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DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS ESTABLISHING A PLAN OF
CONDOMINIUM OWNERSHIP
FOR
VILLA PORTOFINO

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TABLE OF CONTENTS

| <u>Article/Section</u> | <u>Page</u> |
|---|-------------|
| PREAMBLE | 1 |
| I DEFINITIONS | 2 |
| II DESCRIPTION OF PROJECT: DIVISION OF PROJECT AND CREATION OF PROPERTY RIGHTS | 4 |
| 2.01 Description of Project | 4 |
| 2.02 Division of Project | 5 |
| (a) Units | 5 |
| (b) Common Areas | 5 |
| 2.03 Exclusive Use Common Areas | 6 |
| 2.04 No Separate Conveyance of Undivided Interests | 6 |
| 2.05 Partition Prohibited | 7 |
| 2.06 Power of Attorney | 7 |
| III ASSOCIATION: ADMINISTRATION, MEMBERSHIP, VOTING RIGHTS, DUTIES AND POWERS | 7 |
| 3.01 Association to Manage Common Area | 7 |
| 3.02 Membership | 7 |
| 3.03 Transferred Membership | 7 |
| 3.04 Membership Classes and Voting Rights | 8 |
| (a) Class A | 8 |
| (b) Class B | 8 |
| 3.05 Duties | 8 |
| (a) Maintenance | 8 |
| (b) Insurance | 9 |
| (c) Discharge of Liens | 9 |
| (d) Assessments | 9 |
| (e) Payment of Expenses | 9 |
| (f) Enforcement | 9 |
| (g) Security | 9 |
| (h) Availability of Documentation | 9 |
| (i) Utility Suppliers | 9 |
| 3.06 Powers | 9 |
| (a) Utility Service | 10 |
| (b) Easements | 10 |
| (c) Manager | 10 |
| (d) Adoption of Rules | 10 |
| (e) Access | 10 |
| (f) Assessments and Suspension | 10 |
| (g) Enforcement | 11 |
| (h) Acquisition and Disposition of Property | 11 |
| (i) Loans | 11 |
| (j) Dedication | 11 |
| (k) Contracts | 11 |
| (l) Delegation | 11 |

Article/Section

| | | |
|------|---|----|
| IV | ASSESSMENTS | 12 |
| 4.01 | Creation of Lien: Personal Obligation of Assessments | 12 |
| 4.02 | Purpose of Assessments | 12 |
| 4.03 | Types of Assessment | 12 |
| | (a) Annual Assessments | 12 |
| | (b) Special Assessments | 12 |
| | (c) Utility Assessments | 12 |
| 4.04 | Limitations on Annual and Special Assessments | 13 |
| 4.05 | Mid-Year Revision of Annual Assessment | 14 |
| 4.06 | Reserves for Replacement | 14 |
| 4.07 | Trust Accounts | 14 |
| 4.08 | Division and Collection of Assessments | 15 |
| 4.09 | Date of Commencement of Annual Assessment; Due Dates | 15 |
| 4.10 | Delinquent Assessments | 16 |
| 4.11 | Transfer of Unit by Sale or Foreclosure | 16 |
| 4.12 | Lien for Assessments; Notice; Enforcement; Priorities | 16 |
| 4.13 | Unallocated Taxes | 18 |
| 4.14 | Estoppel Certificate | 18 |
| 4.15 | Membership Approval | 18 |
| 4.16 | Initial Capitalization of the Association | 19 |
| V | USE RESTRICTIONS | 19 |
| 5.01 | Condominium Use | 19 |
| 5.02 | Common Area Use | 20 |
| 5.03 | Nuisances | 20 |
| 5.04 | Vehicle Restrictions | 20 |
| 5.05 | Signs | 20 |
| 5.06 | Animals | 20 |
| 5.07 | Garbage and Refuse Disposal | 21 |
| 5.08 | Radio and Television Antennas | 21 |
| 5.09 | Right to Lease | 21 |
| 5.10 | Drapes, Interior Flooring | 22 |
| 5.11 | Clothes Lines | 22 |
| 5.12 | Power Equipment | 22 |
| 5.13 | Liability of Owners for Damage to Common Area | 22 |
| 5.14 | Architectural Control | 22 |
| | (a) Committee | 22 |
| | (b) Restrictions | 23 |
| | (c) Modification for Handicapped | 23 |
| | (d) Modifications Of Unit | 24 |
| | (e) Reconstruction After Destruction | 24 |
| | (f) Architectural Standards | 24 |
| | (g) Submission, Approval and Conformity of Plans | 25 |
| | (h) Appeal | 26 |

Article/Section

| | | |
|------|---|----|
| VI | INSURANCE, DAMAGE AND DESTRUCTION | 26 |
| 6.01 | Insurance | 26 |
| 6.02 | Damage and Destruction | 29 |
| VII | INSTITUTION LENDERS | 33 |
| 7.01 | Rights of Institutional Lenders | 33 |
| (a) | Document Availability | 33 |
| (b) | Audited Statement | 33 |
| (c) | Required Notices | 33 |
| (d) | Material Amendments | 34 |
| (e) | Consent to Actions | 35 |
| (f) | Right of First Refusal | 36 |
| (g) | Unpaid Dues or Charges | 36 |
| (h) | Insurance or Condemnation Proceeds | 36 |
| (i) | Reserves | 36 |
| (j) | Contracts | 36 |
| (k) | Termination of Professional Management | 37 |
| (l) | Priority of Liens | 37 |
| (m) | Restoration or Repair | 37 |
| (n) | Project Termination | 37 |
| (o) | Reallocation of Interests | 38 |
| (p) | Partition | 38 |
| VIII | GENERAL PROVISIONS | 38 |
| 8.01 | Enforcement | 38 |
| 8.02 | Hearing | 39 |
| 8.03 | Invalidity of any Provision | 40 |
| 8.04 | Term | 40 |
| 8.05 | Amendments | 40 |
| 8.06 | Encroachment Easements | 41 |
| 8.07 | Owner's Right and Obligation to Maintain and Repair | 41 |
| 8.08 | Condemnation | 42 |
| 8.09 | Limitation of Restrictions on Declarant | 43 |
| 8.10 | Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements | 44 |
| 8.11 | Termination of any Responsibility of Declarant | 45 |
| 8.12 | Owner's Consent and Compliance | 45 |
| 8.13 | Notices | 46 |
| 8.14 | Fair Housing | 46 |
| 8.15 | Documents Provided to Prospective Purchaser | 46 |
| 8.16 | Easements for Utilities and Maintenance | 47 |
| 8.17 | Equitable Servitudes; Privity of Contract; Covenants Running With Land | 48 |
| 8.18 | ALTERNATIVE DISPUTE RESOLUTION (Enforcement of Governing Documents) | 48 |
| 8.19 | ALTERNATIVE DISPUTE RESOLUTION (Action For Damages Against Declarant For Defect in Design or Construction of the Project) | 50 |

Article/Section

EXHIBIT "A" LEGAL DESCRIPTION
EXHIBIT "B" PARTIAL BUDGET

SUBORDINATION AGREEMENT

PREAMBLE

THIS DECLARATION, made on the date hereinafter set forth, and made by the person(s) and/or entity or entities hereinafter identified as the "Declarant", is made with reference to the following facts:

A. The Declarant is the owner of a certain tract of land located in the City of San Diego, County of San Diego, State of California, more particularly described as set forth in Exhibit "A" to this Declaration, which is attached hereto and incorporated herein by reference and made a part hereof as though set forth in full, which property, together with all improvements and structures now or hereafter constructed thereon and all appurtenances thereto, is hereinafter defined and referred to as the "Project".

B. The Declarant hereby establishes by this Declaration a plan for the division of the Project in a single phase into residential Condominiums under the provisions of the Common Interest Development Act of the State of California (Civil Code Section 1350, et. seq.).

C. The Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of the said Condominiums and the Owners thereof.

NOW, THEREFORE, the Declarant hereby declares that the Project, and every part thereof shall be held conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part thereof, in accordance with the plan for the improvement of the Project and the division thereof into Condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon the Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE I

DEFINITIONS

1.01 "Articles" shall mean and refer to the Articles of Incorporation of the Association as originally established and as may be amended from time to time.

1.02 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating, and managing the Project which is to be paid by each Unit Owner as determined by the Association.

1.03 "Association" shall mean and refer to the California nonprofit mutual benefit corporation established by the Declarant or its agent for the Owners of Condominiums in the Project, namely VILLA PORTOFINO OWNERS ASSOCIATION.

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

1.05 "Bylaws" shall mean and refer to the Bylaws of the Association as originally established and as may be amended from time to time.

1.06 "Common Area" shall mean and refer to the entire common interest development (the Project) except the separate interests (Units) therein.

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

1.08 "Common Interest" means the proportionate undivided one-thirtieth (1/30th) fractional interest in the Common Area which is appurtenant to each Unit as set forth in Article II, Paragraph 2.02(b) of this Declaration.

1.09 "Common Interest Development" means and refers to the Project.

1.10 "Condominium" shall mean an undivided interest in common in a portion of the real property hereinafter described, coupled with a separate interest in space called a Unit, the boundaries of which are described on the recorded final Condominium Plan in sufficient detail to locate all boundaries thereof.

1.11 "Condominium Building" shall mean the residential structure containing the Condominium Units.

1.12 "Condominium Documents" and "Project Documents" mean and include this Declaration, the exhibits, if any, attached hereto, the Articles, the Bylaws, and the rules and regulations for the Members, as any and all of the foregoing are established and may be amended from time to time.

1.13 "Condominium Plan" and "Plan" shall mean and refer to the plan 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, in sufficient detail to identify the Common Area and each separate Unit, and (3) a certificate consenting to the recordation of the plan signed and acknowledged by the record owner of fee title to the real property included in the Project.

1.14 "Declarant" shall mean and refer to the person(s) and/or entity or entities identified in Exhibit "A" to this Declaration as the record holder(s) of title to the real property identified and legally described in said Exhibit, and shall also mean and refer to any and all successors and assigns of Declarant.

1.15 "Declaration" shall mean and refer to this Declaration Of Covenants, Conditions and Restrictions Establishing A Plan Of Condominium Ownership.

1.16 "Director" shall mean and refer to a person who is a member of the Board of Directors of the Association.

1.17 "Eligible holder mortgages" shall mean mortgages held by "eligible mortgage holders".

1.18 "Eligible mortgage holder" shall mean a first lender who has requested notice of certain matters from the Association in accordance with section 7.01 of this Declaration.

1.19 "Eligible insurer or guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with section 7.01 of this Declaration.

1.20 "Exclusive Use Common Area" shall mean and refer to those portions of the Common Area designated by this Declaration for the exclusive use of one or more, but fewer than all, of the Owners of the separate Units and which are or will be appurtenant to the separate Units.

1.21 "Institutional Lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding, insuring or guaranteeing a recorded first mortgage on any Unit.

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

1.23 "Mortgage" shall include a deed of trust as well as a mortgage.

1.24 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a mortgagee, and shall include successors in interest of an original mortgagee.

1.25 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.26 "Owner" shall mean and refer to the record holder or holders of title of a Condominium in the Project. This shall include any person having a fee simple title to any Unit and shall include contract sellers, but shall exclude persons or entities having any interest merely as security for the performance of an obligation.

1.27 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.28 "Project" shall mean and refer to that certain tract of land described in Exhibit "A" to this Declaration, including all structures and improvements erected or to be erected thereon, and all appurtenances thereto..

1.29 "Share" means the percentages in and to the Common Area attributed to and appurtenant to each Unit as set forth in Article II, Paragraph 2.02(b) of this Declaration.

1.30 "Unit" and "Living Unit" are synonymous terms and shall mean and refer to the separate interests in space, the boundaries of which are described on the recorded final Condominium Plan in sufficient detail to locate all boundaries thereof.

1.31 "Unit Designation" means the number, letter or combination thereof or other official designations shown on the Condominium Plan.

1.32 Number and Gender. The singular and plural number and masculine, feminine and neuter gender, respectively, shall each include the other where the context requires.

ARTICLE II

DESCRIPTION OF PROJECT: DIVISION OF PROJECT AND CREATION OF PROPERTY RIGHTS

2.01 Description of Project: The Project consists of the above-referenced underlying tract of land with Condominium Units and all other improvements located thereon, and all appurtenances thereto. The Declarant has constructed or will construct, or there exists, upon the tract of land one or more residential dwelling structures which will be divided into Condominium Units. Reference

is made to the Condominium Plan to supply further details concerning the Project. The development of the Project will be consistent with any overall development plans submitted by Declarant to, and approved by, the United States Department of Veterans Affairs.

