

**FIRST AMENDED DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS, LIMITATIONS, RESERVATIONS,  
LIENS AND CHARGES  
FOR  
CAPRI BY THE SEA CONDOMINIUMS**

**DATED: November 16, 1979**

This First Amended Declaration of Covenants, Conditions, Restrictions, Easements, Limitations, Reservations, Liens and Charges for Capri By The Sea Condominiums is the corrected First Amended Declaration of Covenants, Conditions, Restrictions, Easements, Limitations, Reservations, Liens and Charges for Capri By The Sea Condominiums dated November 16, 1979 and recorded November 20, 1979 in the Office of the County Recorder of San Diego, California as File No. 79-490693 and the Amendment to that Declaration dated November 26, 1979 and recorded November 26, 1979 in the Office of the County Recorder of San Diego, California as File No. 79-495786.

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LIENS AND CHARGES  
FOR  
CAPRI BY THE SEA CONDOMINIUMS

This Declaration is made this 16th day of Nov. , 1979 by MISSION INVESTMENT TRUST, an unincorporated California business trust (hereinafter referred to as "Declarant"), and revises and amends all declarations of covenants, conditions and restrictions recorded prior to the date of this Declaration.

RECITALS

A. Declarant is the owner of that certain real property (the "Property") located in the City of San Diego, County of San Diego, State of California, as more particularly described in Exhibit "All attached hereto and incorporated herein by this reference.

B. Declarant desires and intends to create and develop upon the Property, pursuant to a comprehensive and coherent general plan, a residential condominium project (such project, together with the Property, referred to herein as the "Project") consisting of 140 condominium units and jointly-owned common areas.

C. Declarant has deemed it desirable to create and to impose upon the Property a general plan for the protection, maintenance, improvement, development, use, occupancy and enjoyment of the Project and, toward these ends, to adopt and establish covenants, conditions, restrictions, easements, limitations, reservations, liens and charges upon the Property in order to implement and facilitate the planned development of the Project, in order to protect and enhance the value, desirability and attractiveness of the Project and for the benefit of the future owners of the units within the Project.

D. Declarant has deemed it desirable for the benefit of the future owners of the units within the Project to establish a non-profit corporation, Capri by the Sea Condominium Owners Association (the "Association"),

incorporated under the laws of the State of California, and to delegate and assign to the Association the power and duty to administer and enforce the covenants, conditions, restrictions, easements, limitations, reservations, liens and charges contained herein.

E. Declarant intends to convey all of the Project and each portion thereof subject to the covenants, conditions, restrictions, easements, limitations, reservations, liens and charges contained herein.

NOW, THEREFORE, pursuant to Sections 1350, et of the California Civil Code, Declarant hereby declares that the Project and each portion thereof is held and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easements, limitations, reservations, liens and charges, each and all of which is and are declared hereby to be for the benefit of the Project and each portion thereof and each present and future owner of the Project or any unit therein or portion thereof, and Declarant. These covenants, conditions, restrictions, easements, limitations, reservations, liens and charges shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Project or any portion thereof, as well as the heirs, assignees and successors in interest of such parties, and shall inure to the benefit of the Project and each portion thereof and Declarant and each present and future owner of the Project or any portion thereof and the heirs, assignees and successors in interest of Declarant and such owners. These covenants, conditions, restrictions, easements, limitations, reservations, liens and charges are imposed upon the Project and each Unit or other portion thereof as a servitude in favor of the Project and each Unit or other portion thereof as the dominant tenement or tenements.

## **ARTICLE 1**

### **DEFINITIONS**

1.1 "Architectural Committee" shall mean and refer to the Architectural Committee of the Association, the powers, duties and mechanics for selection of the members of which are set forth in Article 6 of this Declaration.

1.2 "Articles" and "By-Laws" shall mean and refer to the Articles of Incorporation and By-Laws of the Association as the same may from time to time be duly amended.

1.3 "Assessment" shall mean and refer to any or all of the Assessments hereinbelow defined:

(a) "Regular Assessment" shall mean and refer to a charge against each Owner's Condominium representing that portion of the Common Expenses attributable to such Owner and/or such Owner's Unit as provided for in this Declaration.

(b) "Capital Improvement Assessment" shall mean and refer to a charge against each Owner's Condominium representing a portion of the cost to the Association for the installation or construction of any capital improvements on any Common Area as provided for in this Declaration.

(c) "Reconstruction Assessment" shall mean and refer to a charge against each Owner's Condominium representing a portion of the cost to the Association for the reconstruction of all or any portions of the Common Area as provided for in this Declaration.

(d) "Special Assessment" shall mean and refer to a charge against a particular Owner's Condominium for certain costs incurred by the Association or Declarant, as provided for in this Declaration, which costs are directly attributable to such owner and/or such Owner's Unit.

1.4 "Association" shall mean and refer to Capri by the Sea Condominium Owners Association, a nonprofit mutual benefit corporation, incorporated under the laws of the State of California, and its successors and assigns.

1.5 "Association Rules" shall mean and refer to rules and regulations adopted by the Association as provided in Section 2.7, below.

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

1.7 "City" shall mean and refer to the City of San Diego, California unless otherwise specifically stated.

1.8 "County" shall mean and refer to the County of San Diego, California, unless otherwise specifically stated.

1.9 "Common Area" shall mean and refer to all of the Project, but excepting therefrom all of the Units.

1.10 "Common Expenses" shall mean and refer to the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (unless the cost of such repair and replacement is otherwise provided for in Article 10 of this Declaration); unpaid Assessments; management and administration of the Association, including without limitation compensation paid to managers, accountants, attorneys and other agents and employees; utilities, irrigation, trash pickup and disposal, gardening and other services benefiting the Common Area; fire, casualty, liability, workers' compensation and other insurance covering the Common Area; reasonable reserves as appropriate; bonding of the Board or any other management body or the members thereof or any person handling the funds of the Association; taxes paid by the Association; amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Area or any portion thereof; amounts paid or incurred by the Association in collecting Assessments, including without limitation amounts expended in order to purchase a condominium in connection with the foreclosure of an Assessment lien against such Condominium; costs incurred by any committees or other bodies established by the Board or the Association; and other expenses incurred by the Association for any reason whatsoever in connection with the Common Area or the Governing Instruments or in furtherance of purposes of the Association or in the discharge of any obligations imposed upon the Association or the Board by the Governing Instruments.

1.11 "Condominium" shall mean and refer to an estate in real property as defined in Section 783 of the California Civil Code, or as defined by applicable statutes or judicial decisions from time to time, consisting of a separate interest in a Unit, together with an undivided interest in common in the Common Area and easements and other rights as more particularly defined in Article 3, below.

1.12 "Condominium Building" shall mean and refer to a building containing one or more units.

1.13 "Condominium Plan" shall mean and refer to that certain Condominium Plan recorded October 3, 1972 in the Office of the County Recorder of the County of San Diego, State of California, as Instrument Number 265205 as that Condominium Plan may from time to time be amended.

1.14 "Declarant" shall mean and refer to Mission Investment Trust, an unincorporated California business trust, and such of its successors as shall acquire the entire fee interest of Declarant in the Project, as of the date of acquisition thereof. Persons or entities who acquire less than the entire fee interest of Declarant in the Project shall not be successors of Declarant for purposes of this Declaration, but shall instead be owners.

1.15 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Easements, Limitations, Reservations, Liens and Charges for Capri by the Sea Condominiums, as the same may be amended, supplemented, modified or changed from time to time.

1.16 "Family" shall mean one or more persons related to each other by blood, marriage or legal adoption, or a group of not more than two persons not so related, together with his, her, or their domestic servants, if any, maintaining a common household in a Unit.

1.17 "Federal Agencies" shall mean and refer to one or more of the following agencies: Federal Housing Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association and Veterans Administration, as well as other, similar federal governmental agencies which may exist from time to time and which perform functions or provide services similar to those performed or provided by the aforementioned agencies.

1.18 "Governing Instruments" shall mean and refer to this Declaration, the Articles and By-Laws.

1.19 "Institutional Mortgagee" shall mean and refer to a Mortgagee which is in the business of making loans secured by mortgages, deeds of trust or like encumbrances upon real property.

1.20 "Land" shall mean and refer to the material of the earth, whatever may be the ingredients of which it is composed, and shall include free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed by law and rights of others to the use of airspace granted by law.

