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DECLARATION
FOR
"VILLA VENUSTO"
(a Condominium Project)

San Diego, California

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Exhibit "A" - Project Legal Description

THIS DECLARATION is made on the day and year hereinafter written by SUNLAND RANCHO BERNARDO PARTNERSHIP, a California Limited Partnership (hereafter, "*Declarant*"), with reference to the following:

RECITALS

A. Declarant is the Owner of the real property located in the City of San Diego, County of San Diego, State of California, more particularly described in Exhibit "A," attached hereto and by this reference made a part hereof ("*Property*" or "*Condominium Property*."

B. Declarant desires to establish certain covenants, conditions and restrictions upon the Property and each and every portion thereof, which will constitute a general scheme for the use and management of the Property as a residential community called VILLA VENUSTO ("*Neighborhood*"); and for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and the quality of life for the Owners and occupants thereof.

C. Declarant has or intends to improve the Property by developing thereon **thirty-two (32)** low-rise residential units. The Neighborhood shall be developed as a Condominium Common Interest Development ("*Project*" or "*Condominium Project*"), pursuant to the provisions of the *Davis-Stirling Common Interest Development Act* (California Civil Code Section 1351 et seq), whereby Declarant will subdivide the residential units into "*Living Units*" in **four (4)** incremental *Phases* or sales sequences, as described hereafter.

D. In addition to the Living Units, the Condominium Project will consist of "*Common Area*", consisting of (but not limited to): Condominium Buildings, private driveway & parking areas, garages, walkways, lighting, landscaped areas and fences & walls. There are two types of Common Area:

(i) "*Phase Common Area*," consisting of all air, land and improvements located within a Phase Airspace Envelope (herein defined) in which at least one Condominium Unit has been conveyed to a Retail Buyer, but excluding therefrom any Living Units located therein; and

(ii) "*General Common Area*," consisting of all air, land and improvements located outside of a Phase Airspace Envelope within the Project.

E. Declarant has or will hereafter file a *Condominium Plan* with the Office of the County Recorder of San Diego County, California, covering the Condominium Property. The Condominium Plan depicts the Phases and the Living Units contained therein. Each Phase shall contain the following number of Living Units:

<u>PHASE</u>	<u>NUMBER LIVING UNITS</u>	<u>LIVING UNIT DESIGNATIONS</u>
I	9	Units 9 thru 12, inclusive Units 16 thru 20, inclusive
II	8	Units 21 thru 24, inclusive Units 29 thru 32, inclusive
III	7	Units 13 thru 15, inclusive Units 25 thru 28, inclusive
IV	8	Units 1 thru 8, inclusive

F. Notwithstanding the number of Phases and the number of Living Units respectively contained within each Phase as shown above, Declarant shall have the unilateral right to reconfigure the number of Phases and/or the number of Living Units contained within each such Phase in accordance with the terms and provisions contained in the Article entitled "*Phase Reconfiguration; Condominium Plan Amendment; Redesign*" within this Declaration.

G. The Property is part of The Community of Bernardo Heights ("*Community*") and is subject to the covenants, conditions and restrictions contained in that certain **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COMMUNITY OF BERNARDO HEIGHTS** recorded as File/Page No. 80-319018 in the Office of the San Diego County Recorder on September 30, 1980, and any amendments thereto, now or hereafter recorded.

H. The Property is further subject to that certain "*Reciprocal Easement Agreement*" recorded August 20, 1992, as Document No. 92-0526081 in the Office of the County Recorder of San Diego County, California, and any amendments thereto now of record, all of which are incorporated herein by reference to said Agreement with the same effect as though fully set forth herein.

I. Declarant will cause or has caused the incorporation of the **VILLA VENUSTO HOMEOWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation ("*Association*"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), for the purpose of exercising the powers and functions set forth herein. The Association shall act as the management body for the Neighborhood, and shall be responsible for the operation, maintenance and control of the Common Area. By virtue of owning a Living Unit in the Project, each Owner shall also have a membership in the Association, which membership shall be appurtenant to and pass with title to the Living Unit.

J. Each Owner of a Condominium shall receive title to (i) a separate interest in space called a Living Unit, (ii) an appurtenant undivided fractional interest in the Phase Common Area in which the Living Unit is located, (iii) an appurtenant undivided *one-thirty-second (1/32)* fractional interest in the General Common Area, and (iv) the exclusive right

to use any "Exclusive Use Common Area" appurtenant to such Owner's Living Unit. Each Owner's fractional interest in their respective Phase Common Area shall not change nor be affected by virtue of the conveyance of Living Units in other Phases. The Owners of Living Units in each Phase shall have no title or fractional interest in the Phase Common Area of other Phases.

K. The development of the Property as Condominiums will be consistent with any overall development plans submitted to and approved by the California Department of Real Estate. The foregoing notwithstanding, each Owner who takes title to a Condominium in the initial Phase acknowledges that the sale of Condominiums in the subsequent Phases shall be at the sole discretion of Declarant.

L. This Declaration shall encumber all of the Condominium Property upon its recordation in the Office of the County Recorder of San Diego County. The general terms, conditions, covenants and restrictions contained herein shall become operative as to all of the Property upon the recordation of this Declaration. Upon the first conveyance of a Living Unit within any Phase of the Property to a Retail Buyer under the authority of a California Department of Real Estate Final Subdivision Public Report ("**Public Report**"), Phase shall be called an "**Annexed Phase**." Upon such initial conveyance, the Living Units contained in such Annexed Phase shall become an operative part of the Common Interest Subdivision and shall be subject to the specific terms, conditions, covenants and restrictions contained in this Declaration relating to the operation of the Association and Living Units as a Common Interest Subdivision, including, but not limited to the following:

(i) The commencement of assessments, as provided for in the Section entitled "**Commencement of Assessments; Due Dates**" herein;

(ii) Voting rights, as provided in the section entitled "**Commencement of Voting Rights**" herein;

(iii) Association and Owner responsibilities of maintenance relating to such Annexed Phase and the Living Units therein;

(iv) Nonexclusive easements of ingress, egress and use of Common Area, as more particularly described herein, and

(v) Provisions relating to condemnation and destruction of Common Area in such Annexed Phase.

Prior to the conveyance of the first Living Unit in a Phase, such Phase shall be called an "**Unannexed Phase**."

In the event that no Living Units are conveyed in a Phase, but one or more are, instead, leased or rented, that Unannexed Phase and all of the Living Units in such Unannexed Phase, shall, upon the date of the first residential occupancy of a Living Unit in such Unannexed Phase, be treated as Separate Interest Living Units for the purposes of this Declaration and shall (a) immediately become subject to the same specific terms, conditions, covenants and restrictions contained in this Declaration as if such Living Unit were

conveyed to a Retail Buyer, and (b) become subject to regular, special and all other assessments described in this Declaration beginning the first of the month next following the date of the first residential occupancy of a Living Unit in such Unannexed Phase, as more fully described in the Section entitled "*Unit Assessments In Unannexed Phases*" herein.

M. Subject to the terms, limitations, restrictions and conditions set forth in this Declaration, and to any rules and regulations adopted by the governing body of the Association, the Owners and occupants of Condominiums in any one Phase shall have reciprocal nonexclusive easements for ingress, egress and use over the Phase Common Area of each other Phase that (i) a Notice of Completion has been recorded for all of the improvements in such respective Phase and Certificates of Occupancy have been issued by the appropriate governmental agency, and (ii) is not occupied by a Condominium Building or is not an area to which an Owner has an exclusive right to use, regardless of whether any Condominiums located in a Phase have been conveyed to Retail Buyers.

N. Declarant deems it desirable to subject the Property in accordance with a common plan to certain covenants, conditions, restrictions, reservations, easements, equitable servitudes, liens and charges, all running with the Property for the benefit of Declarant and any and all present and future Owners of the Property or any portion thereof.

NOW, THEREFORE, Declarant hereby certifies and declares that all of the Property is, and shall be, held, conveyed, transferred, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the limitations, covenants, conditions, restrictions and easements hereinafter set forth, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the subdivision, protection, maintenance, improvement, sale and lease of the Property, or any portion thereof. All of the limitations, covenants, conditions, restrictions and easements set forth herein are equitable servitudes and shall run with the land and shall be binding upon all parties having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, its successive owners and each Owner and his or her respective successors-in-interest, and may be enforced by any Owner, the Association or the Community Association.

ARTICLE 1. - DEFINITIONS

1.1. ANNEXED PHASE.

"Annexed Phase" shall mean a Phase of the Project in which at least one (1) Condominium Unit has been conveyed by Declarant to a Retail Buyer under the authority of a Public Report.

1.2. **ARTICLES.**

"Articles" shall mean and refer to the Articles of Incorporation for the Association, including such amendments thereto as may from time to time be made.

1.3. **ASSOCIATION; CORPORATION; NEIGHBORHOOD ASSOCIATION.**

"Association," "Corporation" or "Neighborhood Association," the terms being synonymous, shall mean and refer to **VILLA VENUSTO HOMEOWNERS ASSOCIATION**, a California non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

1.4. **BOARD.**

"Board" shall mean and refer to the Board of Directors of the Association.

1.5. **BYLAWS.**

"Bylaws" shall mean and refer to the Bylaws of the Association, including such amendments thereto as may from time to time be adopted.

1.6. **CITY.**

"City" shall mean and refer to the City of **San Diego**, a municipal corporation located in the County of **San Diego**, State of California.

1.7. **COMMON AREA.**

"Common Area" shall mean and refer to the entire Common Interest Development, excepting therefrom the Separate Interests in space therein called "Living Units"; also excepting therefrom any separate interests in Phase Airspace Envelopes Separate, as depicted on the Condominium Plan, in which no Living Units have been conveyed by Declarant to a Retail Buyer. Common Area shall consist of two types, each defined as follows:

1.7.1. **GENERAL COMMON AREA.**

"General Common Area" shall mean and refer to that real property described in **Exhibit "A"** and in the Condominium Plan and the improvements now or hereafter situated thereon or therein, excepting therefrom (i) those four (4) Separate Interests in space as shown and described in the Condominium Plan as "Phases"; and, (ii) those thirty-two (32) Separate Interests shown and described on the Condominium Plan as "Living Units 1 through 32, inclusive."

The General Common Area shall include, but not be limited to: land, parking spaces, detached garages, private driveway, walkways, lighting, landscaped areas, sprinklers and sprinkler pipes, conduits, pipes, private storm drains, private utilities, plumbing, wires and other utility

installations and central services (except such services which exclusively serve a Living Unit) required to provide common power, light, telephone, gas, cable television, water and sewage, and any other facilities which the Association owns or leases for the common benefit, use and enjoyment of all of its Members.

The General Common Area shall be owned by all of the Owners of the Separate Interest Living Units described in the Condominium Plan or Plans in equal 1/32nds undivided fractional interests as tenants in common, one (1) for each Living Unit, for a total of 32/32nds. In the event that the Living Units within a particular Phase Airspace Envelope as shown on a Condominium Plan covering that Phase are not constructed or the first one of which has not been conveyed as a Separate Interest (such Phase being an Unannexed Phase), the undivided fractional interests in and to the General Common Area attributable to such Unannexed Phase shall be equal to the total number of Living Units allocated thereto as shown on the Condominium Plan therefor. The foregoing notwithstanding, such Unannexed Phase fractional interests shall be subject to the Phase Reconfiguration provisions contained in the Article entitled "**Phase Reconfiguration; Condominium Plan Amendment; Redesign**" of this Declaration.

1.7.2. PHASE COMMON AREA.

"Phase Common Area" shall mean and refer to each of the four (4) Phase Airspace Envelopes shown and described in the Condominium Plan in which at least one (1) Living Unit has been conveyed by Declarant to a Retail Buyer under the authority of a Public Report. Phase Common Area shall include all of the real property, Condominium Buildings, air and earth and other improvements located within the boundaries of each such Phase Airspace Envelope, excepting therefrom all Living Units.

The Phase Common Area represented by each Phase Airspace Envelope shall be owned by the Owners of Living Units located within each such Phase Airspace Envelope in equal undivided fractional interests as tenants in common, one (1) for each Living Unit, as follows:

<u>PHASE</u>	<u>NUMBER LIVING UNITS</u>	<u>UNDIVIDED INTERESTS PHASE COMMON AREA</u>
I	9	1/9th
II	8	1/8th
III	7	1/7th
IV	8	1/8th

Phase Common Area includes, without limitation, land, Condominium Buildings, walkways, lighting, landscaped areas and open space, sprinklers and sprinkler pipes, conduits, pipes, plumbing, wire and other utility installations and central services (except such services which exclusively serve a Living Unit) required to provide common power, light, telephone, gas, cable television, water and sewage located within the Phase boundaries. The

undivided fractional common interest shall be appurtenant to each Living Unit, shall be permanent in character and cannot be altered without the consent of all of the Owners affected. Such undivided common interest cannot be separated from the Living Unit to which it is appurtenant, and any conveyance or transfer of the Living Unit includes the undivided common interest in the Phase Common Area.

1.8. COMMON EXPENSES.

"Common Expenses" shall mean and refer to the actual and estimated costs and expenses incurred or to be incurred by the Association, including, but not limited to:

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

(b) Due but unpaid Assessments;

(c) Costs and expenses not paid by the Owner responsible for payment, when such costs and expenses are paid by the Association;

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

(e) Costs of utilities, trash pickup and disposal, gardening and other services benefiting the Owners and their property to the extent such services are paid for by the Association;

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

(g) The costs of any other insurance obtained by the Association pursuant to the provisions of this Declaration;

(h) Reasonable reserves as deemed appropriate by the Board or required by law;

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

(j) Taxes paid by the Association;

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

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

(m) The costs of any other item or items designated by, or in accordance with other expenses incurred by, the Association for any reason whatsoever in connection with the operation or maintenance of the Common Area, or in furtherance of the purposes or the discharge of any obligation imposed on the Association by this Declaration, the Articles or Bylaws.

1.9. COMMON INTEREST DEVELOPMENT.

"Common Interest Development" shall mean and refer to the Project.

1.10. COMMUNITY.

"Community" shall mean and refer to all of The Community of Bernardo Heights.

1.11. COMMUNITY ARCHITECTURAL COMMITTEE.

"Community Architectural Committee" shall mean and refer to the architectural committee established pursuant to Article VIII of the Community Declaration.

1.12. COMMUNITY ARTICLES.

"Community Articles" shall mean and refer to the Articles of Incorporation of the Community Association.

1.13. COMMUNITY ASSESSMENTS.

"Community Assessments" shall mean and refer to assessments levied by the Community Association pursuant to the Community Declaration.

1.14. COMMUNITY ASSOCIATION.

"Community Association" shall mean and refer to The Community Association of Bernardo Heights as defined and established in the Community Declaration.

1.15. COMMUNITY BOARD.

"Community Board" shall mean and refer to the Board of Directors of the Community Association.

1.16. COMMUNITY BYLAWS.

"Community Bylaws" shall mean and refer to the Bylaws of the Community Association.

1.17. COMMUNITY COMMON AREA.

"Community Common Area" shall mean and refer to all real property in which the Community Association owns an interest for the common use and benefit of the members of the Community Association, their lessees, guests, invitees or patrons. The Community Common Area may include interests held by lease or easement as well as estates in fee.

1.18. COMMUNITY DECLARATION.

"Community Declaration" shall mean and refer to that certain *"Declaration of Covenants, Conditions and Restrictions for the Community of Bernardo Heights,"* recorded on September 30, 1980 in the Office of the County Recorder of San Diego County, California, as File No. 80-319018, and such amendments thereto as shall from time to time be recorded.

1.19. COMMUNITY DOCUMENTS.

"Community Documents" shall mean and refer to the Community Declaration, Community Articles, Community Bylaws and Community Rules.

1.20. COMMUNITY RULES.

"Community Rules" shall mean and refer to and rules and regulations adopted by the Community Board pursuant to Section 3.8 of the Community Declaration.

1.21. CONDOMINIUM.

"Condominium" shall mean and refer to an estate in the Condominium Property, or portions thereof, as defined in California Civil Code Section 1351(f), or any similar statute hereinafter enacted, and shall consist of an undivided interest as tenant-in-common (i) in the General Common Area and (ii) in the Phase Common Area, coupled with a separate interest in space called a Living Unit, together with any Exclusive Use Common Area conveyed appurtenant thereto. Condominium, for purposes of this Declaration, shall also mean and refer to those residential units located within Unannexed Phases.

1.22. CONDOMINIUM BUILDING.

"Condominium Building" shall mean any building structure located on the Property.

1.23. CONDOMINIUM DOCUMENTS and/or PROJECT DOCUMENTS.

"Condominium Documents and/or Project Documents" means and includes this Declaration and any Exhibits attached hereto, any Supplementary Declaration or Declaration of Annexation, the Reciprocal Easement Agreement, Condominium Plan, Articles, Bylaws, and any Rules and Regulations established from time to time by the Board or any Committee of the Board and the Community Documents, including any amendments to the aforescribed documents as may from time to time be made.

1.24. CONDOMINIUM PLAN.

"Condominium Plan" shall mean and refer to a plan or plans, as may from time to time be amended, consisting of (1) a description or survey map of the Project which shall refer to or show monumentation on the ground, (2) a three-dimensional description of the Project or a Phase thereof, as built or to be built, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the Common Areas and each Separate Interest, and (3) a certificate consenting to the recordation of the Condominium Plan pursuant to California Civil Code Section 1351(e), signed and acknowledged by the record owner of fee title to the Lot within the Property that such Condominium Plan covers or any portion thereof. The Condominium Plan may be amended in accordance with Civil Code Section 1351(e) and as provided herein in the Article entitled **"Phase Reconfiguration; Condominium Plan Amendment; Redesign."**

1.25. DECLARANT.

"Declarant" shall mean and refer to **SUNLAND RANCHO BERNARDO PARTNERSHIP**, a California Limited Partnership its successors and assigns, if such successors or assigns should acquire all of the Declarant's interest in the Project for the purpose of development or sale. A successor Declarant shall also be deemed to include the beneficiary under any Mortgage securing an obligation from a then existing Declarant encumbering all or any portion of the Project, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure of sale.

1.26. DECLARATION.

"Declaration" shall mean and refer to this Declaration recorded with the Office of the County Recorder of **San Diego County**, California, covering the Condominium Property, including such amendments thereto as may from time to time be recorded.

1.27. ELIGIBLE INSURER OR GUARANTOR.

"Eligible Insurer or Guarantor" shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or Bylaws of the Association. Such notice must contain the Unit number or the Unit address of the secured Condominium.

1.28. ELIGIBLE MORTGAGE HOLDER.

"Eligible Mortgage Holder" shall mean and refer to the holder of a First Mortgage on a Condominium, who has provided a written request to the Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association. Such notice must contain the Unit number or the Unit address of the secured Condominium.

1.29. EXCLUSIVE USE COMMON AREA.

"Exclusive Use Common Area" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner of a Separate Interest in space called a Living Unit and is appurtenant to that Living Unit bearing the same numerical designation, as shown and identified on the Condominium Plan as:

- "Y" denoting Yard Exclusive Use Common Areas
- "D" denoting Deck Exclusive Use Common Areas

"Exclusive Use Common Area" shall also mean and refer to internal and external: telephone & electrical wiring, plumbing, lighting and other utilities, shutters, awnings, window boxes, doorsteps, stoops, porches, exterior doors, door and window frames and hardware incident thereto, screens and windows or other fixtures, if any of the foregoing are designed to exclusively serve a single Living Unit, but located outside the boundaries of such Living Unit.

Notwithstanding anything herein contained, or in the Condominium Plan, to the contrary, each **Yard Exclusive Use Common Area** is an exclusive use easement the lateral boundaries of which extend to the interior surfaces of the perimeter walls and fences as installed by Declarant, rather than to the dimensions stated in the Condominium Plan, said dimensions being only approximate.

Deck and Yard Exclusive Use Common Areas, for purposes of this Declaration, may be referred to as "Deck(s)" and "Yard(s)" herein.

1.30. FHLMC.

"FHLMC" shall mean and refer to the Federal Home Loan Mortgage Corporation, including any successors thereto.

1.31. FNMA.

"FNMA" shall mean and refer to the Federal National Mortgage Association, including any successors thereto.

1.32. FIRST MORTGAGE.

"First Mortgage" shall mean and refer to a recorded Mortgage in first priority over any and all other Mortgages encumbering a Condominium.

1.33. IMPROVEMENT.

"Improvement" shall mean and refer to all structures and appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, additions, patio covers, awnings, gazebos, paintings of any exterior surfaces of any structure, walkways, swimming pools, jacuzzi spas and other

recreational facilities, garages, private streets, driveways & parking areas, fences, screening walls, retaining walls or other type walls, stairs, decks, landscaping, sprinkler pipes & heads, hedges, windbreaks, natural or artificial trees, shrubs and flowers, poles, masts, antennas, exterior air conditioning, water softener fixtures or equipment, street furniture, benches, signs, including entry monument signs and Neighborhood directional signs.

1.34. LIVING UNIT, UNIT, CONDOMINIUM UNIT, CONDOMINIUM, LIVING AREA.

"Living Unit, Unit, Condominium Unit, Condominium, Living Area" shall mean and refer to the residential separate interests in space in the Condominium Project which are not owned in common with the other Owners of other separate interests in the Project and shall include the garage located therein. Living Units are numbered 1 through 32, inclusive, and are shown and described on the Condominium Plan for the Project, and are further identified as to each respective Phase in the Recitals portion of this Declaration.

1.35. MAP or SUBDIVISION MAP.

"Map" or "Subdivision Map" shall mean and refer to that certain Subdivision Map filed in the Office of the County Recorder of San Diego County, as more particularly described in Exhibit "A".

1.36. MEMBER.

"Member" shall mean and refer to a person entitled to membership in the Association as provided within this Declaration and the Project Documents.

1.37. MORTGAGE.

"Mortgage" shall mean and refer to a deed of trust as well as a mortgage encumbering a Condominium.

1.38. MORTGAGEE.

"Mortgagee" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.39. MORTGAGOR.

"Mortgagor" shall mean and refer to the trustor of a deed of trust as well as a mortgagor.

1.40. NEIGHBORHOOD.

"Neighborhood" shall mean and refer to all of the Property which is, from time to time, subject to this Declaration.

1.41. NON-EXCLUSIVE USE COMMON AREA.

"Non-Exclusive Use Common Area" shall mean and refer to all Common Area except the Exclusive Use Common Area.

1.42. OWNER.

"Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of a Condominium, including contract buyers but excluding those having such interest merely as security for the performance of an obligation.

1.43. PERSON.

"Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to real property.

1.44. PHASE.

"Phase" shall mean and refer to (i) an incremental sales sequence of the Project for which a separate Public Report has been issued by the California Department of Real Estate, and/or, (ii) a Separate Interest in space called a "Phase Airspace Envelope" as depicted and described in one or more Condominium Plans covering the Project or a portion thereof; the word "Phase" as used in this Declaration may refer to any of the foregoing as the context may indicate. A Public Report may cover one or more Phase Airspace Envelopes within the Project.

The Project, as contemplated as of the date of the recordation of this Declaration, consists of **four (4) Phases**, each being a Phase Airspace Envelope, as shown and described on the Condominium Plan or Plans covering the Condominium Property. Each Phase consists of the number Living Units described in Recital E to this Declaration.

The sale of Condominiums in each Phase and/or the sequence of Phases, whether as presently configured or any reconfiguration thereof as described in this Declaration, shall be at the sole discretion of Declarant and there is no assurance or guarantee that Condominiums in any Phase will be built and/or sold by Declarant.

1.45. PHASE AIRSPACE ENVELOPE; PAE.

"Phase Airspace Envelope" or "PAE" shall mean and refer to a non-residential separate interest in space shown and described on one or more Condominium Plans covering the Property. Each Phase Airspace Envelope is a three-dimensional envelope of airspace the lower limit of which extends to a horizontal plane **twenty feet (20.0')** below the existing ground elevation; the upper limit of which extends to a horizontal plane **fifty feet (50.00')** above the existing ground elevation; the lateral boundaries of each Phase Airspace Envelope are vertical planes at the limits of the horizontal dimensions of each such respective PAE. Each PAE includes all air, earth, Condominium Buildings

and all other improvements located within its boundaries, excepting therefrom all Living Units located therein.