2.02 Division of Project: The Project is hereby divided into the following separate freehold estates:

(a) Units: Each of the Living Units is separately shown, numbered and identified on the Condominium Plan by the designation "LU-#", where "#" is the number of the Unit. Each of the Units consists of the aggregate of the spaces bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, and doors of that Unit. Each Unit includes both the portions of the building so described and the airspaces so encompassed, except for any soffits, exposed ceiling beams, interior bearing walls and those areas and those things which are defined as "Common Area" in Article II, Paragraph 2.02(b) of this Declaration. All appliances, fixtures, and utility installations located within the Unit are a part of that Unit. Any and all individual heating and air conditioning equipment that serves only one Unit but is located outside that Unit is also part of that Unit. Each Unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Article VIII, Paragraph 8.06 of this Declaration. In interpreting deeds and plans, the then existing physical boundaries of a 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 Plan regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the Plan or deed and those of the building.

(b) Common Areas: The remaining portion of the Project is referred to herein as "Common Area" and shall include, without limitation: land; landscaping; driveway and ramp areas; exterior stairs and stairway areas; walkways and walkway areas; storage room(s); courtyard and planter areas; elevator area and equipment; utility areas; trash chute and dumpster areas; perimeter fencing; controlled access gate(s) and intercom(s); and the bearing walls, columns, girders, subfloors, unfinished floors, roofs and foundations of all buildings shown on the Plan; reservoirs, tanks, pumps, ducts, flues, chutes, conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof, other than central fire protection sprinkler heads, when located within a Unit), required to provide power, light, telephone, television, gas, water, sewerage, drainage, and other utility service. Each Unit Owner shall have, as appurtenant to his Unit, an undivided interest in the Common Area equal to the quotient obtained by dividing the number one (1) by the number of Units within the Project. The ownership of each Condominium shall include a Unit

and such undivided interest in the Common Area. The common interest appurtenant to each Unit is declared to be permanent in character and cannot be altered without the consent of all the Unit Owners affected, and at least sixty-seven percent (67%) of the first mortgagees of such Unit Owners, as expressed in an amended declaration. Such common interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner may use the Common Area in accordance with the purposes for which it is intended without interfering with the rights of any other Unit Owner. Each Unit shall have appurtenant to it a nonexclusive easement for ingress, egress and support through the Common Area.

2.03 Exclusive Use Common Areas: Certain balcony areas, patio areas, garage areas, storage cabinet areas and parking spaces within the Project are Exclusive Use Common Areas and are identified on the Condominium Plan by the designations "B-#" for balcony area, "P-#" for patio area, "G-#" for garage area, and "SC-#" for storage cabinet area and "PS-#" for parking space, where "#" is a number which identifies the number of the Unit to which such Exclusive Use Common Area is made permanently and irrevocably appurtenant by and upon the proper recordation of this Declaration in the Office of the County Recorder where the Project is located. In the event that more than one Exclusive Use Common Area of the same type is appurtenant to any given Unit, then the symbol "*" will appear immediately after "#" in the designations shown on the Condominium Plan, where "*" is a number or letter which has no relation to the number of any Unit, but is simply used as a means to distinguish one such area from another of the same type that is appurtenant to the same Unit. Any and all such Exclusive Use Common Areas which are appurtenant to any given Unit shall be described and included in the first conveyance of such Unit by the Declarant to the purchaser thereof (and in any and all subsequent conveyances of such Unit) and shall thereafter be available for the exclusive use and enjoyment of the Owner of the respective Unit transferred thereby upon recordation of such conveyance in the Office of the County Recorder where the Project is located. Any and all fireplaces, internal and external telephone wiring, shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, railings, patios, exterior doors, door frames, screens and windows, and hardware incident thereto, or other fixtures designed to serve a single Unit, but located outside the boundaries of the Unit, are Exclusive Use Common Areas allocated exclusively to that Unit.

2.04 No Separate Conveyance of Undivided Interests: The foregoing undivided interests are hereby established and are to be conveyed with the respective Units as indicated above, cannot be changed, except as herein set forth, and the Declarant, its successors, assigns and grantees covenant and agree that the undivided interests in the Common Area and the fee title to the respective Units conveyed therewith shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

2.05 Partition Prohibited: The Common Area shall remain undivided as set forth hereinabove. Except as provided by California Civil Code Section 1359, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby, but partition of title to a single unit is prohibited.

2.06 Power of Attorney: The Board of Directors is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interest in the Project may be had pursuant to the provisions of California Civil Code Section 1359. The power of attorney herein granted may be exercised only upon the vote or written consent of two thirds (2/3rd) of the total voting power of the Association, which shall include two-thirds (2/3rd) of the Members other than the Declarant, or where the two-class voting structure is still in effect, shall include two-thirds (2/3rd) of the voting power of each class of Members, provided, however, that said power of attorney shall not apply to the Secretary, United States Department of Veterans Affairs, an Officer of the United States of America. Any two (2) Directors are hereby authorized to record a certificate of exercise in the Office of the County Recorder where the Project is located, which certificate shall be conclusive in favor of any person relying thereon in good faith.

ARTICLE III

ASSOCIATION: ADMINISTRATION, MEMBERSHIP, VOTING RIGHTS, DUTIES AND POWERS

3.01 Association to Manage Common Area: The Owners of all Condominiums covenant and agree that the management of the Common Area and the overall administration of the Project shall be vested in the Association in accordance with the provisions of the Condominium Documents.

3.02 Membership: The Owner of a Unit shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be held in accordance with the provisions of the Condominium Documents.

3.03 Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or foreclosure of the Unit to which it is appurtenant, and then only to the purchaser in the case of a sale, or mortgagee in the case of a foreclosure of such Unit. Upon death of a Member his membership passes automatically, along with title to his Unit, to his heirs. A mortgagee does not have membership

rights until he becomes an owner by foreclosure. Any attempt to make a prohibited transfer is void. No Member may resign his membership. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon its books, and thereupon any old membership outstanding in the name of the seller shall be null and void.

3.04 Membership Classes and Voting Rights: The Association shall have two (2) classes of voting membership:

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

(b) Class B: Class B Members shall be the Declarant, and shall be entitled to vote as follows: voting shall be the same as for Class A memberships, except that the Class B Members may triple their votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(1) When the total votes outstanding in the Class A membership equal the total votes (tripled as stated above) outstanding in the Class B membership; or

(2) On the second anniversary date of the first conveyance of a Unit in the original issuance of the final subdivision report for the Project.

3.05 Duties: In addition to the duties elsewhere enumerated or provided for in the Condominium Documents, and without limiting the generality thereof, the Association shall perform the following duties:

(a) Maintenance: The Association shall maintain, repair, replace, restore, operate and manage all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of, or caused by, the willful or negligent act or neglect of an Owner, or his guests, tenants or invitees, the cost of which is not covered by insurance maintained by the Association. The repair or replacement resulting from such excluded items shall be the responsibility of that Owner; provided, however, that if an Owner should fail to make the repairs or replacements which are the responsibility of such Owner, as provided above, then, upon a vote

of a majority of the Board of Directors, and after not less than thirty (30) days notice to the Owner, and hearing, the Association shall have the right, but not the obligation, to enter the Condominium and make such repairs or replacements, and the cost thereof shall be added to the assessments chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium.

(b) Insurance: The Association shall procure and maintain such policy or policies of insurance as are required by the Condominium Documents.

(c) Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Member or Members responsible for the existence of said lien.

(d) Assessments: The Association shall fix, levy, collect and enforce assessments as set forth in the Condominium Documents.

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

(f) Enforcement: The Association shall enforce the provisions of the Condominium Documents.

(g) Security: The Association shall provide reasonable security for the Common Area.

(h) Availability of Documentation: The Association shall make available to any prospective purchaser of a Condominium, any Owner of a Condominium, any first mortgagee, and the holders, insurers and guarantors of any first mortgage on any Condominium, current copies of the Declaration, the Articles, the Bylaws, any rules governing the Condominium and all the books, records and financial statements of the Association. "Available" as used in this paragraph shall at least mean available for inspection upon request during normal business hours or under other reasonable circumstances.

(i) Utility Suppliers: The Association shall permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development and operation of the Project.

3.06 Powers: In addition to the powers elsewhere enumerated or provided for in the Condominium Documents, and without limiting the generality thereof, the Association shall have the following powers:

(a) Utility Service: The Association shall have the authority to obtain for the common benefit of all of the Condominiums, all water, gas, telephone, sewer, and electric service and refuse collection, and janitorial or window cleaning service, and other necessary utility service. The Association shall pay all charges for utilities supplied to the Project except those metered and charged separately to the Units.

(b) Easements: The Association shall have authority to grant easements where necessary for utilities, sewer facilities and otherwise over the Common Area to serve the common and open space areas and the Condominium Units.

(c) Manager: The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except the power to conduct hearings, impose discipline, file suit, record or foreclosure liens, or make capital expenditures, provided, that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the Members of the Association, and to terminate the same without cause or payment of a termination fee on thirty (30) days written notice.

(d) Adoption of Rules: The Association may adopt reasonable rules not inconsistent with this Declaration relating to the use of the Common Area and all facilities thereof, and the conduct of Owners and their tenants and guests with respect to the Project and other Owners.

(e) Access: For the purpose of performing the maintenance of the Common Area, or for any other purpose related to the performance by the Association or the Board of Directors of their respective responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Unit or to enter any portion of the Common Area to effect emergency repairs. Such entry for purposes of maintenance, replacement, improvement or nonemergency repair may be made only after such action has been approved as being reasonably necessary by at least a two-thirds (2/3rds) vote of the Board and at least three (3) days notice has been given to the Owners of any Units involved. All such entries shall be made with as little inconvenience as possible to the Owner involved and any damage caused thereby shall be repaired by the Board at the expense of the Association.

(f) Assessments and Suspension: The Association shall have the power to fix, levy and collect assessments in accordance with the provisions of the Condominium Documents. The Association may suspend the voting rights of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty

(30) days for any infraction of its published rules and regulations, if any, provided that the accused Member is given notice and an opportunity to be heard with respect to the alleged default or violation, pursuant to Corporations Code Section 7341 and Article VIII, Section 8.02 of this Declaration, before a decision is made to impose discipline against the member.

(g) Enforcement: The Association shall have the authority to enforce the Condominium Documents pursuant to the provisions of Corporations Code Section 7341 (as more particularly set forth in Paragraphs 8.01 and 8.02 of this Declaration).

(h) Acquisition and Disposition of Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by three-fourths (3/4ths) of the total voting power of the Association, which shall include three-fourths (3/4ths) of the Members other than the Declarant.

(i) Loans: The Association shall have the power to borrow money, and only with the assent by vote or written consent of three-fourths (3/4ths) of the first Mortgagees and of each class of Members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

(j) Dedication: The Association shall have the power to dedicate or transfer all or substantially all of its assets, including all or any part of the Common Area, to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding any contrary provision in the Articles or Bylaws, so long as there is any Condominium for which the Association is obligated to provide management, maintenance, preservation or control, no such dedication or transfer shall be effective unless an instrument approving same has been signed by one hundred percent (100%) of the total voting power of the Association.

(k) Contracts: The Association shall have the power to contract for goods and/or services for the Common Area or for the Association, provided the term of such contract does not exceed one (1) year and subject to the other limitations elsewhere set forth in the Condominium Documents.

(l) Delegation: The Association shall have the power to appoint committees, including Architectural Control and Nominating Committees, and to delegate its authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, subject to the limitations elsewhere set forth in the Condominium Documents.

ARTICLE IV

ASSESSMENTS4.01 Creation of Lien: Personal Obligation of Assessments:

The Declarant, for each Unit owned within the Project, hereby covenants, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to pay assessments to the Association for purposes herein permitted, which are to be established and collected as hereinafter provided. The assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them. No Owner of a Condominium may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of the Common Area or by the abandonment of his Condominium.

4.02 Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of all the residents in the entire Project, and for the improvement and maintenance of the Common Area for the common good of the Project. The Association shall not impose or collect an assessment, penalty or fee that exceeds the amount necessary to defray the costs for which it is levied.

4.03 Types of Assessment:

(a) Annual Assessments: The Board shall establish and levy annual assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. Failure by the Board to set assessments for any given year shall not be deemed a waiver of the assessments for that year, but rather the prior year's assessments shall continue.

(b) Special Assessments: The Board, at any time, may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, to cover the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Area, or for such other purposes as the Board in its discretion considers appropriate.

