominiums in said phase not yet sold. Escrow shall remit these funds to the Association. Upon the close of escrow of any Condominium for which the capitalization fee was prepaid by Declarant, escrow shall remit to the Declarant the capitalization fee collected from the buyer.

ARTICLE V

USES, RESTRICTIONS AND COVENANTS

5.1 The Units and Neighborhood Common Area shall be used as follows:

5.1.1 Residential Use: Each Unit shall be used for residential purposes. No other uses shall be allowed; provided, however, that Declarant may use any unsold Units owned by Declarant as sales models until all Units in the neighborhood are sold to individual Condominium purchasers, pursuant to Section 8.1.5. The Board may establish uniform rules regarding the definitions of permanent and temporary occupancy, permitted stays by guests and exceptions for health purposes.

5.1.2 Parking: The exclusive use of one (1) or more Garages will be granted to or reserved for the Owner of each Unit as designated in his Deed. No boats, trailers, campers, motorcycles, golf carts or other recreational vehicles shall be parked or stored anywhere in the Neighborhood except wholly within the Garage belonging to an Owner. No part of the Neighborhood other than Garages shall be used for major repair, construction or reconstruction of any vehicle, boat or any other item or thing.

5.1.3 Rental of Residential Units: A Unit Owner shall be entitled to rent his Unit, provided that:

- (i) The entire Unit is rented or leased;
- (ii) Such rental or lease is for a period of not less than sixty (60) days;
- (iii) Such rental or lease is solely for residential purposes;
- (iv) The Unit Owner has given notice of the proposed tenancy to the Board and has otherwise complied with the terms of this Declaration;
- (v) The rental or lease shall be by written agreement specifying that the tenant shall be subject to all provisions of the Declaration, the By-Laws and the Rules and that a failure to comply therewith shall be a default under such lease or agreement; and
- (vi) Each tenant or lessee shall be provided with a copy of the Rules and of this Declaration by the Unit Owner so renting or leasing.

5.1.4 Combination of Units: Contiguous Units may be combined for use as a single residence with the Board's prior approval. Before the Board shall consent to any such combination (except for combinations accomplished by Declarant prior to the conveyance of all Condominiums), it shall first receive and give its approval of:

(a) Architectural plans;

(b) A certificate of a structural engineer licensed in the State of California and approved by the Board stating that those portions of the Building Common Area affected by the proposed combination are not required for structural support;

(c) A bid by a contractor licensed in the State of California and approved by the Board setting forth the cost to make the proposed combination and the time within which the combination could be completed;

(d) A bond naming the Board as an obligee (or other security approved by the Board) to assure the prompt completion of the combination in a workmanlike manner free of mechanics' liens;

(e) All building and other governmental permits required for the construction; and

(f) A certificate by electrical and plumbing contractors licensed in the State of California setting forth in detail the effect the proposed combination would have on any plumbing and wiring within the Building Common Area to be affected by the proposed combination.

The Owner of such combined Units shall be entitled to the votes and shall be obligated to pay the Assessments on each of the owned Units in the same manner as if they had not been combined.

The Board shall permit reconstruction of such Units as independent Units in conformance with the Plan, upon the Board's receipt and approval of items (a) through and including (f) above; no Unit shall be independently conveyed, leased or transferred as an independent Unit unless and until such reconstruction has been accomplished.

5.1.5 Drapes: All drapes, window shades or other window coverings installed in the windows of Units which are visible from the exterior of the building shall have an exterior surface or lining as designated by the Neighborhood Architectural Committee. provided, however, that in no case shall any window opening have affixed to it or be otherwise lined with any foil, paper or similar

material. Any drapes or other window coverings installed with Committee approval may remain for the useful life thereof, regardless of a change in the Committee or Association Rules, unless the Board compensates the Owner for the pro rata remaining value of such window covering. All window coverings shall be installed within ninety (90) days after close of escrow.

5.1.6 Guests and Lessees: Each Owner shall be responsible for compliance with the provisions hereof by his guests and lessees and shall pay the Reimbursement Assessments and Special Assessments levied pursuant to this Declaration, the By-Laws or the Association Rules for a violation by his lessee or guest.

5.1.7 Use of Neighborhood Common Area; Insurance Restrictions: There shall be no use of the Neighborhood Common Area except by the Unit Owners, their invitees, guests or tenants. There shall be no obstruction of any part of the Neighborhood Common Area. Nothing shall be stored, kept or parked in the Neighborhood Common Area (including Restricted Common Area) without the prior consent of the Neighborhood Association except in designated storage spaces. No storage closet, locker or facility of any kind (except those constructed by Declarant) shall be built, placed or kept in any part of the Neighborhood Common Area, other than on Restricted Common Area, without the prior approval of the Neighborhood Association. No alterations, additions or other improvements to Restricted Common Area shall be permitted without the approval of the Neighborhood Architectural Committee. Nothing shall be done or kept in the Neighborhood Common Area which will increase the the rate of insurance on any of the community facilities without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in the Neighborhood Common Area which will result in the cancellation of insurance on any Unit or any part of the Neighborhood Common Area, which would interfere with rights of other Unit Owners, which would be noxious, harmful or unreasonably offensive to other Unit Owners or which would be in violation of any governmental statute, ordinance, rule or regulation. No waste shall be committed in the Neighborhood Common Area.

5.1.8 Use of Units: No Unit Owner may permit or cause anything to be done or kept upon, in or about his Unit which will obstruct or interfere with the rights of other Unit Owners, annoy other Unit Owners by unreasonable noise, smell or otherwise or be noxious, harmful or unreasonably offensive to other Unit Owners. A Unit Owner shall not install or affix any floor covering to any Balcony or Patio without obtaining the prior written approval of the Neighborhood Architectural Committee. Notwithstanding such approval, the Unit Owner shall be responsible for maintaining and repairing any such floor covering, and shall, when necessary or required for structural repair, maintenance or replacement of the

Balcony or Patio, remove said floor covering. Each Unit Owner shall comply with all of the requirements of all governmental authorities, federal, state and local, and all laws, ordinances, rules and regulations applicable to his Unit.

5.1.9 Care of Unit and Appurtenances: Each Unit Owner shall keep the interior of any Garage, Patio and/or Balcony to which he has been granted an exclusive right of use or which has been assigned to him, clean, free of debris, in good repair and in a neat and orderly condition. Each Unit Owner shall keep the interior of his individual residence, and all fixtures, appliances and appurtenances therein or thereto, including any fireplace, in good condition and repair.

5.1.10 Neighborhood Common Area Improvements: Except as may be authorized by the Neighborhood Architectural Committee pursuant to Section 5.4 below and approved by the appropriate agency of the City in which the Project is located, no person other than the Board and its duly authorized agent shall construct, reconstruct, refinish or alter any improvement situated upon the Neighborhood Common Area.

5.1.11 Signs: No sign of any kind shall be displayed to the public view or from any Unit or the Building Common Area; provided, however, that: (a) one sign of reasonable dimensions may be placed upon the Unit advertising a Condominium for sale or rent; (b) during the period in which the Declarant is the Owner of two or more Condominiums, Declarant may maintain and display in the Neighborhood such signs as it may deem appropriate advertising said Condominiums for sale; provided, however, that Declarant's display of such signs shall not exceed a period of seven (7) years after the issuance of a Final Subdivision Public Report for the first phase of the Project, and provided further, that Declarant shall provide for the removal of said signs and shall then restore the Neighborhood Common Area to the extent the former presence of such signs so requires; and (c) the Neighborhood Association may maintain and display such signs as the Board may deem appropriate identifying the Neighborhood. Any such signs shall be attractive and compatible with the design of the Neighborhood and shall comply with any applicable City ordinances. Notwithstanding the foregoing, any Unit Owner, the Neighborhood Association or Declarant may maintain any sign required by legal proceedings.

5.1.12 Structural Alterations: Nothing shall be altered or constructed in, placed or stored in or removed from the Neighborhood Common Area, Patios or Balconies except as expressly permitted in this Declaration, the By-Laws or Neighborhood Association Rules or with the written consent of the Board or the Neighborhood Architectural Committee, as the case may be; provided, however, that without such consent, Owners may make such

alterations of Building Common Area within their Units as do not adversely affect the structural integrity of any buildings or improvements or alter the exterior appearance of any part thereof, such permitted alterations to include, without limitation, interior remodeling of Units (excluding load-bearing walls, wherever located).

5.1.13 Restriction on Businesses: No business of any kind whatsoever shall be established, maintained, operated, permitted or conducted in the Neighborhood, or any portion thereof, excepting the business of Declarant in completing the development and sale of the Condominiums in the Neighborhood and such professional and administrative professions as may be permitted by city ordinance, provided there is no external evidence thereof.

5.1.14 Animals: Except for one (1) animal of twenty-five pounds or less per Unit, no animals shall be maintained, bred or kept in any Unit or in the Neighborhood Common Area. No animal may be kept, bred or maintained for any commercial purposes. The Board shall specifically have the right to prohibit the maintenance of any pet which, in the opinion of the Board, after notice and hearing, constitutes a nuisance to an Owner or Owners.

5.1.15 Storage of Waste Materials: All garbage, trash and accumulated waste plant material shall be placed and kept in covered trash containers designated and maintained by the Neighborhood Association. No exterior individual Unit trash containers or receptacles shall be permitted without the express consent of the Board. No portion of any Unit shall be used for the storage of building materials or other materials other than in connection with approved construction.

5.1.16 Antennas: Except for those erected, constructed or maintained by the Board, no outside television antenna, aerial or radio pole shall be erected, constructed or maintained on the Neighborhood Common Area or any Unit located in such a manner as to be visible from the outside, except by written consent from the Board.

5.1.17 Roof: No person shall walk on any roof without the prior consent of the Board except for areas constructed for such use, if any.