Prior to the conveyance of the first Living Unit in a PAE to a Retail Buyer, the interest in each PAE shall be held by Declarant in fee simple title. Upon the conveyance of the first Living Unit in a PAE to a Retail Buyer, all of the Living Units located in such Phase shall become Separate Interests in space, each unto itself, located within the boundaries of the PAE Separate Interest in space, but apart from it, and the interest in such Phase Airspace Envelope shall change from a single fee simple interest into "**Phase Common Area**," which shall be owned in undivided fractional interests in common by all of the Owners of Living Units within such Phase Airspace Envelope in equal number as the number of Living Units contained in such Phase.

1.46. PROJECT; CONDOMINIUM PROJECT.

"Project or Condominium Project" shall mean and refer to the Property, including all Condominiums and all structures and improvements erected or to be erected thereon.

1.47. PROPERTY; CONDOMINIUM PROPERTY.

"Property or Condominium Property" shall mean and refer to that certain real property located in the City of **San Diego**, County of **San Diego**, California, more particularly described in **Exhibit "A"** hereto.

1.48. PUBLIC REPORT.

"Public Report" shall mean and refer to the Final Subdivision Public Report issued by the California Department of Real Estate covering one or more Phases of the Project.

1.49. RETAIL BUYER.

"Retail Buyer" shall mean and refer to a Person who purchases a Condominium Unit from Declarant under the authority of a Public Report for purposes of ownership and use thereof.

1.50. RULES.

"Rules" shall mean and refer to any Rules and Regulations adopted by the Board pursuant to the section herein entitled "**Rules and Regulations**" in the "**Rights of Owners, Board and Association**" Article herein.

1.51. SEPARATE INTEREST.

"Separate Interest" shall mean and refer to a separate interest in space as defined in Civil Code Section 1351(1). There are two types of Separate Interests within the Condominium Project: an "**Unannexed Phase**" Separate Interest, which is non-residential in nature, and a "**Living Unit**" Separate Interest, which is residential in nature, both defined herein.

1.52. SUPPLEMENTAL DECLARATION.

"Supplemental Declaration" shall mean and refer to a declaration or similar instrument recorded in the Office of the San Diego County Recorder which may contain such complementary additions and modifications of the terms, provisions, covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect any portion of the Project that was not originally contemplated herein and as are not inconsistent with the scheme of this Declaration; in no event, however, shall any such Supplemental Declaration revoke any of the covenants, conditions and restrictions established by this Declaration unless this Declaration be amended as provided herein.

1.53. UNANNEXED PHASE.

"Unannexed Phase" shall mean and refer to a Phase in the Project in which no Condominium Units have been conveyed by Declarant to individual Retail Buyers under the authority of a Public Report.

ARTICLE 2. - MEMBERSHIP, VOTING, FIRST MEETING

2.1. MEMBERSHIP IN GENERAL.

Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser. The transfer of title to a Condominium or the sale of a Condominium and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant thereto to the transferee. As a Member of the Association, each Owner is obligated to promptly, fully and faithfully comply with and conform to the Articles, this Declaration, the Bylaws and the Rules adopted thereunder from time to time by the Board and officers of the Association.

2.2. CLASSES OF VOTING RIGHTS.

The Association shall have two (2) classes of voting membership:

2.2.1. CLASS A.

Each Member, other than the Declarant, shall be a Class A member. Class A membership entitles the holder to one (1) vote for each Condominium of which he or she is record Owner. If a Condominium is owned by more than one person, each such person shall be a Member of the Association, but there shall be no more than one (1) vote for each Condominium.

2.2.2. CLASS B.

The Declarant is a Class B member. Class B membership entitles the holder to three (3) votes for each Condominium of which the Declarant is record Owner. The foregoing notwithstanding, the Owner of an Unannexed Phase (i.e. a PAE) in which Assessments have been levied thereon by the Association, shall be entitled to three (3) votes for each Living Unit shown on the Condominium Plan covering such Phase, notwithstanding absence of the conveyance of the first Living Unit Separate Interest within such Phase.

The Class B membership shall be irreversibly converted to Class A membership on the first to occur of the following:

- (a) Two (2) years following the conveyance of the first Living Unit by Declarant to a Retail Buyer in the most recent Phase of the Project under the authority of a Public Report; or
- (b) The fourth (4th) anniversary of the first conveyance of a Living Unit by Declarant to a Retail Buyer in the first Phase of the Project under the authority of a Public Report.

2.3. COMMENCEMENT OF VOTING RIGHTS.

An Owner's right to vote, including Declarant, shall not vest until Assessments have been levied upon such Owner's Separate Interest as provided in this Declaration. All voting rights shall be subject to the restrictions and limitations provided for herein and in the Articles and Bylaws.

2.4. APPROVAL OF MEMBERS.

Unless specifically provided for otherwise, any provision of the Condominium Documents requiring the vote or written assent of the Association voting power shall be deemed satisfied by the following:

2.4.1. VOTE OF MAJORITY.

The vote of the majority at a meeting duly called and noticed pursuant to the provisions of the Bylaws dealing with annual or special meetings of the Members, unless a provision of this Declaration requires a special meeting only; provided, however that such majority must include the specified number of all Members entitled to vote at such meeting and not such a majority of a quorum of those Members present;

2.4.2. WRITING.

A writing or writings signed by a majority of the voting power; or

2.4.3. COMBINATION OF VOTES AND WRITING.

A combination of votes and written assent, provided that Members shall not change their vote or written assent after it is cast or delivered and provided further that only those written assents executed within sixty (60) days before or thirty (30) days after a meeting may be combined with votes cast at such meeting to constitute a majority.

2.5. FIRST ANNUAL MEETING OF THE ASSOCIATION.

The first regular meeting of the Association shall be held no later than (i) forty-five (45) days after the close of escrow for the sale of fifty-one percent (51%) of the Condominiums in the Project, or (ii) no later than six (6) months after the close of escrow for the sale of the first Condominium in the Project, whichever comes first. Thereafter, regular meetings and special meetings of the Association shall be held in accordance with provisions of the Bylaws. At the first meeting, the Members shall elect the Board of Directors. Election to and removal from the Board shall be by secret written ballot with cumulative voting, as more particularly described in the Bylaws.

2.6. CLASS A MEMBERS' SELECTION OF ASSOCIATION DIRECTORS.

In any election of Directors, commencing on the first regular annual meeting scheduled after the first Condominium is sold to an Owner, other than Declarant, so long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, not less than *twenty percent (20%)* of the Directors shall have been elected solely by the votes of Class A Members, other than the Declarant. Such Class A elected representative may be removed prior to the expiration of his term of office only by a vote of at least a simple majority of the Members, excluding the Declarant.

2.7. NO PERSONAL LIABILITY OF BOARD MEMBERS.

In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Association which acts on behalf of and as representative of the Owners, and no Member thereof shall be individually or personally liable or obligated for performance of such duties or responsibilities unless he fails to act in good faith.

ARTICLE 3. - RIGHTS OF OWNERS, BOARD AND ASSOCIATION

3.1. RIGHTS OF OWNERS.

Owners, and, to the extent permitted by such Owner, his family, guests, invitees, lessees, and contract purchasers who reside in such Owner's Condominium, shall have the following rights and limitations:

3.1.1. RIGHT OF ACCESS AND USE OF CONDOMINIUM.

The right of access over the Common Area for ingress to and egress from such Owner's Condominium, and of enjoyment and full use of such Condominium, which right shall be appurtenant to and shall pass with title to the Owner's Condominium, subject to the limitations contained herein. This right cannot be forfeited or abridged by the failure by an Owner to comply with provisions of the Condominium Documents or duly-enacted rules of operation for Common Areas and facilities thereon, except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association.

3.1.2. RIGHT TO THE USE OF COMMON AREA.

The right of ingress and egress and of enjoyment in, to and over the Common Area, which shall be appurtenant to and shall pass with title to the Condominium, subject to the limitations and restrictions of the Condominium Documents.

3.1.3. RIGHT TO NOTICE AND HEARING.

The right to receive notice and an opportunity to be heard orally or in writing, as set forth in Section 7341 of the California Corporations Code (or any successor statute or law), prior to a decision by the Board to impose monetary penalties, a temporary suspension of an Owner's right as a Member of the Association, or other appropriate discipline for failure to comply with the Condominium Documents as described more fully in the Section entitled "*Penalties Against Members*" herein.

3.1.4. DELEGATION OF USE.

Any Owner may delegate his right of enjoyment to the Common Area to his tenants or contract purchasers who reside in his Condominium; provided, however, that if any Owner delegates such right of enjoyment to tenants or contract purchasers, neither the Owner nor his family shall be entitled to use the Common Area by reason of ownership of the Condominium during the period of delegation. Guests of any Owner may use the Common Area only in accordance with the Rules adopted by the Board.

3.2. RIGHTS OF BOARD.

The Board shall have the following rights:

3.2.1. RULES AND REGULATIONS.

The right to establish uniform rules and regulations pertaining to the use of the Common Area not inconsistent with the provisions of this Declaration, and to amend the same from time to time relating to the use of the Common Area and other facilities situated thereon by Owners and by their tenants or

guests, including the right to reasonably limit the number of guests using the Common Area and any facilities thereon, and the conduct of such persons with respect to automobile parking, outside storage of bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the Neighborhood or offend or cause inconvenience or danger to persons residing or visiting therein. Such Rules may provide that the Owner of a Condominium whose occupant leaves property on the Common Area in violation of the Rules may be assessed (after appropriate notice and an opportunity for a hearing before the Board as set forth herein) an amount to cover the expense incurred by the Association in removing such property and storing or disposing thereof.

3.2.2. PENALTIES AGAINST MEMBERS.

The right to impose the following penalties against Members:

(a) **Suspension** of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period of time during which the assessment on a Member's Condominium remains unpaid;

(b) **Suspension** of the membership rights and privileges, together with the voting rights of any Member of the Association, for any period not to exceed thirty (30) days for any infraction of the Association's Rules;

Suspension may include the suspension of the right of a Member to the use of any recreational facilities on the Common Area; however, no such suspension shall affect the rights of such Member to access to his Condominium, except by judgment of a court or a decision arising out of arbitration or on account of foreclosure or sale under a power of sale for failure of the Member to pay assessments duly levied by the Association.

(c) **Levying of monetary penalties** against an individual Member as a disciplinary measure for failure of a Member to comply with provisions of the Project Documents, or as a means of causing the Member to reimburse the Association for costs and expenses incurred by the Association in the repair of damage to Common Areas and facilities for which the Member was allegedly responsible, or in bringing the Member and his Condominium in compliance with the Project Documents. Provided, however, no such monetary penalty may be characterized or treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924b and 2924c of the Civil Code.

(d) It is provided, however, that the provisions of the preceding paragraph expressly do not apply to charges imposed against a Member consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments as more fully described in this Declaration.

3.2.3. NOTICE AND HEARING.

As set forth in Section 7341 of the California Corporations Code (or any successor statute or law), no suspension or monetary penalty shall be effective unless a Member receives fifteen (15) days' prior written notice of the proposed action and the reasons therefor and is given an opportunity to be either heard orally or in writing before the Board not less than five (5) days before the proposed effective date of the action. The notice required hereby may be given by any method reasonably calculated to provide actual notice in accordance with the notice provisions described in the Article herein entitled "*General Provisions*".

3.2.4. RIGHT TO ENTER CONDOMINIUM.

For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration and the other Condominium Documents, the Association's agents or employees shall have the right at reasonable hours to enter into any Condominium or upon any portion of the Common Area (including any Exclusive Use Common Area). Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused shall be repaired by the Association. For other than emergency repairs, oral notification of such proposed entry shall be given to the occupant of the Condominium at least twenty-four (24) hours in advance; in the event such oral notification is not established, the notification of the proposed entry shall be made in accordance with the "Notice" provisions contained in the Section hereinafter entitled "*Notice*." Each Owner of a Condominium Unit hereby grants authority to the Association, its agents and employees to effect notification of proposed entry to the occupant of such Owner's Condominium Unit without prior, concurrent or subsequent notice to such Owner. In the case of an emergency, the right of entry shall be immediate, with no notice required. For the purpose herein, "emergency" is defined as an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property.

3.2.5. ACCESS TO COMMON AREA.

The right of Association access, ingress and egress over the Common Area and the right of installation and use of utilities thereon for the benefit of the Neighborhood.

ARTICLE 4. - POWERS AND DUTIES OF ASSOCIATION

The Association, acting through its Board of Directors, shall have all of the powers of a California nonprofit mutual benefit corporation, and to perform any and all lawful acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, as described and subject to the limitations set forth in this Declaration, the Articles of Incorporation and the Bylaws of the Association.

ARTICLE 5. - ASSESSMENTS

5.1. COVENANT FOR ASSESSMENTS.

The Declarant, for each Condominium owned within a Phase in the Project in which either a Unit has been sold to a Retail Buyer under the authority of a Public Report, or leased, as more fully described, respectively, in the Sections herein entitled "**Commencement of Assessments**" and "**Unit Assessments in Unannexed Phases**"; hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

- (a) **Regular Assessments**, which shall include an (i) adequate reserve fund for long-term or periodic maintenance, repair and replacement of the Common Area, (ii) any Community assessments and (iii) costs as determined by that certain Reciprocal Easement Agreement described herein; and,
- (b) **Special Assessments** which shall be established and collected as hereinafter provided.

All assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on the Condominium Unit and shall be a continuing lien upon the Unit against which each such assessment is made, the lien to become effective upon recordation of a **Notice of Delinquent Assessment**, as provided in this Article. Each such assessment, together with interest, costs, late charges and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

5.2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the Project and for the improvement and maintenance of the Common Area for the common good of the Project.

5.3. RATE OF ASSESSMENTS.

Regular Assessments and Special Assessments (other than those Special Assessments levied for the rebuilding or major repair of the structural Common Areas) shall be levied at a uniform rate for all Condominium Units and may be collected on a monthly basis, or otherwise, as determined by the Board.

5.4. SPECIAL ASSESSMENTS.

If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, replacement of or new capital improvements on the Common Area, the Board shall determine the approximate amount necessary to defray such expenses and, except as provided in the "*Limitations on Assessments*" Section hereinbelow, said amount shall become a Special Assessment. The Board may, in its discretion, prorate such Special Assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Special Assessments shall be levied on the same basis as Regular Assessments, provided that a Special Assessment against Owners to raise funds for the *rebuilding or major repair* of the structural Common Area of the Project shall be levied on the basis of the ratio of the square footage of the floor area of the Living Unit to be assessed to the total square footage of floor area of all Living Units to be assessed.

5.5. SINGLE BENEFIT ASSESSMENT.

The Board may establish a Single Benefit Assessment for reconstruction, capital improvements, extraordinary maintenance, or any other cost or expense not otherwise provided for in this Declaration that will benefit less than all of the Owners, and which will be assessed only against the Condominiums of those Owners so benefitting.

(a) Except as provided in the paragraph immediately below, such Single Benefit Assessments may be imposed only by a vote of at least fifty-one percent (51%) of the Owners of the Condominiums benefitted by the Single Benefit Assessment.

(b) Whenever the Association performs any service or accomplishes any item of repair or maintenance which is the duty of an Owner to accomplish, but which has not been accomplished by such Owner, or whenever the Association determines to preempt the performance of a specific Owner of a given act of maintenance or repair, the Association shall specifically charge the cost thereof, together with any financing costs and administrative costs incurred by the Association, to the Owner for whom such work was done, and shall include such additional cost as a Single Benefit Assessment for such Owner(s).

Each Single Benefit Assessment shall be segregated in the Financial Accounts solely to the Condominiums which derive the benefit therefrom. In the event that the Association obtains income directly related to an item which has been assessed as a Single Benefit Assessment, such income shall be allocated so as to reduce or offset such Single Benefit Assessment.

5.6. INDIVIDUAL ASSESSMENTS.

The Association may also impose an Individual Assessment against any Member to reimburse the Association for costs incurred in bringing a Member and

his Condominium into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws and the Association Rules and Regulations, which assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing, as more fully described in the section in the "**Rights of Owners, Board and Association**" Article entitled "**Notice and Hearing**"; provided, however, that except to the extent such Individual Assessment is to reimburse the Association for the cost of collecting those assessments described in the Section hereinbefore entitled "**Covenant For Assessments**," the Individual Assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner which is or was in non-compliance.

5.7. **MAXIMUM REGULAR ASSESSMENT.**

Until January 1st of the year immediately following conveyance of the first Condominium in the Project to an Owner, the maximum regular annual assessment for each Condominium shall be the monthly assessment amount against each Condominium times twelve (x12) as such monthly assessment amount is shown and approved by the California Department of Real Estate in its original Public Report for the initial Phase of the Project.

5.8. **CONDOMINIUMS NOT SUBJECT TO ASSESSMENTS.**

If for any reason whatsoever one or more Condominiums is not required to pay assessments (e.g. a Condominium owned by the Association by virtue of the Association having acquired such Condominiums through foreclosure), such assessments shall be deemed to be common expenses collectible from all of the remaining Condominium Owners in the same proportion as each Condominium now bears to the others, less the number of Condominiums owned or not assessed by the Association. If profits are derived from the rental or sale of any Condominium owned by the Association which ownership resulted in an increase of assessments paid by the remaining Condominium Owners for additional common expenses thereby incurred, such Owners shall have reimbursed to them any or all of the excess assessments paid by them on such equitable terms and conditions as shall be determined by the Board.

5.9. **LIMITATIONS ON ASSESSMENTS.**

(a) The Board of Directors of the Association shall not impose or collect an assessment, penalty, or fee that exceeds the amount necessary for the purpose or purposes for which it is levied. Annual increases in Regular Assessments for any fiscal year, as authorized by subsection (b) immediately hereinafter, shall not be imposed unless the Board has prepared and distributed the proforma operating budget described in the "**Financial Reports**" Section of the **Bylaws**, in accordance with the provisions of Civil Code Section 1365a as it may from time to time be amended, with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code.

(b) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the Board of Directors of the Association may not impose, except as provided herein, a Regular Assessment that is more than twenty percent (20%) greater than the Regular Assessment for the Association's preceding fiscal year or impose Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners constituting a quorum casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. These provisions, however, shall not limit assessment increases necessary for the following "emergency situations:"

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

(2) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Association is responsible where a threat to personal safety is discovered;

(3) An extraordinary expense necessary to repair or maintain those portions of the Project or the Common Area for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget described in the "**Financial Reports**" Section of the **Bylaws**, in accordance with Civil Code Section 1365. Provided, however, that prior to the imposition or collection of an assessment under this paragraph, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the Notice of Assessment.

(c) For purposes of this Section, "quorum" is defined as more than fifty percent (50%) of the Owners (including the Declarant) of the Association.

(d) Any action authorized under this Section shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting.

5.10. NOTICE OF ASSESSMENT INCREASE.

The Board shall provide notice by first-class mail to the Owners of any increase in Regular or Special Assessments not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

5.11. REDUCTION OR ABATEMENT OF REGULAR ASSESSMENTS.

In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common

Expenses, the Board in its discretion may either reduce the amount of the Regular Assessments or may abate collection of Regular Assessments as it deems appropriate. Nothing in this Section shall require the Board either to abate or reduce the Regular Assessments. The foregoing notwithstanding, neither an abatement nor a reduction in Regular Assessments shall be permitted so long as Declarant is possessed with or controls a majority of the total voting power of the Association or the Board.

5.12. NO OFFSETS.

All assessments shall be payable in the amount specified by the Board and no offsets against such amount shall be permitted for any reason, including, without limitation (i) a claim that the Association is not properly exercising its duties and powers as provided in this Declaration; (ii) a Member has made or elects to make no use of the Common Area or any Improvements located therein; or, (iii) any construction or maintenance performed pursuant to the Section entitled "*Assumption of Maintenance Obligations*" of the Article entitled **RESPONSIBILITIES OF MAINTENANCE** herein, shall in any way postpone assessments or entitle a Member to claim any such offset or reduction.

5.13. COMMENCEMENT OF ASSESSMENTS; DUE DATES.

The monthly installment payments of the annual Regular Assessment shall commence as to all Condominiums within a Phase on the first day of the calendar month next following the date of closing of the first sale of a Condominium to a Retail Buyer thereof in that Phase under the authority of a Public Report. Declarant shall be obliged to pay to the Association the full assessment installment for each unsold Condominium in an Annexed Phase following the sale of the first Condominium in such Phase. The first annual Regular Assessment shall be adjusted according to the number of months remaining in the fiscal year. The Board of Directors shall fix the amount of the annual Regular Assessment against each Condominium at least thirty (30) days in advance of each annual Regular Assessment period. Written notice of the annual Regular Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

5.14. UNIT ASSESSMENTS IN UNANNEXED PHASES.

Subsequent to any initial Annexed Phase where Condominiums are sold, in the event that the Condominiums in any subsequent Unannexed Phase are not sold, but are developed and the Condominiums therein are leased to persons whose use and occupancy thereof results in use of the parking areas, driveways, utilities, facilities and other improvements in the Property, the expense and cost of which the Association is responsible, all of the Condominiums in such subsequent Unannexed Phase shall be subject to such Regular, Special and Single Benefit Assessments pursuant to this Declaration that are levied by the Board for the cost of maintenance, repair and replacement of said streets, facilities, utilities and other improvements so used, and for any other costs and expenses paid by the Association benefiting the Condominiums in such Unannexed Phases. Such assessments shall commence as to all Condominiums in said subsequent Unannexed Phase on the first day of the first calendar month following

the first residential occupancy of a Condominium in such Unannexed Phase pursuant to the lease or rental agreement; payment of such assessments shall be enforced pursuant to the provisions for the collection of assessments herein. The foregoing notwithstanding, there shall be no assessments or other charges against any Unannexed Phase where there are no Units fully constructed, occupied or used, except (i) for such costs and expenses for any damage to the Common Area in Annexed Phases as a result of any of Declarant's construction activities in such Unannexed Phases or for such costs and expenses as may be incurred by the Association, as more fully described in the Article entitled "**Use of Unannexed Phases; Mechanics Liens**" herein, and (ii) any costs and expenses that may be attributable to an Unannexed Phase for any liability or other insurance paid for by the Association, in which case, Declarant or its successor in interest, as Owner of such Unannexed Phase Separate Interest shall be responsible for and obligated to pay the proportionate amount of any such attributable insurance cost or expense in the same manner as any other assessment described herein.

5.15. LATE PENALTIES; INTEREST ON ASSESSMENTS.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be subject to a reasonable late penalty not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, and shall bear interest on all sums including the delinquent assessment, reasonable costs for collection and late penalties at an annual percentage not exceeding twelve percent (12%) commencing thirty (30) days after the assessment becomes due, or at the maximum legal rate as defined in the California Civil Code Section 1366, or any successor statute or law.

5.16. EFFECT OF NON-PAYMENT OF ASSESSMENTS.

Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a **Notice of Delinquent Assessment** as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorneys' fees), late penalties and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien, if by nonjudicial foreclosure as provided below. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association. Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorneys' fees), late penalties and interest accruing thereon, shall be and become a lien upon the Condominium described therein, which lien shall also secure all costs (including attorney's fees),

late penalties and interest accruing thereon. In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium together with all costs (including attorneys' fees), late charges and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and release of such lien.

5.17. FORECLOSURE PROCEEDINGS.

Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924b, 2924c and 1367 of the California Civil Code, or any successor statute or law, and to that end, the right to enforce the lien by sale is hereby conferred upon the Association and its trustee designated in the Notice of Delinquent Assessment, or a trustee substituted pursuant to California Civil Code Section 2934a. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, costs, late penalties and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

5.18. PRIORITY OF THE LIEN.

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 of record. Sale or transfer of any Condominium shall not affect the assessment lien. However, the transfer of any Condominium pursuant to a "power-of-sale" or judicial foreclosure of a First Mortgage shall extinguish the lien of or obligation for such assessments as to payments which became due prior to the foreclosure transfer. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

5.19. WAIVER OF EXEMPTIONS.

Each Owner, to the extent permitted by law, waives, to the extent any liens created pursuant to this Article, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment thereof becomes delinquent, or any lien is imposed.

5.20. TAXATION OF ASSOCIATION.

In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the individual Condominiums, said taxes shall be added to the annual assessments, and, if necessary, a Special Assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

5.21. PERSONAL LIABILITY OF OWNER.

No Owner may exempt himself from personal liability for assessments levied by the Association, nor release the Condominium owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Condominium.