1.21 "Lessee" shall mean and refer to any person or entity who occupies a Unit under a written or unwritten lease or other consensual agreement with an Owner, and shall include the Family of such person or entity, if any.

1.22 "Member" shall mean and refer to every person or entity who holds membership in the Association as provided in section 2.2, below.

1.23 "Mortgage" shall mean and refer to any duly recorded mortgage or deed of trust or similar encumbrance upon real property encumbering one or more Condominiums or the Project or any portion thereof, and shall also include any duly recorded conditional or installment sale contract conveying fee simple title to a Condominium.

1.24 "Mortgagee" shall mean and refer to a person or entity to whom a Mortgage is made, and shall include the beneficiary of a deed of trust and any other person having an interest in one or more Condominiums or the Project or any portion thereof merely as security for the performance of an obligation as well as any vendor of a Condominium under a duly recorded conditional or installment sale contract.

1.25 "Owner" shall mean and refer to one or more persons or entities, including Declarant, who are the record owner of a Condominium, or who are the record vendee of a Condominium under a duly recorded conditional or installment sale contract conveying fee simple title to such Condominium, but shall not mean or refer to those having such interest merely as security for the performance of an obligation. In the event that a Condominium is owned of record concurrently by more than one person or entity, all persons and/or entities owning such Condominium shall collectively be considered to be the Owner of such Condominium. Where duties or obligations are imposed by the Governing Instruments upon Owners, each such person or entity shall be jointly and severally responsible for performance of such obligations and duties and jointly and severally liable for the failure of such persons and/or entities to perform such obligations and duties. Where the vote, consent, approval or ratification of the owners, or of any group of owners, other than Declarant, is required pursuant to the Governing Instruments, all persons and/or entities concurrently owning a single Condominium shall give a single vote, consent, approval or ratification as they decide among themselves.

1.26 "Permanently" shall mean more than ninety (90) days in any calendar year.

1.27 "Project" shall mean and refer to the Property and all improvements now or hereafter constructed thereon.

1.28 "Property" shall mean the real property described in Exhibit "All hereto, which shall include all of the Units and Common Area, and any other real property heretofore or hereafter acquired by the Association.

1.29 "Time Share Interval" means (i) a fee ownership or leasehold estate, or (ii) a contractual right of exclusive occupancy, whereby the use, occupancy, or possession of such Unit rotates among purchasers of such Time Share Interval according to a fixed or floating time schedule.

1.30 "Unit" shall mean and refer to the elements of a Condominium which are owned separately by an owner and are not owned by such owner in common with the Owners of other Condominiums in the Project, said elements being more particularly described in Article 3 of this Declaration and in the Condominium Plan.

## ARTICLE 2 The Association

2.1 Powers and Duties of the Association. The Association is hereby designated as the management body of the Project, and shall exist for the purposes set forth in the Governing Instruments. The affairs of the Association shall be managed by the Board. All lawful acts, agreements and determinations made by the Association in accordance with the applicable statutes of the State of California and the provisions of the Governing Instruments shall be binding upon the Owners and their invitees, licensees, guests, successors, assigns, Families and Lessees. In addition to the powers and duties set forth in the Articles and By-Laws or elsewhere provided for in this Declaration, whether directly or by implication, and without limiting the generality thereof, the Association shall:

(a) Enforce the provisions of the Governing Instruments by appropriate means and carry out the obligations of the Association under the Governing Instruments, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement and defense of actions and proceedings, and the promulgation of Association Rules as provided in Section 2.8, below;

(b) Pay any real and personal property taxes, assessments, and other charges assessed against, or which are or could become a lien upon, the Common Area, or some portion thereof, unless such taxes are separately assessed against the owners;

(c) Contract for and maintain such policy or policies of insurance as may be required by the Governing Instruments or as the Board deems necessary or desirable in furthering the purposes of and protecting the interest of the Association, and review the effectiveness and adequacy of such policies on a regular basis;

(d) Contract for materials and/or services for the Common Area or the Association;

(e) Delegate its duties, powers, functions and obligations to committees, officers or employees as expressly authorized in the Governing Instruments, and/or employ a manager and/or contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association; provided that any contract with a person or firm appointed as a manager or managing agent shall be terminable with or without cause without payment of a termination fee on not more than 30 days' written notice by the Association; provided, however, that no delegation of a duty, power, function or obligation hereunder by the Association shall relieve the Association of such duty, power, function or obligation, and provided further that, in the event that the Association shall delegate any or all of its duties, powers, functions or obligations to any person or entity, neither the Association nor the Board nor any member thereof shall be liable for any omission or improper exercise of any duty, power, function or obligation so delegated;

(f) Prepare budgets and financial statements of the Association on an annual basis;

(g) Initiate and carry out appropriate disciplinary proceedings and impose appropriate monetary penalties and other sanctions (including, without limitation, temporary suspensions of membership rights in the Association) against owners for violations of provisions of the Governing Instruments and Association Rules in accordance with procedures set forth in the Governing Instruments and Association Rules; provided that the accused owner is given notice and an opportunity to be heard with respect to any alleged violation before a decision to impose discipline is reached.

(h) Have the power, but not the duty, to enter, through any representative or agent, any Unit at reasonable hours and after reasonable notice, where reasonably necessary in connection with inspection of such Unit or construction, maintenance or repair for the benefit of the Common Area or the Owners, or for the enforcement of the provisions of the Governing Instruments or Association Rules. Any damage caused by such entry shall be repaired at the sole cost and expense of the Association.

(i) Have the power, but not the duty, to enter, through any representative or agent, any Unit without notice and at any hour in the event of an emergency involving potential danger to life or property. Any damage caused by such entry shall be repaired at the sole cost and expense of the Association.

(j) Obtain or contract for all water, gas, electric and other utilities, and refuse collection and other services for the benefit of the Common Area and, if not separately metered or billed, for the Units, and prorate the cost thereof among the users of such services;

(k) Grant easements where necessary, for utilities and sewer facilities and for other purposes, over the Common Area to serve the Property;

(l) Establish and maintain working capital, contingency, and asset replacement funds and/or other adequate reserves in amounts to be determined by the Board;

(m) Have the duty to maintain architectural control over the Project and appoint an Architectural Committee in connection therewith, pursuant to Article 6 of this Declaration;

(n) Fix and levy Assessments upon Condominiums from time to time and fix the due date for the payment of such Assessments and the date upon which the same shall become delinquent, as authorized in this Declaration.

(o) Borrow money and incur indebtedness for the purposes of the Association and cause to be executed and delivered therefore, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges or other evidence of debt and security therefore;

(p) own, lease, maintain, operate, control, repair, restore and otherwise manage, or cause to be managed, the Common Area, together with the facilities, improvements, structures, fixtures, equipment, trees, shrubbery, plants, landscaping and any drainage or irrigation facilities or systems located thereon, as well as any personal property of the Association located thereon, in a neat, orderly, safe and sanitary condition and in such a manner as to maintain and preserve established slope ratios, prevent erosion or sliding problems and to facilitate the orderly discharge of water through established drainage systems and patterns. Any natural slope areas within the Common Area shall be maintained in such a manner as to prevent noxious or dangerous weeds, sage brush, chaparral or any other brush or weeds from attaining such growth as to become a fire menace or public nuisance.

(q) Have the power to establish, independently or in cooperation with the City and/or County, a special body, area, or district for the performance of all or a portion of the maintenance and other functions within the responsibility of the Association.

(r) Have the power to acquire real property by lease or purchase for offices or other facilities that may be necessary or convenient for the management of the Common Area, for the administration of the affairs of the Association or for the benefit of the Owners.

2.2 Membership. Each person or entity who has record ownership, singly or in common with others, of a fee interest in a Condominium which is subject to Assessment by the Association pursuant to this Declaration shall be a Member. No person or entity having an interest in a Condominium merely as security for the performance of an obligation shall be a Member. Membership in the Association, and the right to vote as established in Section 2.4, below, shall be appurtenant to, and may not be separated from, fee ownership of a Condominium subject to Assessment by the Association. Ownership of such a Condominium shall be the sole qualification for membership in the Association. In the event that more than one person or entity is the record owner of a fee interest in such a Condominium each such person or entity shall be a Member.