(c) Utility Assessments (When Applicable): In the event that any water or other public utility service provided to the

Project is sub-metered to the separate Units privately by the Association rather than directly by the public utility company and the cost of such service to the Units is not included in the annual assessments levied by the Board, then the Board shall periodically levy a utility assessment against each Unit to reimburse the Association for the actual cost of such service to that Unit that was billed to the Association by the public utility company.

4.04 Limitations on Annual and Special Assessments: Until the first (1st) day of January of the year immediately following the issuance of the public report for the Project, the maximum annual assessment shall be sufficient to cover the maintenance, utility, insurance, and other reasonable and necessary operating expenses for the common good of the Project during this period of time and, except as otherwise provided in this Article, shall be in accordance with and shall not exceed the amount set forth in the budget approved by the Department of Real Estate (a copy of which, in pertinent part, is attached hereto for reference and is labeled as Exhibit "B" to this Declaration). From and after the first (1st) day of January of the year immediately following the issuance of the public report for the Project, the Board may not impose an annual assessment that is more than twenty percent (20%) greater than the annual 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. For the purposes of this paragraph, quorum means more than fifty percent (50%) of the Owners of the Association. This paragraph does not limit assessment increases necessary for emergency situations. For purposes of this paragraph, an emergency situation is any one of the following: (1) an extraordinary expense required by an order of a court, (2) an extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible, where a threat to personal safety on the property is discovered, (3) an extraordinary expense necessary to repair or maintain the Project, or any part of it for which the Association is responsible, that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget under Civil Code Section 1365; provided that, prior to the imposition or collection of an assessment under this Subparagraph 3, 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. The Association shall provide notice by first-class mail to the Owners of the Units of any increase in the annual or special assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming

due. The annual assessment may not be decreased either by the Board or by the Members by more than ten percent (10%) in any one year without the approval of at least sixty-seven percent (67%) of the voting power of the Association residing in Members other than the Declarant, or where the two-class voting structure is still in effect, at least sixty-seven percent (67%) of each class of Members. Without the approval of the Members of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum nor less than the minimum; however, annual increases in annual assessments for any fiscal year, as authorized hereinabove, shall not be imposed unless the Board has complied with subdivision (a) of Civil Code Section 1365 with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this paragraph, "quorum" means more than fifty (50%) percent of the Owners of the Association. During the time the Project is subject to an outstanding public report, the Declarant shall notify the Department of Real Estate of any increase of ten percent (10%) or more over the amount of the annual assessment reflected in the current public report for the Project.

4.05 Mid-Year Revision of Annual Assessment: Subject to the limitations on the maximum and minimum amount of assessments herein provided, if at any time during the course of any year the Board shall deem the amount of the annual assessment to be inadequate or excessive, the Board shall have the power, at a regular or special meeting, to revise the assessment for the balance of the assessment year, effective on the first day of the month next following the date of the revision.

4.06 Reserves for Replacement: As part of the regular annual assessments for maintenance authorized hereinabove, the Board of Directors shall annually fix the amount to be contributed pro rata by each Member to reserve funds for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position.

4.07 Trust Accounts: Amounts received by the Association as contributions, assessments or dues from the Owners shall be held in two (2) or more trust accounts so that reserves for capital improvements and for replacement are clearly separated from funds for operating expenses, repair, and maintenance. Capital improvement and replacement funds shall be used solely for capital improvements and replacements of the Common Area within the Project.

4.08 Division and Collection of Assessments: Annual assessments shall be charged to and divided among the Unit Owners equally (pro rata according to the total number of Units in the Project); provided that, if the original budget of the Association which is first duly approved by the Department of Real Estate (a partial copy of which, in pertinent part, is attached hereto for reference and is labeled as Exhibit "B" to this Declaration) provides for variable assessments, then, notwithstanding the equal division set forth hereinabove, the annual and special assessments shall be charged to and divided among the Unit Owners according to the same formula or schedule under which said budget was calculated so that the assessments against the various Unit Owners bear a relationship which is equitably proportionate to the value of common services furnished to the respective Units. Special assessments shall be levied on the same basis as annual assessments, except where the special assessments against a Member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the Member and his Unit into compliance with the provisions of the Condominium Documents, and provided that a special assessment against Owners to raise funds for the rebuilding or major repair of the structural common area housing Units of the Project shall be levied upon the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units to be assessed. The Board shall fix the method of payment of such assessments and shall be empowered to permit either lump sum or monthly payments. Any and all utility assessments shall be charged to and divided among the Units in a manner which reflects the actual cost of any and all such services provided to a particular separate Unit but billed to the Association during the immediately preceding billing cycle of the public utility company, and notice of such assessments shall be sent to the Owners no later than thirty (30) days after receipt by the Board of each bill from the utility company to the Association.

4.09 Date of Commencement of Annual Assessment; Due Dates: The annual assessments provided for herein shall commence as to all Units covered by this Declaration on the first day of the month following the conveyance of the first Condominium to an individual Owner. The first assessment shall be adjusted according to the number of months remaining in the calendar year. Subject to the provisions of Paragraph 4.04 of this Article, the Board of Directors shall determine and fix the amount of the annual assessment against each Unit and send written notice thereof to every Owner at least thirty (30) but not more than sixty (60) days in advance of each annual assessment period. The due dates for the payment of any assessments and installments thereof shall be established by the Board of Directors, and shall be specified in said notice. Assessments shall be payable in equal monthly installments on the first (1st) day of each month unless otherwise established by the Board.

4.10 Delinquent Assessments: Assessments levied pursuant to the Condominium Documents are delinquent fifteen (15) days after they become due. If an assessment is delinquent, the Association may recover all of the following:

(a) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(b) A late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater.

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

4.11 Transfer of Unit by Sale or Foreclosure: The lien of the assessments and any related interest, late charges, costs and attorney's fees provided for herein shall be subordinate to the lien of any first mortgage upon any Condominium, if the mortgage was recorded before the assessment was due. Sale or transfer of any Unit shall not affect the assessment lien; however, the sale or transfer of any Unit pursuant to a power of sale or judicial foreclosure of any first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, if the mortgage was recorded before the assessment was due. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof. Where the mortgagee of a first mortgage of record obtains title to the same as a result of a power of sale or judicial foreclosure of any such first mortgage, such acquirer of title, his successor and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer, if the mortgage was recorded before the assessment was due. 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.

4.12 Lien for Assessments; Notice; Enforcement; Priorities:

(a) An assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with Civil Code Section 1366, shall be a debt of the Owner of the separate Unit at the time the assessment or other sums are levied. Before the Association may place a lien upon the separate interest of an Owner to collect a debt which is past due under this Article, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including

items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. Any payments toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses.

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Civil Code Section 1366, shall be a lien on the Owner's Unit in the Project from and after the time the Association causes to be recorded with the county recorder of the county in which the Project is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Civil Code Section 1366, a legal description of the Owner's Unit in the Project against which the assessment and other sums are levied, the name of the record owner of the Unit in the Project against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in Civil Code Section 1367 subdivision (d), the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the president of the Association, and shall be mailed in the manner set forth in Civil Code Section 2924b to all record Owners of the separate interest against which the assessment and other sums are levied no later than ten (10) calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof.

(c) A lien created pursuant to Civil Code Section 1367(b) shall be prior to all other liens recorded subsequent to the notice of assessment, except all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and except the lien or charge of any first mortgage of record.

(d) After the expiration of thirty (30) days following the recording of a lien created pursuant to Civil Code Section 1367(b), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Civil Code Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trust.

(e) Nothing in Civil Code Section 1367 or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to said action or prohibits an

association from taking a deed in lieu of foreclosure. 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. During the period a Unit is owned by the Association following foreclosure: (a) No right to vote shall be exercised on behalf of the Unit; and (b) No assessment shall be assessed or levied on the Unit; and (c) Each other Unit shall be charged, in addition to its usual assessment, its proportionate share of the assessment that would have been charged to such Unit had it not been acquired by the Association as a result of foreclosure. After acquiring title to the Unit at foreclosure sale, following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Unit, which deed shall be binding upon the Owners, successors, and all other parties. Each Owner, to the extent permitted by law, waives to the extent of any liens created pursuant to this Declaration, the benefit of any homestead or exemption laws of California in effect at the time any assessment or installment becomes delinquent or any lien is imposed. The Board may temporarily suspend the voting rights of a Member who is in default in payment of any assessment, after notice and hearing as provided in Section 8.02 of this Declaration.

4.13 Unallocated Taxes: In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, said taxes shall be included in the assessments made under the provisions of Paragraph 4.01 of this Article, and, if necessary, a special assessment may be levied against the Units in an amount equal to said taxes, to be paid no later than thirty (30) days prior to the due date of said tax.

4.14 Estoppel Certificate: The Association shall, upon demand by any person and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Unit have been paid. Such a certificate, when properly executed, shall be conclusive evidence of such payments as of the date of its issuance.

4.15 Membership Approval: Any action authorized under Section 4.04 hereinabove, which requires a vote of the membership of the Association, shall be taken at a meeting called for that purpose, written notice of which shall be given to all Members of the Association by personal delivery or by first-class, registered or certified mail not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. If a quorum is present and the proposed action is favored by a majority vote of the Members present at such meeting, but such vote is less than a majority of the total voting power of the Association, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the

Association not later than thirty (30) days from the date of such meeting.

4.16 Initial Capitalization of the Association. Upon acquisition of record title to a Condominium from Declarant, each Owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6th) the amount of the then annual assessment for the Condominium as determined by the Board. This amount shall be deposited by the buyer in to the purchase and sale escrow and disbursed therefrom to the Association. This shall not constitute a prepayment of two month's annual assessments. Within six (6) months after the close of the first escrow, Declarant shall deposit into an escrow an amount equal to one-sixth (1/6th) of the then Regular annual assessment for any and all units which are not yet sold and on which assessments have commenced. Escrow shall remit these funds to the Association. Upon close of escrow of any unit for which this capital contribution was prepaid by Declarant, escrow shall remit to Declarant the capitalization fee collected from the buyer.

ARTICLE V

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project, and each condominium therein, is subject to the following:

5.01 Condominium Use: No Condominium shall be occupied and/or used except for residential purposes by the Owners, their tenants, members of their families, and their social guests and no trade or business shall be conducted therein, except that the Declarant, its successors or assigns, may use any Unit in the Project owned by the Declarant for a model home site and display and sales office during construction and until the last Unit is sold by the Declarant or three years from the date of the closing of the first sale of a Condominium, whichever shall first occur, and further excepted that any Owner or tenant actually residing in a Unit may use a part of that Unit as an office, with a desk, business telephone, and with the Unit as a business address, provided that, considering the residential nature of the Project rather than the nature of any given business, such use does not involve an unreasonable number of clients, customers or other persons coming to the Unit for business purposes, nor an unreasonable amount of mail or other business deliveries to the Unit, and further provided that such use does not interfere with any other Owner's or tenant's quiet enjoyment of his Unit or otherwise violate any covenant or restriction set forth in Section 5.03 hereinbelow or elsewhere in this Declaration regarding nuisances. No element of a Unit other than living area elements shall be used at any time as a residence, either temporarily or permanently. No tent, shack, trailer, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

5.02 Common Area Use: The Common Area may be used for pedestrian movement within the Project, for vehicular passage to and from any parking spaces, and for storage, laundry, trash, and recreational purposes in the appropriate and designated areas, if any. All owners and tenants shall have reasonable rights of ingress to and egress from their respective Condominiums and any and all Exclusive Use Common Areas appurtenant thereto. Vehicles may only be parked in garages and parking spaces, not in driveways.

5.03 Nuisances: No noxious, illegal, or offensive activities shall be carried on upon any Condominium, or in any part of the Project, nor shall anything be done thereon which may be or becomes an annoyance or a nuisance to, or which may in any way interfere with, the quiet enjoyment of each of the Owners of his respective Unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be canceled or cause a refusal to renew the same, or which will impair the structural integrity of any building.

5.04 Vehicle Restrictions: No vehicle maintenance, other than emergency work, shall be permitted on the Project, except with prior written approval of the Board. No trailer, camper, mobile home, commercial vehicle, truck (other than standard size vans or pickup truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Project, other than temporarily, unless placed or maintained within an enclosed parking area, except with prior written approval of the Board. Commercial vehicles shall not include sedans or standard size van or 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 vehicles shall be operated on the Project. No off-road, unlicensed motor vehicles shall be operated upon the Project.

5.05 Signs: Except as provided in Article VIII, Section 8.09, paragraph (d) of this Declaration, or except as expressly authorized in advance by the Board, no signs, other than one (1) sign of customary and reasonable dimensions advertising a Condominium for sale or lease and displayed or erected in such Units, shall be displayed to the public view on any Units or any portion of the Project except such signs as are approved by the Board or committee appointed by the Board. All signs must conform to the applicable ordinances of the city and county in which the Project is located.