5.22. FINANCIAL ACCOUNTS.

The Board shall establish financial accounts ("Financial Accounts"), into which shall be deposited all monies paid to the Association and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration and the Bylaws. The Financial Accounts shall be established as savings and/or checking accounts at any banking or savings institution insured by the Federal Deposit Insurance Corporation or similar Federal insuring agency. Aggregate deposits held in any single bank or savings institution shall not exceed the contemporary limit of Federal Deposit Insurance coverage available. The Financial Accounts shall include:

- (a) An Operating Account for current Common Expenses of the Association;
- (b) A Reserve Account for capital improvements, replacements, painting and repairs of the Common Area; and
- (c) Any Other Accounts that the Board may establish to the extent necessary under the provisions of the Condominium Documents.

Except for purposes of transfer of funds upon receipt or disbursement thereof, the Board shall not commingle any amounts deposited into any of the Financial Accounts with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Financial Accounts by the Declarant so long as the amounts assessed to, deposited into, and disbursed from any such Account are earmarked for specified purposes authorized by the Condominium Documents.

5.23. USE OF RESERVE FUNDS.

Any reserve fund accounts maintained by the Association (including any capital accounts maintained pursuant to the above Section entitled "*Financial Accounts*") shall be used for the purposes and in the manner described in California Civil Code Section 1365.5, as it may from time to time be amended.

5.24. VOTING REQUIREMENT FOR CERTAIN ACTIONS.

Notwithstanding anything contained in this Declaration to the contrary, the following actions shall require the vote or written assent of at least seventy-five percent (75%) of the voting power of the Association: (i) any

Special Assessment for a purpose other than to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Non-Exclusive Use Common Area (including fixtures and personal property related thereto) or for any unallocated taxes, (ii) a name change for the Project, (iii) the sale or encumbrance of any property owned by the Association, or (iv) the annexation of any new property to the Association and/or this Declaration, other than the Property or any portion thereof specifically covered by this Declaration or a Supplemental Declaration as a Phase.

ARTICLE 6. - COMMUNITY ASSOCIATION

6.1. EASEMENT TO COMMUNITY ASSOCIATION.

The officers, agents, employees and independent contractors of the Community Association shall have a non-exclusive easement to enter upon the Property or any portion thereof for the purpose of performing or satisfying the duties and obligations of the Community Association as set forth in the Community Declaration, the Community Bylaws, the Community Articles, the Community Rules and the rules and regulations of the Community Architectural Committee.

6.2. SUBORDINATION OF ASSESSMENT LIEN.

Anything contained in this Declaration to the contrary notwithstanding, the lien of any assessment imposed upon any Condominium pursuant to this Declaration shall be subordinate and inferior to the lien of any assessment imposed upon such Condominium pursuant to the Community Declaration.

6.3. COMMUNITY ASSOCIATION ASSESSMENTS.

Declarant, for each Condominium it owns, hereby covenants, and each Owner of a Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, does and is hereby deemed to covenant and agree to pay to the Community Association the Community Assessments imposed upon such Condominium pursuant to the Community Declaration. The Community Assessments shall be levied and collected as provided in the Community Declaration.

The Community Association, in its sole and absolute discretion, may elect to require the Association to administer, levy, collect and enforce the Community Assessments imposed upon Condominiums. All such funds collect by the Association shall be held in trust by the Association for the benefit of the Community Association, and such funds shall be disbursed to the Community Association as provided in the Community Declaration.

The Community Association, in its sole and absolute discretion, may elect to administer, levy, collect and enforce the assessments by the Association provided for under this Declaration. All such funds collected by

the Community Association shall be utilized in the manner and for the purposes specified in this Declaration and in the Community Declaration, the Community Bylaws, the Community Articles, the Community Rules and the rules and regulations of the Community Architectural Committee.

6.4. ENFORCEMENT.

Breach of any of the limitations, restrictions, conditions and covenants set forth in this Declaration or the continuation thereof may be enjoined, abated or remedied by appropriate legal proceedings by the Association or the Community Association. The Community Association shall be deemed to be a third party beneficiary of and an entity that may enforce the provisions of this Declaration. The failure of the Association or the Community Association to enforce any of said limitations, restrictions, conditions and covenants shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on, or incurred by, the Association or the Community Association as a result of such failure. The prevailing party in any action at law or in equity instituted by the Association or 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 attorney's fees.

6.5. SUPREMACY OF COMMUNITY DOCUMENTS.

In addition to all of the rights and obligations that are conferred or imposed upon the Association pursuant to this Declaration and the other Condominium Documents, the 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 Documents. The Association (including, without limitation the Architectural Committee of the Association) shall also be subject to all superior rights and powers which have been conferred upon the Community Association pursuant to the Community Documents.

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.

In the event of any conflict between any of the covenants, conditions and restrictions or provisions of this Declaration or any of the other Condominium Documents with any of the covenants, conditions and restrictions or provisions of the Community Declaration or any of the other Community Documents, then the Community Documents shall govern and prevail.

ARTICLE 7. - USE RESTRICTIONS

7.1. MAXIMUM NUMBER OF LIVING UNITS IN PROJECT.

Notwithstanding anything to the contrary contained herein, in no event shall the Project, when completed, consist of more than thirty-two (32)

Living Units, unless authorization for a greater number is obtained from the City of San Diego pursuant to the requirements of the Subdivision Map Act (Government Code §§ 66410 - 66499.37) and/or other applicable law.

7.2. USE OF CONDOMINIUMS.

Each Condominium shall be improved, used and occupied for private, single-family dwelling purposes only; provided, however, Declarant may use any of the Living Units and Exclusive Use Common Areas owned or leased by Declarant as model homes and sales offices during that time period described in the section entitled "*Declarant Exemption*" in the Article herein entitled "*General Provisions*."

7.3. BUSINESS OR COMMERCIAL ACTIVITY.

No business of any kind shall be permitted or conducted in any of the Living Units. Owners may, however, without external evidence, (i) maintain their personal professional library, (ii) keep personal business or professional records, or (iii) handle his or her personal business, professional calls or correspondence from said premises.

7.4. LEASE OF CONDOMINIUMS.

Each Owner shall have the right to lease his Condominium, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration and all other Project Documents; and that the failure to comply with the provisions of these Project Documents shall be a default of the lease. No Owner shall lease his Condominium for "*transient or hotel purposes*". Any lease which is either for a period of less than thirty (30) days, or pursuant to which the Lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes. Any lease agreement shall be for the Condominium Unit and its appurtenant Exclusive Use Common Areas, as well as the garage within the boundaries of the Unit, and no such agreement shall allow the lessee to forfeit the use of such Exclusive Use Common Areas and garage. Upon the lease of any Condominium, the Owner thereof shall, within ten (10) days thereafter, provide a copy of the lease agreement to the Association.

7.5. INSURABILITY.

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

7.6. PETS.

Except as otherwise provided more stringently in the zoning ordinances of the City, an Owner may keep and maintain in his Condominium domesticated pets such as dogs, cats or other usual and ordinary household pets, not to exceed **two (2)** in number, the maximum weight of which shall be 30 pounds each; and birds (excluding poultry and birds of prey), not to exceed four (4) in number; provided that no pets shall be kept, maintained or bred for any commercial purposes whatsoever. An Owner may keep and maintain any number of aquarium-type fish.

The foregoing notwithstanding, no pets may be kept on the Property which result in an annoyance or are obnoxious to other Owners or occupants. No pets shall be allowed on the Common Area except as may be permitted by the Association Rules. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. The Association, Declarant or any Owner may cause any unleashed dog found within the Common Area to be removed to a pound or animal shelter under the appropriate governmental jurisdiction by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the dog. **No dog whose barking disturbs other Owners or occupants shall be permitted to remain on the Property.** Owners shall prevent their pets from soiling all portions of the Common Area where other persons customarily walk and shall promptly clean up any mess left by their pets.

7.7. INTERFERENCE WITH OTHER OCCUPANTS.

No Living Unit or Exclusive Use Common Area shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any Unit nor on the Common Area.

7.8. SIGNS.

No signs, placards, decals or other similar objects, shall be erected or displayed to the public view on from within any Living Unit or the Common Area without the written approval of the Board; provided however, each Owner shall have the right to erect or display one (1) sign reasonably located, in plain view of the public and of reasonable dimensions and design not to exceed *4 square feet* in area, advertising the following: (i) that the Condominium is for sale, lease or exchange by the Owner or the Owner's agent, (ii) directions to the Condominium, (iii) the Owner's or agent's name, and (iv) the Owner's or agent's address and telephone number. Customary window dressings placed in observance of national or religious holidays, **security system** window signs not to exceed *sixty-four inches (64") square* in size (and no more than one per window), or such signs as may be required by legal proceedings, shall not be considered signs for purposes of this Section. During the time of construction of the Project, **job identification signs** having a maximum face area of **six (6) square feet per sign** and of the type usually employed by architects, contractors, subcontractors, tradesmen and lenders, shall be permitted. Any of the foregoing notwithstanding, all signs shall conform with applicable local governmental ordinances.

Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right, during the time period described in the section entitled "**Declarant Exemption**" in the Article herein entitled "**General Provisions**", to install and maintain such signs, poles and advertisements as it deems appropriate in connection with its sales, financing, or construction program for the sale to the public of Condominiums, provided such signs shall comply with the local zoning ordinances, that all City approvals therefor shall be obtained and that they do not unusually interfere with the right of use and quiet enjoyment of the Owners and occupants.

7.9. EXTERIOR LIGHTING.

Any exterior lighting installed on Common Area shall either be indirect, shielded or of such controlled focus and intensity as to prevent glare on surrounding properties and unreasonable disturbance to occupants of other Condominiums.

7.10. ANTENNAS, SATELLITE DISHES.

No "Citizens Band" (C.B.), amateur radio, microwave transmission antennas, satellite dishes or other similar electronic receiving or broadcasting devices shall be installed or maintained on the Condominium Property. The foregoing notwithstanding, AM/FM radio and/or television antennas located within the interior of a Living Unit shall be permitted, provided it is not visible from any street or from anywhere else in the Project. Nothing herein stated is intended to obligate Declarant or the Board to install a master antenna system.

7.11. MASTS & POLES.

No masts or poles may be constructed, installed or maintained on the Property for any purpose whatsoever without the prior written consent of the Board (or its delegated committee) and necessary approvals and permits from the appropriate local governmental agency. The foregoing notwithstanding, nothing herein shall be construed to prevent any Person that would otherwise have a legal right to display a Flag of the United States of America from his Condominium from exercising that right, subject to reasonable restrictions imposed by the appropriate local jurisdiction as to the time, place and manner of placement or display of such Flag, when necessary for the preservation of the public's health, safety or order; provided, however, no restrictions solely to promote aesthetic considerations may be imposed.

7.12. REMODELING THE COMMON AREA.

Except as otherwise specifically provided herein, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape or adorn any part or parcel of the Common Area without the written consent of the Board or Architectural Committee.

7.13. OFFENSIVE ACTIVITIES AND CONDITIONS.

No noxious or offensive activity shall be carried on in any Condominium or on the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance, other than that which may result from construction or repair of improvements made at the instructions of the Board or Declarant. Nothing shall be done to any Condominium, or in, on, or to the Common Areas, which would impair the structural integrity of any structure located on the Property. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Architectural Committee.

7.14. GARBAGE AND REFUSE DISPOSAL.

All rubbish, trash and garbage shall be regularly removed from Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers designed for such purpose. All equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition. The Board may require, pursuant to its Rules, that all garbage and other wastes be segregated and such segregated elements be separately packaged (for example, all cans, glass, paper products and other items of trash be segregated from each other and separately packaged for pickup and disposal by a garbage and waste disposal company or a department of any governmental agency having jurisdiction over the Project). All equipment, trash bins or cans shall be kept screened and concealed from view of other Condominiums and from the Common Area.

7.15. FENCES; WALLS.

No fences or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of improvements on the Property or as subsequently provided by the Board or its delegated committee.

7.16. CLOTHES LINES.

No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes anywhere in the Project, except in such areas which may be approved by the Board or its delegated committee.

7.17. YARDS, DECKS; STORAGE.

Deck Exclusive Use Common Areas may be used for placement of lawn/patio style furniture, barbecues, potted plants, and other usual patio equipment and furniture; provided, however, no *potted plants* or other objects may be placed upon or over any Deck railing above an area where someone or something may be injured or damaged in the event such potted plants or other objects should fall down. An Owner shall not allow any water to run off any Deck onto the Common Area. Owners shall place trays under all potted plants.

Fireplace wood may also be stored, provided it shall be kept in a container which may be sealed so to mitigate the infestation of termites and other pests, screened and concealed from view of other Condominiums, the Common Area, public and private streets. **Decks and Yards** may not be used for storage purposes. No draping of towels, carpets, laundry or other articles over railings or walls shall be allowed. No Owner may install permanent **Yard** improvements which could interfere (i) with proper drainage through such Owner's Yard and the Project, or (ii) with necessary repair or maintenance of drainage lines and inlets therein. All of the foregoing notwithstanding, the Board, or its delegated committee, shall, in accordance with its **Rules** and the **"Architectural and Design Control** Article herein, have the ultimate authority to establish, determine, approve and/or disapprove such rules and regulations affecting the placement, storage and nature of items permitted on Decks and Yards.

7.18. LANDSCAPING.

Each Owner shall cultivate and landscape the Yard Exclusive Use Common Area appurtenant to his Unit within one year from the date of the conveyance of such Unit to said Owner. Such landscaping shall be maintained in accordance with the provisions therefor contained in the Section entitled **"Owner Responsibility of Exclusive Use Common Areas"** herein.

7.19. WINDOW COVERINGS.

Each Owner shall install window coverings on all bedroom windows and glass doors larger than 4'0' x 5'0' of his or her Unit within *ninety (90)* days after the date of the conveyance of the Condominium Unit to said Owner. All drapes, curtains, window coverings, shutters or blinds visible from the Common Area or public areas shall be white in color or so lined. Other colors, materials and patterns may be used, provided they are approved by the Board or its delegated committee. No window shall ever be covered with paint or aluminum foil; provided, however, non-reflective solar films shall be permitted.

7.20. CAR MAINTENANCE AND POWER EQUIPMENT.

No car maintenance, servicing, repairing, assembling, disassembling, modifying, restoring, other than emergency work, shall be permitted in the Neighborhood, except with prior written approval of the Board for minor repairs only. The length of time allowed for emergency or approved minor repair work shall be determined by the Board through its Rules. The foregoing notwithstanding, no emergency or repair work shall be permitted in any continuous period of forty-eight (48) hours or more.

No power equipment (other than "hand-held" power tools) or other similar apparatus may be used in the Neighborhood except with the prior written approval of the Board; in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

7.21. USE OF COMMON AREA.

Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(a) Affording vehicular passage, parking, and pedestrian movement within the Condominium Property, including access to the Living Units;

(b) Recreational use by the Owners and occupants of Living Units in the Condominium Property and their guests, subject to rules established by the Board;

(c) Beautification of the Common Area and providing privacy to the residents of the Condominium Property through landscaping and such other means as the Board shall deem appropriate;

(d) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions and for such fees as may from time to time be determined by the Board; and,

(e) As Exclusive Use Common Areas to be used in the manner hereinafter described. Nothing herein contained shall be deemed to allow persons other than the Owner of a Unit to which an Exclusive Use Common Area is appurtenant (or his tenants and licensees) to the enjoyment and use thereof.

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

7.22. EXCLUSIVE USE LICENSES.

The Board shall have the right to allow one or more Owners to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Unit, and provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

7.23. LIABILITY FOR DAMAGE TO COMMON AREA.

Each Owner shall be legally liable to the Association for all damages to the Common Area or to any improvements thereof or thereto, including but not

limited to the buildings, facilities and landscaping, caused by such Owner, his guests, lessees, invitees or any occupant of such Owner's Living Unit, as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of his Unit, and shall, after written notice and an opportunity for a hearing as provided in the Section entitled "**Penalties Against Members**", pay the fines and penalties assessed pursuant hereto, the Bylaws or the Rules and Regulations for any violation by his guests, lessees and occupants of his Living Unit.

7.24. INTERIOR OF CONDOMINIUMS; MODIFICATIONS; HANDICAPPED ACCESS.

Subject to the provisions of this Declaration, applicable provisions of law and Civil Code Section 1360, each Owner shall have the right, at his sole cost and expense:

(a) To make any improvement or alteration within the boundaries of his Living Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Area;

(b) To maintain, repair, repaint, paper, panel, plaster, tile and finish the interior surfaces of the ceiling, floors, window frames, trim, door frames and interior walls of the Unit and the surfaces of the bearing walls and partitions located within the Unit and to substitute new finished surfaces in place of those existing on said ceiling, floors, walls, and doors of said Unit;

(c) To modify his Living Unit to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the Living Unit for the purposes of this Section if the Unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted herein is subject to the following conditions:

(1) The modifications shall be consistent with applicable building code requirements;

(2) The modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or aesthetics;

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

(4) Any Owner who wishes to modify his Living Unit pursuant to this Section, shall comply with the provisions of the **"Architectural And Design Control"** Article hereafter regarding the review and approval by the Board or its delegated committee of such modifications, which approval shall not be unreasonably withheld.

7.25. EXCLUSIVE USE COMMON AREAS.

Each Exclusive Use Common Area shall be (i) appurtenant to the Unit with which the Exclusive Use Common Area is conveyed, and (ii) used only for the purposes set forth in this Declaration. The right to so use an Exclusive Use Common Area shall be exercisable only by the Owner of the Condominium appurtenant thereto and/or said Owner's tenants and licensees. Conveyance of a Condominium shall effect conveyance of the Exclusive Use Common Areas appurtenant thereto and transfer all rights thereto to the vested Owner of the Condominium. Any license thereto shall be terminated upon such conveyance. No Exclusive Use Common Area nor any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from the Condominium to which it is appurtenant. Each Exclusive Use Common Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Article or the **"Architectural And Design Control"** Article hereafter. Except as provided in this Section and in the **"Interior of Condominiums; Modifications; Handicapped Access"** Section above, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Common Area or any other part of the Common Area without the prior written consent of the Board or its Committee in accordance with the provisions of the **"Architectural And Design Control"** Article herein.

7.26. VEHICLE RESTRICTIONS.

No trailer, recreational vehicle, camper, camper shells which are higher than the respective cab or wider or longer than the factory bed, mobile home, motor home, house car, commercial vehicle, trucks larger than 3/4-ton, boats, boat trailers, inoperable automobile, or similar equipment shall be permitted to remain upon any area within the Project; provided, however, vehicles used for immediate purposes of moving or the delivery of goods to a resident or the Association shall be permitted. Commercial vehicles shall not include automobiles or standard size vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky, nor any unlicensed motor vehicle shall be operated in the Project.

The foregoing notwithstanding, Declarant or Declarant's successor in interest may maintain trailers or temporary structures within the Project which are incidental to the completion of the Project.

7.27. **PARKING; STORAGE.**

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Garages and open, exterior parking spaces shall be used to park automobiles, standard sized pickup trucks or standard sized vans; provided that such vehicles may be fully enclosed or contained therein and not interfere with the reasonable access to adjacent vehicles, and such vehicles to the contrary shall not be permitted in the Project; provided, however, Owners may use their garages to store boats or boat trailers, provided, such vehicles may be fully enclosed and contained therein with the garage door fully closed. No owners or their tenants shall park more vehicles in the Project at any one time than the number of vehicles that their garage may accommodate. Garages shall be kept available and usable for the parking of Owners' or tenants' vehicles at all times and no garage shall be converted into any use that would prevent its use as parking space for the number of vehicles the garage was designed to contain (for example, if a garage can accommodate two vehicles, and an Owner utilizes one space therein for storage of a boat, such Owner may only have one additional vehicle within the Project, and must use the adjacent garage space therefor). Except for purposes of ingress or egress, all garage doors shall remain closed; provided, however, garage doors may remain open during any one day for no more than one (1) hour of cumulative time. **Owners are to use their garages for parking of their vehicles so that unassigned Common Area parking will be available for guest parking.** No Owner shall block or impede access of fire fighting equipment to private streets and fire hydrants within the Common Area.

The Board may, from time to time, establish Rules and Regulations for the operation and parking of vehicles in the Common Areas and such activities related thereto. Any permission from the Board for an Owner's use of an unassigned, guest parking space must be in writing and will create only a license to use such parking space, revocable at any time by the Board.

7.28. **TOWING.**

Any vehicle parked within the Project may be removed as provided for in this Section in accordance with the provisions of *California Vehicle Code Section 22658.2* as it may from time to time be amended.

Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for use by handicapped persons or in a manner which interferes with any entrance to or exit from the Project or any Condominium Unit, parking space, garage or driveway located thereon.

The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this Section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

ARTICLE 8. - ARCHITECTURAL AND DESIGN CONTROL**8.1. GENERAL.**

The powers and duties set forth in this Article shall be vested in, and exercised by the Board of Directors of the Association until such time that an Architectural Committee is formed as provided herein.

8.2. RESTRICTED ACTIVITY.

No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement or structure of any kind, or exterior alteration shall be commenced, erected, placed, painted or maintained upon the Project, nor shall any alteration or improvement of any kind be made thereto, nor shall any outdoor umbrellas be erected, nor extensive landscaping of **Decks and Yards** visible from the street or from the Common Area be undertaken, until the same has been approved in writing by the Architectural Committee.

8.3. PLAN SUBMISSION; REVIEW.

Complete plans and specifications showing the nature, kind, shape, color, size, height, materials to be used and location of any proposed improvements or alterations shall be submitted to the Architectural Committee for approval as to quality of workmanship, design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. In the event the Committee, fails to approve or disapprove plans and specifications within **thirty (30)** days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

8.4. EXEMPTED FROM REVIEW.

No permission or approval shall be required to repaint in accordance with Declarant's original color scheme or as previously approved by Architectural Committee, or to rebuild in accordance with plans and specifications previously approved by the Committee. Nothing contained herein shall be construed to limit the right of an Owner to paint the interior of his Living Unit any color desired, or to improve or alter any improvements within the interior boundaries of the Owner's Living Unit provided such improvement or alteration does not impair the structural integrity of any Common Area, the utilities, or other systems servicing the Common Area or other Condominiums, and does not involve altering any Common Area (including bearing walls). The provisions of this Article shall not apply to the initial construction by Declarant of the Project improvements, and the Architectural Committee shall have no authority or right to approve or disapprove thereof.

8.5. ARCHITECTURAL COMMITTEE.

The Architectural Committee shall consist of not less than three (3) nor more than five (5) members. Declarant shall appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original Public Report for the first Phase of the Project. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the Condominiums in the Project, including subsequent Unannexed Phases, if any, have been sold or until the *fifth anniversary* date of the conveyance of the first Condominium Unit in the Project to a Retail Buyer under the authority of a Public Report, whichever first occurs. After one (1) year from the date of conveyance of the first Condominium Unit in the Project to a Retail Buyer under the authority of a Public Report, the Board shall have the power to appoint *one (1) member* to the Architectural Committee until ninety percent (90%) of all of the residential Units in the Property have been sold or until the *fifth anniversary* date of the conveyance of the first Condominium Unit in the Project to a Retail Buyer under the authority of a Public Report, whichever first occurs. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee.

Members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Committee by the Declarant need not be members of the Association. A majority of the Architectural Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Committee, and thereafter the Board shall appoint such a successor.

8.6. MEETINGS.

The Architectural Committee shall meet from time to time as necessary to properly perform its duties hereunder. The vote or written consent of the majority of the Architectural Committee shall constitute an act by the Architectural Committee unless the unanimous decision of its members is otherwise required by this Declaration.

8.7. DUTIES.

It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to this Declaration and any Architectural Standards adopted by the Architectural Committee, to insure that any improvements constructed on the Property by anyone other than Declarant conform herewith, to perform other duties delegated to it by Association within the time periods set forth herein, and to carry out all other duties which may be imposed upon it by this Declaration. The Architectural Committee, in its own name or on behalf of the Association, may exercise all available legal and equitable remedies to prevent or remove any unauthorized and unapproved construction or improvements on the Property or any portion thereof. The Architectural Committee shall have the right, upon reasonable notice, to inspect any and all improvements made by an Owner. The

Architectural Committee shall have a duty to keep and maintain a record of all action from time to time taken by the Architectural Committee at all meetings or otherwise.