5.2 MAINTENANCE BY UNIT OWNER: The Neighborhood Association shall have the exclusive right to contract for all goods and services, payment for which is to be made from the maintenance fund. Except as limited herein, each Unit Owner shall have the exclusive right, at his sole cost and expense to: (i) maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors and the perimeter walls of his

Unit, the surfaces of the bearing walls located within his Unit and the surfaces of any other finishes owned by the Unit Owner as herein defined; (ii) substitute new finished surfaces for the finished surfaces then existing on said ceilings, floors and walls, including, without limiting the generality of the foregoing, the following: substitution of paint for paper or paper for paint, substitution of any type of paneling for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile or substitution of wood for linoleum or tile or of linoleum or tile for wood; (iii) repair, paint, finish, alter, substitute, add or remove any fixtures attached to said ceilings, floors or walls. The Unit Owner shall be responsible and liable for the maintenance and replacement of the finishes of the interior walls, floors and ceilings of his Unit and for the maintenance and repair of internal installations to the Unit, such as fireplaces, if any, toilets, showers, bathtubs, sinks, kitchen appliances, telephone facilities, the connections thereto, doors, windows and all other accessories within the boundaries of the Unit.

5.3 MAINTENANCE AND CARE OF RESTRICTED COMMON AREA: Each Unit Owner shall clean, repair and maintain the Restricted Common Area to which he has been granted an exclusive easement, including the Garage, Patio and/or Balcony at said Owner's sole expense; provided, however, that the painting of any exterior surfaces of Garages, Patios and Balconies shall be the responsibility of the Association. This paragraph shall not be construed to permit any interference with or damage to the structural integrity of the building.

All plantings and landscaping of Patios or Balconies shall be installed and maintained by an Owner at the Owner's expense in conformity with plans approved by the Neighborhood Architectural Committee. No Owner shall build or place any structure within his Patio or Balcony without the prior written consent of the Neighborhood Architectural Committee or the Board, as the case may be, and, if applicable, the City of San Diego. Any Owner granted a Patio shall landscape such Patio, or cause such Patio to be landscaped, within a reasonable length of time after the conveyance of the Unit from Declarant. All such landscaping shall be undertaken in accordance with the procedures set forth by the Neighborhood Architectural Committee and by Article VIII of the Community Declaration.

5.4 ALTERATIONS OR ADDITIONS:

5.4.1 Alterations to Neighborhood Common Area Other Than Restricted Common Area: A proposal for any structural alteration or addition to the community facilities or the Neighborhood Common Area, other than Restricted Common Area, may be made at any regular or special meeting of the Board. Such proposal

may be adopted by a majority vote of the Board; provided, however, that if the aggregate expenditure for capital improvements to the Neighborhood Common Area exceeds five percent (5%) of the budgeted gross expenses of the Neighborhood Association for that fiscal year, such proposal shall be accepted only upon the affirmative vote of a majority of the voting power of each class of Members at a regular or special meeting. Unless otherwise agreed at the meeting of such Members, the cost of the alteration or addition so approved shall be paid from the maintenance fund, and the Neighborhood Association shall levy a Special Assessment to cover said cost, which shall be shared among the Unit Owners in proportion to their respective interests in the Neighborhood Common Area.

5.4.2 Alterations to Restricted Common Area: Any proposals for alterations, additions or other improvements of Restricted Common Area shall be submitted to the Neighborhood Architectural Committee in writing by the Owner proposing such alterations, additions or improvements. The Committee shall review such proposal to determine (i) whether such proposals would be compatible with the design, construction and standards of quality of the Neighborhood; (ii) whether the proposed improvements would interfere with or disturb the use or enjoyment of other Units; and (iii) whether the proposed improvements would be acceptable to the City of San Diego. The cost of any application to the City or any other costs incurred shall be borne solely by the Unit Owner making such proposal. Unless otherwise agreed at a meeting of the Members called for such purpose, the cost of an alteration or addition to Restricted Common Area approved by the Neighborhood Architectural Committee shall be paid by the Unit Owner granted exclusive use of such Restricted Common Area.

5.5 USE OF COMMON FACILITIES: The Unit Owners and their invitees, tenants and guests, in common with all other Unit Owners in the Neighborhood, may enjoy the use of all facilities in the Neighborhood Common Area so long as they abide by the terms of this Declaration and any Rules which may be adopted by the Neighborhood Association, subject however, to any grant of the exclusive easements and/or licenses to particular Unit Owners of Patios, Balconies, and Garages within the Common Area.

5.6 COMMUNITY DECLARATION: The provisions of this Article V shall not be construed to be in derogation of or to limit the use restrictions contained in Article VI of the Community Declaration.

ARTICLE VI

EASEMENTS

6.1 GENERALLY: There are hereby specifically reserved and granted for the benefit of the Units and Unit Owners, in common and for each Unit and Unit Owner severally, and for the Neighborhood Association, as their respective interests shall obtain, in addition to all easements, if any, reserved and granted on the Map or Plan, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article.

6.2 UTILITIES: There is reserved and granted for the benefit of each Unit, as dominant tenement, a non-exclusive easement for utility services over, under and through the Neighborhood, including the Neighborhood Common Area and each other Unit, jointly, as the servient tenement.

6.3 ENCROACHMENT: There are reserved and granted for the benefit of each Unit, as dominant tenement, over, under and across each other Unit and the Common Area, as servient tenement, and for the benefit of the Common Area, as dominant tenement, over, under and across each Unit, as servient tenement, non-exclusive easements for encroachment, support, occupancy and use of such portions of the Project as shall be encroached upon, used and occupied by the dominant tenement as a result of any accretion, erosion, addition, deterioration, decay, construction, reconstruction movement or subsidence of any residence building or structure or any portion thereof, or any other cause. A valid easement for encroachment and for the maintenance of the encroachment shall exist for as long as the encroachment exists. The easement of encroachment may but need not be cured by repair and restoration of the structure.

6.4 SUPPORT, MAINTENANCE AND REPAIR: There is hereby reserved and granted a non-exclusive easement appurtenant to the Neighborhood Common Area and to all other Units, as dominant tenements, through each Unit and the Neighborhood Common Area, as servient tenement, for the support, maintenance and repair of the Neighborhood Common Area and all other Units.

6.5 INGRESS AND EGRESS: There is hereby reserved to each Unit, as dominant tenement, a non-exclusive easement appurtenant to each Unit over and across the Neighborhood Common Area (exclusive of Restricted Common Area) as servient tenements, for ingress, egress, use and enjoyment of said Neighborhood Common Area subject to the limitations provided in this Declaration.

6.6 BALCONIES AND PATIOS: Each Unit and each Unit Owner shall have an exclusive easement, and such exclusive easement is hereby reserved and granted, for the use, possession and enjoyment of any Balcony or Patio directly adjacent to said Unit as designated and delineated on the Plan; subject, however, to the right of the Neighborhood Association to enter in and upon said Balcony or Patio for the purposes of maintaining and repairing the same, pursuant to this Declaration, and enforcing the terms hereof. The grant of any such easement for a Balcony or Patio situated on the first floor of a building shall include such area beneath the surface of the earth as is reasonable and necessary for the cultivation, landscaping and drainage of the Balcony or Patio.

6.7 GARAGES: Each Unit and each Unit Owner shall have an exclusive easement, and such exclusive easement is hereby reserved and granted, for the use, possession and enjoyment of any Garage(s) bearing the same number as the Unit as shown on the Plan; subject, however, to the right of the Neighborhood Association to enter in and upon said Garage for the purposes of maintaining and repairing the same pursuant to this Declaration and enforcing the terms hereof.

6.8 EASEMENT TO DECLARANT FOR ADJOINING PROPERTY:

6.8.1 Reservation of Easement: Declarant shall have, and hereby expressly reserves an easement over and across the Neighborhood Common Area, as servient tenement, appurtenant to the Additional Property, as dominant tenement, for the purpose of reasonable ingress to and egress from, over and across the Neighborhood to the Additional Property. In addition, Declarant shall have and specifically reserves a non-exclusive easement appurtenant to the Additional Property for ingress and egress over the private roads and pathways in the Neighborhood until such time as all of the Additional Property is annexed. Declarant shall be obligated to restore any portion of the Neighborhood to its original condition if the original appearance or condition of such portion has been altered as a result of the use of the easements established in this Section. Such easements shall terminate seven (7) years after the original issuance of the first Final Subdivision Public Report issued for the first phase of the Neighborhood.

6.8.2 Binding: The easements reserved in this Section 6.8 shall constitute an easement appurtenant to the Additional Property, and each portion thereof, for the use and benefit of Declarant and its tenants and successors in interest in the Additional Property until such time as the Additional Property is annexed to the Neighborhood.

6.9 ANNEXATION OF ADDITIONAL PROPERTY: Upon annexation of any portion of the Additional Property to the Neighborhood, the Units and the Owners of Units in the annexed phase shall have all of the easements over and across the Building Common Area as are specified in this Article, and the Units and the Owners of Units in the Neighborhood prior to such annexation shall after such annexation have all of such easements and rights of use over and across the Building Common Area contained in such annexed phases as are granted and reserved in this Article as though said annexed property were initially a part of the Neighborhood. The reciprocal cross-easements set forth above shall be effective only at such time as Additional Property has been annexed pursuant to Section 2.5 hereof.

ARTICLE VII

NEIGHBORHOOD ARCHITECTURAL COMMITTEE

7.1 ORGANIZATION: There shall be Neighborhood Architectural Committee consisting of three (3) persons. There shall also be one alternate member who may be designated by the Committee to act as substitute on the Committee in the event of absence or disability of any member.

7.2 DESIGNATION OF MEMBERS AND TERMS OF OFFICE:

A. Initial Members: The initial members of the Neighborhood Architectural Committee shall be appointed by Declarant, prior to the conveyance of the first Unit to a Purchaser. Such designation shall be reflected in the minutes of the Neighborhood Association. Declarant shall designate one member to serve a term of one (1) year; one member to serve a term of two (2) years and one member to serve a term of three (3) years from the date of appointment. The alternate member shall serve a term of three (3) years. Each of said members shall serve the length of said terms unless they have resigned or have been removed from office. Thereafter, the terms of all Neighborhood Architectural Committee members appointed shall be three (3) years. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members who have resigned or been removed or whose terms have expired may be reappointed; however, no person shall serve as a member of the Neighborhood Architectural Committee, either regular or alternate, for a period in excess of six (6) years in any ten (10) year period.