2.3 Transfer of Membership. Membership in the Association shall be transferred only by transfer of fee ownership of a Condominium subject to Assessment by the

Association. No person or entity holding the requisite ownership interest in a Condominium shall transfer in any manner the membership held by such person or entity, except upon and by the means of transfer of a fee ownership interest in a Condominium held by such person or entity, and, in case of such transfer of a fee ownership interest in a Condominium, membership in the Association shall be transferred only to the transferees of such fee ownership interest. Any attempt to make a transfer of membership in the Association otherwise than by conveyance or assignment of a fee ownership interest in a Condominium, and any attempt to pledge, hypothecate or otherwise encumber the membership of a Member, is prohibited, void and without effect, and shall not be reflected upon the books and records of the Association. In the event that any person or entity holding the requisite fee ownership interest in a Condominium shall fail or refuse to transfer the membership registered in the name of such person or entity upon transfer of such fee interest, or any portion thereof, in such Condominium, to the transferees of such fee interest, the Association shall have the right to terminate the membership of such person or entity as to the fee interest transferred and to effect the transfer of membership, through entries in the books and records of the Association or otherwise, to the transferees of such interest.

2.4 Voting Rights. Voting rights attributable to each Condominium shall not vest until Assessment(s) have been levied against such Condominium, pursuant to Article 4 of this Declaration. The Association shall have two classes of voting membership as follows:

(a) Class A: Class A Members shall be all persons or entities entitled to membership as defined in Section 2.2, above, with the exception of Declarant. Each Class A Member shall be entitled to one vote for each Condominium subject to Assessment owned by such Class A Member; provided that if a Condominium subject to Assessment is owned concurrently by more than one person or entity, there shall be no more than one vote for each Condominium. Where the fee interest in a Condominium is jointly owned by more than one person or entity, such joint holders of such fee interest shall exercise the single vote to which they are jointly entitled as they shall among themselves determine. Any votes cast in violation of this Section 2.4(a) shall be null and void.

(b) Class B: The Class B Member shall be Declarant. The Class E Member shall be entitled to three votes for each Condominium subject to Assessment as to which it holds a fee interest, provided that Class B membership shall be converted to Class A membership, with one vote for each Condominium owned, and shall forever cease to exist upon the occurrence of whichever of the following is first in time:

(1) The total votes outstanding held by Class A Members equal the total votes outstanding held by the Class B Member.

(2) The second anniversary of the issuance by the California Department of Real Estate of the Renewed and Amended Final Subdivision Public Report dated -November 16, 1979 pertaining to the Project.

(c) Class Voting. For so long as there are two classes of membership in the Association, any action requiring the approval of a prescribed percentage of the membership of the Association shall require the vote or written assent of the prescribed percentage of each class of membership in the Association, unless otherwise expressly provided by the Governing Instruments.

2.5 The Board. The management of the affairs of the Association shall be the responsibility of the Board, the members of which shall be elected by the Association.

2.6 Powers of the Board.

(a) The Board shall have all of the powers and duties expressly or implicitly provided for in the Governing Instruments, and shall, in general, have the right, power, and duty to perform all necessary and appropriate acts for the conduct and management of the business and affairs of the Association, including, without limitation, the following:

(i) Enforcement of applicable provisions of the Governing Instruments and Association Rules, and any other instruments which may exist at present or in the future for the ownership, management and control of the Project;

(ii) Payment of real or personal property taxes, assessments or other charges which are, or which could become, a lien upon the Common Area or any portion thereof;

(iii) Contracting for casualty, liability and other insurance on behalf of the Association;

(iv) Contracting for goods and/or services for the Common Area, the Association or common facilities and common interests of the Association, subject to the limitations set forth below;

(v) Delegation of its powers to committees, officers, agents or employees of the Association as expressly authorized by the Governing Instruments;

(vi) Preparation of budgets and financial statements for the Association as prescribed by the Governing Instruments;

(vii) Formulation of rules of operation for the Common Area and for any other properties or facilities owned, controlled or managed by the Association;

(viii) Initiation and execution of appropriate disciplinary proceedings and imposition of appropriate monetary penalties and other sanctions (including, without limitation, temporary suspension of membership rights in the Association) against owners for violations of the provisions of the Governing Instruments and Association Rules, in accordance with procedures set forth in the Governing Instruments and/or Association Rules; provided that the accused owner is given notice and an opportunity to be heard with respect to any alleged violation before a decision to impose discipline is reached.

(ix) Entry into any Unit as necessary in connection with construction, maintenance or emergency repair for the benefit of the Association, the Owners or the Common Area.

(b) The Board shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of the total voting power of each class of membership in the Association and a majority of voting power of the members other than votes of the Declarant:

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

(A) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration;

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

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

(ii) Incurring aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of 5% of the budgeted gross expenses of the Association for that fiscal year;

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

(iv) Paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided, however, that the Board may cause a member of the Board or officer of the Association to be reimbursed for expenses incurred in carrying on the business of the Association.

2.7 Association Rules. The Association and the Board shall have the power to adopt, amend and repeal such rules and regulations ("Association Rules") as they deem necessary or desirable, from time to time, in order to manage or govern the Association and the Owners. The Association Rules shall govern such matters in furtherance of the purposes of the Association as the Association or the Board shall deem appropriate, including, without limitation, the use of the Common Area and the establishment of a system of reasonable disciplinary sanctions and proceedings, including without limitation fines or penalties enforceable as Special Assessments; provided, however, that the Association Rules

may not discriminate among the Owners, and shall not be inconsistent with the Governing Instruments. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner in the manner established in this Declaration for the delivery of notices and a copy shall be posted at a conspicuous place or places within the Common Area. Upon such mailing or delivery and posting, such Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Association Rules, as adopted, amended or repealed, shall be available at the principal office of the Association to each Owner upon request. In the event of any conflict between any such Association Rules and any provisions of the Governing Instruments, the provisions of the Association Rules shall be deemed to be superseded by the provisions of the Governing Instruments to the extent of such inconsistency.

2.8 Operation of the Association and Board. The conduct and scheduling of meetings of the Association, the notices to be given of such meetings, the quorum and voting requirements for Association action, the election and removal of officers of the Association and members of the Board, the conduct and scheduling of meetings of the Board, the quorum and voting requirements for Board action and other aspects of the operation of the Association and the Board shall be governed by the provisions of the Articles and/or By-Laws.

ARTICLE 3  
Description of Property Interests in  
Units and Common Area

3.1 Establishment of Condominium Interests.

(a) Declarant, in order to establish a plan of Condominium ownership for the Project, hereby agrees and declares that it has divided and hereby does divide the Project into the Condominium estates described in Sections 3.2 and 3.3, below.

(b) Each Condominium in the Project includes:  
(i) a separate Unit, the elements of which are defined in Section 3.2, below; (ii) all easements appurtenant to the respective Condominium; and (iii) an undivided interest in common in the Common Area, as defined in Section 3.3, below.

(c) The individual Condominiums hereby established and which shall be individually conveyed are as described in the Condominium Plan.

3.2 Elements of a Unit; Balcony Easements. Each Unit shall be a separate freehold estate consisting of air space, the boundaries of which (such boundaries being included within the Unit) are the interior finished surfaces of the perimeter walls, floors, ceilings, windows and doors of each Unit (including the outlets of all utility installations therein) where they exist, and otherwise to the inclined, vertical or horizontal planes or curved surfaces at the limits of the horizontal dimensions shown as upper and lower elevations therefore in the Condominium Plan, together with all interior windows, fireplaces, interior doors and nonstructural partitions within such interior finished surfaces. Each Unit includes the elements of air space depicted in the Condominium Plan and designated by the word "unit" and a three or four-digit numeral.

Each Owner shall have an easement, appurtenant to the Unit of such owner, for exclusive use of that portion of the Common Area comprising the balcony area, if any, immediately adjacent to the Unit of such owner, which balcony area is depicted in the Condominium Plan and designated by the letter "B" and a three or four-digit numeral corresponding to the numeral of the Owner's Unit on the Condominium Plan. Such Owner shall have the right to use of that balcony area to the exclusion of all other persons, subject only to the rights of the Board and the Association to enter upon, maintain, improve and otherwise use the Common Area pursuant to the Governing Instruments; provided, however, that the exercise of such rights by the Board and/or the Association shall not unreasonably interfere with the right of such owner to the use and enjoyment of such balcony area.