8.8. COMPENSATION.

Architectural Committee members shall receive no compensation for services rendered, other than reimbursement by the Association for expenses incurred by them in the performance of their duties hereunder. Provided, however, an Architectural Committee member may receive compensation in the event he or she renders services in a professional capacity in connection with architectural review, subject to the unanimous approval of the Board.

8.9. FEE FOR REVIEW.

The Architectural Committee shall have the right to establish a fee for the review and approval of plans and specifications which must be submitted to the Architectural Committee pursuant to the provisions of this Article or the Bylaws, which shall be reasonably related to the duties performed and to cover any expense incurred in obtaining professional review assistance from licensed engineers, architects or contractors.

8.10. ARCHITECTURAL STANDARDS.

The 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 "*Architectural Standards*." Said Standards shall interpret and implement the provisions of this Article by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, landscaping, color schemes exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said Architectural Standards shall not be in derogation of the standards required by this Declaration.

8.11. ESTOPPEL CERTIFICATE.

Within thirty days after written demand is delivered to the Architectural Committee by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time pursuant to the Section hereinabove entitled "*Fee for Review*"), the Architectural Committee shall provide the Owner with an estoppel certificate certifying that as of the date thereof, either: (a) all improvements made and other work completed by said Owner 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 Owner, or from anyone deriving any interest in said Condominium 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 Association and Owners and such persons deriving any interest through them.

8.12. LIABILITY.

Neither the Board nor the Architectural Committee shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of 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 whether or not the facts therein are correct; provided, however, that such Architectural Committee member has acted in good faith on the basis of such information as may be possessed by him.

8.13. ENFORCEMENT.

In the event of a violation of any of the provisions of this Article, by any Owner including, without limitation, failure of any Owner to comply with the written directive or order from the Architectural Committee, the Architectural Committee shall have the right and authority to enforce, pursuant to the "Enforcement" Article hereinafter, the performance of the subject matter of such directive, including, if necessary, the right to enter the Condominium where a violation of these restrictions exists and perform such remedial work as may be necessary to effect compliance, the cost of which shall be charged to the Owner of the Condominium in question. Such costs shall be due within five (5) days after receipt of written demand therefor, and shall bear interest at the maximum rate allowed by law. Said costs may be recovered by the Architectural Committee together with such interest and reasonable attorney's fees and costs in an action at law against such Owner.

8.14. NON-COMPLIANCE WITH LAWS.

Neither the Association, the Architectural Committee nor the Board shall be responsible for any non-compliance with any governmental law, rule or regulation of any building or other structure erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications approved by the Architectural Committee or any defect in any conditions or requirements they may have imposed with respect thereto.

8.15. APPROVAL BY GOVERNMENTAL JURISDICTION.

Prior to commencing any alteration or improvements approved by the Architectural Committee, the Owner shall comply with all appropriate governmental jurisdiction laws and regulations and with the architectural requirements of the Community Declaration. Approval by the Architectural Committee shall not be considered to satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction or the Community Association. The Association shall not be obligated to enforce the provisions of this Section. An Owner's failure to obtain such governmental approval and Community Association approval may subject such Owner to certain penalties or other remedies imposed by the governmental entity or Community Association, notwithstanding the approval of the Architectural Committee, which penalties shall be the responsibility of such Owner.

ARTICLE 9. - RESPONSIBILITIES OF MAINTENANCE

9.1. GENERAL.

The Association and all Owners are hereby required to maintain the areas described in this Article. For purposes of this Article "maintenance" shall include, without limitation, the painting, weatherproofing and cleaning of the items set forth below to keep a clean, safe and sanitary condition necessary to preserve the attractive appearance of each Condominium and the Project and to protect the values thereof. The Board shall have the power to determine the standards of such maintenance, which shall be, at a minimum, in conformance with maintenance standards for similar projects in the area.

9.2. OWNER RESPONSIBILITY OF LIVING UNIT.

Each Owner of a Living Unit shall be responsible for the maintenance, repair and replacement of the following items relating to such Unit:

(a) All doors attached to the Unit, whether interior or exterior, glass or otherwise, and windows, including the metal frames and tracks of such doors and windows, and hardware attached thereto, garage doors, the interior surfaces of such garage door & hardware attached thereto, door bells, screen doors and all other screens enclosing openings to the Unit; provided that painting or replacement of exterior doors and windows shall require the prior approval of the Board or its delegated committee.

(b) The interior of such Owner's Living Unit, including the interior surfaces; and,

(c) All appliances whether "built-in" or "free-standing" within the Living Unit.

(d) The plumbing, heating, ventilating and air-conditioning systems, which service such Owner's Condominium (including air-conditioning compressors) whether located in the Common Area or any Owner's Exclusive Use Common Area; television cable equipment, wires and connections, telephone wiring, and all appliances, equipment and fixtures, lighting fixtures (and lightbulbs) provided all of the foregoing systems are used or operated exclusively by such Owner and not in common. Plumbing shall include all water, sewer and drainage pipes and lines serving between the points at which the same enter/exit a Living Unit and the points at which the same join other water, sewer and/or drainage pipes and lines serving other Units or the Common Area. The responsibility for the cost of repair or replacement of that portion of plumbing lines and/or pipes where those of individual Living Units join with those of other Units or the Common Area shall be that of the Association (in other words, regardless of who initiates a service call and subsequent repair of such "joining point," the Association shall be responsible for the ultimate cost).

9.3. OWNER RESPONSIBILITY OF EXCLUSIVE USE COMMON AREAS.

Each Owner shall be responsible for (i) general maintenance and cleaning of the interior (or inside-facing) surfaces of any appurtenant Deck Exclusive Use Common Areas that may be appurtenant to such Owner's Unit including any interior facing wood or stucco railings, fences, walls and flooring of Decks; and (ii) maintenance, repair and replacement of the lighting fixtures (and lightbulbs) and other fixtures, including lighting fixtures located at the front, rear or side entrances to a Living Unit, provided such fixtures and appliances are not used in common with other Owners, in which case the Association shall be responsible. Except in emergency situations, the replacement of exterior fixtures, appliances, doors and equipment shall require the prior approval of the Board, or its delegated committee. In the case of emergency replacement of the items specified above, such Owner shall take reasonable measures to conform with the overall scheme of the Project, and subsequently replace such item if directed by the Board or Committee.

Each Owner shall also be responsible for the maintenance of all patios and landscaping within Yard Exclusive Use Common Areas in conformance with both the Association's and Community Association's Architectural Committee standards, including without limitation, the installation of landscaping as provided in Section 7.18 of this Declaration, the regular irrigation, fertilization and cleaning thereof to prevent rubbish or debris of any kind from being either placed or permitted to remain or accumulate upon or adjacent to such Yard, so as to render such Yard or portion thereof unsanitary, unsightly, offensive or detrimental to other residents. Maintenance of the Yards shall also include the maintenance and painting of interior facing wood fences & walls, and the maintenance and repair of any yard drains and irrigation systems. Each Owner shall take precaution not to interfere with any surface or subsurface drainage systems, lines or inlets located within the boundaries of such Owner's Yard, unless proper consideration for alternative systems and alignments is obtained from professionals, together with written approval by the Board in accordance with the provisions therefor contained in the Article herein entitled "**ARCHITECTURAL AND DESIGN CONTROL**".

9.4. DAMAGE FROM WITHIN A UNIT.

Except to the extent covered by insurance carried by the Association, in the event the Board shall determine that the walls, ceilings, floors, doors, or windows or any other portion of the Common Area forming the boundaries of a Unit have been damaged from within a Unit, notwithstanding that such damage may be to the Common Area, the Owner of the Unit shall be responsible for repairing such damage in a timely manner in accordance with such Rules as the Board or its delegated committee shall from time to time adopt.

9.5. OWNER'S FAILURE TO MAINTAIN; WILLFUL OR NEGLIGENT ACT.

In the event an Owner fails to maintain the areas described herein pursuant to the standards set by the Board, or if an Owner, or his guests, tenants, invitees or pets, cause the willful or negligent act or neglect of the same or any other area within the Project, the Board may notify the Owner of

the work required and request that the same be done within a reasonable time under the specific circumstances, provided, however, that the Board shall have the right to approve the person or company who shall perform the maintenance or repairs and the method of repair. In the event the Owner fails to carry out such maintenance or repair within said time period, the Board may, following notice and a hearing as provided in the Section entitled "**Notice and Hearing**" in the Article herein entitled "**Rights of Owners, Board and Association**", cause such work to be done and the cost thereof shall immediately be paid by such Owner to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law).

9.6. RESPONSIBILITY OF ASSOCIATION.

The Association shall be responsible for the following:

(a) The maintenance, repair and replacement of the all facilities, including utility facilities as described in the Section hereinafter entitled "**Utility Facilities**," the Common Area including, but not limited to, recreational facilities, private driveways, parking spaces, detached garages, walls, walkways, lighting, metal doors of utility closets, mailboxes (excluding mailbox locks, if any), trash enclosures, landscaped and open spaces, irrigation equipment in Non-Exclusive Use Common Areas, the exteriors, bearing walls, foundations, roofs, metal flashings between roofing and chimneys and roofing vents, gutters and downspouts of all Condominium Buildings and other structures on the Property and all property that may be acquired or leased by the Association. Maintenance shall include normal care and irrigation of landscaping, repair and replacement of plant material and irrigation systems as necessary and general cleanup of the landscaped, open and paved areas;

(b) The maintenance, repair and replacement of any fixtures (lighting or otherwise) located within the Common Area, including those located in Exclusive Use Common Areas, which are not used exclusively by one Owner;

(c) The maintenance, repair and replacement of all Common Area fences, walls and railings and any of the same which are not within or delineated Exclusive Use Common Areas; provided, however, painting of fences shall include only those portions which face the Common Areas (the Association shall not be responsible for the painting of fences facing into Yard Exclusive Use Common Areas);

(d) All water and sprinkler lines up to the point where such lines enter a Living Unit or a Yard Exclusive Use Common Area, after which point such systems shall be the responsibility of the Unit Owner;

(e) The maintenance and repair of all parking spaces and detached garages;

(f) The periodic inspection of: (i) all electrical, gas, water and cable utility controls and meters; (ii) all roofs and metal flashings for evidence of cracking, damage or exposure of underlying structures to the elements.

(g) The periodic inspection, but not less than annually, of all Deck Exclusive Use Common Area for surface wear and tear, drainage conditions, for purposes of ascertaining the necessity for remedial or long-term maintenance and repair to assure the integrity of a Deck surface, and for the repair thereof when required.

(h) The maintenance and repair of the Common Area as required to control the presence of or damage caused by *wood-destroying pests or organisms*; provided, however, the costs of temporary relocation during such maintenance or repair shall be paid by the Unit Owner affected. The Association is hereby given the power to temporarily remove any Unit Owner or occupant for such periods and at such times as may be necessary for prompt, effective treatment of such pests or organisms. The Association shall give notice of the need to temporarily vacate a Unit to the record Owners and occupants not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the occupants will be responsible for all necessary accommodations during the relocation. Any such notice shall be given in accordance with the notice provisions in the Article herein entitled "*General Provisions*", provided that an additional notice shall also be given to any occupant of the Condominium if such occupant is not the record Owner;

(i) All utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district, where such systems are used to provide services to Common Area facilities;

(j) Such other areas, facilities, equipment, services or esthetic components of whatsoever nature as may from time to time be requested by the vote of at least two-thirds (2/3) of the Association membership.

The foregoing Association responsibilities are intended to be applicable only in circumstances due to normal wear and tear or the willful or negligent act or neglect of the Board or its agents, and not when due to any negligent act of an Owner, occupant, guest or invitee.

9.7. UTILITY FACILITIES.

9.7.1. OWNERS' RIGHTS AND DUTIES.

The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, drainage, electric, gas, television receiving and telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities, including air conditioning compressors and condensers (hereinafter referred to, collectively, as "*utility facilities*") shall be as follows:

(a) Whenever utility facilities are installed within the Project, which utility facilities or any portion thereof lie in or on Condominiums owned by other than the Owner of a Condominium served by said utility facilities, or located within the Exclusive Use Common Areas appurtenant another Condominium, such Owner shall have the right of reasonable access for themselves or for utility companies to repair, replace, and generally maintain said utility facilities as and when necessary. Notification of such entry shall be given at least twenty-four (24) hours in advance. Such entry shall be made with as little inconvenience to the affected Owner as possible and any damage caused thereby shall be repaired by the entering Owner at his own expense. In the case of any emergency, the right of entry shall be immediate. For the purpose herein, "emergency" is defined as an unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property;

(b) A Condominium Unit Owner shall be entitled to reasonable access to the Common Areas for the purpose of maintaining the utility facilities appurtenant to such Owner's Unit and/or which serve such Unit. The access shall be subject to the consent of the Board, whose approval shall not be unreasonably withheld, and which may include reasonable conditions of approval for any portion of such utility facilities that are located on the exterior of the Common Areas, and other conditions as the Board determines reasonable;

(c) Whenever utility facilities are installed within the Project, which utility facilities serve more than one (1) Condominium, the Owner of each Condominium served by said utility facilities shall be entitled to and responsible for the full use and enjoyment of such portions of said utility facilities as service his Condominium;

(d) In the event of a dispute between Owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one (1) of such Owners addressed to the Association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties. Said arbitrator is authorized to award any party or parties such sums as it considers proper for the time, expense and trouble of arbitration, including arbitrator fees and attorneys' fees.

9.7.2. ASSOCIATION'S DUTIES.

The Association shall maintain all utility facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal, and those maintained by the Owners as described elsewhere in this Article. The Association shall pay all charges for utilities supplied to the Common Area except those metered or charged separately to the individual Condominiums.

9.8. ASSUMPTION OF MAINTENANCE OBLIGATIONS.

Declarant and its subcontractors, and the agents and employees of the same, shall have the right to come upon the Common Area to complete the construction, refurbishment or installation of any landscaping or other improvements to be installed thereupon. In the event that any of Declarant's subcontractors are contractually obligated to maintain the landscaping and/or other improvements on any portion of the Common Area, such maintenance shall not be assumed by the Association until the termination of such contractual obligation. If there is any excess of assessments collected over actual Common Expenses incurred by the Association, caused by reason of this Section, or otherwise, such excess shall be placed in reserve to offset the future expenses of the Association in any manner designated by the Board.

9.9. PROPERTY MANAGEMENT.

The Board of Directors of the Association shall employ a professional management company ("*Managing Agent*") to handle the day to day management and operation of the Project

9.9.1. PROSPECTIVE MANAGING AGENTS.

Pursuant to *California Civil Code Section 1363.1*, or any succeeding statute, prior to entering into a management agreement, but in no event more than 90 days, the Board shall obtain from a prospective Managing Agent a written statement to the Board which shall contain all of the following information concerning the Managing Agent:

(a) The names and business addresses of the owners or general partners of the Managing Agent. If the Managing Agent is a corporation, the written statement shall include the names and business addresses of the directors and officers and of shareholders holding greater than ten percent (10%) of the shares of the corporation.

(b) Whether or not any relevant licenses, such as architectural design, construction, engineering, real estate or accounting have been issued by the State of California and are currently held by the persons specified in the above paragraph. If a license is currently held by any of those persons, the statement shall contain the following information: (i) what license is held, (ii) the status of that license, (iii) the name of the licensee appearing on that license, and (iv) whether or not there have been any violations or fines relating to such license within the previous five (5) years and whether or not there are any existing or pending.

(c) Whether or not any relevant professional certifications or designations such as architectural design, construction, engineering, real property management or accounting are currently held by any of the persons specified above, including, but not limited to, certified property manager or professional association manager. If any certification or designation is held,

the statement shall include the following information: (i) what the certification or designation is and what entity issued it, (ii) the status of that certification or designation, (iii) the names which the certification or designation is held and, (iv) whether or not there have been any violations or fines relating to such certification or designation within the previous five (5) years and whether or not there are any existing or pending.

(d) Whether or not there have been any judgments, satisfied or not, against such Managing Agent within the previous five (5) years and whether or not there are any existing legal actions.

As used in this section, a "Managing Agent" is a person or entity, who, for compensation or in expectation of compensation, exercises or may exercise control over the assets of the Association or the Condominium Property. A "Managing Agent" shall not include any regulated financial institution operating within the normal course of its regulated business practice. A "Managing Agent" shall not include: (1) a full-time employee of the Association or (2) any regulated financial institution operating with the normal course of its regulated business practice.

9.9.2. DUTIES OF MANAGING AGENT.

The Managing Agent shall have, but not be limited to, the following duties and responsibilities:

(a) To provide an experienced professional ("**Property Manager**") to be responsible for the Project and the Association.

(b) To be responsible for walking a specific portion of the Project on a periodic basis to be determined by agreement between the Board and the Managing Agent, and submit a written outline to the Board of each such period's observations relative to building maintenance, landscaping, recreational amenities and any other Common Area item.

(c) On a regular basis, to monitor the work of contractors for the Association. Invoices and appropriate maintenance forms are to be reviewed prior to payment. Additionally, the Managing Agent is to obtain appropriate lien release forms from the contractor prior to payment. Status of the contractors' work shall be reported to the Board at monthly meetings.

(d) To inspect the landscaping with a landscape contractor on a monthly basis and provide a written report of its observations to the Board.

(e) To cause a yearly maintenance schedule to be prepared and submitted as same to the Board. Said schedule shall be incorporated into the contracts of all contractors. The Managing Agent shall verify each month the status of items and maintenance completed prior to the payment of contractor's invoices.

(f) To complete expeditiously any maintenance items requested by the Board. The Managing Agent shall follow through with the respective contractors and verify completion.

(g) The Property Manager, upon hiring a new contractor, must insure that the contractor does an inspection of the Project prior to bids and proposals being submitted to the Board. Failure to provide a written list of problems, objections or deficiencies by the contractor shall be deemed that all conditions are acceptable.

(h) Whenever the Property Manager or Managing Agent hires, at the direction of the Board, a contractor, the contract must include an expressed indemnity of the Association for any damage caused by the contractor. If the contractor is a subsidiary of the Managing Agent, then the contractor and the Managing Agent shall provide indemnity.

(i) The Managing Agent shall complete all forms and inspections as required by the Project Documents.

(j) The Board of Directors shall instruct the Managing Agent to use its best efforts to utilize contractors that have general liability insurance in amounts exceeding **Two Hundred Fifty Thousand Dollars (\$250,000)** and will require the contractor to add the Association as an additional insured under the contractor's policy. The Managing Agent shall obtain a certificate of such insurance, showing the Association as an additional insured and shall be responsible to monitor such certificates to maintain coverage for the Association. In addition, the Managing Agent shall determine that the foregoing contractors have and maintain current Worker's Compensation Insurance as may be required by law.

9.10. LANDSCAPE MANAGEMENT.

The Board of Directors of the Association shall employ a professional landscape contractor ("**Landscape Contractor**"), appropriately licensed by the State of California, to provide for the landscape management and maintenance of the Project, as hereinafter described, and to serve as a consultant to the Board and the Property Manager in the administration of the landscape maintenance duties of the Association.

9.11. JOINT DECLARANT AND BOARD INSPECTION.

Within sixty (60) days following the first meeting of the Board elected by Members other than Declarant, the Board shall schedule and join with Declarant, or its successor-in-interest, at a mutually convenient time, in conducting a walk-through inspection of the **General Common Area** and **Annexed Phases** of the Project of (1) all landscaping in the Non-Exclusive Use Common Area, and (2) all structural, mechanical and operational improvements, systems and facilities in the Non-Exclusive Use Common Area. Additional

walk-through inspections of subsequent Annexed Phases of the Project shall be conducted in a similar manner within sixty (60) days following the conveyance of the first Living Unit in each such Phase; provided, however, in the event that construction of all landscaping and other improvements in any subsequent Unannexed Phase is complete, Declarant and Board, at Declarant's option, may schedule a walk-through inspection of such Unannexed Phase, or any portion thereof, in accordance with this Section.

9.11.1. JOINT LANDSCAPE INSPECTION.

With respect to the landscaping inspection, Declarant shall have its landscape architect and/or contractor with respect to such landscaping join the Board and Declarant during such initial walk-through inspection; the Board shall select an independent landscape architect (maximum of one) to represent its interests in such initial walk-through inspection, the expense of such landscape architect shall be borne by Declarant.

9.11.2. JOINT STRUCTURAL IMPROVEMENTS INSPECTION.

With respect to the structural improvements inspection, the Declarant and the Board shall conduct such a walk-through inspection. Declarant may have its appropriate maintenance technician, contractor, engineer and/or any other party join in such initial structural walk-through. The Board shall select such independent advisors (maximum of three) as it deems appropriate to represent its interests in such initial walk-through inspection, the expense of which shall be borne by Declarant. Such inspection shall include, without limitation, concrete footings, foundations and slabs, waterproofing components, wood-framed structural members, roof coverings, roof structural members, electrical systems, plumbing systems, drainage systems, sewage systems, walkways and asphalt or paved areas.

9.11.3. PUNCH LIST.

The Board and Declarant either shall approve in writing all landscaped areas and structural, mechanical and operational improvements, systems and facilities, or prepare a written "punch" list of any items needing repair and/or replacement. Declarant and the Board shall not unreasonably withhold their approval with respect to the inspection items. Following completion of the repair and replacement by Declarant of the items on the punch list, Declarant and the Board again shall conduct a joint walk-through inspection in the same manner as described above. The results of the initial inspections and all resulting repair and replacement resulting from such initial inspection shall be recorded in the minutes of the next following meeting of the Board.

9.12. INSPECTION OBLIGATION.

9.12.1. PROFESSIONAL SERVICES.

In addition to the Association's general maintenance obligations set forth in this Article, the Association shall, at all times,

contract with or otherwise retain the services of professional, independent, qualified, individuals to provide the Association with inspection services relative to the maintenance, repair and physical condition of the Project.

9.12.2. USE OF LICENSED CONTRACTORS; WORKFORCE; PERMITS.

All work of repair or replacement required to be performed pursuant to this Article shall be performed only by reputable and experienced contractors, appropriately licensed by the State of California or other controlling governmental jurisdiction. A contractor's workforce shall be presentable at all times and all employees shall be competent and qualified, and shall be U.S. citizens, legal residents or otherwise legally approved to be in the United States. If building or other permits are required for such work, then such permits shall be obtained before the work is commenced.

9.12.3. SCOPE.

The inspectors shall inspect all component parts of the Project, including, but not limited to, structural components, parking areas, driveways and walkways, and landscaping. If any of the contractors, subcontractors or manufacturers responsible for construction or manufacture of any component part of the Project provide the Association with maintenance criteria, maintenance guides or manuals, or warranty requirements, such inspectors shall additionally assist the Association with compliance with same. The Association shall be responsible for meeting all requirements under such maintenance guides or manuals, maintenance criteria, or warranty requirements, or any maintenance guide or manual that may be provided to the Association by the Declarant.

9.12.4. REGULAR INSPECTIONS.

Beginning twelve months following the date that Declarant first conveys a Condominium to a Retail Buyer, the Board shall cause, at a minimum, **regular annual inspections** of the landscaping and improvements located within the Common Area to be conducted by the appropriate professionals described in the preceding sections relating to the original joint inspection by the Board and Declarant, or by such alternative professionals acceptable to the Board; such alternative professionals may include those parties who regularly conduct inspections for purposes of preparation of a **"Reserve Study" as described in California Civil Code Section 1365.5**. The professional inspectors shall provide written reports of their inspections to the Association promptly following completion thereof. The written reports shall identify all items of maintenance or repair which either require current action by the Association or will need further review and analysis. Such written reports shall specifically include a review of all irrigation and drainage systems on the Project. The Board shall report the contents of such written reports to the Members of the Association concurrently with the distribution thereto of those documents described in California Civil Code 1365 and shall include such written reports in the minutes of the Association.

Additionally, the Board shall keep and maintain for at least twelve (12) years, all records, notes, reports and other documentation relating to all walk-through inspections as well as any Owner complaints, pursuant to this Article. Subject to the provisions of the Section hereinafter entitled "**Notice to Declarant**", the Board shall promptly cause all matters identified as requiring attention to be maintained, repaired, or otherwise pursued in accordance with prudent business practices and the recommendations of the inspectors.