5.06 Animals: No more than two (2) usual and ordinary household pets, such as dogs, cats, and caged birds, and fish in no more than two (2) household aquariums, may be kept by an Owner in his Unit, provided that such pets are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Notwithstanding the foregoing, no pets may be kept on the Project which result in an annoyance or are

obnoxious to other Unit Owners. No pets shall be allowed in the Common Area except as may be permitted by rules of the Board. Owners shall clean up after their pets.

5.07 Garbage and Refuse Disposal: All rubbish, trash and garbage shall be regularly removed from each Unit and from the Common Area, and shall not be allowed to accumulate thereon. Trash, garbage, and other waste shall be kept in sanitary containers, which shall be kept in a clean and sanitary condition, and which shall be concealed from the view of other Units.

5.08 Radio and Television Antennas:

(a) No alteration to or modification of any central radio and/or television antenna system or cable television system installed and/or maintained by the Declarant, the Association, or a cable television company shall be permitted, and no Owner shall be permitted to construct and/or use and operate his own external radio and/or television antenna or satellite dish or related equipment, without the advance written consent of the Board. Applications for approval shall be processed in the same manner as for an architectural modification to the Project, and the issuance of a decision shall not be willfully delayed.

(b) The Board shall have the power to impose reasonable restrictions on the installation and use of a video or television antenna, including a satellite dish, that has a diameter or diagonal measurement of thirty-six (36) inches or less, as long as such restrictions do not significantly increase the cost of the antenna system or significantly decrease its performance. Such restrictions may include provisions for the maintenance, repair, or replacement of roofs or other building components that are affected, and requirements for installers to indemnify or reimburse the Association or its Members for any loss or damage caused by the installation, maintenance or use of such antenna.

5.09 Right to Lease: The respective Condominiums shall not be leased or rented by the Owners thereof for transient or hotel purposes, which shall include a rental for any period less than thirty (30) days (except a preclosing rental to the purchaser of such Unit). Subject to the foregoing restrictions, the Owners of the respective Condominiums shall have the absolute right to lease same, and in connection therewith to delegate use and enjoyment of the Common Area provided that the lease is in writing, and is made subject to the covenants, conditions, restrictions, limitations and uses contained in this Declaration and the other Condominium Documents, and any rules or regulations established by the Board of Directors regarding occupancy or use of the Units and Common Area by non-Owner occupants, and further provided that any Owner who rents or leases his Unit shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of their family occupying such Unit and the address and telephone number where such Owner can be reached. Owners who do not reside

within the Project and who have rented or leased their Unit are not permitted to use any recreational facilities of the Project during the term of such rental or lease. The Board may enforce any breach of this Declaration, the other Condominium Documents, and/or the rules and regulations established by the Board for non-Owner occupants, by a legal proceeding brought directly against such non-Owner occupant without the necessity of joining the Owner as a party to such proceeding.

5.10 Drapes; Interior Flooring: All drapes, curtains, blinds and other window coverings, visible from the street or Common Area shall be colors and patterns which are approved by the Board or its authorized committee. No hard surface flooring (including but not limited to hardwood floors, ceramic tile or marble) shall be installed in any Unit on the second, third or fourth floor of the building without an underlayment of cork or similar sound insulation material with a minimum thickness of one-quarter inch.

5.11 Clothes Lines: No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes, except with prior written approval of the Board.

5.12 Power Equipment: No power equipment, hobby shops, or carpentry shops shall be permitted on the Project except with prior written approval of the Board. Approval shall not be unreasonably withheld, and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

5.13 Liability of Owners for Damage to Common Area: The Owner of each Unit shall be liable to the Association for all damages to the Common Area or improvements thereon caused by such Owner or any occupant of his Unit or guest, as such liability may be determined pursuant to the laws of the State of California, except for that portion of said damage, if any, fully covered by insurance maintained by the Association. Liability of an Owner shall be established only after notice to the Owner and hearing before the Board.

5.14 Architectural Control:

(a) Committee: The Architectural Control Committee shall consist of three (3) members. The Declarant shall appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of a final public report for the Project. The Declarant reserves to itself the power to appoint a majority of the members of the Committee until ninety percent (90%) of all the Units in the Project have been sold or until the fifth anniversary of the issuance of the final public report for the Project, whichever occurs first. After one year from the date of issuance of the original public report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of all the Units in the Project have been sold or until the fifth

anniversary date of the issuance of the final public report for the Project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Architectural Control Committee. Members appointed to the Architectural Control Committee by the Board need not be from the membership of the Association. Members appointed to the Architectural Control Committee by the Declarant need not be Members of the Association. 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 the Declarant no longer has the right to appoint any members to the Committee, and thereafter the remaining members of the Committee shall have full authority to designate such a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to the provisions of the Condominium Documents. At any time after the Declarant's right to appoint a majority of the members of the Committee is terminated, the then record Owners of a majority of the Units shall have the power, through a duly recorded written instrument, to change the membership of the Committee or to change any of its powers and duties.

(b) Restrictions: No building, fence, wall, obstruction, wiring, plumbing, screen, patio, patio cover, tent, awning, carport, carport cover, landscaping, planting, improvement, or structure of any kind shall be commenced, installed, erected, stained, painted or maintained upon the Common Area of the Project, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by the Architectural Control Committee appointed by the Board. No permission or approval shall be required to repaint in accordance with the Declarant's original color scheme previously approved by the Board or the Committee, or to rebuild in accordance with plans and specifications previously approved by the Board or by the Committee.

(c) Modification for Handicapped: If the boundaries of a separate Unit are contained within the Condominium Building, the Owner of the Unit may modify his Unit, at his own expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled or alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from public way to the door of the Unit for purposes of this paragraph if the Unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions:

(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 the Condominium Documents pertaining to safety or aesthetics.

(3) Modifications external to the Unit shall not prevent reasonable passage by other residents, and shall be removed by the Owner when the Unit is no longer occupied by disabled persons requiring those modifications.

(4) Any Owner who intends to modify his Unit pursuant to this paragraph shall submit his plans and specifications to the Association for review to determine whether the modifications will comply with the provisions of this paragraph. The Association shall not deny approval of the proposed modifications under this paragraph without good cause.

(d) Modifications Of Unit: The establishment of the Architectural Control Committee and the procedures described in this Section for architectural approval shall not be construed as changing any rights of or restrictions upon Owners to maintain, repair, alter, modify or otherwise have control over their Condominiums as may be specified in Section 8.07 or elsewhere in this Declaration, or in the Bylaws or in the Association rules; provided that any alteration, improvement or maintenance within the boundaries of any Unit shall not impair the Project's structural integrity, utilities, mechanical systems or support.

(e) Reconstruction After Destruction: The reconstruction of any Condominium Building after destruction, which is accomplished in substantial compliance with the Condominium Plan filed covering the portion of the Project in which such Condominium Building is situated shall not require compliance with the provisions of this Section. Such reconstruction shall be conclusively deemed to be in substantial compliance with such Condominium Plan if it has received the approval of the Board.

(f) Architectural Standards: The Board shall adopt and promulgate Architectural Standards to be administered through its Architectural Control Committee. The Architectural Standards shall include the following restrictions and limitations:

(1) Time limitations for the completion of the improvements for which approval is required pursuant to the Architectural Standards;

(2) Conformity of completed improvements to plans and specifications approved by the committee; provided, however, that as to purchasers and encumbrancers in good faith and for value, unless a notice of noncompletion or nonperformance identifying the violating Condominium and its Owner and specifying the reason for the notice, executed by the Committee, is recorded in the Recorder's Office of the County in which the Project is located and given to such Owner within thirty (30) days of the expiration of the time limitation described in subsection

(1) above, or unless legal proceedings have been instituted to enforce compliance or completion within that thirty-day period, the completed architectural improvements shall be deemed to be in compliance with plans and specification approved by the Committee;

(3) Such other limitations and restrictions as the Board in its reasonable discretion shall adopt, including, without limitation, regulation of construction, reconstruction, exterior addition, change, alteration to or maintenance of any building, with regard to the nature, kind, shape, height, materials, exterior color and surface and location of such structure.

(g) Submission, Approval and Conformity of Plans: Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. The Committee may establish reasonable procedural rules and may assess a reasonable fee, not to exceed Two Hundred Fifty Dollars (\$250.00) per submission, in connection with review of plans and specifications. Unless such rules regarding submission of plans are complied with, such plans and specifications shall be deemed not submitted. In the event the Committee fails to approve or disapprove plans or other requests submitted to it within thirty (30) days after such submission, then such approval will not be required so long as any structure or improvement erected or altered pursuant to such plans conforms to all the conditions and restrictions herein contained and is in harmony with similar structures erected within the Project. The Committee may delegate its plan review responsibilities to one (1) or more members of the Committee. Upon such delegation, the approval or disapproval of plans and specifications by such persons shall be equivalent to approval or disapproval by the entire Committee.

The address of the Committee shall be the principal office of the Association as designated by the Board pursuant to the Bylaws. Such address shall be the place for submissions of plans and specifications and the place where the current Architectural Standards, if any, shall be kept. Review and approval by the Committee of plans and specifications does not constitute approval of engineering design, and by approving such plans and specifications, neither the Committee, the members thereof, the Association, the Members, the Board, nor Declarant assumes liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Approval of plans and specifications by the Committee does not relieve the Owner of the responsibility to obtain necessary building permits and approvals from the appropriate governmental

entities. Before any such alterations or improvements are actually commenced, the Owner shall also comply with any and all applicable governmental laws and regulations.

(h) Appeal: In the event plans and specifications submitted to the Architectural Control Committee are disapproved, the party making such submission may appeal in writing to the Board. The written request must be received by the Board not more than thirty (30) days following the final decision of the Committee. The Board shall submit such request to the Committee for comment, and the Committee's written comments will be submitted to the Board. Within forty-five (45) days following receipt of the request for appeal, the Board shall render its written decision. Failure of the Board to render a decision within this forty-five day period shall be deemed a decision in favor of the applicant.

ARTICLE VI

INSURANCE, DAMAGE AND DESTRUCTION:

6.01 Insurance: The Association shall obtain and continue in effect a master policy of insurance, which meets or exceeds any requirements of the Federal Home Loan Mortgage Corporation, and/or the Federal National Mortgage Association if either or both of such entities, respectively, owns or holds a Mortgage on a Condominium in the Project, and which covers all of the personal property and supplies of the Association and all of the real property and improvements of the Project, including the Units, and protecting the interests of the Association, its Members, and their mortgages, as their interests may appear, including without limitation, insurance of the following types:

(a) Insurance on the building itself as originally constructed, but excluding equipment, fixtures, furniture, furnishings, and other personal property supplied or installed by an Owner within his Unit. Insurance shall be in an amount as near as practicable to the full replacement cost of the building, without deduction for depreciation, and shall insure against loss caused by all risks of direct physical loss, subject to the customary and acceptable exclusions, conditions, limitations and/or deductible. By optional perils endorsement the Board may insure against loss caused by breakage of glass, falling objects, water damage, collapse, vandalism, malicious mischief, or loss due to such other peril as the Board may consider reasonable or prudent to insure against. The insurance maintained under this Subparagraph 6.01(a) shall provide that such policy may not be canceled (whether or not requested by the Board) except by the insurer giving at least thirty (30) days prior written notice thereof to the Association and Board, and every other interested person who shall have requested such notice of the insurer, and shall contain a standard lender's loss payable endorsement.

(b) During any period when the insurance provided for under Subparagraph 6.01(a) hereinabove would not be in full force and effect because of any repair or reconstruction of the building, the Board shall obtain and maintain "course of construction" insurance on the buildings, in completed value form, against all risks of direct physical loss, in an amount not less than the full amount of the cost of such repair or restoration, as estimated by the Board.

(c) Comprehensive general liability insurance covering the Association against liability for all civil claims arising out of the Common Area of the Project, or any other real or personal property owned or maintained by the Association, with minimum limits of at least Two Million Dollars (\$2,000,000.00) if the Project consists of 100 or fewer Condominium Units, and Three Million Dollars (\$3,000,000.00) if the Project consists of more than 100 Condominium Units.

(d) A policy of Workmen's Compensation Insurance to the extent required to comply with any applicable laws.