The following are not a part of a Unit: bearing walls, columns, vertical supports, horizontal supports, beams, structural members, roofs, furred ceilings, floors, slabs, foundations, balconies, outside stairways, storage spaces, perimeter doors, fences, reservoirs, tanks, condensers, pumps, heating and other central services, pipes, ducts, flues, chutes, elevators, elevator shafts, chimneys, exterior lighting, wires, conduit and other utility installations, wherever located (but excluding all utility installations and/or outlets thereof when located within the Unit), and all landscaping. In interpreting this Declaration, any Mortgage or conveyance, or the Condominium Plan, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the original Condominium Plan thereof, shall be conclusively presumed to be its boundaries rather than the legal description expressed in this Declaration, any Mortgage or conveyance, or the Condominium Plan regardless

of settling or lateral movement of the Condominium Building and regardless of minor variance between boundaries shown on the Condominium Plan or in the deed and Declaration and those of the Condominium Building.

3.3 Interest in Common Area. In addition to the freehold estate in a Unit and the easement to use of a balcony area portion of the Common Area as described in Section 3.2, above, each Owner of a Condominium in the Project shall have an interest in the Common Area as follows:

(a) A freehold estate consisting of an undivided interest in common in the Common Area including, without limitation, the Land within the Property (as defined hereinbelow) and landscaping thereon, each Condominium Building (excepting therefrom the Units), together with all bearing walls, columns, vertical supports, horizontal supports, beams, structural members, roofs, furred ceilings, floors, slabs, foundations, balconies, outside stairways, storage spaces, perimeter doors, fences, reservoirs, tanks, condensers, pumps, heating and other central services, pipes, ducts, flues, chutes, elevators, elevator shafts, chimneys, exterior lighting, wires, conduit and other utility installations, wherever located, but excluding all utility installations and/or outlets thereof when located within the Units. Management of the Common Area shall be the responsibility of the Association upon the closing of the sale of the first Condominium in the Project.

(b) The undivided interest in the Common Area hereby established and which shall be conveyed with each Unit is a one-one hundred fortieth (1/140) undivided interest. Declarant and its successors, assigns and grantees hereby covenant and agree that the fee title to a Unit and the appurtenant undivided interest in the Common Area conveyed therewith shall not be separated from each other nor separately conveyed or encumbered, and that the appurtenant interest in the Common Area shall be conclusively deemed conveyed with a Unit upon any conveyance of a Unit, even though the description in the instrument of conveyance may refer only to fee title to the Unit.

3.4 Extent of Owners' Easements. Each Owner shall have a nonexclusive easement appurtenant to its Condominium for ingress, egress, use and enjoyment in and to the Common Area and structures, improvements and facilities thereon, if any, subject to the following provisions:

(a) The right of the Association, in accordance with the Governing Instruments, to borrow money for the purpose of improving the Common Area and structures, improvements or facilities thereon, and, in connection therewith, to deed in trust or otherwise encumber the Common Area;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Association's title to the Common Area from impairment due to foreclosure or otherwise;

(c) The right of the Association or the Board to suspend the Association membership voting rights of any owner and/or the rights of any owner to use or enjoyment of recreational or social facilities within the Common Area for any period during which any Assessment against the Condominium owned by such Owner remains unpaid and delinquent after notice and hearing, and for a period not to exceed 30 days after notice and hearing for each infraction of the Association Rules;

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility or any other entity for such purposes and subject to such conditions as may be agreed to by the Association; provided, however, that no such dedication or transfer shall be effective unless (i) such dedication or transfer is approved by the vote or written assent of at least 66-2/3% of the total voting power of each class of membership in the Association, and (ii) an instrument in writing is signed by the Secretary of the Association certifying that such dedication or transfer has been approved by the required vote and/or written assent; provided, further, that no such approval shall be required in connection with the granting from time to time of easements for public utilities or for other public purposes consistent with the intended use of the Common Area;

(e) The right of the Association to establish, in cooperation with the City and/or County, a special tax assessment district for the performance of all or a portion of the maintenance and other functions within the responsibility of the Association;

(f) The right of the Association to establish and enforce Association Rules, including reasonable

rules and regulations pertaining to the use and enjoyment of the Common Area and any structures, improvements and facilities thereon;

(g) The right of the Association to limit the number of guests of owners and Lessees and the use of the Common Area by such guests or by persons (including Owners) who do not reside in a unit.

(h) The right of the Association to charge reasonable admission, use and other fees or charges for the use of any facility situated upon the Common Area;

(i) The right of the Association to perform its duties and exercise its powers, including the power to grant easements on the Common Area;

(j) other rights of the Association, the Architectural Committee, the Board, the owners and Declarant with respect to the Common Area, as may be provided for in the Governing Instruments;

(k) Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of Common Area imposed by Declarant, the City and/or County or any other governmental agency having jurisdiction to impose any such limitations, restrictions or conditions, whether by agreement with the Association or Declarant or otherwise.

3.5 Delegation of Use. Subject to the limitations of Section 3.4, above, any Owner may delegate, in accordance with the Governing Instruments and Association Rules, its right to use and enjoyment of the Common Area and structures, improvements and facilities thereon to the members of the Family of such owner who reside in its Unit and to the Lessees of such owner.

3.6 Preservation of Common Area. Except as otherwise permitted in this Declaration, neither the Common Area or facilities thereon, nor any portion thereof, shall be abandoned, partitioned, subdivided, sold, transferred, alienated, released, hypothecated or otherwise encumbered nor shall the right to use or enjoyment of the Common Area or the facilities thereon be conveyed in any manner other than by conveyance of a Condominium, and any purported conveyance in violation of this Section 3.6 shall be null and void.

3.7 Law Enforcement and Fire Protection, etc. Declarant hereby grants to the City and County, and any and all other governmental or quasi-governmental agencies or bodies having responsibility for law enforcement, fire protection, sanitation, trash collection and utility maintenance, a right of access over any and all private streets within the Property, and over the Common Area.

3.8 Easements for Vehicular Traffic. Declarant hereby grants to each owner a non-exclusive easement appurtenant to each Condominium owned by such Owner for vehicular traffic over any and all private streets within the Property.

3.9 Waiver of Liability; Indemnity

(a) Each person using the Common Area, or any portion thereof, and/or the structures, improvements and facilities thereon, or any portion thereof, including without limitation Owners and their Families, their respective invitees, licensees, guests and Lessees and the invitees, licensees and guests of the Association (all such persons collectively referred to in this Section 3.9 as "Users"), by such use agrees that such use of the Common Area and the structures, improvements and facilities thereof shall be at the sole risk of such User and that neither Declarant nor the Association nor the Board nor any committee, agent or representative of the Association or Board nor any Owner (other than such User, if such User is an owner) nor any member of the Board or any such committee shall be liable for damage to property or injury or death to persons or other liabilities or claims arising from such use.

(b) Each User, by use of the Common Area and the structures, improvements and facilities thereof, indemnities and holds harmless Declarant, the Association, the Board and all committees, agents and representatives of the Association or the Board and all owners (other than such User, if such User is an Owner) and members of the Board or any such committee from any and all claims, including costs and attorneys' fees in any action and appeals therefrom, arising from such use, from any breach of the duties and obligations of such User under the Governing Instruments or Association Rules or from the negligence or willful misconduct of such User.

ARTICLE 4  
Covenant For Assessments

4.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Condominium owned by it, hereby covenants, and each Owner by acceptance of a deed or other conveyance to a Condominium, whether or not it shall be so expressed in any such deed or conveyance, is and shall be deemed to covenant and agree to pay to the Association-

(a) Regular Assessments, (b) Capital Improvement Assessments,  
(c) Reconstruction Assessments, and (d) Special Assessments,  
if any, such Assessments to be fixed, established and collected from time to time as hereinafter provided. Each Assessment, together with such interest thereon and costs of collection thereof as provided in Section 5.1, below, shall be a debt of the person or entity who was the Owner of such Condominium at the time when the Assessment, or any portion thereof, fell due, and shall bind the heirs, devisees, personal representatives, successors and assigns, of such Owner. Each such Assessment, together with such interest and costs, shall be a charge upon the Condominium against which such Assessment is made, and shall become a continuing lien upon such Condominium as provided in Article 5 of this Declaration.