9.12.5. MORE FREQUENT INSPECTIONS.

If more frequent or extensive inspections are recommended by any consultants, contractors or subcontractors employed by the Association with respect to any of the improvements, systems, or facilities described in this Section, then the Board shall implement more frequent inspections as recommended by such consultants or contractors.

9.12.6. NOTICE TO ASSOCIATION BY OWNERS.

Each Owner who observes, notes or suspects any problems or defects to any portion of the Common Area (including such Owner's Exclusive Use Common Area) or such Owner's Unit shall promptly notify the Board in writing of such problems or defects. Within thirty (30) days of the Board's receipt of such notice from an Owner, the Board shall notify and deliver a copy of such notice to Declarant.

9.12.7. NOTICE TO DECLARANT.

During the first ten (10) years following the date of "substantial completion" of the Project, as such term is defined in California Code of Civil Procedure Section 337.15g, the Association shall cause the Declarant, or its designee, to receive ten (10) days advance written notice of all such inspections and an opportunity, without obligation to do so, to be present during such inspection, personally or through an agent, and shall provide the Declarant, or its designee, with a copy of all written reports prepared by the inspectors. In the event, based upon such inspection, any items are identified by the inspector as being the result of construction defects or other matters for which the Declarant or any contractor, subcontractor, architect, materialman, or similar individual or entity could be held liable (collectively, "construction defect"), the Association shall request in writing (a copy of which shall be delivered to Declarant or its designee), that the Declarant, contractor, subcontractor or such appropriate responsible individual or entity take all necessary steps to remedy such construction defect. The party receiving such written request shall, if it elects to take action relative to such request, be given reasonable access to the Project and an opportunity to take all action and do all things necessary to remedy such situation.

9.12.8. SUBSEQUENT ACTIONS.

If, in the opinion of the Declarant or other responsible individual or entity, the matters so identified are not the result of construction defects, or if the party receiving such notice fails to take action to

remedy such situation (and following commencement diligently prosecute same to conclusion) within 120 days of the date of such written request, either party, upon 30 days advance notice, may submit such dispute to binding arbitration before a single arbitrator in accordance with the provisions of the Section entitled "**Binding Arbitration**" in the "**General Provisions**" Article herein. If it is determined by the arbitrator that such condition is not the result of a construction defect, which determination shall be binding, the Board of Directors shall promptly cause all action necessary to remedy such condition to be commenced and diligently prosecuted to completion. The foregoing provisions are for the benefit of, among others, the Declarant, who is a third party beneficiary hereof.

ARTICLE 10. - USE OF UNANNEXED PHASES; MECHANICS LIENS

10.1. USE OF UNANNEXED PHASES.

Prior to the first conveyance, lease or rental of a Living Unit in a Phase Airspace Envelope, only Declarant and persons authorized by Declarant, may enter such Phase Airspace Envelope, and Declarant may deny access therein to any Person by fencing or by any other reasonable method. Declarant hereby reserves a nonexclusive easement for construction, access, ingress and egress over any Annexed Phase of the Project to permit ingress, egress and access to Declarant to an Unannexed Phase for whatever purpose, including, but not limited to, the completion of construction of the Improvements in the Unannexed Phase and, to facilitate Declarant's marketing and sale of Condominiums in the Project. Declarant shall be responsible for all costs and expenses of any and all damages to the Common Area in the Annexed Phase resulting from any of Declarant's construction or sales activities or any other damage Declarant or its agents may incur therein. Until such time as Declarant commences construction in any Unannexed Phase, Declarant shall have an obligation to maintain such Unannexed Phase property in a condition reasonably free of litter and any fire hazards mitigated to the extent required by law ("**Reasonable Condition**") and in the event Declarant fails to maintain such Unannexed Phase property to such a condition, the Board may notify Declarant in writing, pursuant to the notice provisions contained herein, of Declarant's failure to maintain such Unannexed Phase property in Reasonable Condition and request that such maintenance be done within a reasonable time under the specific circumstances. In the event Declarant fails to carry out such maintenance or repair within said time period, the Board may, following notice and a hearing as provided in the Section entitled "**Notice and Hearing**" in the Article herein entitled "**Rights of Owners, Board and Association**", cause such work to be done and the cost thereof shall immediately be paid by Declarant to the Association and until paid shall bear interest at the rate of twelve percent (12%) per annum (but no greater than the maximum rate authorized by law). Notwithstanding anything herein to the contrary, an easement is hereby granted to the Association and its agents over any Unannexed Phase for purposes of performance of the foregoing.

10.2. MECHANICS LIENS.

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Pursuant to California Civil Code Section 1369, no labor performed or services or material furnished in the Project with the consent of or at the request of an Owner, including Declarant, or his agent or contractor shall be the basis for the filing of a mechanics lien against any other property of any other Owner in the Project unless that other Owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. Such "other property" shall mean and include a Living Unit or an Unannexed Phase Separate Interest. However, express consent shall be deemed to have been given by the Owner of any Separate Interest, including a Living Unit or an Unannexed Phase, in the case of emergency repairs. Labor performed or services or materials furnished for the Common Area in Annexed Phases, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner. Labor performed or services or materials furnished for the property located within any Unannexed Phase shall be presumed to be performed or furnished for the Owner of that Unannexed Phase only and shall not be the basis for filing of lien against any other property of any other Owner in the Project, nor any of the Common Area.

ARTICLE 11. - EASEMENTS

11.1. NONEXCLUSIVE EASEMENTS.

Each Condominium Unit Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and for ingress, egress, and support over and through the Common Area. These easements shall be appurtenant to, and shall pass with the title to each Unit and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, as well as to the right of the Association to regulate time and manner of use and to perform its obligations under this Declaration. Each of the easements reserved or granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Owners and their Units superior to all other encumbrances applied against or in favor of any portion of the Project. Individual grant deeds to Units may, but shall not be required to, set forth the easements specified in this Article.

11.2. EASEMENTS TO DECLARANT AND ASSOCIATION.

Easements over and under the Project for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded Maps of the Project, and as may be hereafter required or needed to service the Project (including access through Yard Exclusive Use Common Areas), are hereby reserved by Declarant and its successors and assigns, and, upon the sale of the first Condominium Unit, to the Association, together with the right to grant and transfer the same. Said easement shall be for the

benefit of all Phases of the Project. The foregoing notwithstanding, there is hereby reserved to Declarant, the Association or their duly authorized agents and representatives, such easements as are necessary to perform the duties and obligations of the Association as are set forth in this Declaration, or in any other Project Documents, including any Architectural Standards.

11.3. EASEMENTS TO OTHERS.

Declarant further reserves the right to establish and/or grant over and across the Common Area such easements and rights of way on, over, under or across all or any part thereof to or for the benefit of the State of California, the City, the County of **San Diego**, or any other political subdivision or public or private organization, or any public utility entity, for the purpose of constructing, erecting, operating and maintaining facilities and improvements thereon, therein or thereunder at that time or at any time in the future, including: (i) roads, streets, walks, driveways, parkways and park areas; (ii) poles, wires and conduits for transmission of electricity, providing telephone service and cable television service to the Property and for the necessary attachments in connection therewith, and (iii) public and private sewers, sewage disposal systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith. The Common Area shall be subject to any dedication stated in the Subdivision Map for the Property of an easement for public use for installation, maintenance and operation of facilities for public utilities over all of the Common Area. Said public utilities easement shall inure and run to all franchised utility companies and to the City, and shall include the right of ingress and egress over the Common Area by vehicles of the City and such utility companies to properly install, maintain, repair, replace and otherwise service such utility facilities. The grant of said public utility easement shall not be interpreted to imply any obligation or responsibility of any such utility company or the City for maintenance or operation of any of the Common Area or the facilities located thereon or the repair, replacement or reconstruction thereof except as occasioned by such utility companies or the City, of the utility facilities for which they are responsible. Except for lawful and proper fences, structures and facilities placed upon the Common Area by utility companies, the Common Area subject to the public easement shall be kept open and free from buildings and structures. The City, furthermore, is hereby granted an easement across the Common Area for ingress and egress for use by emergency vehicles of the City.

11.4. ENCROACHMENT EASEMENTS.

The Owner of each Condominium is hereby granted an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if

said encroachment occurred due to the willful misconduct of that Owner. In the event any portion of a structure on the Condominium Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Units or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

ARTICLE 12. - INSURANCE

12.1. MASTER INSURANCE POLICY.

The Association shall obtain and continue in effect the following insurance:

12.1.1. FIRE & HAZARD INSURANCE.

A master policy of fire insurance with extended coverage endorsement for the full replacement value (i.e. one hundred percent (100%)) of current "replacement cost," exclusive of land, foundation, excavation and other items normally excluded from coverage of all of the improvements within the Common Area, without deduction for depreciation, with an "agreed amount endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement", if available; such insurance shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by sprinkler leakage, debris removal, costs of demolition, vandalism, malicious mischief, windstorm, water damage and such other risks as shall customarily be covered with respect to similar Common Interest Developments in the area of the Project. The form and content of such policy must be satisfactory to all institutional First Mortgage lenders and shall meet the maximum standards of the various institutional First Mortgage lenders whose loans encumber any of the Condominium Units or any Unannexed Phase.

12.1.2. PUBLIC LIABILITY INSURANCE.

A general, comprehensive public liability and property damage insurance policy with cross liability endorsement, if available, in an amount not less than **One Million Dollars (\$1,000,000)**, insuring the Association, its agents, the Declarant and the Owners and occupants of the Condominium Units and their respective family members, guests, invitees and agents against any liability incident to ownership or use of the Common Area or any other Association owned or maintained real or personal property, arising out of any single occurrence. Such coverage shall include liability for non-owned and hired automobiles and liability for property of others, and such other risks as are customarily covered with respect to similar real estate developments in the area of the Project. The general liability policy shall also include such provisions as may be required by the provisions of California Civil Code Section 1365.7, or any successor statute, to limit the monetary liability of volunteer directors and officers of the Association. The policy shall, in any

event, contain a "severability of interest" endorsement or the equivalent which shall preclude the insurer from denying the claim of an Owner because of wanton or grossly negligent acts or omissions of the Association or other Owners.

12.1.3. DISHONEST ACTS; FIDELITY BOND.

Such insurance covering directors, officers and employees of the Association and employees of any manager or managing agent, or administrator, whether or not any such persons are compensated for their services, against dishonest acts on their part, or in lieu thereof, a fidelity bond, naming the Association as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or the management agent at any given time during the term of the fidelity bond. However, the bond shall not be less than a sum equal to three (3) months aggregate Regular Assessments on all Condominium Units, including reserve funds.

12.1.4. WORKERS COMPENSATION INSURANCE.

Worker's compensation insurance covering any employees of the Association to the extent required by law.

12.1.5. DIRECTORS AND OFFICERS INSURANCE.

To the extent insurance is available, directors and officers liability insurance in an amount of not less than **One Million Dollars (\$1,000,000)** on behalf of any director, officer or member of a Committee of the Association (collectively, the "Agents") against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent's status as such, regardless of whether the Association would have the power to indemnify the Agent against such liability under applicable law.

12.1.6. OTHER INSURANCE.

Such other insurance as the Board in its discretion considers necessary or advisable.

12.2. COVERAGE, AMOUNT AND TERM OF INSURANCE.

The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, and notices of changes or cancellations) shall satisfy the minimum requirements imposed for this type of project by the FNMA and the FHLMC or any successor thereto. If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is reasonable for the nature of the Project and its insurable assets.

Any insurance maintained by the Association shall contain a "waiver of subrogation" as to the Association and its officers, directors and Members, the Owners and occupants of the Condominiums and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

All insurance policies shall provide that they shall not be cancellable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association. Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the Owners in any proceeding, negotiation, settlement or agreement.

12.3. OWNERS INSURANCE.

No Owner shall separately insure the Improvements on his Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. Any Owner can, however, insure his personal property against loss and obtain any personal liability insurance that he desires; in addition, any improvements made by an Owner within his Living Unit may be separately insured by the Owner. The insurance for the foregoing shall be limited to the type and nature of coverage generally known in the insurance industry as an "HO6", or the equivalent. All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors and Members, of the Owners and occupants of the Condominiums (including Declarant), and of Mortgagees. It is not intended with respect to the individual Living Units that the Association carry (i) liability insurance covering any acts or occurrences, nor (ii) any casualty insurance covering Owners' personalty or betterments.

12.4. FAILURE TO ACQUIRE.

The Association, and its directors and officers, shall have no liability to any Owner or Mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the Members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each Member and any Mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

12.5. INSPECTION OF POLICIES.

Copies of all Association insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and be open for inspection by Owners at any reasonable times.

ARTICLE 13. - DAMAGE OR DESTRUCTION; CONDEMNATION

13.1. RESTORATION OF IMPROVEMENTS.

In the event of partial or total destruction of improvements upon the Common Area, it shall be the duty of the Association to restore and repair the same to its former condition as promptly as practical, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Board or its appointed committee, provided that the Association shall have obtained the prior consent of a majority of the voting power of the Association.

13.1.1. INSURANCE PROCEEDS ADEQUATE.

If the cost of repairing or rebuilding the Common Area does not exceed the amount of insurance proceeds initially offered or paid by the insurance carrier by more than fifty thousand dollars (\$50,000), such insurance proceeds shall be paid to a commercial bank or trust company designated by the Board, to be held for the benefit of the Association and the Owners and their Mortgagees, as their interests shall appear. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Board shall levy a Special Assessment, in accordance with the provisions of the Article entitled "Assessments" herein, against the Owners herein equal to the difference between the cost of repairing or rebuilding and the amount of available insurance proceeds, which sums shall be payable into the fund held by the insurance trustee. The Board may advance the amount of said Special Assessment to the insurance trustee from Association general funds or reserve funds; provided the amount taken from reserve funds represent sums allocated therefor. The Board shall thereupon contract for the repair or reconstruction of the Improvements, paying the cost of such work from the amount held by the insurance trustee, said repair or reconstruction to be for the purpose of returning the Improvements substantially to their appearance and condition immediately prior to the casualty.

13.1.2. INSURANCE PROCEEDS INADEQUATE.

If the cost of such repairing or rebuilding exceeds the amount of available insurance by more than fifty thousand dollars (\$50,000), then all insurance proceeds shall be deposited as provided hereinabove and the Board shall require a determination by written assent or vote of the Members in accordance with the provisions and limitations contained in the Article

entitled "*Assessments*", as to whether a Special Assessment equal to the difference between available insurance proceeds and the cost of such repairing or rebuilding shall be levied. If the Members determine not to levy such Special Assessment, then the Board shall use the available insurance proceeds (a) to mitigate any hazardous conditions that may exist, (b) to make provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and (c) to comply with all other applicable requirements of governmental agencies; any deficiency in funds necessary for the foregoing may be raised by a Special Assessment in an amount determined by the Board therefor. In the event any excess insurance proceeds remain, the Board shall distribute such proceeds among the Owners, subject to the prior rights of the Mortgagees (whose interests may be protected by insurance policies carried by the Association), in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board. In the event of a failure by the Board to agree on the selection of an appraiser, an appraiser shall be appointed by the, then, President of the San Diego County Bar Association. The apportionment of proceeds distributable between the Owner and the Mortgagee of a Unit shall be governed by the provisions of the Mortgage encumbering such Unit.

13.2. CONDEMNATION; EMINENT DOMAIN.

The Association shall represent the Condominium Owners in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Area, or part thereof. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Condominium Owners and their respective Mortgagees as their interests may appear.

In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately and apportioned among the Owners by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners of Condominiums and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in the above Section entitled "*Insurance Proceeds Inadequate*".

In the event of an award for the taking of any Condominium in the Project by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking, and after acceptance thereof such Owner shall be divested of all interest in the Project provided such Owner vacates the Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Project, or take other action. The remaining portion of the Project shall be resurveyed, if necessary,

and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project.

If there is a substantial taking of the Project's property (more than fifty percent (50%)), the Owners may terminate the legal status of the Project, and if necessary, bring a partition action under Civil Code Section 1359 or any successor statute, on the election to terminate by sixty-seven percent (67%) of the total voting power of the Association residing in Members other than Declarant and the approval of Eligible Mortgage Holders holding Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holder Mortgages. The proceeds from the partition sale shall be distributed to the Condominium Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in the above section entitled "*Insurance Proceeds Inadequate*".

ARTICLE 14. - PHASE RECONFIGURATION; CONDOMINIUM PLAN AMENDMENT; REDESIGN

14.1. DECLARANT RIGHT AMEND CONDOMINIUM PLAN AND/OR REDESIGN PROJECT.

Subject to the restrictions and limitations set forth in this Article, Declarant reserves the right, in its sole discretion, at any time or at different times for so long as Declarant holds a fee interest in any portion of the Property, to amend or re-record any Condominium Plan covering the Property or any portion thereof and/or to redesign or reconfigure the Project or any portion or aspect thereof, including, but not limited to, the following:

- (a) Reconfiguration of the number of Phases in the Project;
- (b) Reallocation of the number of Units within any one Unannexed Phase to another Unannexed Phase;
- (c) Redesign of any Condominium Building not yet completed within the Project. Such redesign may include the alteration of the vertical or horizontal boundaries, or both, of any Condominium Building, the alteration of the size, shape, configuration, floor plan and/or location of any Living Units within any Condominium Building;
- (d) Adjust the configuration of any Phase Airspace Envelope boundary line;
- (e) Adjust the boundary lines of any Common Area or Exclusive Use Common Area, so to conform with actual physical attributes or constraints of the land or buildings that were not contemplated originally;
- (f) Effect nominal deviations from the Condominium Plan which result during the actual construction of the Condominium Buildings;

(g) Correct any errors in a Condominium Plan.

The determination of whether a Condominium Plan is to be amended or re-recorded shall be that of the Declarant, subject to any limitations or conditions that may exist by law, by the insuring title insurance company, by the requirements of the San Diego County Recorder, and/or by the requirements of the California Department of Real Estate, if any.

Upon the termination of the Declarant's rights as to any portion of the Project as described above in this Section, the rights described in subsections (e), (f) and (g) above, as to condominium plan amendments only, shall pass to the Board of Directors of the Association, together with the Power of Attorney described hereinafter, and may be effected upon the majority vote of the Board, whereafter, such amendment shall be effective upon its recordation in the Office of the San Diego County recorder, executed by the President and Secretary of the Association, acting as Attorney-In-Fact on behalf of the Owners and those Persons described in the Section entitled hereinafter "Power of Attorney."

14.2. GENERAL RESTRICTIONS OF REDESIGN.

The rights of Declarant set forth in the Section above shall and are hereby made subject to the following additional restrictions and limitations:

(a) In no event shall the Project, when completed, consist of more than *thirty-two (32)* Living Units, unless authorization for a greater number is obtained from the City of San Diego pursuant to the requirements of the Subdivision Map Act (Government Code §§ 66410 - 66499.37) and/or other applicable law.

(b) With the exception of the revisions authorized by subsections (a) through (f), inclusive, of the above Section, the redesign of any portion of the Project shall in no event physically modify, affect or change any Living Units that as of the date of such reconfiguration, redesign or amendment are the subject of an Agreement of Sale/Escrow Instructions or are owned by an Owner other than Declarant, unless the purchaser or Owner of such a Living Unit shall consent to such redesign in writing.

(c) There shall be no increase or decrease in the number of Units within an Annexed Phase.

14.3. AMENDMENT TO CONDOMINIUM PLAN.

In order to effect a reconfiguration, reallocation, redesign or correction as described in the foregoing Sections of this Article, Declarant shall, as may be applicable, prepare, or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and record or cause to be recorded an amendment or re-recordation to any Condominium Plan as may be necessary. The amendment of the Condominium Plan shall, when recorded have the effect of:

(a) Relocating the boundaries of any Phase Airspace Envelope, Common Area and any Exclusive Use Common Area therein and each Living Unit to the extent set forth on the amendment of the Condominium Plan;

(b) Reconfiguring or reallocating the number of Units within any one Unannexed Phase to another Unannexed Phase shown on a Condominium Plan;

(c) Vesting in each Owner (including Declarant with respect to any unsold Condominiums) an undivided interest (to the extent of each Owner's prorata interest in the Common Area) in the Common Area as depicted on the amendment to the Condominium Plan;

(d) Divesting each Owner (except Declarant) of all right, title and interest to any Condominium, other than each Owner's Condominium, depicted on the amendment to the Condominium Plan;

(e) Vesting in each holder of a Mortgage an undivided interest (to the extent of the interest in the Common Area owned by the Owner of the Condominium that is the subject of such Mortgage) in the Common Area as depicted on the amendment to the Condominium Plan; and

(f) Divesting each holder of a Mortgage of all right, title and interest to each Condominium (other than the Owner's Condominium that is the subject of such Mortgage) depicted on the amendment to the Condominium Plan. The adjustment of any Mortgage in accordance with the provisions of this Section shall not affect the priority of such Mortgage with respect to any other matters affecting title to the Living Unit that is the subject thereof.

14.4. DECLARATION OF RECONFIGURATION OR REDESIGN.

In the event the reconfiguration or redesign of all or any portion of the Project in accordance with the provisions of this Article (i) changes the number of Units located in any one Unannexed Phase to another Unannexed Phase, (ii) alters the size of Living Units contained or to be contained in the Project or in a Phase, Declarant shall prepare or cause to be prepared, executed, acknowledge and record or cause to be recorded a "*Declaration of Reconfiguration, Declaration of Redesign,*" or similar instrument as may be appropriate. Each such Declaration shall (a) state that it has been prepared pursuant to and in accordance with the provisions of this Article, and (b) be recorded concurrent with the recordation of its related amended Condominium Plan, if applicable.

14.5. POWER OF ATTORNEY.

Each Owner, by accepting a deed to a Condominium, shall be deemed to have constituted and irrevocably appointed for himself and each of his Mortgagees, optionees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns, whether voluntary or involuntary, and thereby to have conveyed a *Power of Attorney* coupled with an interest to

Declarant as his Attorney-In-Fact to effect the reconfiguration or redesign of all or any portion of the Project, or the correction of any Condominium Plan, in accordance with and subject to the limitations and requirements set forth in this Article, and further:

(a) To prepare or cause to be prepared, to execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any map or record of survey required or permitted by the provisions of the Subdivision Map Act of the State of California in effect on the date of recordation of this Declaration as thereafter amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state or local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(b) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any amendment or re-recordation necessary to cause a Condominium Plan to comply with the Condominium Buildings as actually built, or to effect a reconfiguration of Phasing or the reallocation of Units, or any other purpose described in this Article, which may be required or permitted by the laws of the State of California in effect on the date of recordation of this Declaration and as thereafter enacted or amended and any ordinances, rules and regulations of any governmental entities and authorities having jurisdiction over the Project in effect on the date of recordation of this Declaration and as thereafter enacted or amended, or which may be required or permitted by any title insurer, and in connection therewith, to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state or local governmental entities and authorities; and to execute, acknowledge and deliver any improvement agreements and bonds and post deposits securing the performance of any such conditions and obligations;

(c) To make application for any property reports or Public Reports or amendments thereto or exceptions from the requirements therefor required or permitted in order to comply with federal and state statutes, rules and regulations relating to the sale, lease, transfer or other disposition of subdivided lands to the public and, in connection therewith to preform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by any federal, state and local governmental entities and authorities; to appear before any such governmental entities and authorities; and to execute and deliver any agreements and bonds securing the performance of the obligations contained therein;

(d) To deliver any reports or property reports, or amendments thereto, obtain receipts and offer and administer rescission rights required by law;

(e) To prepare or cause to be prepared, execute, acknowledge, file and record or cause to be filed or recorded a Declaration of Reconfiguration or Redesign pursuant to and in accordance with the provisions of this Article;

(f) To prepare or cause to be prepared, execute, acknowledge, file or cause to be filed for approval and file or record or cause to be filed or recorded any registration or any application for any permit, approval, exemption, ruling or entitlement required or permitted pursuant to any law or regulation in effect as of the date of the recording of this Declaration and as hereafter enacted or amended by any federal, state or local governmental entities and authorities, and in connection therewith to perform all conditions, undertake any obligations and execute all agreements and documentation required or permitted by such governmental body and by any such laws and regulations; to appear before any such governmental bodies and to execute and deliver any agreement and bonds and post deposits securing the performance of any such conditions and obligations; and do all other things now or hereafter permitted or required by any such governmental body and any such laws and regulations;

(g) To prepare or cause to be prepared, execute, acknowledge and record or cause to be recorded any deeds, waivers, releases, reconveyance or other documentation that may be permitted or required to clear title to any Units or any portion of the Property, whether constructed or to be constructed; and

(h) To do any and all things necessary or desirable under the circumstances to effect and accomplish the purposes of this Article.