B. Appointment and Removal: Until such time as the Unit Owners other than Declarant own ninety percent (90%) or more of the Units within the Neighborhood, or five (5) years after the issuance of the final subdivision public report of the Department of Real Estate for the first phase of the Neighborhood, whichever occurs first, the right to appoint and remove all members and alternate members of the Neighborhood Architectural Committee shall be, and is hereby, vested solely in Declarant unless prior to said time Declarant waives its rights hereunder by notice in writing to the Neighborhood Association. Provided, however, after one year from the date of issuance of the original subdivision public report for the first phase of the Neighborhood, the Board shall have the right to appoint one member to the Committee. When Declarant waives or no longer has the right to appoint and remove the members of the Committee, said right shall be vested solely in the Board. All members appointed by the Board shall be Unit Owners. Exercise of the right of appointment and removal, as set forth herein, shall be

evidenced by the specification in the minutes of the Neighborhood Association of each new Committee member or alternate member appointed and each member or alternate replaced or removed from the Neighborhood Architectural Committee.

C. Resignations: Any member or alternate member of the Neighborhood Architectural Committee may at any time resign from the Committee upon written notice delivered to Declarant or to the Board, whichever then has the right to appoint members.

D. Vacancies: Vacancies on the Neighborhood Architectural Committee, however caused, shall be filled by the Declarant or the Board, whichever then has the power to appoint members.

7.3 DUTIES: It shall be the duty of the Neighborhood Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms of Section 5.4 hereof, to adopt Neighborhood Architectural Committee Rules, to perform other duties delegated to it by the Neighborhood Association, and to carry out all other duties imposed upon it by this Declaration.

7.4 MEETINGS: The Neighborhood Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of any two (2) members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it at such meeting or otherwise. The Neighborhood Architectural Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Neighborhood Architectural Committee function.

7.5 ARCHITECTURAL COMMITTEE RULES: The Neighborhood Architectural Committee may, from time to time and in its sole discretion, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Neighborhood Architectural Committee Rules." Said Rules shall interpret and implement the provisions hereof by setting forth the standards and procedures for Neighborhood Architectural Committee review and guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Neighborhood; provided, however, that said Rules shall not be in derogation of the minimum standards required by this Neighborhood Declaration, the Community Declaration or the Community Architectural Rules and Guidelines.

7.6 APPLICATION FOR APPROVAL OF IMPROVEMENTS: Any Owner, except the Declarant and its designated agents, proposing to perform any work of any kind whatever which requires the prior

approval of the Neighborhood Architectural Committee pursuant to Section 5.4, or any other Section of this Declaration, shall apply to such Committee for approval by notifying the Neighborhood Architectural Committee of the nature of the proposed work in writing and furnishing such information as the Committee may require.

7.7 BASIS FOR APPROVAL OF IMPROVEMENTS: The Neighborhood Architectural Committee shall grant the requested approval only if:

A. The Owner shall have complied with the provisions of Section 7.6 above;

B. The Neighborhood Architectural Committee shall find that the plans and specifications conform to the Neighborhood Declaration, the Community Declaration and to the Neighborhood and Community Architectural Committee Rules in effect at the time such plans were submitted to such Committee; and

C. The members of the Neighborhood Architectural Committee, in their sole discretion, shall determine that the proposed improvements would be compatible with the standards of the Neighborhood and the purposes of this Declaration as to quality of workmanship and materials, as to harmony of external design with the existing structures, and as to location with respect to topography and finished grade elevations.

7.8 FORM OF APPROVAL: All approvals given under Paragraph 7.7 shall be in writing; provided, however, that any request for approval which has not been rejected within thirty (30) days from the date of submission thereof to the Neighborhood Architectural Committee shall be deemed approved.

7.9 PROCEEDING WITH WORK: Upon receipt of approval from the Neighborhood Architectural Committee pursuant to Paragraph 7.8 above, the Unit Owner shall, as soon as practicable, satisfy all conditions hereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to be, in all cases, within one year from the date of such approval. If the Unit Owner shall fail to comply with this Paragraph, any approval given pursuant to Paragraph 7.8 above, shall be deemed revoked unless the Neighborhood Architectural Committee, upon written request of the Unit Owner made prior to the expiration of said one-year period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Neighborhood Architectural Committee that there has been no change in the circumstances upon which the original approval was granted.

7.10 FAILURE TO COMPLETE WORK: The Unit Owner shall in any event complete the construction, reconstruction, refinishing, or alteration of any such improvement within one (1) year after commencing construction thereof, except and for so long as such completion is rendered impossible or would result in great hardship to the Unit Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Unit Owner or his agents. If the Unit Owner fails to comply with this Paragraph, the Neighborhood Architectural Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Paragraph 7.11 below as though the failure to complete the improvement were a non-compliance with approved plans.

7.11 INSPECTION OF WORK: Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any construction or reconstruction or the alteration or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article, the Unit Owner shall give written notice thereof to the Neighborhood Architectural Committee.

B. Within sixty (60) days thereafter the Neighborhood Architectural Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished to substantial compliance with the approved plans. If the Neighborhood Architectural Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Unit Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance, and shall require the Unit Owner to remedy such non-compliance.

C. If upon the expiration of thirty (30) days from the date of such notification, the Unit Owner shall have failed to remedy such non-compliance, the Neighborhood Architectural Committee shall notify the Board in writing of such failure. The Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after notice of the non-compliance is given to the Board by the Neighborhood Architectural Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Unit Owner, the Neighborhood Architectural Committee and, in the discretion of the Board, to any other interested party.

D. At the hearing, the Unit Owner, the Neighborhood Architectural Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Unit Owner to remedy or remove the same with a period of not more than forty-five (45) days from the date of the Board ruling. If the Unit Owner does not comply with the Board ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and the Unit Owner shall reimburse the Neighborhood Association for all expenses incurred in connection therewith upon demand. If such expense are not promptly repaid by the Unit Owner to the Neighborhood Association, the Board shall levy a reimbursement assessment against such Owner pursuant to Section 4.4 hereof.

E. If for any reason the Neighborhood Architectural Committee fails to notify the Unit Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Unit Owner, the improvement shall be deemed to be in accordance with said approved plans.

7.12 APPLICATION FOR PRELIMINARY APPROVAL: Any Unit Owner proposing to construct improvements requiring the prior approval of the Neighborhood Architectural Committee may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Neighborhood Architectural Committee Rules. The purpose of the preliminary approval procedure is to allow a Unit Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Applications for preliminary approval shall be considered and disposed of as follows:

A. Within thirty (30) days after proper application for preliminary approval, the Neighborhood Architectural Committee shall consider and act upon such request. The Neighborhood Architectural Committee shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. Failure of the Neighborhood Architectural Committee to act within said thirty (30) day period shall constitute an approval. In granting or denying approval, the Neighborhood Architectural Committee may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable

for the guidance of the applicant.

B. Any preliminary approval granted by the Neighborhood Architectural Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Neighborhood Architectural Committee.

C. In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

7.13 WAIVER: The approval by the Neighborhood Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Neighborhood Architectural Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

7.14 ESTOPPEL CERTIFICATE: Within thirty (30) days after written demand is delivered to the Neighborhood Architectural Committee by any Unit Owner, and upon payment to the Neighborhood Association of a reasonable fee (as fixed from time to time by the Neighborhood Association), the Neighborhood Architectural Committee shall record an estoppel certificate, executed by any two (2) of its members, certifying (with respect to any Unit of said Owner) that as of the date thereof either: (a) all improvements made and other work done upon or within said Unit comply with this Declaration, or (b) such improvements or work do not so comply in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Unit Owner, or from anyone deriving any interest in said Unit through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Neighborhood Association, Declarant and all Unit Owners and such persons deriving any interest through them.

7.15 LIABILITY: Neither the Neighborhood Architectural Committee nor any member thereof shall be liable to the Neighborhood Association or to any Unit Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval or any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (c) the development of any property within the Neighborhood,

or (d) the execution and filing of an estoppel certificate pursuant to Section 7.14, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of the foregoing, the Neighborhood Architectural Committee, or any member thereof, may but is not required to, consult with or hear the views of the Neighborhood Association or any Unit Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Neighborhood Architectural Committee.

7.16 PRECEDENCE OF COMMUNITY ARCHITECTURAL COMMITTEE: The Neighborhood Architectural Committee shall act in coordination with the Community Architectural Committee and shall undertake such duties and responsibilities as may be delegated to the Neighborhood by the Community Architectural Committee, all as more particularly provided in Article VIII of the Community Declaration. The rulings and decisions of the Community Architectural Control Committee shall have precedence over and shall supersede any such decisions or rulings of the Neighborhood Architectural Committee. To facilitate the coordination of the Neighborhood Architectural Committee and the Community Architectural Committee, the Neighborhood Architectural Committee shall have the right, but not the obligation, to assign all or any part of its responsibilities and duties hereunder to the Community Architectural Committee; provided, however, that such assignment of responsibilities shall only be effective if agreed to by the Community Architectural Committee.

7.17 NON-APPLICABILITY TO DECLARANT: The provisions of this Article shall not apply to any Lot owned by Declarant prior to its conveyance of such Lot to a member of the Public.

7.18 CITY REQUIREMENTS: The application to and the review and approval by the Neighborhood Architectural Committee of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other requirements of the City of San Diego, the responsibility for which shall lie solely with the respective Unit Owner.

ARTICLE VIII

DEVELOPMENT RIGHTS

8.1- LIMITATIONS OF RESTRICTIONS: Declarant is undertaking the work of developing for sale residential Units and incidental improvements within the Neighborhood. The completion of that work and the sale, rental and other disposal of said residential Units is essential to the establishment and welfare of the Neighborhood and the Additional Property as a residential community. In order that the work may be completed and the Neighborhood be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

8.1.1 Prevent Declarant, its contractors or subcontractors from obtaining reasonable access over and across the Neighborhood Common Area or from doing within any Unit owned by it or in any portion of the Neighborhood whatever is reasonably necessary or advisable in connection with the completion of said work and the sale and development of the Neighborhood properties;

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

8.1.3 Prevent Declarant from increasing or decreasing the number of Units that may be annexed to the Neighborhood pursuant to Section 2.5 hereof, or prevent Declarant from changing the exterior appearance, landscaping and any other matter directly or indirectly connected with the Neighborhood in the manner deemed desirable by Declarant; provided, however, that Declarant has or shall obtain governmental consents where required by law, including where appropriate the consent of the Department of Real Estate and the Administrator of Veteran's Affairs, an officer of the United States of America.