4.2 Purpose of Assessments. The Regular Assessments levied by the Association shall be collected, accumulated and used exclusively for the purpose of providing for and promoting the pleasure, recreation, health, safety and social welfare of the owners, including enhancement of the value, desirability, and attractiveness of the Project, improvement, repair, restoration and maintenance of the Common Area and structures, improvements and facilities thereon, creation of reasonable and adequate reserves therefor, and discharge of any obligations or duties imposed on the Association or the Board, or any other committee, subcommittee or other body of the Association or Board, by the Governing Instruments. The Association shall levy and collect Regular Assessments from the Owner of each Condominium within the Property in amounts sufficient to pay for all Common Expenses. Special Assessments, Capital Improvement Assessments and Reconstruction Assessments shall be used exclusively for the purposes for which such Assessments were levied as provided in this Declaration.

4.3 Regular Assessments.

(a) Amount and Time of Payment. Regular Assessments shall be levied by the Board against all Condominiums subject to Assessment on a calendar or

fiscal year basis ("Assessment Period") as determined by the Board, and the amount and time of payment of Regular Assessments shall be determined by the Board after giving due consideration to the Common Expenses of the Association. In the event that the amount budgeted to meet the Common Expenses for an Assessment Period proves to be excessive in light of the actual Common Expenses, the Board in its discretion may, by resolution, reduce the amount of the Regular Assessments.

(b) Date of Commencement of Regular Assessments. Regular Assessments shall commence as to all Condominiums on the first day of the month following the conveyance of the first Condominium to an owner other than Declarant.

(c) Assessment Procedures. At least 60 days in advance of the commencement of each Assessment Period, the Board shall estimate the total Common Expenses to be incurred by the Association for such forthcoming Assessment Period and shall at that time determine the amount of the Regular Assessment against each Condominium for such Assessment Period. Written notice of such Regular Assessment shall be sent to every Owner subject thereto at least 60 days in advance of the commencement of each Assessment Period. Each Owner shall thereafter pay to the Association such Regular Assessment in installments as established by the Board. In the event that the Board shall determine at any time that the Regular Assessments levied for a current Assessment Period are, or will become, inadequate to meet all Common Expenses for any reason, it shall immediately determine the approximate amount of such inadequacy, revise the amount of Regular Assessments against each Condominium, and give notice to each Owner of the newly-estimated Common Expenses, the revised Regular Assessment against each Condominium, and the amounts of the installments by which each owner may pay such revised Regular Assessment.

(d) Regular Assessment Limitations. The Board may not, without the vote or written assent of a majority of the total voting power of each class of membership in the Association and a majority of voting power of the members other than votes of the Declarant, impose a Regular Assessment for an Assessment Period which is more than 20% greater than the Regular Assessment for the immediately preceding Assessment Period.

4.4 Capital Improvement Assessments. Capital Improvement Assessments may be levied by the Board only for the purpose of defraying, in whole or in part, the cost of

any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, to the extent the same is not covered by the provisions for Reconstruction Assessments herein, subject to the provisions of Section 2.6(b)(ii), above. Capital Improvement Assessments shall be due and payable at the times and in the amounts fixed by the Board.

4.5 Reconstruction Assessments. Reconstruction Assessments may be levied by the Board in accordance with Article 11 of this Declaration so as to provide funds for the reconstruction of the Common Area and improvements thereon, including without limitation Condominium Buildings.

4.6 Special Assessments. Special Assessments may be levied (a) by the Board from time to time against condominium(s) with respect to which particular costs or expenses have been incurred by the Association for materials or services furnished at the request, or with the consent, of the Owner(s) of any such Condominium(s), (b) by the Board in order to reimburse the Association for sums expended in order to bring the Unit subject to such Assessment into compliance with the provisions of the Governing Instruments; (c) by the Board as fines or other sums owing pursuant to the provisions of this Declaration; or (d) by Declarant and/or the Board in accordance with Section 17.3(c), below. Special Assessments levied by the Board or by Declarant shall be due and payable at the times and in the amounts determined by the Board or by Declarant, respectively.

4.7 Levy of and Limitation Upon Capital Improvements and Reconstruction Assessments. In any fiscal year, the Board may not, without the vote or written assent of a majority of the total voting power of each class of membership in the Association, levy Capital Improvement Assessments or Reconstruction Assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed 5% of the budgeted gross expenses of the Association for that fiscal year. Every general Capital Improvement Assessment and Reconstruction Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments. The provisions of this Section 4.7 shall not apply to Special Assessments.

4.8 Certificate of Payment. Upon demand, the Board shall furnish to any Owner liable for Assessments a certificate in writing signed by an officer or authorized agent of the Association setting forth whether said Assess-

ments or any portions thereof have been paid. Such certificate shall be conclusive evidence of payment of any Assessments or portions thereof therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of such certificate.

4.9 Assessment of Condominiums Owned by Declarant. Upon the commencement of Regular Assessments, each Condominium owned by Declarant shall be subject to Assessment to the same extent and in the same manner as any Condominium owned by any owner other than Declarant, subject to the provisions of Section 4.12, below.

4.10 Nonuse and Abandonment. No Owner may waive or otherwise escape liability for the Assessments provided for herein, or release the Condominium owned by it from the liens and charges hereof, by nonuse of the Common Area or abandonment of its Condominium or otherwise.

4.11 Uniform Rate of Assessment. Each Unit shall be assessed separately and equally for its 1/140th share of any Assessment authorized pursuant to this Declaration except expenditures for insurance, gas for hot water heaters, domestic water, reserve for roof, reserve for painting common Area, reserve for hot water heater, and contingency reserve (collectively referred to hereinafter as "Excepted Expenditures"). Excepted Expenditures shall be assessed separately to each Unit in relation to its Classification ("A", "B", or "C") which classification is based upon the size category of the Unit. Units 102, 104, 106, 107, 109, 111, 202, 204, 206, 207, 209,211,302,304,306,307, 309,311,402,404,406, 407, 409,411,502,504,506,507, 509,511,602,604,606, 607, 609,611,702,704,706,707, 709,711,802,804,806, 807, 809,811,902,904,906,907, 909,911,1002,1004, 1006, 1007, 1009, 1011, 1102, 1104, 1106, 1107, 1109, 1111, 1203, and 1205 shall be classified as "All Units. Units 101, 103, 105, 108, 110,112,201,203, 205,208,210, 212,301, 303, 305, 308, 310,312,401,403, 405,408,410, 412,501, 503, 505, 508, 510,512,601,603, 605,608,610, 612,701, 703, 705, 708, 710,712,801,803, 805,808,810, 812,901, 903, 905, 908, 910, 912, 1001, 1003, 1005, 1008, 1010, 1012, 1101, 1103, 1105, 1108, 1110, 1112, 1202, and 1204 shall be classified as "B" Units. Units 1201, 1206, 1207 and 1208 shall be classified as "IC" Units. Units classified as "B" Units shall be assessed for Excepted Expenditures at a rate equal to 150% of (1/2 more than) the assessment for Excepted Expenditures for Units classified as "All Units. Units classified as "IC" Units shall be assessed for Excepted Expenditures at a rate equal to 275% of (1-3/4 more than)

the assessment for Excepted Expenditures for Units classified as "All Units. Except for the manner of their allocation to each Unit, all Excepted Expenditures shall be treated in all respects like all other Assessments authorized hereunder. In addition to the Assessments provided for herein, the Association may separately assess each Unit that is serviced by a central air conditioning system for its prorata share of the costs and expenditures of repair, maintenance, and operation of such central air conditioning system, such additional assessment being computed as to such Unit's classification as an "A", "B", or "C" Unit as set forth above.

4.12 Exempt Property. The following property subject to this Declaration shall be exempt from the Assessments, charges and liens created herein:

- (a) all properties dedicated to and accepted by a public authority;
- (b) all properties exempt from taxation by the laws of the State of California, upon the terms and to the extent of such legal exemption.

Notwithstanding any provision in this Section 4.12, no real property or improvements used for residential dwelling purposes shall be exempt from the Assessments, charges or liens created by this Declaration.

4.13 No Offsets. All Assessments shall be payable in the amount specified in the Assessment levied by the Board, the Association or Declarant and no offsets or deductions against such amount shall be permitted for any reason,, including, without limitation, a claim that the Association, the Board, or any committee or member thereof is not properly exercising its duties of maintenance or enforcement.