14.6. INDEMNIFICATION OF OWNERS ON EXERCISE OF POWER OF ATTORNEY.

Declarant shall indemnify and hold each Owner harmless from all liabilities, including attorney's fees, which are incurred as a direct result of the execution by Declarant of any improvement agreements or bonds, or both, in connection with the exercise by Declarant of the Power of Attorney set forth in the Section herein entitled "*Power of Attorney*."

14.7. ENCUMBRANCES TO TAKE SUBJECT TO POWER OF ATTORNEY.

Notwithstanding any provision in this Declaration to the contrary, the acceptance or creation of any Mortgage, whether voluntary or involuntary, and whether or not created in good faith and whether or not given for value, shall be deemed to be accepted and/or created subject to each of the terms and conditions of the Power of Attorney described in the Section in this Article entitled "*Power of Attorney*".

14.8. EFFECT ON ASSESSMENTS LIENS.

The recording of a Declaration of Reconfiguration or Redesign in accordance with the provisions of this Article shall not alter or affect the amounts of any Regular or Special Assessments which were due from any Owner prior to such recording or liens thereof.

ARTICLE 15. - SEPARATION OF INTERESTS; PARTITION; POWER OF ATTORNEY**15.1. NO SEPARATION OF INTERESTS.**

No Owner may sell, assign, lease or convey his interest in the Common Area separate and apart from his Living Unit nor any portion of or appurtenance to his Living Unit apart from the entire Living Unit.

15.2. PARTITION.

Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that such partition is consistent with the requirements of California Civil Code Section 1359.

15.3. POWER OF ATTORNEY.

The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when partition of the Owners' interests in said Condominium Property may be had pursuant to the Article entitled "*Damage or Destruction; Condemnation*" or the section entitled "*Partition*" hereinabove. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding an aggregate of two-thirds (2/3) of the interest in the Common Area by any two (2) Members of the Board who are hereby authorized on behalf of the Association to record a certificate of exercise in the Office of the County Recorder of San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

ARTICLE 16. - RIGHTS OF MORTGAGEES**16.1. GENERAL.**

No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Condominium made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Any provision within the Project Documents to the contrary notwithstanding, First Mortgagees shall have the rights expressly provided in this Article.

16.2. NO RIGHT OF FIRST REFUSAL.

This Declaration neither contains nor shall be amended to contain any provision creating a "right of first refusal" to the Association before a Condominium can be sold. Should any such rights nevertheless be created in the future, such rights shall not impair the rights of a Mortgagee of a First Mortgage to: (a) foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage, (b) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Mortgagor, or (c) sell or lease a Condominium acquired by the Mortgagee.

16.3. UNPAID DUES OR CHARGES.

Where the Mortgagee of a First Mortgage of record or other purchaser of a Condominium obtains title to the same pursuant to the remedies in the Mortgage or as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the Common Expenses or Assessments made by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Condominiums including such acquirer, his successors and assigns. Should such acquirer fail to pay its share of Common Expenses, assessments or other charges when due, the Board may file for a Notice of Delinquent Assessment in accordance with the provisions therefor contained in the Section entitled "Effect of Non-Payment of Assessments" herein.

16.4. ACTION REQUIRING MORTGAGEE APPROVAL.

Provided that the Mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, except as provided by statute in case of condemnation or substantial loss to the Condominiums or Common Area of the Project, unless at least two-thirds of the Mortgagees of First Mortgages (based upon one (1) vote for each First Mortgage owned), or Owners (other than the Declarant) of the individual Condominiums have given their prior written approval, the Association may not:

(a) Seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plan or this Declaration, or change, waive or abandon any scheme of regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Area;

(b) Change the pro rata interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of the Common Area appurtenant to each Unit;

(c) Partition or subdivide any Condominium;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Common Area shall not be deemed a transfer within the meaning of this clause;

(e) Use hazard insurance proceeds for losses to any portion of the Condominium Property for other than the repairs, replacement or reconstruction of the Condominium Property, except as may be provided by statute or upon substantial loss to the Units or Common Area, respectively; or

(f) Fail to maintain fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurance value thereof, based on current replacement cost.

16.5. PRIORITY OF INSURANCE PROCEEDS DISTRIBUTION.

Any other provision herein contained to the contrary notwithstanding, no provision of this Declaration or any other Condominium Documents shall give a Condominium Unit Owner, or any other party, priority over any rights of the First Mortgagee of a First Mortgage of the Condominium Unit pursuant to its Mortgage in the case of a distribution to such Unit Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units and/or common elements.

16.6. NOTIFICATION TO MORTGAGEE.

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

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer;

(b) Any default in the performance by an Owner of any obligation under the Condominium Documents not cured within sixty (60) days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in the Bylaws or in this Declaration.

16.7. AGREEMENT FOR MANAGEMENT.

Any management agreement of the Project, or any portion thereof, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, or fewer, written notice and shall have a term of not more than one (1) year, renewable with the consent of the Association and the management agent. The Board shall not terminate professional management of the Association and assume self-management, when professional management had been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the First Mortgages on Condominium Units;

16.8. MORTGAGEES FURNISHING INFORMATION.

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

16.9. OWNERS FURNISHING INFORMATION.

Each Owner, within ten (10) days after the close of escrow for the purchase of his or her Condominium Unit, shall notify the Association in writing of the name and address of his or her Mortgagee of a First Mortgage, and thereafter, each Owner shall promptly notify the Association of any changes of name or address for his or her Mortgagee of a First Mortgage.

16.10. NON-CURABLE BREACH.

Any Mortgagee who acquires title to a Condominium by foreclosure or by deed-in-lieu of foreclosure or assignment-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure. A "breach", as used herein, shall not apply to any lien or obligation for assessments owed to the Association which became due prior to the acquisition of title by deed or assignment in lieu of foreclosure.

16.11. LOAN TO FACILITATE.

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

16.12. FINANCIAL STATEMENT.

Any Mortgagee of a First Mortgage shall be entitled, on written request therefor, to have the Association provide an audited financial statement for the immediately preceding fiscal year, which statement shall be furnished within a reasonable time following such request.

16.13. TERMINATION WITHOUT SUBSTANTIAL DESTRUCTION.

Neither the Association nor Owners may elect to terminate the legal status of the Property for reasons other than substantial destruction or condemnation of the Property as provided herein, without the written consent of Eligible Mortgage Holders who represent at least two-thirds of the votes of Condominiums subject to First Mortgages.

ARTICLE 17. - ENFORCEMENT**17.1. RIGHT TO ENFORCE.**

The Association or any Owner shall have the right of action against any Owner, and any Owner shall have a right of action against the Association, to enforce by proceedings at law or in equity, all restrictions, conditions, covenants and reservations now or hereafter imposed by this Declaration or any amendment thereto, including the right to prevent the violation of such restrictions, conditions, covenants and reservations and the right to recover damages or other dues for such violation, except that Owners shall not have any right of enforcement concerning assessment liens. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Association Articles, Bylaws and other Project Documents and any amendments thereto. The Association shall have the exclusive right to the enforcement of provisions relating to architectural control and the Association Rules, unless the Association refuses or is unable to effectuate such enforcement, in which case any Owner who otherwise has standing shall have the right to undertake such enforcement.

17.2. NUISANCE.

The result of every act or omission, whereby any provision, condition, restriction, covenants, easement, or reservation contained in this Declaration is violated in whole or in part, is hereby declared to be and constitute a nuisance, and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result, and may be exercised by the Association or any Member. Each remedy provided by this Declaration shall be cumulative and not exclusive.

17.3. FAILURE TO ENFORCE.

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

17.4. VIOLATION OF LAW.

Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any Residential Lot 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.

ARTICLE 18. - GENERAL PROVISIONS

18.1. SEVERABILITY.

Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

18.2. AMENDMENTS.

Prior to close of escrow on the sale of the first Condominium in the Property, Declarant may amend this Declaration with the consent of the Department of Real Estate of the State of California. Except as may be in accordance with the provisions of California Civil Code Section 1355 or any amendment or successor statute thereto, during the period of time after the sale of the first Condominium, and prior to conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of **sixty-six and two-thirds percent (66-2/3%)** of the total voting power of each class of Members of the Association. After conversion of the Class B membership in the Association to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of (i) **sixty-six and two-thirds percent (66-2/3%)** of the total voting power of the Association, and (ii) **sixty-six and two-thirds percent (66-2/3%)** of the voting power of the Members of the Association other than Declarant. **However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.** Any such amendment shall become effective upon the recording with the Office of the County Recorder of **San Diego** County, California of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Association and the Secretary or Assistant Secretary of the Association certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the Association are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the Office of the County Recorder of **San Diego** County, California. No material amendment may be made to this Declaration without the additional prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units which are subject to Mortgages held by such Eligible Mortgage Holders.

"Material amendment" shall mean any amendment to provisions of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) Voting rights;

- (b) Assessments, assessment liens, or the priority of assessment liens;
- (c) Reserves for maintenance, repair, and replacement of the Common Area;
- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Areas, or rights to their use;
- (f) Redefinition of the boundaries of any Condominium Unit;
- (g) Convertibility of Condominium Units into Common Areas or visa versa;
- (h) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- (i) Insurance or fidelity bond coverage;
- (j) Leasing of Condominium Units;
- (k) Imposition of any restrictions on an Owner's right to sell or transfer his or her Condominium Unit;
- (l) Any decision by the Board to establish self-management when professional management had been required previously by the Project Documents or by an Eligible Mortgage Holder;
- (m) The restoration or repair of the Project (after hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;
- (n) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs; or
- (o) Any provisions that expressly benefit Eligible Mortgage Holders, Eligible Insurers or Guarantors.

An addition or amendment to this document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only, or if it is made pursuant to an amendment of or new statutory law.

An Eligible Mortgage Holder or Eligible Insurer or Guarantor who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented in writing to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

18.3. DECLARANT APPROVAL.

Notwithstanding anything contained in this Declaration to the contrary, for a period of five (5) years from the date of conveyance of the first Condominium to a Retail Buyer, in order to assure, and in furtherance of, the general plan established herein by Declarant for the proper protection, maintenance and improvement of the Property or any portion thereof, any amendment of the Articles herein entitled "*Assessments*," "*Responsibilities of Maintenance*," "*Easements*" and "*Phase Reconfiguration; Condominium Plan Amendment; Redesign*," the Section hereinafter entitled "*Binding Arbitration*" or this Section entitled "*Declarant Approval*," shall require the written approval of the Declarant; provided, however, the foregoing written approval shall not be required if such amendment is made pursuant to an amendment of or new statutory law. The foregoing notwithstanding, a copy of the proposed amendment(s) to such Sections or Articles shall be given to the Declarant in accordance with the notice procedure described in the Section entitled "*Notice*" hereinafter. If no written disapproval from Declarant is received by the Association within sixty (60) days following the date notice is deemed to have been given, then the approval of Declarant shall be deemed given for the proposed amendment(s), and the Association may proceed as if written approval was obtained with respect to such amendment(s).

18.4. EXTENSION OF DECLARATION.

Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2055, after which date they shall automatically be extended for successive periods of ten (10) years, unless a majority of the Owners have executed and recorded at any time within six (6) months prior to December 31, 2055, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for the conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2055, or at the end of any such ten (10) year period.

18.5. ANNEXATION.

Upon approval in writing of the Association, pursuant to three-quarters (3/4) majority of the voting power of its Members, excluding the voting power of the Declarant, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Declaration of Annexation, which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership in the Association to Class A membership, the action herein requiring membership approval shall require the vote or written consent of at least (i) three-quarters (3/4) majority of the voting power of Members of the Association, and (ii) three-quarters (3/4) majority of the voting power of Members of the Association other than Declarant.

18.6. DECLARANT EXEMPTION.

Declarant is undertaking the work of development of residential Condominium dwellings, a Common Area and incidental improvements upon the Condominium Property. The completion of that work and the sale, rental or other disposal of the Condominium dwellings is essential to the establishment and welfare of the Project as a residential community. In order that such work may be completed and the Condominium Property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

(a) Prevent Declarant, its contractors or subcontractors from doing on the Condominium Property whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Condominium Property, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing the Condominium Property as a residential community and disposing of the same by sale, lease or otherwise; or

(c) Prevent Declarant from conducting on any part of the Condominium Property its business of completing said work, and of establishing a plan of Condominium ownership and of disposing of the Condominiums by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of the Condominium Property as may be necessary for the sale, lease or disposition thereof, provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Unit or the Common Area.

The rights of Declarant provided in paragraphs (a) through (d) above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending (i) when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners thereof; or, (ii) five (5) years from the date of conveyance of the first Condominium in the Project by Declarant to a Retail Buyer; or, (iii) three (3) years following the conveyance of the last Living Unit by Declarant to a Retail Buyer in the most recent Phase of the Project, whichever shall first occur.

Declarant, in exercising his rights under this section will not unreasonably interfere with the use of the Common Area by any Owner.

So long as Declarant, its successors and assigns owns one or more of the Condominiums established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration.

18.7. VIEW ACKNOWLEDGMENT.

Each Owner, by accepting a deed to a Unit, hereby acknowledges that the view or line of sight such Owner's Condominium Unit, at the time such Unit was originally offered for sale to the public by Declarant, may be subject to subsequent obstruction as a result of future construction or plantings by Declarant or other property owners in the vicinity.

18.8. USE OF DETACHED GARAGES BY DECLARANT.

Declarant shall have the exclusive use of that building containing detached garages (i.e. not connected to any Condominium Building containing Living Units) necessary for the conduct of work, sale, rental and other disposition of Condominium Units. This right shall terminate upon the conveyance of the last Condominium Unit in the final Phase of the Project to a Retail Buyer, or upon such earlier date that Declarant ceases to offer Units for sale to the public under an unexpired Public Report.

18.9. TERMINATION OF ANY RESPONSIBILITY OF DECLARANT.

In the event Declarant shall convey all of its rights, title and interest in and to the Property to any partnership, individual or individuals, corporation or corporations, then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

18.10. OWNER'S COMPLIANCE.

Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns. Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

18.11. PERFORMANCE BOND BY DECLARANT.

In the event that the Improvements to be installed by Declarant to the Common Area in a Phase have not been completed prior to the sale of the first Condominium in such Phase and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such Improvements, then if such Improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond.

If the Association has given an extension in writing for the completion of any such Improvement then the Board shall consider and vote on said question if such Improvements have not be completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period.

In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five (5%) percent of the total voting power of the Association, the Board shall call a special meeting of the Members to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

18.12. NOTICE.

In each instance in which notice is to be given to the Owner of a Condominium Unit, the same shall be in writing and may be delivered personally, in which case personal delivery of such notice to one or two or more co-Owners of the Unit, or to any general partner of a partnership owning such Unit, shall be deemed delivered to all of the co-Owners or to the partnership, as the case may be, and personal delivery of the notice to any officer or agent for the service of process of a corporation owning such Unit shall be deemed delivered to the corporation, or such notice may be delivered by United States Mail certified, or registered, postage prepaid, return receipt requested, addressed to the Owner of such Unit at the most recent address furnished by such Owner to the Secretary of the Board, or, if no such address shall have been furnished then to the street (or Post Office Box) address of such Unit, and any notice so deposited in the mail within San Diego County, California, shall be deemed delivered seventy-two (72) hours after such deposit.

18.13. REPORTS TO PROSPECTIVE PURCHASERS; ESTOPPEL CERTIFICATE.

In accordance with California Civil Code Section 1368, or any successor statute or law, the Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following disclosures to the prospective purchaser:

- (a) A copy of the Declaration, Bylaws, Articles and Association Rules, if any;
- (b) A copy of the most recent financial reports as required by the Bylaws;

- (c) A certificate signed by an authorized representative of the Association as to the amount of any assessments levied upon the Owner's interest in his Condominium which are unpaid on the date of the certificate. The certificate shall also include information on late charges, interest and costs of collection which, as of the date of the certificate, are or may be made a lien upon the Owner's Condominium, pursuant to California Civil Code Section 1367, or any successor statute or law. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.
- (d) Any change in the Association's current Regular and Special Assessments and fees which have been approved by the Board, but have not become due and payable as of the date these disclosures are provided.

Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Condominium with a copy of the items specified hereinabove. The Association may charge a fee for this service, as well as a fee or assessment to change its records in connection with the transfer of title to a Condominium Unit. Any fees or assessments contained in this Section shall not exceed the reasonable costs to prepare and reproduce the requested items or the actual costs to change records.

18.14. NOTIFICATION OF SALE OR CONVEYANCE.

Concurrently with the consummation of the sale or other conveyance of any Condominium Unit where the transferee becomes an Owner of the Unit, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale or conveyance. Such notification shall set forth the name of the transferee and his Mortgagee and transferor, the common address of the Unit purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale or conveyance. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, the Board's delegated committee or the Association's manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed given and given in accordance with the provisions of the Section herein entitled "**Notice**".

18.15. BINDING ARBITRATION.

18.15.1. ARBITRATION OF DISPUTES.

Except as expressly provided herein or by law, any dispute, controversy or claim by the Board, the Association or any Owner(s), (collectively "Claim") against Declarant, its successors, assigns, agents or brokers, and /or any contractor, subcontractor, architect, materialman, or other person or

entity involved in the planning, development or construction of the Project or any component part thereof, shall be handled as follows:

(a) The Board or the Owner(s), as the case may be, shall deliver written notice of the nature of such Claim to Declarant and any other involved person or entity within one (1) year of becoming aware of the existence of such Claim, or the facts giving rise to such Claim. For purposes of this Section, knowledge of such Claim shall be deemed to exist, without limitation, upon the identification of such Claim or facts relating thereto, in (i) a written report prepared following an inspection in accordance with the inspection provisions contained herein, (ii) a writing by an Owner to either Declarant or the Board, or (iii) upon the discovery of such Claim.

(b) If Declarant or another involved party so elects, within one hundred twenty (120) days of the date of receipt of such written notice of a Claim, it shall be provided with access to the Property and a reasonable opportunity and time period to cure or otherwise resolve such Claim.

(c) Any such Claim, if not otherwise resolved in accordance with subparagraph (b) above, shall be submitted to and settled by binding arbitration in accordance with this Section. Arbitration shall, failing a resolution in accordance with subparagraph (b) above, constitute the sole and exclusive remedy for the resolution of any such Claim.

18.15.2. ARBITRATION PROCEDURES AND RULES.

Any arbitration instituted pursuant to this Declaration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The decisions of the arbitrator, including the determination of the amount of any damages suffered, if any, shall be conclusive, final and binding upon all the parties, their heirs, executors, administrators, successors, assigns, officers, directors and shareholders, as applicable. On the demand of the arbitrator or any party to an arbitration initiated hereunder, and after reasonable written notice to all concerned parties affording each of them with a reasonable opportunity to join in and become a party to such arbitration, all of the parties to such arbitration and such concerned parties shall be bound by such arbitration proceeding. If any party refuses or neglects to appear at or participate in such arbitration proceeding, the arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented by the party or parties who do participate. The arbitrator is authorized to award any party or parties such sums as it considers proper for the time, expense and trouble of arbitration, including arbitrator fees and attorneys' fees. California Code of Civil Procedure Section 1283.05 (and any successor statute), which provides for extended mutual discovery rights during an arbitration proceeding, is hereby incorporated into, made a part of, and made applicable to this Article.

18.15.3. WAIVER OF ARBITRATION.

In the event any legal action or proceeding is instituted by a party (which is subject to this Section) in connection with any matter for which arbitration under this Section may be required, such party conclusively shall be deemed to have waived its right to require arbitration hereunder, and any party (which is also subject to this Section) named in such action or proceeding may, at any time within thirty (30) days after being served by proper service of process with respect to such action or proceeding, require by written notice delivered to the first mentioned party that such matter be determined by arbitration pursuant to this Section, and such requirement shall be binding on all such parties. A party's failure to require such arbitration within said thirty (30) day period will constitute waiver by such party of its right to require arbitration under this Section, and the party which instituted such action or proceeding also shall be deemed conclusively to have waived its right to require arbitration as of the end of said thirty day period.

18.15.4. EXCEPTIONS.

Notwithstanding anything contained in this Section to the contrary, the provisions of this Section shall not apply to any legal action or proceeding instituted in connection with the enforcement or collection of any Regular, Special or other assessment or other obligation arising under the Article herein entitled "*Assessments*." Additionally, the filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction or other provisional remedies, shall not constitute a waiver of the right to arbitrate under this Section.

18.15.5. ASSOCIATION CLAIMS.

In any arbitration for a dispute, controversy or claim by the Association against Declarant, its successors and assigns, and/or any contractor, subcontractor, architect, materialman, or other person or entity involved in the planning, development or construction of the Project or any component part thereof, pertaining to the planning, development or construction of the Project or any component part thereof, not less than ninety percent (90%) of the amount actually awarded, if any, as a result of such arbitration must be utilized by the Association, solely and exclusively, for the construction, reconstruction, repair or replacement of the Project.

18.16. LITIGATION.

In the event the Association, Declarant, or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "*prevailing party*" shall be the party who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover his costs shall not recover attorney's fees.

18.17. GOVERNING DOCUMENTS.

In the event of a conflict between this Declaration and any other Project Document, the provisions of this Declaration shall control.

18.18. SINGULAR INCLUDES PLURAL.

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

18.19. LIBERAL CONSTRUCTION.

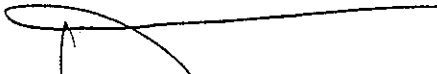
The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Project. The titles or headings of the Articles or Sections of this Declaration have been inserted for convenience and reference only and shall not be considered or referred to in resolving questions or interpretation or construction.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument on September 3, 1992.


DECLARANT:

SUNLAND RANCHO BERNARDO PARTNERSHIP,
a California Limited Partnership

BY: SUNLAND RANCHO BERNARDO CORPORATION,
a California Corporation
its general partner

By: 

Ure R. Kretowicz,
Chief Executive Officer

By: 

Scott C. Rollins,
Secretary

(Please Attach Proper Notary Certificate(s) of Acknowledgment)

1924

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

)
s.s.

On September 3, 1992, before me, the undersigned, a Notary Public in and for said County, personally appeared:

URE R. KRETOWICZ and SCOTT C. ROLLINS

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Linda F. Hall
(Signature)

Linda F. Hall
(Print Name)



#055

1925

EXHIBIT "A"

PROJECT LEGAL DESCRIPTION:

Lot 4 of BERNARDO HEIGHTS UNIT NO. 4 RESUBDIVISION, in the City of San Diego, County of San Diego, California, according to **Map** thereof **No. 9955**, filed in the Office of the San Diego County Recorder, December 30, 1980.

SUBORDINATION AGREEMENT

COMMERCIAL CENTER BANK, a California Banking corporation, being the beneficiary under that certain Deed of Trust dated March 6, 1992 and recorded March 13, 1992 as File No. 1992-0138325 of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to the Declaration to which this Subordination Agreement is attached.

DATED: 9-10-92

COMMERCIAL CENTER BANK,
a California Banking corporation

By:

Keith F. Jones, V.P.

By: _____

(Please Attach Proper Notary Certificate(s) of Acknowledgment)

1927

STATE OF CALIFORNIA)
COUNTY OF San Diego) s.s.

On Sept. 10, 1992, before me, the undersigned, a Notary Public in and for said County, personally appeared:

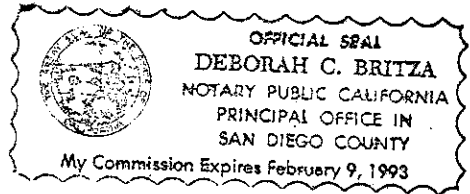
Keith F. Jarvis

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Deborah C. Britza
(Signature)

Deborah C. Britza
(Print Name)



DOC # 1992-0584787
15-SEP-1992 03:59 PM

RECORDING REQUESTED BY:

1815

Recorded Request Of
FIDELITY NATIONAL TITLE

WHEN RECORDED, MAIL TO:

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
ANNETTE EVANS, COUNTY RECORDER
RF: 20.00 FEES: 56.00
AF: 35.00
MF: 1.00



C.C.I.
Att: VILLA VENUSTO
2130 Fourth Avenue
San Diego, California 92101-2110
(619) 231-1606

9201223-SM

CERTIFICATE OF CONSENT TO RECORDATION OF CONDOMINIUM PLAN

PHASES 1, 2, 3 AND 4

VILLA VENUSTO

The undersigned, SUNLAND RANCHO BERNARDO PARTNERSHIP, a California Limited Partnership, being the record owner of the property hereinbelow described, does hereby consent to the recordation of the hereinafter described Condominium Plan pursuant to California Civil Code Section 1351(e).