(e) A comprehensive coverage endorsement or fidelity bond written in an amount at least equal to the estimated maximum of funds, including reserves, in the custody of the Association or its management agent at any given time during the term of the fidelity bond, provided that the bond shall not be less than a sum equal to three (3) months aggregate assessments, plus reserves, on all Condominium Units. The bond must name the Association as insured and insure against misuse and misappropriation of Association funds by members of the Board of Directors, officers and employees of the Association, and any management agent or his employees, whether or not such persons are compensated for their services.

(f) Director's and officer's liability insurance covering persons serving in such capacities, and insuring against loss because of any civil claim made against Directors or officers for any negligent act, error, omission, or breach of duty by any one or all of them.

(g) If, at any time, flood insurance is required by any mortgagee of a Condominium or by any lender who desires to become a mortgagee of any Condominium by reason of any applicable law, ordinance, statute or the like requiring flood insurance as a condition of such mortgagee's or lender's loan remaining or being made, the Board shall forthwith obtain such flood insurance covering the entirety of the Project in amount and coverage, and with such carrier(s) and subject to such terms, as shall satisfy such mortgagee or lender.

The limits and coverage of all insurance provided for herein or otherwise acquired shall be reviewed at intervals of not more than one (1) year and adjusted, if necessary, to provide such

coverage and protection as the Association may deem prudent. Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association and the portion of such payment necessary for the insurance premiums shall be held in a separate account of the Association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due. Each buyer of a Unit shall pay the portion of the premiums attributable to his Unit for the policy or policies purchased by the Declarant for the Association. All property, liability and other insurance carried by the Declarant for the Association and/or the Owners shall contain a cross liability or severability of interest endorsement and a waiver of subrogation provision as to the Association, officers, and Directors, and any Members, their tenants, guests, agents, and employees. Copies of all insurance policies maintained by the Association shall be retained by the Board and shall open for inspection by Owners at any reasonable time.

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.

No Condominium Owner shall separately insure his or her 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 result from the existence of such other insurance will be chargeable to the Owner who acquired other insurance.

Insurance maintained by the Association does not cover the Owner's or occupant's personal property and does not cover personal liability for damages or injuries occurring within the Unit. Any Owner can insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by an Owner within his or her Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements".

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.

6.02 Damage and Destruction: If the Project is destroyed or damaged by fire or any other casualty, the payment and the application of the insurance proceeds, if any, from any policy obtained by the Association pursuant to this Declaration or from any loss payable endorsement, the repair and rebuilding of the Project, and the other consequences of such destruction and damage, shall be as follows:

(a) Within thirty (30) days after the date of such damage or destruction, the Board shall ascertain the cost of repair or reconstruction by obtaining fixed price bids from at least two (2) reputable licensed general contractors, including the obligation to obtain a performance bond if the Board deems one to be necessary, and shall also ascertain the current replacement cost of all Project improvements by obtaining one or more independent appraisals or by other appropriate means, and shall also determine the amount of insurance proceeds if any, by contacting a representative of the Association's insurance carrier. The Board shall have full and sole authority to negotiate with the Association's insurance carrier, and to settle any of the Association's claims for less than full coverage, if to do so is reasonable and/or necessary. Any settlement made in good faith by the Board and the Association's insurance carrier shall be binding upon all Owners. The Board shall also have full and sole authority to contract for the repair and/or reconstruction of all Common Area improvements of the Project.

(b) The Project improvements which have been damaged or destroyed shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, 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 Architectural Control Committee, but excluding any improvements added by individual Owners, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all Project improvements, and available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and at least three-fourths (3/4) of the total voting power of the Association, including three-fourths (3/4) of the voting power held by Members other than Declarant, vote against such repair and reconstruction at a duly called and noticed annual or special meeting of Members at which a quorum is present; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, and a special assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.05, and the Board, without the requirement of approval by the Owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

Any meeting of the Association that is necessary under the provisions of this Paragraph (to vote on the issue of repair and reconstruction, or the issue of a special assessment to supplement any insurance proceeds) shall take place within thirty (30) days after the date that the Board has obtained all of the information specified in Paragraph (a) above.

(c) If the Project is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty-five percent (25%) of the current replacement cost of all common area improvements, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor, and architect certify within ten (10) days prior to any disbursement substantially the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose names and addresses shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of such certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in the foregoing paragraph has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the depository, after payment of the amount requested in the pending

disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

(d) If the cost of repair or reconstruction of the Project is less than twenty-five percent (25%) of the current replacement cost of all common area improvements, then any insurance proceeds shall be paid to the Association, and the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

(e) The repair or reconstruction of the Project shall commence no later than ninety (90) days after the date of such damage or destruction and shall be completed no later than one hundred eighty (180) days after such date, subject to delays that are beyond the control of the party responsible for making the repairs. The Board shall promptly take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction. The repair of any damage to the interior of any Unit shall be made by and at the individual expense of the Owner of that Unit, and shall be completed in a lawful and workman like manner as soon as possible after the repair or reconstruction of the Condominium Building that contains that Unit.

(f) If the Project is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all Owners and their respective mortgages 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, after first applying the proceeds to the cost of clearing debris and mitigating hazardous conditions on the property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

(g) If the failure to repair or reconstruct results in a material alteration of the use of the Project from its use immediately preceding the damage or destruction, as determined by the Board within ninety (90) days after the date of such damage or destruction, the Project shall be sold in its entirety under such terms and conditions as the Board deems appropriate. A material alteration shall be conclusively presumed if repair or reconstruction costs exceed twenty-five percent (25%) of the current replacement cost of all common area improvements. If any Owner or first lender disputes the Board's determination as to a material alteration, the dispute shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator shall be conclusive and binding on all Owners and their mortgagees.

(h) If the Project is sold, the sales proceeds shall be distributed to all Owners and their respective mortgagees in proportion to their respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction, as determined by the independent appraisal procedure described above. For the purpose of effecting a sale under this Section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration and to dissolve the Association. In the event the Association fails to take the necessary steps to sell the entire Project as required hereunder within ninety (90) days following the date of a determination by the Board or arbitrator of a material alteration, or within one hundred eighty (180) days following the date of damage or destruction if the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Project under Civil Code Section 1359, or any successor statute, and the court shall order partition by sale of the entire Project and distribution of the sale proceeds as provided herein.

(i) In the event of substantial damage to or destruction of any Condominium or any part of the Common Area, the institutional lender with respect to such Condominium, or all institutional lenders, respectively, which have informed the Association in writing of their addresses and requested in writing to be notified, shall be sent timely written notice of such damage or destruction, and no provision of the Condominium Documents will entitle the Owner of any damaged Condominium, or any other party, to priority over such institutional lender with respect to the distribution to such Condominium of any insurance proceeds.

(j) The Association is responsible for the repair and maintenance of the Common Area occasioned by the presence of wood-destroying pests or organisms. The cost of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the Owner of the Unit affected. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The Association shall give notice of the need to temporarily vacate a Unit to the occupants and to the Owners 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 temporary relocation, the date and time of the beginning of the treatment, the anticipated date and time of the termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either: (1) personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the Owners, if different than the occupants, by first class mail, postage prepaid, at the most current address shown on the books of the Association, or (2) by sending a copy of the notice to the

occupants at the address of the Unit and a copy of the notice to the Owners, if different than the occupants, by first class mail, postage prepaid, at the most current address shown on the books of the Association. For purposes of this section, "occupant" means an Owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession of the Unit.

ARTICLE VII

INSTITUTION LENDERS

7.01 Rights of Institutional Lenders: No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall impair or render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any Unit 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. A lender who acquires title by foreclosure shall not be obligated to cure any breach of this Declaration or other Condominium Document which is noncurable or of a type which is not practical or feasible to cure. It is intended that any loan to facilitate the resale of any Condominium after foreclosure is a loan made in good faith and for value and entitled to all the rights and protections afforded to other lenders. Notwithstanding any provision in the Condominium Documents to the contrary, institutional lenders shall have the following rights:

(a) Document Availability: The Association shall make available to Condominium Owners and institutional lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the Declaration, Bylaws, Articles, and any other rules concerning the Project, and the books, records, and financial statements of the Association. "Available" means available for inspection and copying (at reasonable charge), upon request, during normal business hours or under other reasonable circumstances.

(b) Audited Statement: Any holder, insurer, or guarantor of a first mortgage shall be entitled, on written request, to an audited financial statement for the immediately preceding fiscal year. If the Project contains fifty (50) or more Units, the Association shall provide such statement at no charge and within a reasonable time following such request. If the Project contains fewer than fifty Units and there is no such statement already available, the requesting party shall be allowed to have such statement prepared within a reasonable time at its own expense.

(c) Required Notices: On written request to the Association, identifying the name and address of the eligible mortgage holder or eligible insurer or guarantor, and the Condominium number or address, such eligible mortgage holder or

eligible insurer or guarantor will be entitled to 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, insurer or guarantor, as applicable.

(2) Any default in performance of obligations under the Project documents or delinquency in the payment of assessments or charges owed by an Owner of a Condominium subject to a first mortgage held, insured, or guaranteed by such eligible mortgage holder, insurer or guarantor, which remains uncured for a period of 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 specified in paragraph (d) herein below; and

(5) Written notice of all meetings of the Association. Such eligible holder, insurer or guarantor shall be permitted to have its designated representative attend all such meetings.

The Association shall discharge its obligation to notify eligible holders, insurers or guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by Article VIII, Section 8.13 of the Declaration.

(d) Material Amendments: Except as provided by statute or by other provision of the Condominium Documents, in case of substantial destruction or condemnation of the Project, and further excepting any reallocation of interests in the Common Area(s) which might occur pursuant to any plan of expansion or phased development contained in the original Condominium Documents, the consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of the Condominiums subject to eligible holder mortgages, shall be required to add or amend any material provisions of the Condominium Documents which establish, provide for, govern, or regulate any of the following: (i) voting; (ii) assessments, assessment liens or the priority of such liens; (iii) reserves for maintenance, repair and replacement of the Common Area(s); (iv) insurance or fidelity bonds; (v) rights to use of Common Area(s) and Exclusive Use Common Areas; (vi) responsibility for maintenance and repair of the

Project; (vii) expansion or contraction of the Project or the addition, annexation, or withdrawal of property to or from the Project (except as provided in the original Condominium Documents); (viii) redefinition of boundaries of any Condominium; (ix) reallocation of the interests in the Common Areas and Exclusive Use Common Area(s); (x) convertibility of Units into Common Area(s) or of Common Area(s) into Units; (xi) leasing of Condominiums; (xii) imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer, or otherwise convey his or her Condominium; (xiii) any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insurers or guarantors of first mortgages on Condominiums; and (xiv) restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than specified herein. An addition or amendment to such documents shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. An eligible mortgage holder who receives a written request to approve additions or amendments and who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request, provided the notice was delivered by certified or registered mail with a return receipt requested.

(e) Consent to Actions: Except as provided by statute, in case of condemnation or substantial loss to the Condominium and/or Common Area(s) of the Project, unless the holder(s) of at least sixty-seven percent (67%) of the first mortgages (based on one (1) vote for each first mortgage owned), or owners (other than Declarant) of the individual Condominiums have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(1) By act or omission, seek to abandon or terminate the Condominium Project and/or the Association (except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain);

(2) Change the pro rata interest or obligations of any individual Condominium for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium in the Common Area(s);

(3) Partition or subdivide any Condominium Unit;

(4) By act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area(s). (The granting of easements for public utilities

or for other public purposes consistent with the intended use of the Common Area(s) by the Condominium Project shall not be deemed a transfer within the meaning of this clause);

(5) Use hazard insurance proceeds for losses to any condominium property (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such condominium property.

(f) Right of First Refusal: The Condominium Documents contain no provisions creating a "right of first refusal," but should any such rights be created in the future, any such rights shall not impair the rights of any first lender to: (i) foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage, or (ii) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a mortgagor; or (iii) sell or lease a Condominium acquired by the mortgagee, and any institutional lender coming into possession of a Unit pursuant to the remedies provided in a deed of trust or foreclosure shall be exempt from any such right of first refusal.

(g) Unpaid Dues or Charges: A first mortgagee may, jointly or singly, pay taxes, insurance premiums, or other charges which are in default and which may or have become a charge against the Common Area, and may secure new casualty insurance coverage on the lapse of any policy covering the Common Area. First mortgagees making such payments shall be owed immediate reimbursement therefor from the Board, which is hereby expressly empowered and authorized to enter into an agreement in favor of all first mortgagees respecting such reimbursements.

(h) Insurance or Condemnation Proceeds: No provision of the Condominium Documents gives an Owner, or any other party, priority over any rights of the first mortgagee of the Condominium Unit pursuant to its mortgage in the case of payment to the Unit Owner of insurance proceeds or condemnation awards for losses to or taking of Condominiums and/or Common Area. All applicable insurance policies shall contain loss payable clauses naming institutional lenders who encumber the Condominiums by deed of trust or mortgage, as their interests may appear.