## **ARTICLE 5**

### **Non-Payment of Assessments**

5.1 Delinquency and Remedies of Association. If any Assessment or any portion thereof is not paid on the date when due, then such Assessment or portion thereof shall become delinquent and shall, together with interest and costs of collection as provided hereinbelow, be and become a lien upon the Condominium against which such Assessment was made, upon the recordation of a notice of assessment as provided in Section 5.2, below. If such delinquent Assessment

or portion thereof is not paid within 30 days after the delinquency date, a late charge of \$10.00 or 6% of the delinquent Assessment or portion thereof, whichever is greater, may be levied by the Board. Such delinquent Assessment or portion thereof shall bear interest from the date of delinquency at the maximum legal rate in effect from time to time, and, in addition to all other legal and equitable rights or remedies, the Association may, at its option, bring an action at law against the owner obligated to pay the same and/or may, upon compliance with the notice provisions set forth in Section 5.2, below, foreclose the lien against the Condominium, and there shall be added to the amount of such delinquent Assessment or portion thereof, and interest thereon, the late charge and all costs and expenses, including reasonable attorneys' fees, incurred by the Association in collecting the delinquent Assessment or portion thereof and/or foreclosing such lien. Each Owner vests in the Board, the Association and their successors, assigns and authorized representatives the right and power to bring all actions at law, in equity, or for the purpose of lien foreclosure in the name of and on behalf of the Association against such Owner for purposes of collecting Assessments or portions of Assessments which are delinquent. In lieu of judicially foreclosing the lien against a Condominium, the Association, at its option, may foreclose such lien by proceeding under a power of sale as provided in Section 5.3, below, such a power of sale being given to the Association as to each and every Condominium for the purpose of collecting Assessments or portions of Assessments which are delinquent.

5.2 Creation of Lien. If any Assessment or any portion thereof becomes delinquent, such amounts as may be delinquent, together with interest, costs of collection (including attorneys' fees) and the late charge, all as described in Section 5.1, above, shall be and become a lien in favor of the Association upon the Condominium against which such Assessment was made upon the recording in the office of the County Recorder of the County of a notice of assessment pursuant to Section 1356 of the California Civil Code or any similar statutory section. The notice of assessment shall not be recorded unless and until the Board or its authorized representative has delivered to the delinquent owner, not less than 15 days prior to the recording of said notice of assessment, a written notice of default and a demand for payment, and such delinquency has not been cured within 15 days after delivery thereof. The lien created upon such recording shall expire, and may be extended by the Board, in accordance with Section 1356 of the California Civil Code or any similar statutory section.

5.3 Foreclosure of Lien. After failure of an Owner to pay a delinquent Assessment in accordance with its terms, the lien created pursuant to Section 5.2, above, may be enforced by sale by the Board, its attorney or other person authorized to make the sale, in accordance with the provisions of Sections 1356 and 2924 et seq. of the California Civil Code or any similar statutory sections, or in any other manner permitted by law. The Board is hereby authorized to appoint the attorney of the Association, any officer of the Association or member of the Board, or any title insurance company authorized to do business in California as agent for purposes of conducting such sale. The Board shall have the power, on behalf of the Association, to purchase the foreclosed Condominium at the foreclosure sale using Association funds or funds borrowed for such purpose, and to hold, lease, mortgage and convey the same.

5.4 Curing of Default. In the event that any delinquency is cured by the delinquent Owner prior to sale, or prior to completing a foreclosure, by payment of the Assessment or portion of an Assessment which is delinquent, together with interest, costs of collection (including attorneys' fees) and late charges, if any, the Board shall, upon payment by such Owner of a reasonable fee, cause to be recorded in the office of the County Recorder of the County a notice setting forth the satisfaction of such claim and release of such lien.

5.5 Cumulative Remedies. The Assessment lien and the rights to foreclosure and sale thereunder as provided in this Declaration shall be in addition to, and not in substitution for, all other rights and remedies which the Board, the Association or their authorized representatives may have hereunder and **by** law.

5.6 Subordination of Lien to Mortgages. The lien of the Assessments provided ?-or in this Declaration shall be subordinate to the liens of Mortgages, as provided in Section 13.3, below.

5.7 Suspension of Voting and Common Area Rights. The Association or the Board may, after notice and hearing, suspend the Association voting rights of any Owner and/or the right to use and enjoyment of the Common Area and the structures, improvements and facilities thereon of any owner for any period during which any Assessment or portion thereof against such owner or the Condominium owned by such owner remains unpaid and delinquent.

ARTICLE 6  
Architectural and Landscaping Control

6.1 Architectural Approval Except for purposes of proper maintenance and repair of previously existing structures or improvements (which maintenance and repair shall conform to the plans, specifications and appearance of such previously existing structures or improvements), no person or entity shall install, erect, attach, build, place, construct or remove any lighting, shades, screens, signs, awnings, patio covers, decorations, fences, walls, aerials, antennas, landscaping, structures, fixtures or improvements (including without limitation basketball backboards or standards) or alter or improve the exterior (including painting thereof) or structurally alter the interior of a unit, or alter or improve the Common Area or any portion thereof, until plans and specifications for such alteration or improvement have been submitted to, and approved in writing by a majority of the members of, the Architectural Committee. Such plans and specifications shall be prepared by a duly licensed architect or other person approved by a majority of the members of the Architectural Committee and shall include, where appropriate, the following:

- (a) descriptions of color, shape, dimensions and materials to be used in the improvements;
- (b) plot plans, showing the location of all the structures and showing the grade elevations and drainage;
- (c) building plans, including floor, foundation, and roof plans and indicating all materials therefor;
- (d) exterior elevations and sections, structural designs and descriptions or depictions of salient exterior surfaces and details;
- (e) exterior color schemes;
- (f) landscaping plans, showing type, location and elevation of trees, bushes, shrubs, plants, hedges and fences;
- (g) fence plans, showing the type (including materials and colors), location and elevation.

All such plans and specifications shall be submitted to the Architectural Committee in writing by the person or entity proposing the improvements. Approval shall be based, among other things, on adequacy of site dimensions; adequacy of structural design and materials; conformity and harmony of the location, external design, landscaping and use of the proposed improvements with neighboring property, structures, improvements, landscaping, operations and uses; effect of location and use of improvements and landscaping upon neighboring property, structures, improvements, landscaping, operations and uses; relation of topography, grade and finished ground elevation of the property being improved to that of neighboring property; proper facing of main elevations with respect to nearby streets; preservation of view and aesthetic beauty; with respect to fences, walls, and landscaping, assurance of adequate access to the Association in connection with the performance of its duties and the exercise of its powers under the Governing Instruments and assurance of adequate access to law enforcement, fire, sanitation and other municipal or governmental officials; conformity with such rules and regulations as may be adopted by the Architectural Committee in accordance with this Article 6; and conformity of the plans and specifications to the purpose and general plan and intent of this Declaration.

6.2 Inapplicability to Declarant. Declarant shall not be required to comply with any of the provisions of Section 6.1, above.

6.3 Trimming of Trees and Shrubs. The Architectural Committee shall have the right, but not the obligation, to require any Owner to remove, trim, top or prune any shrub, tree, bush, plant or hedge which the Architectural Committee reasonably believes materially obstructs the view from any Unit; provided, however, that the Architectural Committee or Declarant, in their sole and absolute discretion, may fail or refuse to authorize the removal, trimming, topping or pruning of any shrub, tree, bush, plant or hedge, and may forbid or prevent the removal, trimming, topping or pruning of any shrub, tree, bush, plant or hedge, notwithstanding the fact that the view from any Unit may be obstructed by such shrub, tree, bush, plant or hedge.

6.4 Number of Members and Term of Architectural Committee. The Architectural Committee shall consist of three members, each of whom shall serve a term of one year. The power to appoint members of the Architectural Committee as provided hereunder shall include the power of removal of such members, and such power of removal may be exercised by

the party who appointed the member at any time and in its sole and absolute discretion. Declarant shall have the right to appoint all of the members of the Architectural Committee and their replacements until the first anniversary ("Anniversary Date") of the date of issuance by the California Department of Real Estate of the Renewed and Amended Final Subdivision Public Report dated November 16, 1979 pertaining to the Project. After the Anniversary Date, Declarant shall have the right to appoint two of the members of the Architectural Committee until 90% or more of the Condominiums have been sold, or until the fifth anniversary ("Fifth Anniversary Date") of the date of issuance by the California Department of Real Estate of such Final Subdivision Public Report, whichever shall first occur. The Board shall appoint the remaining member of the Architectural Committee not appointed by the Declarant. After 90% or more of the Condominiums have been sold or after the Fifth Anniversary Date, whichever shall first occur, the Board shall appoint all of the members of the Architectural Committee. The persons appointed to the Architectural Committee by the Board shall be Members; however, the persons appointed to the Architectural Committee by Declarant need not be Members.