8.1.4 Prevent Declarant from maintaining such signs within the Neighborhood as may be necessary for the sale, lease or disposition of the Condominiums in the Neighborhood; or

8.1.5 Prevent Declarant from maintaining model homes, sales offices, storage and related facilities in any unsold Units or Neighborhood Common Area as are necessary or reasonable, in the opinion of Declarant, for the sale or disposition of the Units; provided, however, that Declarant's use of such units or

Neighborhood Common Area shall not exceed a period of seven (7) years after the original issuance of the Final Subdivision Public Report of the first phase of the Neighborhood, and provided further the Declarant shall have a concomitant obligation to restore said Units or Common Area after completing his use of them, to the extent his use of said Units or Common Area so requires.

This Declaration shall not in any manner constitute a limitation on Declarant's title rights to the Additional Property prior to annexation to the Neighborhood, nor shall it impose any obligation on Declarant or any other person or entity to improve, develop or annex any of the Additional Property.

Nothing in these Restrictions shall limit the right of Declarant to commence and complete construction of improvements in the Neighborhood.

The rights of Declarant under this Declaration to all or part of Declarant's interest in the Neighborhood properties and the Additional Property may be assigned to any successor(s) by an express assignment incorporated in a recorded deed, option or lease, as the case may be, transferring such interest to such successor. This Declaration shall not limit the right of Declarant at any time prior to acquisition of title by a purchaser from Declarant to establish on any part of the Neighborhood additional licenses, reservations and rights-of-way to itself, to utility companies or to others as, from time to time, may be reasonably necessary to the proper development and disposal of the Neighborhood properties and the Additional Property.

ARTICLE IX

DAMAGE OR DESTRUCTION OF BUILDING; CONDEMNATION

9.1 DAMAGE TO SINGLE UNIT: If the Neighborhood is damaged by fire or other casualty which is insured against and said damage is limited to a single Unit, the insurance proceeds shall first be paid to the Association, and then be paid by the Association to the Owner or Owners of such Unit and the Mortgagees thereof, as their respective interests appear, and such Owner or Mortgagees shall use the same to rebuild or repair such Unit. In the event the insurance proceeds are insufficient to complete such work, the Unit Owner shall pay and advance such additional sums as may be necessary to complete such rebuilding and repair.

9.2 DAMAGE TO TWO OR MORE UNITS OR NEIGHBORHOOD COMMON AREAS: If such damage extends to two (2) or more Units or extends to any part of the Neighborhood Common Areas, then and in that event:

A. If the amount of available insurance proceeds is at least eighty-five percent (85%) of the cost of repairing or rebuilding the damaged property to its original design and specifications, the insurance proceeds shall be paid to the Neighborhood Association, and the Board shall thereupon contract to repair or rebuild the damaged portions of the Neighborhood, including all Units, and the Neighborhood Common Areas so damaged. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding the Neighborhood Common Area, the Board shall levy a special assessment against all Unit Owners pursuant to Section 4.3 to make up any deficiency. Costs of repair of the interior of Units shall be assessed according to the damage to each such damaged Unit.

B. In the event that the amount available from such insurance proceeds is less than eighty-five (85%) percent of the cost of repairing or rebuilding, or the membership disapproves the levying of an additional assessment pursuant to Paragraph 9.2A hereof, then such insurance proceeds shall be paid to a bank, savings and loan association, or trust company designated by the Board. Said funds shall be held for the benefit of all Unit Owners and their Mortgagees, as their respective interests shall appear, pursuant to an insurance trust agreement consistent with the provisions of this Declaration, approved and executed by the Board. The Board shall obtain bids from responsible contractors to restore the Neighborhood, including all damaged Units and all damaged Neighborhood Common Areas to its condition

immediately prior to such damage or destruction and shall, as soon as possible, call a special meeting of the Neighborhood Association Members and all First Mortgagees of record to consider such bids. At such special meeting, the Members shall accept or reject such bids by a vote of not less than sixty percent (60%) of each class of voting members and seventy-five percent (75%) of the First Mortgagees attending such meeting.

In the event a bid is accepted, the Board shall levy a special assessment against all Unit Owners pursuant to Section 4.3 to make up the deficiency, if any, between the total insurance proceeds and the contract price for such repair or rebuilding of the Neighborhood Common Area. All insurance proceeds, including any subject to liens of Mortgagees, shall be used for such rebuilding or repair of the Neighborhood Common Area. Costs of repair of the interior of Units shall be assessed separately to the Owner thereof according to the damage of each such damaged Unit. If any bid shall be accepted to repair or rebuild, the contractor shall provide a completion bond naming the Neighborhood Association and each Unit Owner as beneficiaries. In the event all bids are rejected, the Board shall recommend such alternative reconstruction of the damaged or destroyed improvements at a lesser cost as it deems reasonable or adequate which alternatives shall be placed to bid and voted upon as previously provided. In the event that no such alternatives are accepted by the Unit Owners and first mortgagees, then the Board is hereby empowered to, as the agent for all Unit Owners, sell the entire Neighborhood, including all Units and the Neighborhood Common Areas, in its then present condition, on terms satisfactory to the Board. In the event of the sale of all Units and the Neighborhood Common Area, proceeds from such sale and insurance proceeds received by the Association on account of the destruction of the Neighborhood Common Area shall be distributed by the Neighborhood Association among Unit Owners and their respective Mortgagees according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal.

9.3 CONDEMNATION OF NEIGHBORHOOD COMMON AREAS: If at any time all or any portion of any Neighborhood Common Areas, or any interest therein, be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Neighborhood, shall be paid to the holder or holders of the fee title to such area as their interests may appear, as determined by independent appraisal. Any such award to the Neighborhood Association shall be deposited into the operating fund of the

Neighborhood Association. The Neighborhood Association shall represent the interests of all Unit Owners in any proceedings relating to such condemnation to the extent such Unit Owners have any interest in the Neighborhood Common Areas.

9.4 APPRAISALS: Where the provisions of this Article require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser with a Member of the Appraisers Institute certificate or the equivalent, which appraiser shall be selected by the Board.

ARTICLE X

RIGHTS OF MORTGAGEES

10.1 CONFLICT: Notwithstanding any contrary provision contained elsewhere in this Declaration, or in the By-Laws, Articles or Rules, the provisions of this Article shall control with respect to the rights and obligations of Institutional Mortgagees specified herein.

10.2 LIABILITY FOR UNPAID ASSESSMENTS: Any Institutional Mortgagee who obtains title to a Condominium pursuant to the remedies provided in the First Mortgage, except upon a voluntary conveyance to the Institutional Mortgagee, or by foreclosure shall take the property free of any claims for unpaid assessments or charges against the Condominium which accrue prior to the acquisition of title to the Condominium by the Institutional Mortgagee.

10.3 RESERVE FUND: The Association shall maintain a reserve fund which shall be sufficient to pay for maintenance, repair and periodic replacement of Neighborhood Common Area improvements which the Association is obligated to maintain. The reserve fund shall be funded by regular assessments of Owners which are payable in installments rather than by special assessments; provided, however, that this provision shall not be deemed to limit the power of the Association to levy any other type of assessment or charge authorized by this Declaration.

10.4 TERMINATION OF CONTRACTS AND AGREEMENTS:

10.4.1 Any contract or lease, including any contract providing for the services of Declarant, entered into by the Association while Declarant controls the Association shall provide that the Association has the right to terminate such contract or lease without cause and without penalty or the payment of a termination fee at any time after the transfer of control of the Association from Declarant upon not more than ninety (90) days notice to the other party. For purposes of this Subsection, the term "control" shall mean the right of Declarant to exercise unilateral control over the Association, the Board, the Project or the Owners in any manner other than by Declarant's exercise of votes allocated to Declarant on the same basis as votes are allocated to other Owners.

10.4.2 Any agreement for professional management of the Neighborhood or any agreement providing for services of the Declarant shall be for a term not to exceed three (3) years and shall provide that the agreement may be terminated by either

party without cause and without payment of a termination fee upon not more than ninety (90) days written notice.

10.5 NOTICES TO ELIGIBLE HOLDERS: An Eligible Holder is entitled to timely written notice of:

10.5.1 Any condemnation loss or casualty loss which affects either a material portion of the Neighborhood or the Condominium on which the Eligible Holder holds a First Mortgage;

10.5.2 Any delinquency in the payment of assessments or charges owed by the Owner of a Condominium which is subject to a First Mortgage held by the Eligible Holder if the delinquency is not cured within sixty (60) days after its due date.

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

10.5.4 Any proposal to take any action specified in Section 10.11.2, below.

10.5.5 Any default by an Owner-Mortgagor of a Condominium in the performance of his obligations under this Declaration or the By-Laws, which is not cured within sixty (60) days;

10.5.6 Any proposal to abandon or terminate the legal status of the Neighborhood as a Condominium Project;

10.5.7 Any proposal to partition or subdivide a Condominium or the Neighborhood Common Area;

10.5.8 Any proposal to change the percentage ownership interest of Owners in the Building Common Area.

10.6 INSPECTION OF BOOKS AND RECORDS: Upon request, any Owner or Mortgagee shall be entitled to inspect the books, records and financial statements of the Association, this Declaration, the By-Laws, the Articles and the Rules and any amendments thereto during normal business hours or under other reasonable circumstances.

10.7 FINANCIAL STATEMENTS: If the Neighborhood contains more than fifty (50) Condominiums, the Association, at its expense, shall prepare an audited financial statement for the immediately preceding fiscal year and furnish the same within one hundred twenty (120) days after written request in any Institutional Mortgagee. If the Neighborhood contains less than fifty (50) Condominiums, if fifty-one percent (51%) of the

Institutional Mortgagees desire to have audited financial statements of the Association for the immediately preceding fiscal year, the Institutional Mortgagees, at their expense, may cause an audited financial statement to be prepared, if one is not otherwise available.