Said property is situated in the unincorporated area of the County of San Diego, State of California, and is described as:

LEGAL DESCRIPTION

Lot 4 of BERNARDO HEIGHTS UNIT NO. 4 RESUBDIVISION, in the City of San Diego, County of San Diego, California, according to Map thereof No. 9955, filed in the Office of the San Diego County Recorder, December 30, 1980.

Said property shall be a Condominium Project and a Common Interest Development.

THIS CONDOMINIUM PLAN IS BEING RE-RECORDED IN ORDER TO CORRECT THE PHASING SCHEDULE ON SHEET 1 OF THE DIAGRAMATIC PLAN.

Attached hereto, and by reference made a part hereof, is a diagrammatic plan ("Condominium Plan") of the Condominium Project ("Project") and the separate interests therein, consisting of (i) a description of the Project that refers to or shows monumentation on the ground, and (ii) a three-dimensional description of the Project in sufficient detail to identify the Common Areas and each separate interest.

This Condominium Plan comprises four (4) Phase separate interests in space and thirty-two (32) Living Units separate interests in space and appurtenances, all shown and described thereon.

The Project and Condominium Plan are subject to the terms and conditions stated in that certain *Declaration for "VILLA VENUSTO"* recorded concurrently herewith, and any amendments thereto now or hereafter of record.

The following notes and definitions are a part of the Condominium Plan:

1. "CONDOMINIUM" shall mean and refer to an estate in the real property shown herein, as defined in Civil Code Section 1351(f), and shall consist of an undivided interest as tenant-in-common (i) in the Community Common Area and (ii) in a Phase Common Area, coupled with a separate interest in space called a "Living Unit," together with any Exclusive Use Common Area conveyed appurtenant thereto - of which the boundaries of all of the foregoing are described on this Plan with sufficient detail to locate all boundaries thereof.
2. "SEPARATE INTEREST" shall mean and refer to a separate interest in space as defined in Civil Code Section 1351(1). There are two types of Separate Interests within the Condominium Project: an "UNANNEXED PHASE" Separate Interest, which is non-residential in nature, and a "LIVING UNIT" Separate Interest, which is residential in nature, both defined herein.
3. "PHASE" shall mean and refer to each of four (4) non-residential separate interests in space in the real property shown and described herein.
 - A. Phases are numbered I, II, III and IV. Total number of Phases is four (4).
 - B. Each Phase is an envelope of airspace the Lower Limit of which extends to a horizontal plane 20.0 feet below the existing ground elevation; the Upper Limit extends to a horizontal plane 50.00 feet above the existing ground elevation. The lateral boundaries of each Phase are vertical planes at the limits of the horizontal dimensions of each respective Phase shown herein.
 - C. Each Phase separate interest shall include all air, earth, Condominium Buildings and other improvements located within the Phase boundaries, excepting therefrom all Living Unit separate interests located therein.

- D. Each Phase relationship to the Project boundary lines and the other Phases is shown on SHEET 2 herein.
4. **"LIVING UNIT"** shall mean and refer to the residential separate interests in space within a Phase in the real property which are not owned in common with the other owners of other Living Units. Said Living Units are shown and described herein by **"TYPICAL UNIT FLOOR PLANS"** on SHEETS 7, 8 and 9.
- A. Living Units are numbered 1 through 32, inclusive. Total number of Living Units is 32.
- B. Each Living Unit is an airspace, the boundaries of which are the interior unfinished surfaces (not including paint, paper, non-bearing walls, tile, enamel, or other finishes) of the perimeter walls, floors (Finished Floor Elevation), doors, windows, ceilings (Finished Ceiling Elevation) thereof corresponding to vertical and/or horizontal planes at the limits of the dimensions shown on the Unit Floor Plans on Sheets 7, 8 and 9. Living Units shall include garages located within the boundaries thereof.
- C. Detailed information within Living Units, such as the interior partitionings, beams, columns, shelves and other similar features are omitted in the TYPICAL UNIT FLOOR PLANS.
- D. The Finished Floor Elevations (F.F.) for each Living Unit are shown on SHEETS 7, 8 and 9 and on the respective Horizontal Control Plans.
- E. The following are not a part of the Living Unit: bearing walls, columns, floors, roofs, foundations, gutters, downspouts, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except outlets thereof when located within the boundaries of the Living Unit, or used or operated exclusively by such Living Unit.
5. **"COMMON AREA"** shall consist of two types, each defined as follows:
- A. **"GENERAL COMMON AREA"** shall mean and refer to all of the real property and any improvements situated thereon, excepting therefrom (i) those four (4) Phase separate interests in space and (ii) and the Living Unit separate interests in space located therein, both shown and described on the Plan. The General Common Area shall include, but not be limited to: land, private driveways, unassigned guest parking, detached garages, walkways, lighting, landscaped areas, sprinklers and sprinkler pipes, conduits, pipes, private storm drains, private utilities, plumbing, wires and other utility installations and central services (except such services which exclusively serve a Living Unit) required to provide common power, light, telephone, gas, cable television, water and sewage, and any other facilities which the Association owns or leases for the common benefit, use and enjoyment of all of its Members.

- B. "PHASE COMMON AREA" shall mean and refer to those four (4) separate interests in space shown herein, each consisting of an "airspace envelope," the lower limit of which extends to a horizontal plane 20.0 feet below the existing ground elevation; the upper horizontal boundary extends to a horizontal plane 50.00 feet above and parallel to the existing ground elevation; the lateral boundaries are vertical planes at the limits of the horizontal dimensions of the respective Phase shown herein. Phase Common Area shall include all of the real property, air and earth located within the Phase boundaries, excepting therefrom all Living Units separate interests shown and described herein. Phase Common Area includes, without limitation, land, Condominium Buildings, walkways, lighting, landscaped areas, fences and walls, sprinklers and sprinkler pipes, conduits, pipes, plumbing, wires and other utility installations and central services (except such services which exclusively serve a Living Unit) required to provide common power, light, telephone, gas, cable television, water and sewage within the Phase boundaries.
6. "EXCLUSIVE USE COMMON AREA" means that portion of the Common Area designated by the Declaration for the exclusive use of one or more, but fewer than all of the owners of Living Units and which will be appurtenant to these Living Units. Each YARD AND DECK EXCLUSIVE USE COMMON AREA is assigned and appurtenant to its correspondingly numbered Living Unit as shown in the Plan hereto.
- A. The lower horizontal boundary of a DECK EXCLUSIVE USE COMMON AREA is equal to the finished surface of its floor. The upper horizontal boundary shall extend up to a horizontal plane 8.00 feet above the lower horizontal boundary, unless otherwise shown, excepting therefrom any portions of a Condominium Building extending thereinto.
- C. The lower horizontal boundary of a YARD EXCLUSIVE USE COMMON AREA will be at the finished upper surface of any paved area and at the finished grade elevation of any unpaved area. The upper horizontal boundary shall extend up to a horizontal plane 8.00 feet above the lower horizontal boundary, unless otherwise shown, excepting therefrom any portions of a Condominium Building extending thereinto. The lateral boundaries shall be at the interior finished surface of any fence or wall enclosing such Yard.
7. All lateral boundaries are vertical planes at the limits of the horizontal dimensions shown on this Plan. Angles between all boundary planes and lines are 90°, unless indicated otherwise. Written dimensions on this Plan shall have precedence over dimensions scaled from this Plan.
8. It is herein recognized that some dimensions may vary a few hundredths of a foot due to unavoidable short or over measurements encountered in the framing and application of wall coverings.

9.

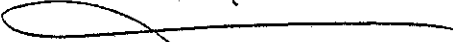
In interpreting Deeds and Plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the Deed or this Plan, regardless of settling or lateral movement of the building and regardless of minor variance between the boundaries shown on the Plan or Deed, and those of the building.

IN WITNESS WHEREOF, this Certificate of Consent has been executed at San Diego, California on September 3, 1992

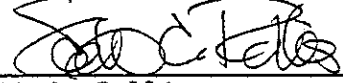
RECORD OWNER:

SUNLAND RANCHO BERNARDO PARTNERSHIP,
a California Limited Partnership

BY: SUNLAND RANCHO BERNARDO CORPORATION,
a California Corporation
its general partner

By: 

Ure R. Kretowicz,
Chief Executive Officer

By: 

Scott C. Rollins,
Secretary

(Please Attach Proper Notary Certificate(s) of Acknowledgment)

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

)
) s.s.

On September 3, 1992, before me, the undersigned, a Notary Public in and for said County, personally appeared:

URE R. KRETOWICZ and SCOTT C. ROLLINS

personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Linda F. Hall
(Signature)

Linda F. Hall
(Print Name)



#056

ALL-PURPOSE ACKNOWLEDGMENT

No. 5179

State of California
County of San Diego

115

On 10/7/92 before me, Linda F. Hall
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Ure R. Kretowicz & Scott C. Rollins
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~has~~/they executed the same in ~~his~~/their authorized capacity(ies), and that by ~~his~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER(S) CEI & SECY TITLE(S)
- PARTNER(S) LIMITED GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____



#059

Witness my hand and official seal.

Linda F. Hall
SIGNATURE OF NOTARY

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)
Sunland Rancho Bernardo Corporation, General Partner of Sunland Rancho Bernardo Partnership

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE
MUST BE ATTACHED
TO THE DOCUMENT
DESCRIBED AT RIGHT:

Title or Type of Document CERTIFICATE OF CONSENT TO RECORD.
Number of Pages _____ Date of Document _____
Signer(s) Other than Named Above _____

ACKNOWLEDGMENT BY BENEFICIARY

COMMERCIAL CENTER BANK, a California Banking corporation, being the beneficiary under that certain Deed of Trust dated March 6, 1992 and recorded March 13, 1992 as File No. 1992-0138325 of Official Records in the Office of the County Recorder of San Diego County, California, hereby declares that the lien and charge of said Deed of Trust is and shall be subordinate to the Declaration to which this Subordination Agreement is attached.

DATED: 9-10-92

COMMERCIAL CENTER BANK,
a California Banking corporation

By: Keith Jarvis, V.P.

By: _____

(Please Attach Proper Notary Certificate(s) of Acknowledgment)

STATE OF CALIFORNIA)
COUNTY OF San Diego) s.s.

On Sept. 10, 1992, before me, the undersigned, a Notary Public in and for said County, personally appeared:

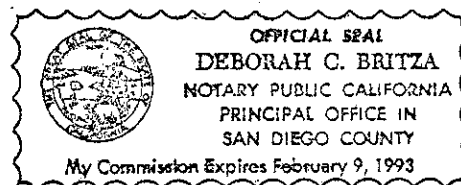
Keith F. Jarvis

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Deborah C. Britza
(Signature)

DEBORAH C. BRITZA
(Print Name)



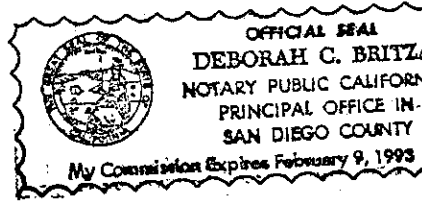
COUNTY OF SAN DIEGO

On October 7, 1992, before me, _____,
Notary Public, personally appeared KEITH F. JARVIS

_____, personally known to me (or proved to me
on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/
their signature(s) on the instrument the person(s), or the entity
upon behalf of which the person(s) act, executed the instrument.

WITNESS my hand and official seal.

Signature Deborah C. Britza



BYLAWS

FOR

VILLA VENUSTO HOMEOWNERS ASSOCIATION

*(a California Non Profit
Mutual Benefit Corporation)*

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BYLAWS

ARTICLE 1. - NAME AND OFFICE LOCATION

The name of the corporation shall be the **VILLA VENUSTO HOMEOWNERS ASSOCIATION**, a California nonprofit mutual benefit corporation, herein referred to as the "**Association**." The office of this corporation shall be located in the County of **San Diego**, State of California.

ARTICLE 2. - DEFINITIONS

2.1. DECLARATION.

Declaration shall mean and refer to the **DECLARATION FOR VILLA VENUSTO** recorded _____, as Document No. _____, all as shown in the Official records of the Office of the County Recorder of San Diego County, California, covering the **VILLA VENUSTO Condominium Project**, including such amendments thereto as may from time to time be recorded.

2.2. OTHER DEFINITIONS.

Each definition set forth in the Declaration Article entitled "Definitions" shall have the same meaning within these Bylaws, and each such definition is by this reference incorporated herein.

ARTICLE 3. - MEMBERS

This Association shall have two (2) classes of voting membership as set forth in the Declaration and the Articles.

ARTICLE 4. - MEETINGS OF MEMBERS

4.1. PLACE OF MEETING.

All meetings of Members shall be held on the Project or at such other location in **San Diego** County, California, in reasonable proximity to the Project, as may be designated in the notice of meeting.

4.2. CONDUCT OF MEETINGS; PARLIAMENTARY PROCEDURE.

All meetings of Members shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Members may adopt.

4.3. ANNUAL MEETINGS OF MEMBERS.

The first annual meeting of Members shall be held within six (6) months after the close of escrow for the sale of the first Condominium by Declarant, or within forty-five (45) days after close of escrow for the sale by Declarant of fifty-one percent (51%) of the Condominiums authorized for sale under the first public report for the Project, whichever shall first occur. Subsequent annual meetings of Members shall be held in each succeeding year within one week before or after the anniversary of the first annual meeting of Members on a day to be determined by the Board, which shall not be a legal holiday.

4.4. NOTICE OF ANNUAL MEETING.

Written notice of each such annual meeting shall be given to each Member and, upon written request therefor, to all first Mortgagees. Such notice shall be delivered either personally or by sending a copy of the notice through the mail or by telegraph, charges prepaid, to the address appearing on the books of the Association or supplied to the Association for the purpose of notice. If no address is supplied, notice shall be deemed to have been given if mailed to the address of the Condominium owned by such Member or encumbered by the first Mortgagee, or published at least once in some newspaper of general circulation in the county of said principal office. All such notices shall be sent not less than ten (10) days (except in emergency situations in which case as much advance notice shall be given as is reasonably possible) and not more than ninety (90) days before each annual meeting, and shall specify the place, day and hour of such meeting and any matters the Board intends to present for action by the Members; the foregoing notwithstanding, any proper matter may be presented at such meeting for action.

4.5. SPECIAL MEETINGS.

Special meetings of Members, for any purpose or purposes whatsoever, may be called scheduled at any time by the Board in response to the vote of a majority of the Board of Directors, or in response to a request by the Chairman of the Board, the President, or upon written request of the Members representing five percent (5%) of the total voting power of the Association. Except in special cases where other express provision is made by statute, notice of such special meetings shall be given in the same manner as for annual meetings of Members. Notices of any special meeting shall specify in addition to the place, day and hour of such meeting, the general nature of the business to be transacted.

4.6. MORTGAGEE REPRESENTATION.

First Mortgagees shall have the right to attend all membership meetings through a representative designated in writing and delivered to the Board.

4.7. MEMBERSHIP AND VOTING.

Membership shall be held as provided in the Declaration. Unless a contrary voting requirement is called for specific matters elsewhere in these Bylaws, the Declaration or Articles, any action by the Association which must have the approval of the Members before being undertaken shall require the vote or written assent of a majority of each class of membership. Where the vote or written assent of each class of membership is required, any requirement that the vote of Declarant be excluded is not applicable. After the conversion of Class B membership to Class A membership, any provision herein requiring the approval of Members other than Declarant shall mean the vote or written assent of a majority of the total voting power of the Association (including Declarant's votes) and the vote or written assent of a majority of the total voting power of Members other than the Declarant. Voting rights attributable to Condominiums shall not vest until assessments against those Condominiums have been levied by the Association. Except as provided in the section entitled "**Election**" herein, voting of the Members on all matters may be done viva voce (vocally) or by ballot.

4.8. QUORUM; ADJOURNED MEETINGS AND NOTICE THEREOF.

Except as otherwise provided in the Articles of Incorporation or the Declaration, the presence in person or by proxy at any meeting of the Owners of a majority of the voting power of the Association (excluding the number of votes as to which voting rights are suspended at the time of the subject meeting) shall constitute a quorum for the transaction of any action at such meeting, except as otherwise provided in the Declaration or these Bylaws. In the absence of a quorum at a meeting, a majority of the Owners present in person or by proxy may adjourn the meeting to another time, but may not transact any other business. An adjournment for lack of a quorum shall be to a date not less than five (5) days and not more than thirty (30) days from the original meeting date, and the quorum for such resumed meeting shall be the presence in person or by proxy of twenty-five percent (25%) of the total voting power of the Association (excluding the number of votes as to which voting rights are suspended at the time of the subject meeting); provided, however, if after adjournment a new date is fixed for the adjourned meeting, notice of the time and place of the adjourned meeting shall be given to members in the manner described for regular meetings; provided further, that in the event the quorum requirement becomes twenty-five percent of the voting power of the membership, then the only matters that may be voted upon at any meeting actually attended in person or by proxy of one-third (1/3) or less of the voting power, are matters notice of the general nature of which was given in the notice of meeting.

When any membership meeting, either annual or special, is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Except as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting other than by an announcement at the meeting at which such adjournment is taken.

4.9. CONSENT OF ABSENTEES.

The transactions of any meeting of Members, either annual or special, however called and noticed, shall be as valid as though they occurred at a meeting duly held after regular call and notice if a quorum be present either in person or by proxy and if, either before or after the meeting, each of the Members entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of such meeting or an approval of its correct minutes. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

4.10. ACTION WITHOUT MEETING.

Any action on a matter that may be taken by the vote of Members at a regular or special meeting (except for the election of directors which must be conducted in accordance with the provisions of the section entitled "*Election*" herein) may be taken without a meeting if, *in compliance with Section 7513 of the California Corporations Code, including such amendments thereto as may from time to time be made*, a ballot is distributed to every Member entitled to vote on the matter. Such ballot shall set forth the proposed action (including any known contrary opinions) provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time frame within which to return the ballot to the Association. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All soliciting ballots shall indicate the number of responses needed to meet the quorum requirement and shall state the percentage of approvals necessary to pass the measure submitted.

4.11. PROXIES.

At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Condominium, or upon receipt of notice by the Secretary or the Board of the death or judicially declared incompetence of a Member, or upon the expiration of eleven (11) months from the date of the proxy. In addition, voting by proxy shall comply with any other applicable requirements of California Corporations Code Sections 7514 and 7613.

4.12. PROXY AND WRITTEN BALLOT, FORM.

In addition to any other requirements, any form of proxy or written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of

each matter or group of matters to be acted upon. It shall not be mandatory that a candidate for election to the governing body be named in the proxy or written ballot. The proxy or written ballot shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The proxy shall also identify the person or persons authorized to exercise the proxy and the length of time it will be valid.

ARTICLE 5. - BOARD OF DIRECTORS

5.1. NUMBER AND QUALIFICATIONS OF DIRECTORS.

The affairs of the Association shall be managed by a Board of three (3) directors until changed by amendment to this Section of the Bylaws. Directors need not be Members of the Association. The foregoing notwithstanding, the initial directors may be appointed by the Declarant, and shall hold office until the first meeting of the Members as described in the section entitled "**Election**" herein and until their successors are elected.

5.2. TERM OF OFFICE.

At the first annual meeting of Members, **one (1)** director shall be elected for a term of **one year** and **two (2)** directors for a term of **two years**. Thereafter, directors shall be elected at each annual meeting of Members to fill the vacancies of those directors whose term then expires and the term of each such director so elected shall be **two (2) years**. Unless vacated sooner, each director shall hold office until the director's term expires and a successor is elected. If any annual meeting is not held or the directors are not elected thereat, the directors may be elected at any special meeting of Members held for that purpose.

5.3. REMOVAL; VACANCIES.

Unless the entire Board is removed from office by the vote of the 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 or not consenting in writing to 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 directors were then being elected. A director elected to office solely by the votes of Members other than Declarant may be removed from office prior to the expiration of his term only upon the vote of a simple majority of the voting power of Members other than Declarant. Provided, however, the Board may declare vacant the office of a director (a) who has been declared of unsound mind by final court order or (b) who has been convicted of a felony. In the event of the death or resignation of a director, his or her successor shall be appointed by the Board at a duly held meeting of the Board or by a sole remaining director, and shall serve for the unexpired term of his or her predecessor.

A vacancy or vacancies shall be deemed to exist in case of death, resignation or removal of any director, or if the Members shall increase the

authorized number of directors but shall fail, at the meeting at which such increase is authorized, or at any adjournment thereof, to elect the additional directors so provided for, or in case the Members fail at any time to elect the full number of authorized directors. The Members may elect a director at any time to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment by the Bylaws is voted authorizing an increase in the number of Directors. A vacancy created by removal of a director can be filled only by election of the Members. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his or her term of office.

5.4. COMPENSATION AND FEES.

Neither the directors nor the officers of the Association shall receive any monetary compensation for their services performed in the conduct of the business of the Association, except upon the vote or written consent of a majority of the voting power of each class of Member of the Association. After conversion of the Class B membership to Class A membership, such decision shall require the vote or written assent of (i) fifty-one percent (51%) of the voting power of the Association, and (ii) fifty-one percent (51%) total voting power of the Members other than Declarant. Nothing herein contained shall be construed or preclude any director or officer from serving the Association in any other capacity as an agent, employee or otherwise and receiving compensation therefor. Directors and officers of the Association may be reimbursed for expenses incurred in carrying on the business of the Association.

ARTICLE 6. - NOMINATION AND ELECTION OF DIRECTORS

6.1. NOMINATION.

Nomination for election to the Board of Directors shall be made by a Nominating Committee. Notice to the Members of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the Members, to serve until the close of such 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. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

6.2. ELECTION.

The first election of the Board shall be conducted at the first meeting of the Association described in the section entitled "*Annual Meetings of Members*" herein, at which time all positions on the Board shall be filled.

At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is required for all elections in which *more than two (2)* directors are to be elected; provided, however, all Members shall be entitled to cumulate their votes for one (1) or more candidates for the Board, if the candidate's name has been placed in nomination prior to voting, and if a Member has given notice at the meeting prior to the voting of his or her intention to cumulate votes. **Voting for directors shall be by secret written ballot.** So long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, not less than *twenty percent (20%)* of the incumbents on the Board shall have been elected solely by the votes of Owners other than the Declarant.

ARTICLE 7. - MEETINGS OF DIRECTORS

7.1. PLACE OF MEETING.

All meetings of the Board shall be held within the Project, or at such other location in **San Diego** County, California, in reasonable proximity to the Project, as may be designated in the notice of meeting. Members of the Board may participate in a meeting through use of conference telephone or similar communications equipment, so long as all Directors participating in such meeting can hear one another; all such directors shall be deemed to be present in person at such meeting.

7.2. ORGANIZATIONAL MEETING.

Immediately following each annual meeting of Members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meeting is hereby dispensed with.

7.3. REGULAR MEETINGS.

Regular meetings of the Board shall be held without call bimonthly, or at such time as the Board shall determine; provided, however, should said day fall upon a legal holiday, then said meeting shall be held at the same time on the next day thereafter ensuing which is not a legal holiday. Notice of the time and place of all such regular meetings of the Board shall be posted at a prominent place within the Common Area and communicated to directors not less than four (4) days prior to the meeting; provided, however, 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 the meeting.

7.4. SPECIAL MEETINGS.

Special meetings of the Board for any purpose or purposes may be called at any time by the President, or, if he is absent or unable or refuses

to act, by any Vice President, or by any two (2) Directors other than the President.

Written notice of the time and place of special meetings and the nature of any special business to be considered shall be posted in the manner prescribed for notice of regular meetings and shall be sent to all directors by first class mail not less than four (4) days prior to the scheduled time of the meeting, or such notice shall be delivered personally or by telephone or telegraph not less than forty-eight (48) hours prior to the scheduled time of the meeting; provided, however, notice of the meeting need not be given to any Director who has signed a waiver of notice or a written consent to the holding of the meeting.