6.5 Failure to Approve or Disapprove Plans and Specifications. In the event that the Architectural Committee, or its representatives designated in accordance with Section 6.10, below, fail(s) to either approve or disapprove plans and specifications within 30 days after the same have been submitted to it, it shall be conclusively presumed that the Architectural Committee has approved such plans and specifications. All improvement or other work approved by the Architectural Committee shall be diligently completed and constructed in accordance with approved plans and specifications.

6.6 No Liability. Neither Declarant, nor the Association, nor the Board, nor the Architectural Committee, nor the members or designated representatives thereof shall be liable in damages or otherwise to anyone submitting plans or specifications to the Architectural Committee for approval, or to any Owner, Lessee or other occupant of a Condominium or other property affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications, or for any defect in any structure constructed in accordance with such plans and specifications. Such plans and specifications are not approved for engineering design. No person or entity required by this Declaration to submit

plans or specifications to the Architectural Committee for approval, nor any Owner, Lessee or other occupant of a Condominium, shall bring any action, claim or suit at law, in equity, or before any governmental, quasi-governmental or arbitral agency, board, body or tribunal against Declarant, the Association, the Board, the Architectural Committee or any of the members or designated representatives thereof in connection with the submission, approval, disapproval, failure to approve or disapprove, installation, use or operation of the plans, specifications or work or improvements performed or installed pursuant thereto.

6.7 Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained herein, after the expiration of: (a) one year from the date of issuance of a building permit by municipal or other governmental authority for any improvements, or (b) one year from the date of commencement or construction of any improvements, or (c) 90 days after substantial completion of the work of construction or installation of any improvements, whichever is later, said improvements shall, as regards purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article 6 unless actual notice of noncompliance or Noncompletion, executed by the Architectural Committee or its designated representatives, shall appear of record in the office of the County Recorder of the County, or unless legal proceedings shall have been instituted to enforce such compliance or completion.

6.8 Rules and Regulations. The Architectural Committee may from time to time, in its sole discretion, adopt, amend and repeal reasonable rules and regulations interpreting and implementing such provisions of this Declaration as are within the jurisdiction of the Architectural Committee and establishing reasonable architectural standards for the Project, and compliance with such rules and regulations shall thereafter, until the repeal or amendment of such rules and regulations, be required for all works of improvement as enumerated in Section 6.1, above.

6.9 Variances. Where circumstances such as topography, location of property lines, location of trees, configuration of units or Condominium Buildings or other matters so require, the Architectural Committee, by the vote or written assent of a majority of the members thereof, may allow reasonable variances as to any of the covenants, conditions, or restrictions contained in this Declaration under the jurisdiction of such Committee or any rules and regulations promulgated by such Committee, on such terms and

conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan of improvement and development of the Project.

6.10 Appointment and Designation. The Architectural Committee may from time to time, by the vote or written assent of a majority of the members thereof, delegate any of its rights or responsibilities hereunder to one or more duly licensed architects or other qualified persons who shall have full authority to act on behalf of the Architectural Committee in all matters within the scope of such delegation.

6.11 Review Fee and Address. All plans and specifications required by Section 6.1, above, shall be submitted in writing for approval, together with a reasonable processing fee as established from time to time by the Board. The address of the Architectural Committee shall be in care of the principal office of the Association, as specified in the By-Laws, or at such other place or places as may from time to time be designated by the Architectural Committee in writing to the Board. Such address shall be the place for the submission of plans and specifications and the place where the current rules and regulations, if any, of the Architectural Committee shall be kept.

6.12 Inspection. Any member or agent of the Architectural Committee may from time to time, at any reasonable time and upon reasonable notice, enter and inspect any Unit or other property subject to the jurisdiction of the Architectural Committee as to its improvement or maintenance in compliance with the provisions of this Article 6.

## ARTICLE 7 General Restrictions

7.1 Residential Dwellings. Except as elsewhere provided in this Declaration, no building, structure, or improvement shall be constructed, erected, altered, placed or permitted to remain on any portion of the Property other than the Condominium Buildings, related appurtenances and improvements, and Common Area improvements contemplated by the Condominium Plan, together with replacements thereto.

7.2 Single-Family Residential Use. Each Unit shall be used exclusively for residential purposes; provided, however, that nothing contained in this Section 7.2 or elsewhere in this Declaration shall be deemed to prohibit or preclude use or occupancy of any Unit pursuant to a Time Share Interval. No Unit shall at any time be occupied Permanently by more than one Family.

7.3 Nuisance. No noxious or offensive activity shall be carried on within any Condominium or upon any part of the Property, nor shall the Property or any portion thereof be used for any purpose tending to injure the reputation thereof, or to disturb the neighborhood or occupants of adjoining property, or to constitute a nuisance or a violation of any public law, ordinance or regulation in any way applicable thereto.

7.4 Insurance. No Owner shall permit or suffer anything to be done or kept within the Property which shall in any way increase the premiums of insurance on any Condominium Building or on the Common Area.

7.5 Commercial Use. No Condominium or portion of a Condominium or fixtures, equipment or improvements within a Unit shall be used, or caused, allowed or authorized in any way to be used, directly or indirectly, for any business, commercial, manufacturing, mercantile, storage, vending or other nonresidential purposes.

7.6 Common Area Use. The Common Area shall be used only for recreational, social, pedestrian and vehicular movement and other purposes authorized under the Governing Instruments including use of those facilities and areas reasonably necessary to operate a Time Share Interval; provided, however, that the Association shall have the right to provide or authorize such services on the Common Area as it deems appropriate for the use and enjoyment of the Common Area or for the benefit of the owners; and provided, further, Declarant reserves a non-exclusive easement to establish in that portion of the Common Area known as the "lobby area" in the South section of the ground floor for the purpose of accepting reservations, arrivals, departures, an information center and telephone switchboard for guests, renters, Owners and users of the Units.

7.7 Projections and Antennas. No projections of any type shall be placed or permitted to remain above the roof of any Condominium Building or other building or structure upon the Property, with the exception of chimneys, vent stacks and other projections provided for in the plans and specifications therefor, except with the prior express written approval of the Architectural Committee. No Owner or other occupant of a Unit shall construct, erect, or maintain any outside television or radio pole or antenna or other electronic device upon any Condominium Building or other structure, or within any Unit or upon any other portion of the Project in such manner as to be visible from outside such Unit, except with the prior express written approval of the Architectural Committee.

7.8 Transmitting Devices. No transmitting devices, including amateur radio and citizens' band transmitters, may

be operated within the Project except with the prior express written approval of the Architectural Committee and the Board.

7.9 Temporary Buildings. No shed, tent, or temporary building shall be erected, maintained or used on the Property; provided, however, that temporary buildings intended for use and used only for purposes incidental to the initial construction of improvements on any portion of the Property may be erected, maintained and used, provided that such erection, maintenance and use has been approved by the Declarant, the Board or the Architectural Committee and further provided that such said temporary buildings shall be promptly removed upon completion of such construction work.

7.10 Parking of Vehicles. Except for temporary parking in certain limited cases designated below, no mobile home, truck (other than pickup trucks), trailer, recreational vehicle, boat, airplane, or any similar kind of vehicle or equipment shall be permitted to remain within the Project; provided, however, that the provisions of this Section 7.10 shall not apply to emergency vehicle repairs. Temporary parking shall mean parking of reasonably limited duration of vehicles belonging to guests of Owners or Lessees, delivery trucks, service vehicles and other commercial vehicles being used in the furnishing of services to the Association or to an Owner, Lessee, or other occupant of a Unit, and parking of vehicles belonging to or being used by Owners or Lessees for loading or unloading purposes. Guest parking spaces, if any, within the Property shall be reserved for the exclusive use of guests of Owners, Lessees and other occupants of Units, and such parking spaces shall not be used by Owners, Lessees or other occupants of Units. The Board may adopt rules to regulate the admission and parking of any and all vehicles within the Property, including the levy of fines (which fines may be deemed Special Assessments) or other penalties against owners who violate, or whose Lessees, invitees, licensees or guests violate, such rules.