(i) Reserves: Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs, and replacement of those improvements which the Association is obligated to maintain and that must be maintained, repaired or replaced on a periodic basis. The dues or charges shall be payable in regular installments rather than by special assessments.

(j) Contracts: Any agreement for professional management of the Condominium Project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year, but may be renewable for

successive one (1) year periods. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board of Directors of the Association to Condominium purchasers, must provide for termination by either party for cause on thirty (30) days' written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days' or less written notice.

(k) Termination of Professional Management: When professional management has been previously required by the Project's documents or by any eligible mortgage holder, insurer or guarantor, whether such entity became an eligible mortgage holder, insurer or guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Owners of Condominiums to which at least sixty-seven percent (67%) of the votes in the Association are allocated 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 holder mortgages.

(l) Priority of Liens: Each holder of a first mortgage lien on a Condominium who comes into possession of the Condominium by virtue or foreclosure of the mortgage, or any purchaser at the foreclosure sale under a first deed of trust, will take the Condominium free of any claims for unpaid assessments and fees, late charges, fines, or interest levied in connection therewith against the Condominium which accrue prior to the time such holder takes title to the Condominium, if the mortgage was recorded before the assessment was due, except for claims for a pro rata share of such assessments or charges to all Condominiums in the Project, including the mortgaged Condominium.

(m) Restoration or Repair: Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by eligible mortgage holders holding mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to eligible holder mortgages.

(n) Project Termination: Any action to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project property requires 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 holder mortgages, and the consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated. Except as provided by statute or by the foregoing provision (in case of substantial destruction or condemnation of the Project), the consent of Owners of Condominiums to which at least sixty-seven

percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on Condominiums which have at least sixty-seven percent (67%) of the votes of Condominiums subject to eligible holder mortgages, shall be required to terminate the legal status of the Project as a condominium project.

(o) Reallocation of Interests: No reallocation of interests in the Common Area(s) resulting from a partial condemnation or partial destruction of the Project may be effected without the prior approval of eligible mortgage holders holding mortgages on all remaining Condominiums, whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Condominiums subject to eligible holder mortgages.

(p) Partition: Partition or subdivision of any Unit, as provided in Article II, Paragraphs 2.05 and 2.06 of this Declaration, is subject to the rights of institutional lenders.

ARTICLE VIII

GENERAL PROVISIONS

8.01 Enforcement:

(a) The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity (subject to the provisions of Section 8.18 hereof, whenever applicable), all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration and other Condominium Documents, and in such action shall be entitled to recover reasonable attorneys' fees as are ordered by the Court; provided that no judicial proceedings shall be commenced by the Board against an Owner for any nonmonetary breach of this Declaration and/or the other Condominium Documents unless and until there has been a hearing with respect to such breach in accordance with this Declaration and the other Condominium Documents. It is hereby agreed that damages at law for such nonmonetary breach are inadequate. Failure by the Association or by any Owner to enforce any covenant or restriction contained in the Condominium Documents shall in no event be deemed a waiver of the right to do so thereafter. The remedies provided for in the Condominium Documents for breach of the covenants contained therein shall be cumulative, and none of such remedies shall be exclusive.

(b) The Association shall have no power to cause a forfeiture or abridgement of an Owner's rights to the full use and enjoyment of his individually owned Unit on account of a failure by such Owner to comply with the provisions of the Condominium Documents or any duly enacted rules of operation for any Common Areas and facilities except where the loss or forfeiture is the result of the 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 such Owner to pay assessments levied by the Association.

(c) A monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Condominium Documents, or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area and facilities for which the Member was allegedly responsible (pursuant to Section 8.07 of this Declaration or otherwise), or in bringing the Member and his Unit into compliance with the Condominium Documents shall not be characterized nor treated as an assessment which may become a lien against the Member's Unit enforceable by a sale of the Unit in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code; provided that this provision shall not apply to charges imposed against an Owner consisting of reasonable interest on delinquent assessments and/or charges to reimburse the Association for attorney's fees and/or costs reasonably incurred in its efforts to collect delinquent assessments, as more particularly set forth in Section 4.12 of this Declaration.

(d) If the Association adopts or has adopted a policy of imposing any monetary penalty, including any fee, on any Association Member for a violation of the Condominium Documents or rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of a Member, the Board of Directors shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed for those violations, which shall be in accordance with authorization for Member discipline contained in the Condominium Documents. The Board of Directors shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was previously adopted and distributed to the Members.

8.02 Hearing: If any Condominium Owner, or other occupant of the Condominium owned by him, shall fail to observe any of the provisions of this Declaration, the other Condominium Documents, or any of the rules or regulations adopted by the Board, the Board shall give written notice of such fact to the Condominium Owner in accordance with the Condominium Documents. Any such notice so given shall contain a specifications of the alleged violation of the Condominium Documents, or of such rule or regulation, as the case may be, and such notice shall also specify a date not less than fifteen (15) nor more than thirty (30) days after the date of the notice for a hearing before the Board to review the alleged violation as set forth in the notice. At such hearing, the Board shall accept such evidence and take such testimony as is required by Corporations Code Section 7341, and any additional evidence and testimony as may be reasonable under the circumstances, reach a decision with respect thereto, and if the Board concludes that the alleged violation did in fact occur, the Board may impose monetary

penalties, temporarily suspend voting and Common Area privileges for a period not to exceed thirty (30) days, or take any other disciplinary action permitted by the Condominium Document's, effective not less than five (5) days after the date of such hearing. The notice and hearing provided for by this Paragraph 8.02 shall not be a prerequisite to enforcement by the Board of an Owner's obligation for assessments, except for disciplinary/compliance assessments.

8.03 Invalidity of any Provision: Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

8.04 Term: The covenants and restrictions of this Declaration shall run with and bind the Project, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Condominium subject to this Declaration, his respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from and after the date this Declaration is first duly recorded, after which term they shall be automatically extended for successive periods of fifty (50) years, unless an instrument in writing, signed by at least sixty-seven percent (67%) of the Owners of the Condominiums, has been recorded within the year preceding the beginning of any such successive period, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

8.05 Amendments: Prior to close of escrow on the sale of the first Unit, the Declarant may amend this Declaration, with the consent of the Department of Real Estate. During the period when the Declarant or its successor holds or controls as many, or more than, one-fourth (1/4th) of the total voting power of the Association, amendments which would materially change rights to ownership, possession, or use of interests in the Project must have the prior written consent of the Department of Real Estate. After sale of the first Unit, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of Members representing at least sixty-seven percent (67%) of the voting power of the Association, which shall include at least sixty-seven percent (67%) of the affirmative votes or written consent of Members other than the Declarant, or where the two-class voting structure is still in effect, at least sixty-seven percent (67%) of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. The Association, or any Owner, may petition the Superior Court for an order reducing the voting percentage required to amend this Declaration, pursuant to Civil Code Section 1356. After the Declarant has completed its construction and marketing activities with respect to the Project, or a particular phase thereof, the Board of Directors of the

Association may adopt an amendment, in accordance with the provisions of Civil Code Section 1355.5, deleting from this Declaration any provision which is unequivocally designed and intended to facilitate access by the Declarant over and across the Common Area of the Project, or a particular phase thereof, for the completion of such activities. All amendments must be recorded. They shall become effective upon recordation of a Certificate of Amendment in the Office of the County Recorder where the Project is located. The Certificate must be executed and acknowledged by any two (2) Directors and must state the full text of the amendment and the names of the Owners who voted for the amendment. In the event that the Project has been submitted by Declarant to, and has been approved by, the United States Department of Veterans Affairs, any amendment to this Declaration shall require the prior written approval of this agency as long as the two-class voting structure is still in effect for the Association, in which case a draft of any amendment should be submitted to this agency for approval prior to recordation.

8.06 Encroachment Easements: Each Condominium within the Project is hereby declared to have an easement over all adjoining Condominiums and the Common Area for the purpose of accommodating any minor encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be valid 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 encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of said Owner. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owner of each Condominium agrees that minor encroachments over adjoining Condominiums or Common Area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In Units where noncentral air conditioning equipment is installed, an easement over the Common Area into which such air conditioning equipment encroaches shall exist for the purpose of the use and enjoyment, maintenance, replacement, and repair of said equipment.

8.07 Owner's Right and Obligation to Maintain and Repair: Except for those portions of the Project which the Association is required to maintain and repair, each Unit Owner shall, at his sole cost and expense, maintain and repair his Unit, and all elements thereof, keeping the same in good condition. An Owner's obligation of maintenance and repair includes the exterior doors and windows of his Unit and any individual air conditioning and heating equipment, appliances, plumbing and electrical systems and equipment located within his Unit or serving only his Unit. Each Owner shall have the exclusive right at his sole cost and expense, to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors,

windows, and doors bounding his Unit. Each Unit Owner shall keep any portions of the Exclusive Use Common Area which are appurtenant to his Unit in a clean, neat and safe condition. In the event an Owner fails to maintain and repair his Unit in a manner which the Board deems necessary to preserve the appearance and value of the Project, the Board shall give written notice to such Owner, stating with particularity the work required, and request it be done within a reasonable time from the giving of such notice. If an Owner disputes his liability to carry out such maintenance or repairs, he may request a hearing by the Board. The determination of the Board at such hearing shall be final. If the Owner is determined by the Board at such hearing to be liable for such maintenance and repair, and the Owner fails to carry out the same within the time prescribed by the Board at the hearing, the Board may cause such work to be done and may specially assess the costs thereof to such Owner and, if necessary, lien his Unit for the amount thereof.

8.08 Condemnation: The term "taking" as used in this Section shall mean condemnation by eminent domain, or by sale under threat thereof, of all or part of the Project.

(a) Subject to the right of all institutional lenders who have duly requested the right to join the Board in the proceedings, the Board shall represent all Owners in any condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Area(s), or part thereof. No Member shall challenge the good faith exercise of the discretion of the Board in fulfilling its duties under this Section.

(b) A condemnation award or settlement proceeds affecting all or part of the Common Area of the Project, and which is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners, shall be distributed among the affected Owners and their respective mortgagees, if any, according to the relative fair market values of the Units affected by the condemnation as determined by independent appraisal at the time said taking occurs.

(c) 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 he and his mortgagee shall be divested of all interest in the Project if such Owner shall vacate his 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 and Condominium Plan shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Project.

(d) 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 at least fifty-one percent (51%) 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 the Condominiums subject to eligible holder mortgages. The proceeds from the partition sale shall be distributed to the Owners and their respective mortgagees according to the relative fair market values of the Units, as determined by independent appraisal at the time said taking occurs.

(e) In the event of a taking, each Owner shall have the exclusive right to claim any award made for his personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. The Board shall nevertheless represent each Owner in any action to recover all awards with respect to any personal property which may, at the time of the taking, be part of the real estate comprising any Condominium, and shall allocate to such Owner so much of any awards as is attributed in the taking proceedings, or failing such attribution, attributable by the Board to such personal property.

(f) If any Condominium or portion thereof, or the Common Area or any portion thereof, is made the subject matter of any condemnation or eminent domain proceedings or is otherwise sought to be acquired by a condemning authority, the institutional lender with respect to any such Condominium, or all institutional lenders participating in the Project, respectively, will be entitled to timely written notice of such proceedings or proposed acquisition and no provision of any document establishing the Project will entitle the Owner of a Condominium or other party to priority over such institutional lender with respect to the distribution to such Condominium Owner of the proceeds of any award or settlement.

(g) The Board is authorized to bring an action in inverse condemnation. In such event, the provisions of this Article shall apply with equal force.

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

(a) Prevent the Declarant, its contractors or subcontractors, from doing on the Project whatever is reasonably

necessary or advisable in connection with the completion of said work; or

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

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

(d) Prevent the Declarant from maintaining such sign or signs on any of the Project as may be necessary for the sale, lease or disposition thereof.

The foregoing limitations of the application of the restrictions to the Declarant shall terminate upon the sale of Declarant's entire interest in the Project or the third anniversary of the issuance of the final public report for the project, whichever occurs first. So long as the Declarant, or its successor and assigns, own one or more of the Condominiums established and described herein, the Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration and the other Condominium Documents. In exercising its rights under this Paragraph 8.09, the Declarant shall not unreasonably interfere with the use and enjoyment of the Units and the Common Area by Owners while completing any work necessary to said Units or Common Area.