7.5. QUORUM.

A majority of the directors shall be necessary to constitute a quorum for the transaction of business, except to adjourn as hereinafter provided. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board.

7.6. ADJOURNMENT.

A quorum of the directors may adjourn any directors' meeting to meet again at a stated day and hour; provided, however, that in the absence of a quorum, a majority of the directors present at the directors' meeting, either regular or special, may adjourn from time to time until the time fixed for the next regular meeting of the Board.

7.7. NOTICE OF ADJOURNMENT.

Notice of adjournment of any Directors' meeting, either regular or special, need not be given to absent Directors if the time and place are fixed at the meeting adjourned.

7.8. ATTENDANCE AT MEETINGS AND EXECUTIVE SESSIONS.

Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may, upon the vote of a majority of its members present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, matters that relate to the formation of contracts with third parties and matters relating to the discipline of an Association Member upon the specific request by said Member that such meeting be held in executive session, and other matters of business of a similar nature. Except as hereinafter provided, only members of the Board shall be entitled to attend executive sessions. The nature of any and all business to be considered in executive session shall first be announced

in open session. In matters relating to the discipline of an Association Member, such Member shall be entitled to attend the executive session held by the Board at the specific request of such Member. Any matter discussed in executive session shall be *generally* noted in the minutes of the Board.

7.9. ACTION WITHOUT MEETING.

Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such actions by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. An explanation of the action to be taken or actually taken by the Board shall be given to the members of the Association within three (3) days after all written consents have been obtained. Said explanation shall be given in the same manner as provided for the giving of notice of regular meetings of the Board. Failure to give such notice shall not, however, render the action to be taken or actually taken invalid.

7.10. ENTRY OF NOTICE.

Whenever any director has been absent from any special meeting of the Board, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such special meeting was given to such Director as required by law and these Bylaws.

7.11. WAIVER OF NOTICE.

The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum be present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or a consent to holding such meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

7.12. MINUTES OF BOARD MEETINGS.

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

Association Members shall be notified in writing at the time that the pro forma budget described in the **Financial Reports** Section entitled "**Budgets**" hereinafter is distributed or at the time of any general mailing to the entire membership of the Association of their right to have copies of the minutes of meetings of the Board and how and where those minutes may be obtained.

ARTICLE 8. - POWERS AND DUTIES OF THE BOARD

8.1. POWER EXERCISED BY BOARD.

Subject to other provisions of the Declaration and to the limitations of the Articles of Incorporation, these Bylaws and the California Nonprofit Mutual Benefit Corporations Code as to action to be authorized or approved by the Members, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be controlled by, the Board.

8.2. EXTENT.

The powers expressly provided within this Article are without prejudice to the general powers of the section immediately above, but shall be subject to the same limitations.

8.3. ENFORCEMENT.

The Board's powers and duties relating to enforcement shall be as follows:

(a) To enforce the provisions of the Declaration, the Articles of Incorporation and Bylaws of the Association, the rules and regulations adopted by the Board and the provisions of any agreement to which the Association is a party; and,

(b) To initiate and execute disciplinary proceedings against members of the Association, as set forth in the Declaration, for violation of the provisions of the Articles, Bylaws, the Declaration and the rules and regulations adopted by the Board.

8.4. MANAGEMENT AND CONTROL.

With respect to the business and property of the Association, the Board shall have the following powers and duties:

(a) To conduct, manage and control the affairs and business of the Association, and to make such rules and regulations therefor not inconsistent with law, the Articles of Incorporation, the Bylaws or the Declaration as they deem best, including rules and regulations for the operation of the Common Area and Facilities owned or controlled by the Association, including limiting the number of an Owner's guests who may use any recreational facilities;

(b) To manage, operate, maintain and repair the Common Area and all improvements located thereon, including the restoration and replacement of any or all of the buildings, structures or improvements which are part of the Common Area at any time and from time to time as the Board may determine desirable or necessary; and to make capital expenditures for and on behalf of

the Association; provided, that the Association may not incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant, except as allowed in the Declaration upon damage or destruction; and,

(c) To enter into any Condominium and Exclusive Use Common Area as may be necessary for the purpose of carrying out any of the powers or duties of the Board as herein set forth and as set forth in the Declaration, including such entry as may be necessary in connection with the construction, maintenance or emergency repair of the Common Area, at any reasonable hour and, except in the case of emergency, after reasonable notice as more fully described in the Declaration.

8.5. INDEBTEDNESS; SALE OF PROPERTY.

The Board shall have the power to borrow money and incur indebtedness for the purposes of the Association, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations or other evidences of debt and securities therefor, and to sell Association property for the benefit of all of the Owners and their Mortgagees, as their respective interests may appear, at such price and upon such terms as the Board may determine reasonable; provided, however, that the Board shall not have the power to borrow money for the Association during any fiscal year in excess of the aggregate sum of, nor to sell during any fiscal year property of the Association having an aggregate fair market value greater than, five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written assent of a majority of the voting power of each class of Members of the Association. After conversion of the Class B membership to Class A membership, the Board shall not have the power to borrow money for the Association during any fiscal year in excess of the aggregate sum of, nor to sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written consent of (i) a majority of the total voting power of the Association and (ii) a majority of the total voting power of the Members other than the Declarant.

8.6. MONETARY OBLIGATIONS.

Provided the areas herein apply to this Project, the Board shall have the following powers and duties:

(a) To pay all charges for water, electricity, gas, CATV and other utility services for the Common Area and, to the extent not separately metered or charged, for each Living Area; and,

(b) To pay any taxes and governmental special assessments which are or could become a lien on the common area or any portion thereof.

(c) To fix, levy, collect and enforce assessments as set forth in the Declaration.

8.7. USE OF RESERVE FUNDS.

The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement or maintenance of, or litigation involving the repair, restoration, replacement or maintenance of major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash flow requirements or other expenses. The transferred funds shall be restored to the reserve fund within three (3) years of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the Project, delay the restoration until the time which the Board reasonably determines to be necessary. The Board shall exercise prudent fiscal management in delaying restoration of these funds to the reserve account, and shall, if necessary, levy a Special Assessment to recover the full amount of the expended funds within the time limits required herein. This Special Assessment shall not be subject to the limitation imposed by Civil Code Section 1366.

8.8. CONTRACTS.

The Board, with the appropriate assent, shall have the following powers and duties:

(a) To contract and pay for fire, casualty, liability, fidelity and other insurance adequately insuring the Association and Owners with respect to the Common Area and the affairs of the Association, which shall include bonding of the Members of any management body. Any provision to the contrary herein notwithstanding, so long as FNMA or FHLMC holds a Mortgage on a Condominium or owns a Condominium, the Association shall continuously maintain in effect such casualty and liability insurance and fidelity bond, meeting all requirements and containing such coverage and endorsements as may be required from time to time by FNMA or FHLMC. Such casualty insurance shall include, but not be limited to, a master or blanket policy with full replacement cost coverage and an agreed value endorsement. Whether or not FNMA or FHLMC holds any Mortgage, fidelity insurance shall be in the form of a bond, naming the Association as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Association or the management agent at any given time during the term of the fidelity bond, to protect against misuse and misappropriation of Association property by Members of the Board, officers and employees of the Association, any administrator and any management agent and his employees whether or not any such persons are compensated for their services. However, the bond should not be less than a sum equal to three (3) months aggregate assessments on all Condominiums plus reserve funds; and,

(b) To contract and pay for goods and services relating to the Common Area, and to employ personnel necessary for the operation and maintenance of the same, including legal and accounting services; Anything herein to the contrary notwithstanding:

(1) That the term of any contract with a third person for supplying goods or services to the Common Area or for the Association shall not exceed a term of one (1) year unless a longer term is approved by a majority of the voting power of each class of Members of the Association, or after conversion of the Class B membership to Class A membership, unless such longer term is approved by (i) a majority of the total voting power of the Association and (ii) a majority of the total voting power of the Members other than the Declarant, with the following exceptions:

(A) A contract with a public utility company for materials or services the rates for which are regulated by the Public Utilities Commission may exceed a term of one (1) year so long as it does not exceed the shortest term for which the public utility contracts at the regulated rate;

(B) A contract for prepaid casualty and/or liability insurance policies may be for a term of not to exceed three (3) years, provided that the policy permits short rate cancellation by the Association;

(C) Lease agreements for laundry room fixtures and equipment not to exceed five (5) years' duration, provided that the lessor under the agreement is not an entity in which the subdivider has a direct or indirect ownership interest of ten percent (10%) or more.

(D) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(E) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and service not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(2) Any agreement for management of the Project, and any other contract providing for services by the Declarant, shall be terminable for cause upon thirty (30) days written notice, and without cause or payment of a termination fee upon ninety (90) days, written notice and shall have a term of not more than one (1) year, renewable with the consent of the Association and the management agent.

(3) The Board shall not terminate professional management or administration of the Project and assume self-management, when professional management had been required previously by an Eligible Mortgage Holder, without the prior written approval of Mortgagees holding seventy-five percent (75%) or more of the first Mortgages on Condominiums;

8.9. NOTIFICATION.

Provided that FNMA or FHLMC, or any Eligible Mortgage Holder or Eligible Insurer have any mortgage secured by any part of the Project, the Board shall have the following powers and duties:

(a) To provide any Eligible Mortgage Holder or Eligible Insurer, after written request therefrom to the Association, identifying the name and address of the holder, insurer or guarantor and the Condominium number or address, with timely written notice of:

(1) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer, as applicable.

(2) Any default in the performance by an Owner of any obligation under the Project Documents not cured within sixty (60) days.

(3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(4) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in these Bylaws or the Declaration.

(b) To give timely written notice to FHLMC (in care of the servicers of FHLMC loans on Condominiums) of any loss to or taking of the Common Area if such loss or taking exceeds \$10,000, and of any damage to a Condominium if such damage exceeds \$1,000; provided FHLMC funds are secured by any part of the Project.

(c) To give timely written notice to all Eligible Mortgage Holders of any substantial damage to or destruction of any Condominium or any part of the Common Area and, if any Condominium, or any portion thereof, or the Common Area, or any portion thereof, is made the subject of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, to give timely written notice to all Eligible Mortgages Holders of any such proceeding or proposed acquisition.

8.10. FINANCIAL REPORTS.

With regards to the financial reports for the Project, the Board shall have the following powers and duties:

8.10.1. BUDGET.

To prepare or cause to be prepared a pro-forma operating budget ("Budget") for the Association for the immediately ensuing and each succeeding fiscal year of the Association, a copy of which shall be distributed personally or by mail to each of the Members of the Association not fewer than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year to which the budget relates. Said Budget shall include all of the following:

(a) The estimated revenue and expenses on an accrual basis.

(b) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to the Section entitled "**Reserve Study**" hereinafter, which shall be printed in bold type and include the following:

(1) The current estimated replacement cost, estimated remaining life and estimated useful life of each Component ("Component," for purposes of this Section shall be as defined in the Section hereinafter entitled "**Reserve Study**").

(2) As of the end of the fiscal year for which the Reserve Study is prepared: (i) the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the Components (hereafter, "**Cash Reserves**"), (ii) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Components (hereafter, "**Accumulated Reserves**"), and (iii) the percentage that the **Accumulated Reserves** is of the **Cash Reserves** (in other words, **Accumulated Reserves** divided by **Cash Reserves**).

(3) A statement as to whether the Board has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace or restore any Component or to provide adequate reserves therefor.

(4) A **general statement** setting forth the procedures used by the Board in the calculation and establishment of such reserves to defray the costs of repair, replacement or additions to the Components.

The foregoing summary of the Association's reserves shall not be admissible in evidence to show improper financial management of an Association, provided that other relevant and competent evidence of the financial condition of the Association is not made inadmissible pursuant to Civil Code Section 1366.

8.10.2. FINANCIAL STATEMENT.

To cause a financial statement of the affairs of the Association to be made and distributed to Members pursuant to Section 1365 of the California Civil Code, as it may be amended from time to time, including:

(a) 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 Condominium in the Project, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the numbers of the Condominiums and the name or names of the Owners assessed.

(b) An **annual report** consisting of the following to be distributed within one hundred twenty (120) days after close of the Association's fiscal year:

- (1) A **balance sheet** as of the end of the fiscal year.
- (2) An **operating (income & expense) statement** for the fiscal year.
- (3) A **statement of changes in financial position** for the fiscal year.
- (4) Any information required to be reported under Section 8322 of the California Corporations Code or any amendment thereof.
- (5) For any fiscal year in which the gross income to the Association exceeds \$75,000.00, a **review** of the annual report referred to in this Section shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(c) If the annual report described above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit or review from the books and records of the Association.

(d) In addition to financial statements, the governing body shall annually distribute during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year, a statement of the Association's policies and practices in enforcing its remedies against Members for defaults in the payment of Regular and Special Assessments including the recording and foreclosing of liens against Members' Condominiums.

8.10.3. RESERVE STUDY.

To prepare or cause to be prepared a reserve study for the second (2nd) fiscal year of the Association, and thereafter, once every **three (3) years**, which shall provide the following:

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

(b) Identification of the estimated remaining life and estimated useful life of each Component.

(c) An itemized estimate of the cost of repair, replacement, restoration or maintenance costs of each Component, both currently and at the end of its useful life.

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

(e) As of the end of the fiscal year for which the reserve study is prepared: (1) the current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the Components (hereafter, "**Cash Reserves**"), (2) the current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain the Components (hereafter, "**Accumulated Reserves**"), and (3) the percentage that the **Accumulated Reserves is of the Cash Reserves** (in other words, **Accumulated Reserves divided by Cash Reserves**).

8.10.4. BUDGET SUMMARY.

In lieu of the distribution of the Budget described in the Section entitled "**Budget**" hereinabove, the Board of Directors may elect to distribute a summary of said Budget to all of the Association's Members with a "written notice" on the front page of the Budget summary printed in at least 10-point bold type stating that the Budget is available at the business office of the Association or at another suitable location within the boundaries of the Community and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the Budget to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five days.

8.10.5. BOARD REVIEW OF FINANCIAL STATEMENTS.

To cause to be prepared and to review, on at least a quarterly basis, the following financial statements of the Association:

- (a) A current reconciliation of the operating accounts.
- (b) A current reconciliation of the reserve accounts.
- (c) The current year's actual reserve revenues and expenses compared to the current year's budget.
- (d) The latest account statement prepared by the financial institutions where the Association has its operating and reserve accounts.
- (e) An income and expense statement for the operating and reserve accounts.

8.11. ADDITIONAL POWERS AND DUTIES OF BOARD.

The Board shall have the following additional powers and duties:

8.11.1. DELEGATION.

To delegate any of its powers hereunder to others including Committees, officers, employees, or agents. Such delegation may include the ability to enter into any contract or to execute any instrument in the name and on behalf of the Association, subject to all the limitations contained in the Condominium documents. The authority delegated may be general or defined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or to any amount.

8.11.2. SUPERVISION.

To supervise, select and remove any or all officers, agents and employees of the Association, and to prescribe such powers and duties for them as may not be inconsistent with law, the Articles, these Bylaws or the Declaration, and to see that their duties are properly performed, and, subject to the provisions of the section entitled "*Term of Office*" herein, to fix their compensation.

8.11.3. PROSECUTE; DEFEND.

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

8.11.4. APPOINTMENT OF TRUSTEE.

To appoint a Trustee to enforce assessment liens by power of sale as provided in the Declaration and in Civil Code Section 1367.

8.11.5. CHANGE PRINCIPAL OFFICE.

To change the principal office for the transaction of the business of the Association from one location to another within the same county.

8.11.6. SELL PROPERTY.

To sell property owned by the Association for the benefit of all of the Owners and their Mortgagees, as their respective interests may appear, at such price and upon such terms as the Board may determine reasonable, subject to the limitations contained in the section hereinbefore entitled "*Indebtedness; Sale of Property.*"

8.11.7. RECORDS.

To cause to be kept a complete record of all its acts and 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; and to keep adequate and correct books and records of account, minutes of proceedings of its Members, Board and committees, and a record of its Members giving their names and addresses and classes of membership.

8.11.8. DUPLICATION OF BUILDING PLANS.

To provide written permission to duplicate the official copy of Project building plans maintained by the building department.

8.11.9. GRANT EASEMENTS.

To grant easements under, through and over the Common Area which are reasonably necessary to the ongoing development and operation of the Project for, but not limited to, utilities, cable television, water and sewer facilities.

8.11.10. OTHER POWERS.

In addition to any other power contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in Corporations Code Section 7140.

8.12. LIMITATIONS.

The Board of Directors of the Association shall be prohibited from taking any action in violation of any provision in the Project Documents, except with the vote or written consent of (i) a majority of the Members of each Class A and Class B during the time the two-class voting structure is in effect; or (ii) a majority of the Members of the Association including at least fifty-one percent (51%) of Association Members other than Declarant after conversion to a single Class A voting membership. In addition, the Board is further prohibited from taking any action in violation of any State, County or City statute, law, ordinance or regulation.

ARTICLE 9. - OFFICERS

9.1. OFFICERS.

The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer. The Association may also have, at the discretion of the Board, one (1) or more assistant Secretaries, one (1) or more assistant Treasurers and such other officers as may be appointed in accordance with the provisions of the section hereinafter entitled "*Subordinate*

Officers. Officers other than the President need not be directors. One (1) person may hold two (2) or more offices, except those of President and Secretary simultaneously.

9.2. ELECTION.

The officers of the Association shall be chosen annually by the Board, and each shall hold his office until he shall resign, or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

9.3. SUBORDINATE OFFICERS.

The Board may appoint such other officers as the business of the Association may require, each of whom shall hold office for such period, have authority and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

9.4. REMOVAL AND RESIGNATION.

Any officer may be removed, either with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board or, except in case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice to the Board or the President, or to the Secretary of the Association. Any such resignation shall take effect at the date of the 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.

9.5. VACANCIES.

A vacancy in any office because of death, resignation, disqualification or any other cause, other than a vacancy created by removal, may be filled by appointment by the Board. A vacancy created by removal of a director can be filled only by election of the Members. The officer so appointed shall serve for the remainder of the term of the officer he or she replaces.

9.6. PRESIDENT.

The President shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. He shall preside at all meetings of the Members and at all meetings of the Board. He shall be, by virtue of his office, a Member of all committees, and shall have the general powers and duties of management usually vested in the office of President of a corporation, and shall have such other powers and duties as may be prescribed by the Board or by these Bylaws. The President shall see that orders and resolutions of the Board are carried out and shall sign all leases, mortgages, deeds, written instruments and all evidences of indebtedness, including without limitation, promissory notes, checks, drafts or other

orders for payment of money, as provided in the section entitled "*Checks, Drafts, Etc.*" herein.

9.7. VICE PRESIDENT.

In the absence or disability of the president, the Vice President shall perform all the duties of the President, and when so acting shall have all powers of and be subject to all the restrictions upon the President. The Vice President shall have such other powers and perform such other duties as from time to time may be prescribed for him by the Board or by the Bylaws.

9.8. SECRETARY.

The Secretary shall keep, or cause to be kept, a book of minutes at the principal office or such other place as the Board may order of all meetings of directors and Members, with the time and place of holding, whether regular or special and if special how authorized, the notice thereof given, the names of those present at the directors' meetings, the number of Member present or represented at a meeting of Members meetings and the proceedings thereof.

The Secretary shall give, or cause to be given, notice of all the meetings of the Members and of the Board required by the Bylaws or by law to be given, and he shall keep other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

9.9. TREASURER.

The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transaction of the Association, including account of its assets, liabilities, receipts, disbursements, gains, losses, capital and surplus. The books of account shall at all reasonable times be open to inspection and copying by any Director or his duly authorized representative.

The Treasurer shall sign all evidences of indebtedness, including without limitation, promissory notes, checks, drafts or other orders for payment of money, as provided in the section entitled "*Checks, Drafts, Etc.*" herein, and shall deposit all moneys and other valuables in the name, and to the credit, of the Association with such depositories as may be designated by the Board. He shall disburse the funds of the Association as may be directed by resolution of the Board, shall render to the President and directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

The duties of the Treasurer relating to the collection and disbursement of Association funds herein may be performed by a management company or such other agent as may be approved by the Board.

ARTICLE 10. - MISCELLANEOUS

10.1. CHECKS, DRAFTS, ETC.

All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by the President and Treasurer of the Association, or by such person or persons and in such manner as from time to time shall be determined by resolution of the Board pursuant to the subsection entitled "*Other Powers*" within the section herein entitled "*Additional Powers and Duties of Board*".

The foregoing notwithstanding, the signature of at least two (2) persons who shall be Members of the Board or, one (1) officer who is not a Member of the Board and a Member of the Board, shall be required for the withdrawal of moneys from the Association's reserve accounts.

As used in this Article, "*reserve accounts*" means moneys that the Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those Common Area components of the Project which the Association is obligated to maintain pursuant to the section entitled "*Management and Control*" herein.

10.2. FISCAL YEAR.

The fiscal year of the Association shall begin on the 1st day of June and end on the 31st day of May of each year, except that the first fiscal year shall begin on the date of incorporation of the Association. However, the fiscal year of the Association is subject to change from time to time as the Board shall determine.

10.3. INSPECTION OF BOOKS AND RECORDS.

The Association shall keep in its principal office for the transaction of business, or at such other place within the Project as the Board shall prescribe, the original or a copy, including any amendments, of the Bylaws certified by the Secretary, the Declaration, Articles of Incorporation, Rules and Regulations, a membership register which shall include the members' mailing address and telephone numbers, books of account and copies of minutes of all Membership, Board and Committee meetings, all of which, other than minutes, proposed minutes or summary minutes of a Board executive session, shall be made available for inspection and copying by any Member of the Association, or by any Member's duly appointed representative and by all first Mortgagees, at any reasonable time and for a purpose reasonably related to his interest as a Member or Mortgagee, and as provided for in Corporations Code Sections 8330 through 8338, inclusive. The Board shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Member or Mortgagee desiring to make the inspection

- (b) Hours and days of the week when such an inspection may be made
- (c) Payment of the costs of reproducing copies of documents requested

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the Common Area. The right of inspection by a Director shall include the right at his expense to make extracts and copies of documents.

10.4. REQUEST FOR COPIES OF REPORTS.

Upon written request from an Owner or his duly authorized representative, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Condominium with:

(a) A copy of the Declaration, Bylaws, Articles of Incorporation and Rules & Regulations, if any.

(b) A copy of the most recent financial reports, as called for in the section entitled "*Financial Reports*" herein.

(c) A statement in writing from an authorized representative of the Association as to the amount of any assessments levied upon the Owner's interest in his Condominium which are unpaid on the date of the Statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's interest in the Project pursuant to California Civil Code Section 1367, or any successor statute or law. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

The Association may charge a fee for this service, which shall not exceed the reasonable costs to prepare and reproduce the requested items.

ARTICLE 11. - AMENDMENTS

Except as may otherwise be stated in these Bylaws, during the period of time prior to conversion of the Class B membership in the Association to Class A membership, new Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of the Members entitled to exercise a majority or more of the voting power of each class of Members of the Association or by the written assent of such Members. After conversion of the Class B membership to Class A membership in the Association, these Bylaws may be amended or repealed by the vote of Members entitled to exercise (i) a majority of the voting power of the Association, and (ii) at least a majority of the voting power of the Members of the Association other than Declarant. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Anything herein stated to the contrary notwithstanding, no

"material amendment" (as more fully set forth in the section of the Declaration entitled "Amendments") may be made to these Bylaws without the prior written consent of Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units which are subject to mortgages held by such Eligible Mortgage Holders.

An addition or amendment to this document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only.

An Eligible Mortgage Holder or Eligible Insurer, who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request, provided that notice was delivered by certified or registered mail, with a "return receipt" requested.

I, the undersigned, do hereby certify:

1. That I am the duly elected and acting Secretary of **VILLA VENUSTO HOMEOWNERS ASSOCIATION**, a California non-profit mutual benefit corporation; and

2. That the foregoing Bylaws, comprising **twenty-four (24)** pages, constitute the Bylaws of said corporation duly adopted at the meeting of the Board of Directors thereof duly held on _____, 19__.

IN WITNESS WHEREOF, I have hereunto subscribed my name this _____ day of _____ 19__.

Secretary