10.8 TERMINATION OF PROJECT: Except as provided by statute in the case of condemnation or substantial loss to the Condominiums and/or the Neighborhood Common Area, any decision, by act or omission, to abandon or terminate the legal status of the Neighborhood as a Condominium project shall require:

10.8.1 The approval of sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage owned, if the decision to terminate the legal status is a result of substantial destruction or a substantial taking in condemnation or the property within the Project; or

10.8.2 The approval of sixty-seven percent (67%) of the Owners and sixty-seven percent (67%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned if Section 10.8.1, above, is not applicable.

10.9 ACTIONS REQUIRING CONSENT: Except as provided by statute in the case of condemnation or substantial loss to Units and/or Neighborhood Common Area, unless sixty-seven percent (67%) of the Institutional Mortgagees, based on one (1) vote for each First Mortgage owned, or sixty-seven percent (67%) of the Owners other than Declarant, have given their prior written approval, the Association shall not be entitled to:

10.9.1 Use hazard insurance proceeds for losses to any Neighborhood property (whether to Units or Neighborhood Common Area) for other than the repair, replacement or reconstruction of the Neighborhood property;

10.9.2 Partition or subdivide any Condominium;

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

10.9.4 Change the prorata interests or obligations of any individual Condominium for the purpose of levying assessment or charges or allocating distribution of hazard insurance proceeds or condemnation awards.

10.10 PARTIAL CONDEMNATION OR DESTRUCTION:

10.10.1 In the event a portion of the Neighborhood is either condemned or destroyed or damaged by a hazard that is insured against, restoration or repair shall be performed substantially in accordance with the provisions of the Declaration and the original plans and specifications for the Project, unless fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, approve the taking of other action by the Association.

10.10.2 After a partial condemnation or partial destruction of the Neighborhood, no reallocation of interests of Owners in the Common Area may be effected without the prior written approval of sixty-seven percent (67%) of the Institutional Mortgagees on all remaining Condominiums, whether existing in whole or in part, based on one (1) vote for each First Mortgage owned.

10.11 AMENDMENT OF DECLARATION AND BY-LAWS: The vote or written consent of sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of the Eligible Holders, based on one (1) vote for each First Mortgage owned, shall be required to:

10.11.1 Assume self-management of the Project, if professional management of the Project has been required by an Eligible Holder at any time.

10.11.2 Add to, amend or modify, whether by formal amendment or otherwise, any material provisions of this Declaration or the By-Laws which establish, provide for, govern or regulate any of the following subjects:

10.11.2.1 Voting;

10.11.2.2 Assessments, assessment liens, or subordination of assessment liens;

10.11.2.3 Reserves for maintenance, repair and replacement of Neighborhood Common Areas;

10.11.2.4 Insurance policies or fidelity bonds;

10.11.2.5 Rights to use the Neighborhood Common Area;

10.11.2.6 Responsibilities for maintenance and repair of any portion of the Neighborhood;

10.11.2.7 Expansion or contraction of the Neighborhood or the addition or annexation of property to or withdrawal of property from the Neighborhood;

10.11.2.8 The boundaries of a Condominium;

10.11.2.9 The interest of an Owner in Building Common Area or Restricted Common Area;

10.11.2.10 Convertibility of Condominiums into Neighborhood Common Area or of Neighborhood Common Area into Condominiums;

10.11.2.11 Leasing or rental of Condominiums;

10.11.2.12 Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his Condominium;

10.11.2.13 The provisions of Section 4.10 and this Article X.

Any amendment or addition to the Declaration or By-Laws regarding any of the foregoing subjects shall not be considered material and need not be approved by Eligible Holders if the amendment or addition is solely for the purposes of correcting typographical errors or for clarification. Any Eligible Holder who receives a written request to approve an addition or amendment who does not deliver or have its response postmarked within thirty (30) days of the date contained within the written request shall be deemed to approve the addition or amendment. All notices or other communications made pursuant hereto shall be in writing and shall be deemed properly delivered, given or served when (i) personally delivered against receipted copy; or (ii) mailed by certified or registered mail, postage prepaid, in either case (i) or (ii) to the parties at their last known address.

10.12 INSURANCE POLICIES: Each policy of insurance shall provide that no substantial modification or cancellation of the policy may occur without at least ten (10) days prior written notice to the Association and to each First Mortgagee listed as a scheduled holder on the policy.

ARTICLE XI

COMMUNITY ASSOCIATION

11.1 EASEMENT TO COMMUNITY ASSOCIATION. The officers, agents, employees and independent contractors of the Community Association shall have a nonexclusive easement to enter upon the real property, or any portion thereof, constituting the Neighborhood for the purpose of performing or satisfying the duties and obligations of the Community Association as set forth in the Community Declaration, the Community By-Laws, the Community Articles and the rules and regulations of the Community Board and the Community Architectural Committee.

11.2 SUPREMACY OF COMMUNITY DECLARATION. In addition to all of the rights and obligations which have been conferred or imposed upon the Neighborhood Association pursuant to this Declaration, the Bylaws or the Articles, the Neighborhood Association shall be entitled to exercise any of the rights conferred upon it and be subject to all of the obligations imposed upon it pursuant to the Community Declaration, the Community Bylaws or the Community Articles. The Neighborhood Association (including, without limitation, the Neighborhood Architectural Committee) shall also be subject to all superior rights and powers which have been conferred upon the Community Association pursuant to the Community Declaration, the Community Bylaws and the Community Articles.

A. Each Owner and such Owner's Condominium(s) shall be subject to all of the covenants, conditions, restrictions and provisions contained in the Community Declaration.

B. In the event of any conflict between any of the covenants, conditions, restrictions or provisions of this Declaration the Bylaws or the Articles with any of the covenants, conditions, restrictions or provisions of the Community Declaration, the Community Bylaws or the Community Articles, then, in such event, the covenants, conditions, restrictions and provisions of the Community Declaration, the Community Bylaws and the Community Articles shall govern and prevail.

11.3 ENFORCEMENT. A breach of any of the limitations, restrictions, conditions and covenants set forth in this Declaration, or the continuation thereof, may be enjoined, abated or remedies by appropriate legal proceedings by the Community Association. The Community Association shall be deemed to be a person who may enforce the provisions of this Declaration to the same extent as the Board or any Owner. The failure of the Community Association to enforce any of said limitations, restrictions, conditions or covenants shall not constitute a

waiver of the right to enforce the same thereafter. No liability shall be imposed on, or incurred by, the Community Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Community Association to enforce or interpret said limitations, restrictions, conditions or covenants, shall be entitled to all costs incurred in connection therewith, including without limitation, reasonable attorneys' fees.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 MECHANIC'S LIENS: In case there shall be filed a Notice of Mechanic's Lien against the Neighborhood for, or purporting to be for, labor or material alleged to have been furnished or delivered for any Unit Owner at the Neighborhood or at his Unit, the Unit Owner shall forthwith cause such lien to be discharged by payment, bonding or otherwise. If the Unit Owner shall fail to cause such lien to be discharged by payment, bonding or otherwise, the Board may send written notice to said Unit Owner specifying that unless said Unit Owner discharges said lien within five (5) days from the date of said notice, then the Board may cause said lien to be discharged by payment or bond or otherwise. Within said five-day period, the Unit Owner shall be permitted to address a hearing of the Board regarding the validity of such lien or any offsets or defenses thereto. The Board shall determine whether such lien adversely and improperly affects and encumbers the ownership interest of other Unit Owners. Should the Board determine that said lien adversely and improperly effects and encumbers ownership interest of other Unit Owners and that no adequate protection of said interests has been provided, the Board may cause said lien to be discharged by payment, bond or otherwise. The Board shall have the right to collect from the Unit Owner responsible for said lien all amounts so paid together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

12.2 TERM OF DECLARATION: The provisions of this Declaration of Covenants, Conditions and Restrictions shall continue and be effective for a term of fifty (50) years from the date of this Declaration after which time this Declaration shall be automatically extended for successive periods of ten (10) years, until a majority vote of the Unit Owners shall determine that this Declaration shall terminate.

12.3 AMENDMENTS:

12.3.1 Amendment of Declaration: Except as otherwise provided in Article X, above, after the conveyance of the first Unit, the provisions hereof may be amended by a vote or written consent of the record Owners constituting not less than seventy-five percent (75%) of both classes of membership of then Neighborhood Association; provided, however, that until the expiration of Class B membership, as provided in Section 3.3.2 of this Declaration, the approval of the Veteran's Administration shall be obtained prior to any amendment to this Declaration. In the event only one class of membership exists at the time of the

proposed amendment, said amendment shall require the vote or written consent of the record owners of Units constituting seventy-five percent (75%) of the Units other than Declarant. Said Amendment shall be effective upon the recordation in the Office of the Recorder of San Diego County, of an instrument setting forth the terms thereof duly certified and executed by the President and Secretary of the Neighborhood Association. Notwithstanding anything to the contrary herein contained, no such Amendment shall affect the rights of the holder of any deed of trust or mortgage recorded prior to the recordation of such Amendment.

12.3.2 Rights of Community Association and Declarant: Anything contained in this Declaration to the contrary notwithstanding, this Declaration shall not be amended, modified or rescinded (i) at any time prior to September 30, 1990 without the prior written consent of Genstar Development Inc., a New York corporation (Penasquitos Properties Division), (ii) without the prior written consent of the Community Board and (iii) without the recording of said written consent or consents, as appropriate, in the Office of the County Recorder of San Diego County, California.

12.4 CONSTRUCTION OF PROVISIONS: The provisions of this Declaration shall be liberally construed to effect its purposes of creating a uniform plan for the development and operation of a condominium development pursuant to the provisions of Section 1350 et seq. of the Civil Code of the State of California.

12.5 ENFORCEMENT AND NONWAIVER:

12.5.1 Right of Enforcement: Except as otherwise provided herein, Declarant, the Association or any Owner or Owners shall have the right to enforce any and all of the provisions of this Declaration, the By-Laws, the Articles and the Rules, including any decision made by the Association, upon the Owners, the Association or upon any property in the Project.