8.10 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: The Declarant, for itself, its successor and assigns, covenants that all original improvements to the Common Area shall be completed in accordance with the plans and specifications therefor. In the event that said improvements have not been completed prior to issuance by the Department of Real Estate of its original final public subdivision report for the Project, the Declarant shall assure completion of those portions of said improvements which have not been completed by said date under a bond or other financial arrangement approved by the Department of Real Estate, generally describing the nature of said improvements and the date(s) for completion thereof and with the Association designated as obligee thereunder. Where the Project includes Common Area improvements which have not been completed prior to the issuance by the Department of Real Estate of its original final public subdivision report for the Project, and where the Association is obligee under a bond or other arrangement to secure performance of the commitment of the Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvements for

which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any Common Area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of Members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond, or on the failure of the Board to consider and vote on the question, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by Members representing at least five percent (5%) of the total voting power of the Association. At such special meeting a vote of a majority of Members of the Association other than the Declarant shall be required to take action to enforce the obligation under the bond and a vote of a majority of the voting power of the Association, excluding the Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association. On satisfaction of Declarant's obligation to complete the Common Area improvements, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the Common Area improvements as described on the planned construction statement. Any dispute between Declarant and the Association regarding the completion of the Common Areas shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

8.11 Termination of any Responsibility of Declarant: At such time as the first (organizational) meeting of the Association is held pursuant to the provisions of the Condominium Documents, or as soon as practical, the Declarant shall surrender to the Association such books, records, contracts, and other documents relating to the operation and management of the Project as may then exist, including a set of approved construction plans. In the event the Declarant shall convey all of its right, title and interest in and to the Project to any partnership, individual or individuals, corporation or corporations, then and in such event, the 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.

8.12 Owner's Consent and Compliance: Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project is and shall be conclusively deemed to

have consented and agreed to every covenant, condition and restriction and other provisions of the Condominium Documents.

Each owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration and, to the extent they are not in conflict with this Declaration, the Articles and the Bylaws, as all of the foregoing may have been duly amended, and the decisions and resolutions of the Association or its duly authorized representative, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due for damages, or for injunctive relief. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration, the Articles, and the Bylaws, and all questions of interpretation and construction of these Condominium Documents which are resolved by the Board, shall be deemed to be final, conclusive and binding on all Owners of Condominiums, their successors and assigns.

8.13 Notices: Any notice permitted or required by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered to a person seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, certified or registered, addressed to such person at the current address given by such person to the secretary of the Board for the purpose of such service of notice, or addressed to the Unit of such person if no other address has been given to the secretary.

8.14 Fair Housing: No Owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, or mortgaging or occupancy of his Unit to any person of a specified race, color, religion, ancestry, national origin, sex, marital status or physical handicap.

8.15 Documents Provided to Prospective Purchaser: The Owner of a Unit shall, as soon as practicable before transfer of title or execution of a real property sales contract thereof, provide the following to the prospective purchaser:

- (a) A copy of the Condominium Documents of the Project.
- (b) A copy of the most recent documents distributed pursuant to Civil Code Section 1365.
- (c) A true statement in writing from an authorized representative of the Association as to the amount of the Association's current annual and special assessments and fees, as well as any assessments levied upon the Owner's Unit in the Project 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 Unit in the Project pursuant to Civil Code Section 1367.

(d) Any change in the Association's current annual and special assessments and fees which have been approved by the Association's Board of Directors, but have not become due and payable as of the date disclosure is provided pursuant to this Section.

Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Unit with a copy of the requested items specified in paragraphs (a), (b), (c) and (d) above. The Association may charge a fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested items; otherwise, the Association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the Association's actual costs to change its records.

8.16 Easements for Utilities and Maintenance: Easements over and under the Project for the installation, repair and maintenance of electric, telephone, water, gas, sanitary sewer lines and facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded map of the Project, and as may be hereafter required or needed to serve the Project, together with the right to grant and transfer the same, are hereby reserved in favor of Declarant until the sale of Declarant's entire interest in the Project, and thereafter in favor of the Association. Whenever sanitary sewer, water, electricity, gas, television receiving or telephone lines or connections, conduits, ducts, or flues are installed within the Project, which connections, or any portion thereof, lie in or upon Condominiums owned by other than the Owner of a Condominium served by said connections, the Owners of any Condominium served by said connections shall have the right of reasonable access for themselves or utility companies to repair, replace and generally maintain said connections as and when necessary in the event the Board has failed or been unable to take timely action to do so.

Whenever sanitary sewer, water, electricity, gas, television receiving or telephone lines or connections, conduits, ducts, or flues are installed within the Project which connections serve more than one Condominium, the Owner of each Condominium served by said connection shall be entitled to the full use and enjoyment of such portions of said connection as service his Condominium.

In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors who shall decide the dispute,

and the decision of the Board shall be final and conclusive on the parties.

Notwithstanding any other provision of this Declaration to the contrary, the Owner of any Unit is entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone wiring that is part of the Exclusive Use Common Areas of his Unit. This access shall be subject to the consent of the Association, which approval shall not be unreasonably withheld, and which may include the Association's approval of telephone wiring upon the exterior of the Common Areas, and other conditions as the Association determines reasonable..

8.17 Equitable Servitudes; Privity of Contract; Covenants Running With Land: All covenants, conditions, restrictions, and agreements contained herein are made for the direct mutual and reciprocal benefit of each and every Condominium in the Project, and shall create mutual equitable servitudes upon each Condominium in favor of every other Condominium, and, shall create reciprocal rights and obligations between the respective Owners of all Condominiums and privity of contract and estate between all grantees of said Condominiums, their heirs, successors and assigns; and, as to the Owner of each Condominium, his heirs, successors and assigns, shall operate as covenants running with the land for the benefit of all other Condominiums.

8.18 ALTERNATIVE DISPUTE RESOLUTION: (THIS SECTION OF THE DECLARATION APPLIES ONLY TO DISPUTES THAT INVOLVE ENFORCEMENT OF THE GOVERNING DOCUMENTS.)

A. Summary of Civil Code Section 1354. UNLESS THE APPLICABLE TIME LIMITATION FOR COMMENCING THE ACTION WOULD RUN WITHIN ONE HUNDRED TWENTY (120) DAYS, PRIOR TO THE FILING OF A CIVIL ACTION BY EITHER THE ASSOCIATION OR AN OWNER SOLELY FOR DECLARATORY RELIEF OR INJUNCTIVE RELIEF, OR FOR DECLARATORY RELIEF OR INJUNCTIVE RELIEF IN CONJUNCTION WITH A CLAIM FOR MONETARY DAMAGES, OTHER THAN ASSOCIATION ASSESSMENTS, NOT IN EXCESS OF FIVE THOUSAND DOLLARS (\$5,000.00), RELATED TO THE ENFORCEMENT OF THE GOVERNING DOCUMENTS, THE PARTIES SHALL ENDEAVOR, AS PROVIDED IN CIVIL CODE SECTION 1354, OR ANY SUCCESSOR STATUTE, TO SUBMIT THEIR DISPUTE TO A FORM OF ALTERNATIVE DISPUTE RESOLUTION SUCH AS MEDIATION OR ARBITRATION. THE FORM OF ALTERNATIVE DISPUTE RESOLUTION CHOSEN MAY BE BINDING OR NONBINDING AT THE OPTION OF THE PARTIES. ANY PARTY TO SUCH A DISPUTE MAY INITIATE THIS PROCESS BY SERVING ON ANOTHER PARTY TO THE DISPUTE A REQUEST FOR RESOLUTION, WHICH SHALL INCLUDE: (1) A BRIEF DESCRIPTION OF THE DISPUTE BETWEEN THE PARTIES; (2) A REQUEST FOR ALTERNATIVE DISPUTE RESOLUTION; (3) A NOTICE THAT THE PARTY RECEIVING THE REQUEST FOR RESOLUTION IS REQUIRED TO RESPOND THERETO WITHIN THIRTY (30) DAYS OF RECEIPT OR IT WILL BE DEEMED REJECTED; AND (4) A COPY OF CIVIL CODE SECTION 1354, OR ANY SUCCESSOR STATUTE. SERVICE OF THE REQUEST FOR RESOLUTION SHALL BE IN THE SAME MANNER AS PRESCRIBED FOR SERVICE IN A SMALL CLAIMS ACTION AS PROVIDED IN SECTION 116.340 OF THE CODE OF CIVIL PROCEDURE, OR ANY SUCCESSOR STATUTE. PARTIES

RECEIVING A REQUEST FOR RESOLUTION SHALL HAVE THIRTY (30) DAYS FOLLOWING SERVICE OF THE REQUEST FOR RESOLUTION TO ACCEPT OR REJECT ALTERNATIVE DISPUTE RESOLUTION AND, IF NOT ACCEPTED WITHIN THE 30-DAY PERIOD BY A PARTY, SHALL BE DEEMED REJECTED BY THAT PARTY. IF ALTERNATIVE DISPUTE RESOLUTION IS ACCEPTED BY THE PARTY UPON WHOM THE REQUEST FOR RESOLUTION IS SERVED, THE ALTERNATIVE DISPUTE RESOLUTION SHALL BE COMPLETED WITHIN NINETY (90) DAYS OF RECEIPT OF THE ACCEPTANCE BY THE PARTY INITIATING THE REQUEST FOR RESOLUTION, UNLESS EXTENDED BY WRITTEN STIPULATION SIGNED BY BOTH PARTIES. THE COSTS OF THE ALTERNATIVE DISPUTE RESOLUTION SHALL BE BORNE BY THE PARTIES. MEMBERS OF THE ASSOCIATION SHALL ANNUALLY BE PROVIDED A SUMMARY OF THE PROVISIONS OF CIVIL CODE SECTION 1354, TOGETHER WITH A NOTICE STATING THE FOLLOWING: "FAILURE BY ANY MEMBER OF THE ASSOCIATION TO COMPLY WITH THE PRE-FILING REQUIREMENTS OF SECTION 1354 OF THE CIVIL CODE MAY RESULT IN THE LOSS OF YOUR RIGHTS TO SUE THE ASSOCIATION OR ANOTHER MEMBER OF THE ASSOCIATION REGARDING ENFORCEMENT OF THE GOVERNING DOCUMENTS." THE SUMMARY SHALL BE PROVIDED EITHER AT THE TIME THE PRO FORMA BUDGET REQUIRED BY CIVIL CODE SECTION 1365 IS DISTRIBUTED OR IN THE MANNER SPECIFIED IN SECTION 5016 OF THE CORPORATIONS CODE.

B. Text of Civil Code Section 1366.3.

(a) The exception for disputes related to Association assessments in subdivision (b) of Civil Code Section 1354 shall not apply if, in a dispute between the Owner of a separate interest and the Association regarding the assessments imposed by the Association, the Owner of the separate interest chooses to pay in full to the Association all of the charges listed below in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Civil Code Section 1367; and in those instances, the Association shall inform the Owner that the Owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the Association.

(1) The amount of the assessment in dispute.

(2) Late charges.

(3) Interest.

(4) All fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including attorney's fees not to exceed four hundred twenty-five dollars (\$425).

(b) The right of any Owner of a separate interest to utilize alternative dispute resolution under this section may not be

exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any Owner of a separate interest and the Association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The Owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a) above, if it is determined through alternative dispute resolution that the assessment levied by the Association was not correctly levied.

8.19 ALTERNATIVE DISPUTE RESOLUTION (ACTION FOR DAMAGES AGAINST DECLARANT FOR DEFECT IN DESIGN OR CONSTRUCTION OF THE PROJECT): ANY AND ALL CLAIMS AND DISPUTES BETWEEN AN OWNER OR THE ASSOCIATION AND THE DECLARANT OR ANY OF ITS PARTNERS, AGENTS, EMPLOYEES OR OTHER REPRESENTATIVES CONCERNING THE DESIGN, CONSTRUCTION OR DEVELOPMENT OF THE PROJECT SHALL BE RESOLVED THROUGH BINDING ARBITRATION PURSUANT TO THE ACTUAL COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION OR THE ACTUAL STREAMLINED OR COMPREHENSIVE RULES AND REGULATIONS OF JAMS/ENDISPUTE, SUBJECT TO THE FOLLOWING MODIFICATIONS THEREOF:

(1) THE DECLARANT (SUBDIVIDER) SHALL ADVANCE THE FEES NECESSARY TO INITIATE THE ARBITRATION, WITH THE COSTS AND FEES, INCLUDING ONGOING COSTS AND FEES, TO BE PAID AS AGREED BY THE PARTIES AND IF THEY CANNOT AGREE AS DETERMINED BY THE ARBITRATOR(S) WITH THE COSTS AND FEES OF THE ARBITRATION TO ULTIMATELY BE BORNE AS DETERMINED BY THE ARBITRATOR(S);

(2) ADMINISTRATION OF THE ARBITRATION SHALL BE BY A NEUTRAL AND IMPARTIAL PERSON(S);

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

(4) THE VENUE OF THE ARBITRATION SHALL BE IN THE COUNTY WHERE THE PROJECT IS LOCATED UNLESS THE PARTIES AGREE TO SOME OTHER LOCATION.