12.5.2 Violation and Nuisance: Every act or omission whereby a covenant, condition or restriction of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner or Owners. However, any other provision of this Declaration notwithstanding, only Declarant, the Board, or the Association or their duly authorized agents may enforce by self-help any covenant, condition or restriction herein set forth

12.5.3 Violation of Law: Any violation of any state,

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

12.5.4 Remedies Cumulative: Each remedy provided by this Declaration is cumulative and not exclusive.

12.5.5 Nonwaiver: The failure to enforce the provisions of any covenant, condition or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of said Declaration.

12.6 BINDING: This Declaration shall be for the benefit of and be binding upon all Unit Owners, their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, lessors, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

12.7 SEVERABILITY OF PROVISIONS: The provisions hereof shall be deemed independent and severable, and the invalidity or unenforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

12.8 GENDER, NUMBER AND CAPTIONS: As used herein, the singular shall include the plural and the masculine shall include the feminine. The titles and captions of each paragraph hereof are not a part hereof and shall not affect the construction or interpretation of any part hereof.

12.9 COMMUNITY ASSOCIATION: The Community Association is hereby granted the right, as a third party beneficiary to the agreements specified herein, to enforce, through the Community Board, all of the terms and provisions hereof to the same extent as any Owner in the Project or any officer or Director of the Neighborhood Association.

12.10 VA APPROVAL: Until the expiration of the Class B membership and notwithstanding any other provision in this Declaration to the contrary, approval of the Veteran's Administration shall be obtained prior to any annexation of

Additional Property, any dedication of Neighborhood Common Area and any amendment to this Declaration.

IN WITNESS WHEREOF, the undersigned Declarant has executed the within Declaration the day and year first above written.

DECLARANT:

THE AKINS COMPANY VENTURE NO. 4
a California limited partnership

By: *Frank Allen*
Title: PRESIDENT

By: *William H. Allen*
Title: VICE PRESIDENT

PALAZZO BERNARDO
DEVELOPMENT PLAN

The Akins Company's Bernardo Heights development of Palazzo Bernardo will ultimately consist of a total of 209 condominiums upon the annexation of the final phase of the project.

The unit types will be comprised of 1, 2 and 3 bedroom condominium and townhomes; square footages of the units will be 1133, 1276, 1508-1548 and 1667. Each of the two building types of 10 and 11 units will be situated around central courtyards with fountain areas. The Southern Mediterranean architectural theme will be applied throughout the project.

The neighborhood recreational facilities will consist of a recreation building, pool and spa as well as additional spa areas in subsequent phases for the use and enjoyment of all homeowners.

BY-LAWS
OF
PALAZZO BERNARDO ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the corporation is "PALAZZO BERNARDO ASSOCIATION," hereinafter referred to as the "Neighborhood Association". The principal location of the office of the Neighborhood Association shall be in the County of San Diego, State of California.

ARTICLE II

DEFINITIONS

The terms used herein shall have the meanings set forth in Article I of the Declaration of Covenants, Conditions and Restrictions for Palazzo Bernardo, A Condominium Project, recorded on _____, 19____, File No. _____, Official Records of San Diego County (the "Declaration").

ARTICLE III

MEETING OF MEMBERS

1. ANNUAL MEETINGS: The first meeting of the Members shall be held not later than six (6) months after the date of the closing of the sale of the first Unit in the Neighborhood or within forty-five (45) days after the closing of the sale of the Unit which represents the fifty-first (51st) percentile of the total Units in the Neighborhood authorized for sale, under the first Subdivision Public Report for the Neighborhood, whichever occurs first. Thereafter, the annual meetings of the Neighborhood Association shall be held on the first Tuesday of March of each succeeding calendar year at the hour of 7:00 o'clock p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday. Meetings shall be held within the Neighborhood or in such location within a reasonable distance as close to the the Neighborhood as possible as the Board may specify in writing.

2. SPECIAL MEETINGS: Special meetings of the Members may be called at any time by the President or by the Board.

A special meeting of the Members of the Neighborhood Association shall be promptly called by the President, or, if the President refuses, by any Director, upon:

(a) the vote for such a special meeting by a majority of a quorum of the Board; or

(b) receipt by the Board of a written request for such a special meeting signed by Members representing not less than five percent (5%) of the total voting power of the Neighborhood Association.

3. NOTICE OF MEETINGS: Written notice of regular and special meetings of the Members shall be given by or at the direction of the Secretary of the Neighborhood Association or other persons authorized to call the meeting by personally delivering a copy of such notice at least ten (10) but no more than ninety (90) days, or by mailing a copy of such notice at least twenty (20) but no more than ninety (90) days, before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Neighborhood Association or to the address supplied by such Member to the Neighborhood Association for the purpose of notice; provided, however, that if such meeting is called pursuant to the request provided for in Section 2(b) above, then notice shall be given at least thirty-five (35) but no more than ninety (90) days after receipt of the Board of such request. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. If mailed, the notice shall be deemed to be delivered twenty-four (24) hours after its deposit in the United States mail, first class postage prepaid, to the Member at his address as provided herein.

4. QUORUM: The presence at the meeting of Members entitled to cast (or of proxies entitled to cast) fifty-one percent (51%) of the total voting power of the Association shall constitute a quorum for any action, except as otherwise provided in the Declaration and these By-Laws. If, however, such quorum shall not be present or represented at any meeting, a majority of the Members present, in person or by proxy, shall have the power to adjourn the meeting, without notice other than announcement at the meeting, to another time, such time to be a date not less than five (5) nor more than thirty (30) days from the date of the original meeting. The quorum for any such adjourned meeting shall be not less than twenty-five percent (25%) of the votes of each class of Members. 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. If any measure voted upon at such a subsequent meeting is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer of the Association not later than thirty (30) days from the date of such meeting.

5. PROXIES: At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, signed by the Owners and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon the conveyance by the Member of the title to his Condominium, or upon the death or judicially declared mental incompetence of such Member; provided, however, that Declarant may execute a proxy which may be irrevocable for the maximum period of time allowed by law. No proxy shall be valid after eleven (11) months from the date of its execution unless otherwise specifically provided in the proxy.

6. ACTION WITHOUT MEETING: Any action which may be taken by the vote of Members at a regular or special meeting, except the election of Directors where cumulative voting is a requirement, may be taken without a meeting if done in compliance with the provisions of Section 7513 of the Corporations Code.

7. VOTING RIGHTS:

A. Class A Members: Each Class A Member shall be entitled to one (1) vote for each Unit owned. When more than one (1) person owns an interest in a single Unit, all such Owners shall be Members of the Neighborhood Association. However, the vote for each Unit must be cast as a Unit. Said vote shall be cast by the designated "Voting Owner" for that unit as herein-after provided. Fractional votes shall not be allowed and in no event shall more than one (1) vote be cast with respect to any one Unit.

When more than one (1) person owns a single Unit, there shall be one "Voting Owner" for such unit. The "Voting Owner" shall be designated by the record Owner or Owners of each Unit by written notice to the Board. Said designation shall be revocable at any time by actual notice to the Board given by any of the Unit Owners of record or by the death or judicially declared incompetence of any record Unit Owner. The power herein conferred to designate a "Voting Owner" and the power to revoke said designation may be exercised by the Unit Owner's conservator, by the guardian of his estate, by the parent(s) or guardian entitled to custody of an Owner in the case of the Owner

being a minor, or, during the administration of his estate, by the executor or administrator of a deceased record Unit Owner where the latter's interest in said property is subject to administration in his estate. Where no "Voting Owner" of a Unit has been designated, or where said designation has been revoked as provided, the vote for such Unit shall be exercised as the majority of co-Owners present and representing said Unit agree to said vote or other action. If the majority of the co-Owners of a Unit present and representing such Unit cannot so agree, no vote shall be cast for such Unit on the particular matter upon which they cannot agree.

B. Contract Purchasers: A Class A Member who has sold his Unit to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his membership rights in the Neighborhood Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments until fee title to the Unit sold is transferred.

C. Class B Members: The sole Class B Member shall be entitled to three (3) votes for each Unit owned so long as such Class B membership exists as provided in the Declaration.

D. Cumulative Voting: When voting for the election of a Director or Directors, every Member shall be entitled to a number of votes equal to the number of Directors to be elected multiplied by the number of Units which the Member owns. Every Member may cumulate his votes and give a single candidate all votes to which he is entitled or distribute his votes on the same principle among as many candidates as he thinks fit, as long as the name of any candidate for whom the Member casts cumulated votes has been put into nomination prior to the commencement of voting and said Member announces his intention to cumulate votes prior to voting.

E. Expiration of Class B: Upon the expiration of the Class B membership with respect to each provision of these By-Laws and the Declaration which requires the vote of both classes of Members, each such provision shall be read as requiring both (a) the vote of the prescribed percentage of all of the Class A Members and (b) the vote of the prescribed percentage of the Class A Members other than Declarant.

ARTICLE IV

BOARD OF DIRECTORS

1. NUMBER: The affairs of the Neighborhood Association shall be managed by a Board of three (3) Directors who shall be Members of the Neighborhood Association in good standing, or officers, directors, or employees of a Member in good standing, including Declarant. Once the total number of Units in the Neighborhood aggregates one hundred thirty-seven (137), the number of Directors shall increase to five (5).

2. TERM OF OFFICE:

A. Initial Board of Directors: The initial Board elected by Declarant pursuant to the Declaration shall hold office until their successors (hereinafter called "Interim Board of Directors") are elected at the first meeting of Members of the Neighborhood Association held pursuant to Paragraph 1 of Article III of these By-Laws.

B. Interim Board of Directors: The Interim Board of Directors elected at the first meeting of the Neighborhood Association Members to succeed the Members of the Initial Board of Directors shall hold office until their successors are elected at the first regular annual meeting of the Neighborhood Association held pursuant to Paragraph 1 of Article III hereof.