(5) THE ARBITRATION SHALL BE COMMENCED IN A PROMPT AND TIMELY MANNER IN ACCORDANCE WITH: (I) THE RULES OF THE ARBITRATION, OR IF THE RULES DO NOT SPECIFY A DATE BY WHICH THE ARBITRATION MUST COMMENCE, THEN (II) A DATE AS AGREED TO BY THE PARTIES, AND IF THEY CANNOT AGREE, (III) A DATE DETERMINED BY THE ARBITRATOR(S);

(6) THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH RULES AND PROCEDURES WHICH ARE REASONABLE AND FAIR TO THE PARTIES.

(7) THE ARBITRATION SHALL BE CONCLUDED IN A PROMPT AND TIMELY MANNER;

(8) THE ARBITRATORS SHALL BE AUTHORIZED TO PROVIDE ALL RECOGNIZED REMEDIES AVAILABLE IN LAW OR EQUITY FOR ANY CAUSE OF ACTION THAT IS THE BASIS OF THE ARBITRATION. THE PARTIES MAY AUTHORIZE THE LIMITATION OR PROHIBITION OF PUNITIVE DAMAGES.

(9) AFTER AN AWARD OR DECISION HAS BEEN MADE, ANY PARTY MAY PETITION THE APPROPRIATE COURT TO CONFIRM, CORRECT OR VACATE THE AWARD OR DECISION, PURSUANT TO SECTION 1285 ET. SEQ. OF THE CODE OF CIVIL PROCEDURE.

IN WITNESS WHEREOF, the Declarant has executed this Declaration, as indicated by its acknowledgment hereinbelow.

VILLA PORTOFINO, LLC,
A California Limited Liability Company

By: MAYFAIR HOMES, INC.,
A California Corporation,
Managing Member

By: Mehran Saberi
MEHRAN SABERI,
President

By: Peter Cvanesoff
PETER CVANESSOFF,
Vice President

CALIFORNIA



ALL-PURPOSE



ACKNOWLEDGEMENT

STATE OF CALIFORNIA

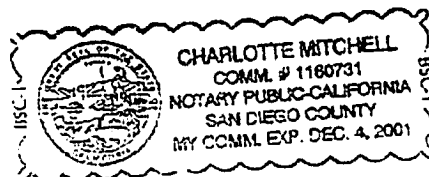
COUNTY OF SAN DIEGO

On 11/13/00 before me, Charlotte Mitchell, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, MEHRAN SABERI and PETER OYANESSOFF
 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) acted,
 executed the instrument.

WITNESS my hand and official seal.

Charlotte Mitchell (SEAL)
 NOTARY PUBLIC SIGNATURE



OPTIONAL INFORMATION



TITLE OR TYPE OF DOCUMENT CCR - Villa Portofino
 DATE OF DOCUMENT 11/13/00 NUMBER OF PAGES 51 + Exhibit
 SIGNER(S) OTHER THAN NAMED ABOVE _____

Legal Description of Real Property

Lot 1 of VILLA PORTOFINO, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14156, filed in the Office of the County Recorder of San Diego County on March 7, 2001.

Record Holder(s) of Title:

VILLA PORTOFINO, LLC, a California Limited Liability Company.

EXHIBIT "A"

12922

(Partial Copy of DRE-approved BUDGET)

EXHIBIT "B"

BUDGET SUMMARY

12923

| | | |
|-----------------------|---|-----------------|
| PHASE NUMBER 1 | DATE OF BUDGET 6/22/00 | DRE FILE NUMBER |
| NUMBER OF UNITS 30 | TRACT NUMBER/NAME OF PROJECT Villa Portofino | |

| | | Per Unit Per Mo. | Total Monthly | Total Annual |
|---------------------|---|---------------------|------------------|-----------------|
| 100 FIXED COSTS | 101. Property Taxes | | -- segregated -- | |
| | 102. Corporation Franchise Taxes | \$2.22 | \$66.67 | \$800 |
| | 103. Insurance (attach proposal) | \$16.42 | \$492.50 | \$5,910 |
| | 104. Local License & Inspection Fees | \$0.28 | \$8.33 | \$100 |
| | 105. Estimated Income Taxes | \$0.69 | \$20.58 | \$247 |
| | 100 - Sub Total | \$19.61 | \$588.08 | \$7,057 |
| 200 OPERATING COSTS | 201. Electricity (attach work sheet) | \$30.33 | \$910.00 | \$10,920 |
| | Lighting: Leased | | | |
| | 202. Gas (attach work sheet) | | | |
| | 203. Water (attach work sheet) | \$1.00 | \$30.00 | \$360 |
| | 204. Sewer/Septic Tanks (include if not in 203) | | | |
| | 205. Cable TV/Master Antenna | | | |
| | 207. Custodial Area | | | |
| | Number of Restrooms none | | | |
| | 208. Landscape Area: (See page 15.) | \$4.36 | \$130.83 | \$1,570 |
| | 209. Refuse Disposal Bi-weekly | | | |
| | Vendor Name: Waste Mgmt. | | | |
| | Telephone Number: 1-800-386-7783 | \$11.67 | \$350.00 | \$4,200 |
| | 210. Elevators | | | |
| | Number/Type: 1 | \$5.00 | \$150.00 | \$1,800 |
| | 211. Private Streets, Driveways, Parking Areas | | | |
| | Area: | | | |
| | 212. Heating & Air Conditioning Maintenance | | | |
| | Area: | | | |
| | 213. Swimming Pool Size Mths Heated | | | |
| | Number | | | |
| | Spa Size | | | |
| | Number | | | |
| | 214. Tennis Court | | | |
| | Number: | | | |
| | 215. Access Control | | | |
| | Guard hours per day: | | | |
| | Number of motorized gate 2 | \$4.00 | \$120.00 | \$1,440 |
| | No. of Intercoms/Tel Entr 1 | \$1.00 | \$30.00 | \$360 |

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| | | Per Unit Per Mo. | Total Monthly | Total Annual |
|------------------------|---|---------------------|-------------------|-----------------|
| 200 OPERATING COSTS | 216. Reserve Study | \$2.22 | \$66.67 | \$800 |
| | 217. Miscellaneous | | | |
| | Minor Repairs | \$4.00 | \$120.00 | \$1,440 |
| | Pest Control | \$1.00 | \$30.00 | \$360 |
| | Concrete Power Washing | \$4.17 | \$125.00 | \$1,500 |
| | Fire Extinguisher | \$0.33 | \$10.00 | \$120 |
| | Community Network | | | |
| | | | | |
| | | | | |
| | 200 - Sub Total | \$69.08 | \$2,072.50 | \$24,870 |
| 300 RESERVE | 301-313 (attach reserve work sheet) | | | |
| | 300 - Sub Total | \$42.81 | \$1,284.25 | \$15,411 |
| 400 ADMINISTRATION | 401. Management ① | \$33.33 | \$1,000.00 | \$12,000 |
| | 402. Legal Services | \$0.83 | \$25.00 | \$300 |
| | 403. Accounting | \$2.00 | \$60.00 | \$720 |
| | 404. Education | \$1.00 | \$30.00 | \$360 |
| | 405. Miscellaneous, office expense | \$2.00 | \$60.00 | \$720 |
| | 400 - Sub Total | \$39.16 | \$1,175.00 | \$14,100 |
| | TOTAL (100-400) | \$170.66 | \$5,119.83 | \$61,438 |
| 500 CONTINGENCY | 501. New Construction 3.13% | \$5.34 | \$160.19 | \$1,922 |
| | 502. Conversions | | | |
| | 503. Revenue Offsets (attach documentation) | | | |
| | | | | |
| | TOTAL BUDGET | \$176.00 | \$5,280.02 | \$63,360 |

❖ DRE regulations allow the use of variable assessments against units only if one unit will derive as much as 10 percent more than another unit in the value of common goods and services supplied by the association.

After determining the percent of benefit derived from services provided (page 14) by the association, an easy chart to follow would be:

| | |
|-----------------------|----------------------|
| Less than 10% | equal assessments |
| from 10% to 20% | variable or equal |
| Over 20% | variable assessments |

The budget and management documents indicate (check appropriate box):

☒ equal assessments
☐ variable assessments

❖ The inventory and quantities used in the preparation of this budget are normally derived from plans completed prior to construction and may vary slightly from actual field conditions. The calculated budget is a good faith estimate of the projected costs and should be deemed reliable for no more than one year. The Board of Directors should conduct an annual review of the Association's actual costs and revise the budget accordingly.

① Depending upon the level of service selected by the Association, the amount shown may be insufficient to cover the cost and may be higher.

RESERVES WORKSHEET 12925

| DRE FILE NUMBER | | | TRACT NUMBER | | | |
|---------------------------|--|---|---|---|--|-------------------------------|
| Item | (1) <input type="checkbox"/> Sq. Ft. or Number | (2) <input type="checkbox"/> Unit Cost HOA Manual | (3) <input type="checkbox"/> Replacement Cost | (4) <input type="checkbox"/> Remaining Life | early Reserve Columns 1x2 or 3÷4 | Cost per Unit per Month |
| Paint | 48,443 | \$0.10 | | | \$4,844 | \$13.46 |
| Wood Siding (paint/stain) | | | | | | |
| Roof - Built-up | 6,525 | \$0.16 | | | \$1,044 | \$2.90 |
| Roof - Shingle | | | | | | |
| Roof - Concrete Tile | 10,032 | \$0.02 | | | \$201 | \$0.56 |
| Water Heaters | | | | | | |
| Light Fixtures | 118 | \$6.00 | | | \$708 | \$1.97 |
| Street Lights | | | | | | |
| Waterproofing | 6,750 | \$0.30 | | | \$2,025 | \$5.63 |
| Carpets | | | | | | |
| Elevators | | | | | | |
| Streets & Drives | | | | | | |
| Heating & Cooling | | | | | | |
| Garage Signage | | | | | | |
| Garage Striping | | | | | | |
| Pool Filter | | | | | | |
| Spa Re-plaster | | | | | | |
| Spa Heater | | | | | | |
| Spa Filter | | | | | | |
| Pool /Spa - Pump No. | | | | | | |
| Mail Boxes | | | | | | |
| Intercom | | | | | | |
| Fences (paint/stain) | | | | | | |
| Fences (repair/replace) | | | | | | |
| Walls (paint) | | | | | | |
| Walls (repair/replace) | 296 | \$0.10 | | | \$30 | \$0.08 |
| Wrought Iron | 1,300 | \$2.00 | | | \$2,600 | \$7.22 |
| Wrought Iron Paint | 9,100 | \$0.30 | | | \$2,730 | \$7.58 |
| Pumps/Vents Motors | 4 | \$60 | | | \$240 | \$0.67 |
| Motorized Gates | 2 | \$400 | | | \$800 | \$2.22 |
| Wood Decking | | | | | | |
| Septic Tanks | | | | | | |
| Entry Monuments | 1 | \$150 | | | \$150 | \$0.42 |
| Landscape Hardware | 3,925 | \$0.01 | | | \$39 | \$0.11 |
| Other | | | | | | |
| TOTAL RESERVE | | | | | \$15,411 | \$42.81 |

☐ Use either Columns 1 and 2 or 3 and 4, but not both for a particular item.

Note: For space purposes, we have included only the components most frequently found in common-interest subdivisions. Reserve items should not be limited to the list above, but be tailored to your particular project.

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SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT. (THIS NOTICE IS REQUIRED BY CALIFORNIA CIVIL CODE SECTION 2953.3)

BANK OF AMERICA, beneficiary under that certain Deed of Trust recorded on June 23, 2000, as Instrument/Document Number 2000-0332204 of Official Records of San Diego County, California, hereby agrees that the lien and charge of said Deed of Trust is and shall be subordinate to the within Declaration of Covenants, Conditions and Restrictions.

Dated: 11-7-2000

BANK OF AMERICA

By: Ronald V. Montoro

By: Carla A. Hudson

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)

On this 7th day of November, 192000, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Ronald V. Montoro and Carla A. Hudson

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) acted, executed the instrument.

WITNESS my hand and official seal.

Peggy J. French