C. Board Elected at Regular Annual Meetings: At the first regular annual meeting of the Neighborhood Association, the Members shall hold a new election of Directors, each of whom shall serve a term of one (1) year. Thereafter the term for all Directors shall be one (1) year, to be served concurrently.

ARTICLE V

NOMINATION, ELECTION AND REMOVAL OF DIRECTORS

1. NOMINATION: Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the Members. The Nominating Committee shall consist of a chairman, who shall be a Director, and two or more Members of the Neighborhood Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members. The appointed Members shall serve from the close of the first annual meeting following their appointment until the close of the next annual meeting. The persons appointed as Members of the Nominating Committee succeeding shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for

election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among the Members only.

2. ELECTION: Election to the Board shall be by secret written ballot. 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 provisions of the Declaration and these By-Laws. The persons receiving the largest number of votes shall be deemed elected. Each Member may cumulate his votes in the manner described in Article III, Section 7, Paragraph D, above. At least twenty percent (20%) of the Directors shall be elected solely by the votes of Owners other than Declarant at any election of Directors as long as a majority of the voting power of the Neighborhood Association resides in Declarant or so long as there are two outstanding classes of membership in the Neighborhood Association. The Board shall adopt special procedures to insure that twenty percent (20%) of the Directors shall be so elected as herein specified. Any Member shall be entitled to cumulate his or her votes for one or more candidates for the Board if the candidate's name has been placed in nomination prior to voting and if the Member has given notice at the meeting prior to the voting of his or her intention to cumulate vote.

3. REMOVAL:

A. Removal Prior to Expiration of Term: Unless the entire Board is removed from office by the vote of Neighborhood Association Members, an individual Director shall not be removed prior to the expiration of his term of office if the number of votes cast against his removal would be sufficient to elect the Director 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 the Director were then being elected.

B. Director Elected by Members other than Declarant: A Director who has been elected to office solely by the votes of Members of the Neighborhood Association other than Declarant, as required by Paragraph 2 of Article V above, may be removed from office prior to the expiration of his term of office only by the vote of not less than fifty-one percent (51%) of the voting power of Members, other than Declarant.

C. Cumulative Voting: When voting for the removal of a Director, each Member shall be entitled to cumulate his votes in a manner described in Article III, Section 7, Paragraph D regarding voting rights.

ARTICLE VI

MEETINGS OF DIRECTORS

1. REGULAR MEETINGS: Regular meetings of the Board of Directors shall be held monthly; provided, however, that if the Board shall determine that the business to be transacted by the Board does not reasonably justify monthly meetings, regular meetings of the Board shall be held at such intervals as the Board may determine, but not less frequently than once every three (3) months. Regular meetings shall be held at the time and at a place within the Project fixed by the Board.

2. SPECIAL MEETINGS: Special meetings of the Board shall be held when called by written notice signed by the President of the Neighborhood Association, or by any two Directors other than the President.

3. NOTICE TO DIRECTORS: Notice of any regular or special meeting of the Board shall be given to each Director not less than four (4) nor more than fifteen (15) days prior to the date fixed for such meeting by written notice delivered personally or sent by mail or telegram to each Director at his address as shown in the records of the Neighborhood Association; provided, however, that notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to the holding of such meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of the special business to be considered. If mailed, such notice shall be deemed to be delivered twenty-four (24) hours after deposit in the United States mail so addressed, with first class postage thereon fully prepaid. If notice is given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. Any Director may waive notice of any meeting. The attendance of a Director at the meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting the transaction of business because the meeting is not lawfully called or convened.

4. QUORUM: Two (2) Directors shall constitute a quorum for the transaction of business until the number of Directors increases to five (5), at which time the number of Directors required for a quorum shall increase to three (3). Every act done or decision made by the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

5. ACTION WITHOUT A MEETING: On an emergency basis the Directors shall have the right to take any action, without a meeting, as may be required for the efficient and expeditious operation and conduct of the Neighborhood Association's business and which it otherwise would have the power and authority to take at a meeting; provided, however, that the written consent of all Directors to such action is first obtained, and provided further, that written notice to Neighborhood Association Members of the action so taken without a meeting shall be posted within three (3) days in a conspicuous place in the Neighborhood Common Area. Any action so taken without a meeting and with such approval shall have the same effect as though taken at a duly noticed meeting of the Board.

6. NOTICE TO MEMBERS; ATTENDANCE BY MEMBERS: The Secretary of the Neighborhood Association shall post a notice of all Board meetings, regular and special, in a conspicuous place on the Neighborhood Common Area not less than four (4) days prior to the scheduled time of the meeting. All meetings of the Board shall be open to all Members of the Neighborhood Association; provided, however, that Members of the Neighborhood Association who are not Members of the Board shall have no right to participate in any deliberations or discussions of the Board unless expressly so authorized by the vote of a majority of a quorum of the Board.

7. EXECUTIVE SESSION: The Board may, with the approval of a majority of a quorum of its Members, adjourn any meeting of the Board and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Neighborhood Association is or may become involved and orders of business of a similar nature; provided, however, that the nature of any and all business to be considered in executive session shall first be announced in open session.

ARTICLE VII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

1. POWERS: The Board shall have the power to:

(a) Enforce the provisions of the Declaration, to propose and publish Rules governing the use of the Neighborhood Common Area and the facilities located therein, including but not limited to Restricted Common Areas, if any, as defined in the Declaration, and the personal conduct of the Members and their families, tenants and guests thereon and to establish penalties for the infraction of said Declaration and/or Rules.

(b) Suspend, after notice and hearing before the Board

prior to the decision of the Board with respect thereto, the voting rights and right to use any recreational or other community-used facilities in the Neighborhood Common Area by a Member during any period in which such Member is in default of the payment of any assessment levied by the Neighborhood Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed thirty (30) days, for infraction of Rules; provided, however, that in either event the Neighborhood Association shall not suspend or limit the right of any Member to use any private driveway or walkway within the Neighborhood for pedestrian or vehicular ingress or egress for any reason whatsoever, nor abridge a Unit Owner's right to use his Unit except where such loss or forfeiture is the result of the judgment of a court or a decision arising out of an arbitration or on account of a foreclosure or sale.

(c) Exercise for the Neighborhood Association all powers, duties and authority vested in or delegated to this Neighborhood Association and not reserved to the membership by other provisions of these By-Laws or the Declaration.

(d) Elect officers of the Board.

(e) Fill vacancies on the Board except for a vacancy created by removal of a Director.

(f) Declare the office of a Member of the Board to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board.

(g) Employ a manager, an independent contractor or such other employees as it deems necessary and to prescribe their duties.

(h) Levy a fine, after notice and hearing before the Board prior to the decision of the Board with respect thereto, against any Unit Owner who shall fail or refuse to obey the Rules, provided that such fine shall not exceed Fifty Dollars (\$50.00) for any infraction of such Rules.

2. LIMITATION OF POWERS: Without the vote or written assent of a majority of each class of Members, the Board shall be prohibited from taking any of the following actions:

(a) Entering into a contract with a third person for goods or services for the Neighborhood Common Area or the Neighborhood Association for a term longer than one (1) year, with the following exceptions:

(1) A management contract, the terms of which have been approved by the Veterans Administration.

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

(3) Prepaid casualty or liability insurance of not more than three (3) years duration, provided that the policy permits for short rate cancellation by the insured.

(b) Incurring aggregate expenditures for capital improvements to the Neighborhood Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Neighborhood Association for that fiscal year.

(c) Selling during any fiscal year property of the Neighborhood Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Neighborhood Association for that fiscal year.

(d) Paying compensation to Directors or officers of the Neighborhood Association for services performed in the conduct of the Neighborhood Association's business; provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred, if reasonable, in carrying on the business of the Neighborhood Association.

(e) Filling a vacancy on the Board created by removal of a Director.

3. DUTIES: It shall be the duty of the Board of Directors to undertake all duties and responsibilities of the Neighborhood Association as expressed in the Declaration and the management and conduct of the affairs of the Neighborhood Association, except as expressly reserved to a vote of the Members. Such duties shall include, but are not limited to, the following:

(a) Cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote.

(b) Supervise all officers, agents and employees of the Neighborhood Association and see that their duties are properly performed.

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(c) As more fully provided in the Neighborhood Declaration, to:

(1) Fix the amount of the annual assessment against each Condominium at least sixty (60) days in advance of each annual assessment period;

(2) Send to every Unit Owner subject thereto written notice of each assessment at least sixty (60) days in advance of each annual assessment period; and

(3) Foreclose the lien against any Condominium for which assessments are not paid within thirty (30) days after the due date, pursuant to the Declaration, or to bring an action at law against the Unit Owner personally obligated to pay the same.

(d) Issue or cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of such certificate not to exceed Fifteen Dollars (\$15.00). If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment.

(e) Procure and maintain adequate liability and hazard insurance on the Neighborhood Common Area and Units as provided in the Declaration.

(f) Cause all officers and employees having fiscal responsibilities to be bonded, as it may deem appropriate.

(g) Cause the Neighborhood Common Area, including the exterior of the buildings, to be maintained as specified in the Neighborhood Declaration.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

1. ENUMERATION OF OFFICERS: The officers of this Neighborhood Association shall be a President and a Vice President, both of whom shall at all times be Directors, a Secretary, a Treasurer and such other officers as the Board may from time to time by resolution create.

2. ELECTION OF OFFICERS: The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

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

4. SPECIAL APPOINTMENTS: The Board may elect such other officers as the affairs of the Neighborhood 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.

5. RESIGNATION AND REMOVAL: Any officer may be removed from office with or without cause by the Board. 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.

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

7. MULTIPLE OFFICES: Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

8. 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 co-sign all checks and promissory notes.

B. Vice President: The Vice President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

C. Secretary: The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal (if any) of the Neighborhood Association and affix it on all papers requiring said seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members of the Neighborhood Association together with their addresses, and shall perform such other duties as required by the

Board.

D. Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Neighborhood Association and disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Neighborhood Association; shall keep proper books of account and shall prepare an annual operating statement reflecting income and expenditures of the Board from the maintenance fund for the preceding calendar year and the allocation thereof to each Unit and a balance sheet as of the last day of the Neighborhood Association's fiscal year. The Treasurer shall distribute a copy of such report to each Unit Owner within one hundred twenty (120) days after the end of each fiscal year. The Treasurer shall also distribute to each Member a balance sheet of an accounting date which shall be the last day of the month closest in time to six (6) months from the closing of the first sale of a Unit to an Owner and an operating statement for said six-month period, including a schedule of assessments received or receivable itemized by each Unit and name of the person assessed, within sixty (60) days after said accounting date.

ARTICLE IX

INDEMNIFICATION OF OFFICERS, DIRECTORS AND AGENTS

1. Right of Indemnity: The Neighborhood Association shall indemnify such Director, officer, committee member, employee or other agents of the Neighborhood Association who is a party to or is threatened to be made a party to any proceeding, including a proceeding by or in the right of the Neighborhood Association, by reason of the fact that such person is or was a Director, officer, committee member, employee or agent of the Neighborhood Association against all expenses and liabilities actually and reasonably paid or incurred in connection with such proceeding to the maximum extent permitted by the California Non-Profit Mutual Benefit Corporation Law. Terms used in this Article IX shall have the same meaning as in Section 7237 of the California Non-Profit Mutual Benefit Corporation Law.

2. Approval of Indemnity: Upon written request to the Board by any person seeking indemnification hereunder, the Board shall promptly determine whether the applicable standard of conduct set forth in the California Non-Profit Mutual Benefit Corporation Law has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevent formation of a quorum of Directors who are not parties to

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such proceeding, the Board shall promptly call a special meeting of Members. At such meeting, the Members shall determine whether the applicable standard of conduct set forth in the California Non-Profit Mutual Benefit Corporation Law has been met and, if so, the Members shall authorize indemnification. Members or other persons seeking to be indemnified shall not be entitled to vote on the question of indemnification.

3. Advancement of Expenses: To the full extent permitted by law and except as is otherwise determined by the Board in a specific instance, expenses incurred by a Director, officer, committee member, employee or agent seeking indemnification under these By-Laws in defending any proceeding covered by these By-Laws shall be advanced by the Neighborhood Association prior to the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the Director, officer, committee member, employee or the agent to repay such amount unless it is ultimately determined that such person is entitled to be indemnified by the Neighborhood Association therefore.

ARTICLE X

COMMITTEES

The Board shall appoint a Neighborhood Architectural Committee pursuant to the Declaration, a Nominating Committee and such other committees as it deems appropriate in carrying out the purposes of the Neighborhood Association. Notwithstanding any grant of authority from the Board, no committee shall have the power to approve any action which by law or these By-Laws requires the approval of the members, fill vacancies on the Board or any committee, amend or repeal by-laws or adopt new by-laws, amend or repeal any resolution of the Board or appoint committees of the Board or members thereof.

ARTICLE XI

BOOKS AND RECORDS

The books, records and papers of the Neighborhood Association, including the membership register, books of account, minutes of meetings of the Board, Members or committees of the Neighborhood Association, the Declaration, the Articles of Incorporation and these By-Laws, shall at all times, during reasonable business hours, be available for inspection and copying by any Member or his duly appointed representative. The Board shall establish reasonable rules with respect to:

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(1) Notice to be given to the custodian of the records by a Member desiring to make the inspection.

(2) Hours and days of the week when such an inspection may be made.

(3) Payment of the cost of reproducing copies of documents requested by a Member.

Every Director of the Neighborhood and of the Community Association shall have the absolute right at any reasonable time to inspect all books, records and documents of the Neighborhood Association and the physical properties owned or controlled by the Neighborhood Association. The foregoing right of inspection includes a right to make extracts and copies of documents. When such right is exercised by a Director of the Community Association, all extracts and copies of documents requested by such Director shall be provided at his expense. The right of inspection by a Director includes the right to make extracts and copies of documents. The Association shall make available to any prospective purchaser of a Condominium, any owner of a Condominium, any first mortgagee, and the holders, insurers and guarantors of a first mortgage on any Condominium, current copies of the Declaration, the Articles, the By-Laws, the Rules governing the condominium and all other books, records and financial statements of the Association.

ARTICLE XII

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Neighborhood Association annual and special assessments which are secured by a continuing lien upon the Condominium against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum. The Neighborhood Association may bring an action at law against the Unit Owner personally obligated to pay such delinquent assessment or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or facilities located thereon or by abandonment of his Unit.

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ARTICLE XIII

CORPORATE SEAL

The Board may (but shall not be required to) adopt, use and, at will, alter a corporate seal. Such seal, if adopted, shall be affixed to all Neighborhood Association documents, but failure to affix the seal to any Neighborhood Association instrument shall not affect the validity thereof.

ARTICLE XIV

AMENDMENTS

1. AMENDMENTS: These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of fifty-one percent (51%) of each Class of Members present in person or by proxy. If only one (1) Class of Members is then in existence, then amendments shall be made only by a vote of fifty-one percent (51%) of the Members, present in person or by proxy and by a vote of fifty-one (51%) of Members other than Declarant present in person or by proxy. Notwithstanding the preceding sentence, the percentage of a quorum or of Members other than Declarant necessary to amend a specific clause in these By-Laws shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Anything herein stated to the contrary notwithstanding:

A) No material amendment to the Bylaws shall be made without prior written approval of Mortgagees holding seventy-five percent (75%) of the first mortgages encumbering Condominiums; provided further, that so long as there remains a Class B membership in the Association, the Veterans Administration shall have the right to veto any amendments to these Bylaws; and

B) These By-Laws shall not be amended, modified or rescinded at any time prior to September 30, 1990 without the prior written consent of Genstar Development, Inc., a New York corporation (Genstar Penasquitos Division), nor at any time without the prior written consent of the Board of Directors of the Community Association of Bernardo Heights. No such amendment, modification or rescission shall be effective without the filing of said written consent(s), as appropriate, with the Secretary of the Community Association of Bernardo Heights.

2. CONFLICT: In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

3. RECORDS OF AMENDMENTS: Whenever an amendment or new By-Law is adopted, it shall be copied in the book of By-Laws with the original By-Laws in the appropriate place. If any By-Laws repeal any portion of the original By-Laws, the date of the meeting at which the repeal was enacted or written assent was filed shall be stated in such book.

ARTICLE XV

CERTIFICATE OF MEMBERSHIP

1. CERTIFICATE OF MEMBERSHIP: The Board of Directors may (but shall not be required to) provide for the issuance of certificates evidencing membership in the Neighborhood Association, which shall be in such form as may be determined by the Board. Such certificates, if issued, shall be signed by the President or a Vice President and by the Secretary or an Assistant Secretary and shall be sealed with the seal of the Neighborhood Association, if such a seal is adopted. All certificates evidencing membership of any Class shall be consecutively numbered. The name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Neighborhood Association. If any certificate shall become lost, mutilated or destroyed, a new certificate may be issued therefor upon such terms and conditions as the Board may determine.

2. TRANSFER OF MEMBERSHIP: Upon the sale of any Unit, the membership of the selling Owner shall terminate and the certificate, if any, issued to such Member shall be cancelled. The new purchasing Owner shall receive a newly issued certificate if the Neighborhood Association has elected to issue certificates evidencing membership in the Neighborhood Association as provided in Paragraph 1 above.

ARTICLE XVI

TAX EXEMPT STATUS

Notwithstanding anything otherwise provided herein or in the Articles or the Declaration, the Board and Members of the Neighborhood Association shall conduct the business of the Neighborhood Association in such manner that the Neighborhood Association shall qualify as and be considered an organization exempt from Federal and State income taxes pursuant to Internal Revenue Code Section 528 and California Revenue and Taxation Code Section 23701t or any amendments or revisions thereto. Pursuant to said Sections: (1) sixty percent (60%) or more of the gross income of the Association for each taxable year shall consist solely of amounts received as membership dues, fees and

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assessments from Unit Owners; (2) ninety percent (90%) or more of the expenditures of the Neighborhood Association for the taxable year are expenditures solely for providing management, maintenance and care of Neighborhood Association property, including Neighborhood Common Areas, or for the general welfare of the community comprising the Neighborhood Association; (3) no part of the net earnings of the Neighborhood Association shall inure to the benefit of any private Member or individual (other than by the Neighborhood Association providing management, maintenance and care of Neighborhood Association property, including Neighborhood Common Areas, or by a rebate of excess membership dues, fees or assessments); (4) the Neighborhood Association shall not provide or maintain facilities to provide utilities for its Members (provided, however, that the Neighborhood Association may charge for utility services provided to the Neighborhood by utility companies, which services are not separately metered); and (5) amounts received as membership dues, fees and assessments not expended for Neighborhood Association purposes during the taxable year shall be transferred or deposited to and held in a separate trust account to provide for management, maintenance and care of the Neighborhood Association property, including Neighborhood Common Areas, or to promote the general welfare of the community comprising the Association. The Board shall cause to be timely filed any annual election for tax-exempt status as may be required under federal or state law, and shall undertake to cause the Neighborhood Association to comply with the statutes, rules and regulations adopted by federal and state agencies pertaining to such exemptions.

ARTICLE XVII

MISCELLANEOUS

The fiscal year of the Neighborhood Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

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CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of PALAZZO BERNARDO ASSOCIATION, a California corporation, and

That the foregoing By-Laws constitute the original By-Laws of said corporation as duly adopted by the Board of Directors thereof on the _____ day of _____, 1981.

Nicki Franklin
Secretary

FIRST AMENDMENT
TO
BY-LAWS

ARTICLE IV, BOARD OF DIRECTORS

2. TERM OF OFFICE:

C. Board Elected at Regular Annual Meetings: At the first regular annual meeting of the Neighborhood Association, the Members shall hold a new election of Directors, each of whom shall serve a term of one (1) year. Of the three (3) Directors elected in 1988, one (1) will serve for a one (1) year term and two (2) will serve for a two (2) year term. Thereafter the term of each Directors shall be two (2) years.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of PALAZZO BERNARDO ASSOCIATION, a California corporation, and

That ARTICLE IV, 2. of the original By-Laws was amended as above according to ARTICLE XIV.

Jan 17, 1989
Date

[Signature]
Secretary