7.11 Privies. No privy shall be erected, maintained or used upon any portion of the Project, but a temporary privy may be permitted during the course of construction, alteration of improvement of a building or other improvements, provided that such erection, maintenance or use is approved by the Architectural Committee. Any permanent lavatory, toilet or water closet which shall be erected, maintained or used upon any portion of the Project shall be enclosed and located within a building permitted under this Declaration, shall be properly connected with the sewer system and shall be so constructed and operated that no offensive odor shall arise or otherwise escape therefrom.

7.12 Animals. No animals, fowl, reptiles, fish, insects or poultry shall be raised, kept or bred within any Unit or elsewhere within the Project.

7.13 Signs. No sign, billboard or advertising device of any character shall be erected, maintained, or displayed upon any portion of the Property, except for such signs and other advertising devices or structures as may be used by Declarant and its agents and designees in connection with the conduct of Declarant's operations for the development, improvement, subdivision and sale of the Condominiums within the Project. However, the Board may approve appropriate signs during the sales phase of any Time Share Interval sales program that may be permitted. Further, in the event the Association decides to permit an agent to operate an office in the Common Area for the purpose of renting Units for owners, signs as approved by the Board shall be allowed. Owners wishing to lease or resell their units may place signs advertising that fact only in that part of the Common Area designated and maintained by the Association for that purpose.

7.14 Unightly Items. No weeds, rubbish, debris, objects or materials of d shall be placed or permitted to accumulate within the Project which shall render the Project or any portion thereof unsanitary, unsightly, offensive or detrimental to any property in the vicinity of the Project. Trash, garbage, rubbish and other waste shall be kept only in sanitary containers. All clotheslines, refuse containers, woodpiles, storage areas, storage piles, machinery and equipment shall be prohibited unless completely obscured from the view of adjoining streets, Units, driveways and the Common Area by means approved by the Architectural Committee. Refuse containers may be set out for a reasonable period of time before and after scheduled trash pickup times.

7.15 Maintenance of Units. All portions of each Unit shall at a 1 times be maintained in good condition and repair and well and properly painted in accordance with Article 6, above.

7.16 Window Coverings. No windows shall be covered with aluminum oil or other similar material, without the prior express written approval of the Architectural Committee.

7.17 Maintenance of Landscaping. Any and all landscaping or plants of every kind and character within a Unit, including shrubs, trees, grass and other plantings within the balcony areas adjacent to such Unit, if any,

shall be neatly trimmed, properly cultivated, and maintained continuously by the Owner of the Condominium at the sole cost and expense of such Owner. The Association shall be responsible for the landscaping and maintenance of landscaped or planted portions of the Common Area.

7.18 Air Conditioners. No air conditioning unit or other mechanical equipment shall be erected, installed, altered, placed or permitted to remain on any portion of the Common Area or upon the exterior of any Condominium Building or other building or structure within the Project without the prior express written approval of the Architectural Committee, such approval to be based upon factors including the size, shape, appearance, noise level and proposed location of such air conditioning unit or other mechanical equipment. This Section 7.18 shall not apply to any air conditioning units installed at the date of these conditions, covenants and restrictions.

7.19 Balcony Areas. No patio cover, awning or roof in, upon, or over any balcony area adjacent to a Unit, and no fence or partition in or upon such areas, shall be erected, installed, altered, placed or permitted to remain without the prior express written approval of the Architectural Committee.

7.20 Oil and Minerals. No portion of the surface or of the subsurface to a depth of 500 feet below the surface of the Property shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, water, gravel, earth or any earth substance. No oil wells, tunnels, shafts or other structures or excavations shall be installed upon the surface of the Property or within 500 feet below the surface of the Property for the purpose of such exploration or removal.

7.21 Operation of Machinery. No machinery or equipment of any kind shall be placed, operated or maintained upon or within any Unit, except such machinery or equipment as is usual and customary in connection with the use or maintenance of a private residence.

7.22 Drainage. No alteration of drainage of water from any Unit and the improvements therein shall be allowed upon, across or under adjoining Units unless an easement for such purpose is granted.

7.23 Owners' Liability. Each Owner shall be liable to the association for any damage to the Condominium

Buildings, the Common Area or any structures or improvements thereon which may be sustained by reason of the negligence or willful misconduct of such Owner, its invitees, licensees, guests, Family or Lessees, both minor and adult.

7.24 Motorcycles. No motorcycles, motorbikes, motor-powered cycles, mopeds, go-carts or other similar motor-powered machines not necessary or incidental to the maintenance of the Project shall be operated within the Project; provided, however, that motorcycles, motorbikes, motor-powered cycles and mopeds may be driven into and out of the Project for a recreational or transportation use outside the Project.

7.25 Firearms. No firearms or similar devices, including without limitation pistols, rifles, shotguns, air rifles, pellet guns, B-B guns, slingshots and bows and arrows, shall be fired, discharged, or otherwise used within the Project.

7.26 Rights of Declarant. None of the restrictions contained within- this Article 7 shall limit the rights of Declarant as provided for in Section 17.9, below, or in the exercise of the easements, licenses and other rights and powers reserved by or granted to Declarant by this Declaration.

7.27 Enclosure of Entry Hall. In the event that an Owner shall own two adjacent units serviced by the same common entry hall, such owner shall have the exclusive use of such entry hall, including the right to enclose it with a doorway as approved by the Board and only so long as such doorway does not obstruct the access to any firehose unit or other emergency facility.

7.28 Parking. Declarant, upon the initial transfer of each Unit to-an Owner other than Declarant, shall assign or cause to be assigned to such Unit the exclusive right to use one parking space in the Common Area. Units 1201, 1206, 1207 and 1208 shall be assigned one additional parking space. After such assignment, the Owner of a Unit shall have the right to use only the parking space(s) assigned to that Unit, and the right to use such parking space(s) shall be conveyed to subsequent Owners of the Unit together with

any transfer or conveyance of the Unit, unless the assignment of parking space(s) to such Unit is changed as hereinafter provided. After 51% of the Units have been conveyed to Owners other than Declarant, the Association shall have the power to change the assignment of parking spaces to Units upon a vote of 75% of all Unit Owners empowering it to do so; including the concurrence of the affected Unit Owner whose parking space assignment is sought to be changed.

## ARTICLE 8 Easements

8.1 Access to Common Area. Declarant hereby grants to the Association, its agents and representatives a license and easement to traverse upon or enter any Unit as necessary in order to gain access to the Common Area and to otherwise exercise, fulfill and discharge the rights, powers, duties and obligations of the Association under the Governing Instruments. Each Owner agrees, for itself and its Lessees, heirs, successors, executors, administrators and assigns, to permit free access through its Unit by the Association and its authorized agents and representatives for the purpose of exercising, fulfilling and discharging the powers, duties and obligations of the Association with respect to the Common Area.

8.2 Encroachments. Each Condominium is hereby declared to have, and Declarant hereby grants to each Owner of a Condominium, an easement over those portions of the Project (including Units and Common Area) adjoining the Unit included within such Condominium for the purpose of:

- (a) accommodating trellises, eaves, overhangs, and other similar projections created during the original construction, reconstruction or repair of a Condominium Building or other structure or improvement provided that such construction, reconstruction or repair is performed in compliance with Article 7 of this Declaration;
- (b) accommodating minor encroachments due to original engineering or surveying errors, settlement or shifting of a Condominium Building or other structure, or errors in original construction, reconstruction or repair, provided that such construction, reconstruction or repair is performed in compliance with Article 7 of this Declaration;
- (c) maintaining, repairing and reconstructing the trellises, eaves, overhangs, projections and encroachments described in subparagraphs (a) and (b) of this Section 8.2.

Each Owner agrees, for itself and its Lessees, heirs, successors, executors, administrators and assigns, and the Association agrees, for itself and its successors and assigns, that each will permit free access, at reasonable times and upon reasonable notice, by each owner (and its authorized agents) for whose benefit an easement shall be granted hereunder for the purpose of exercising the rights of such Owner with respect to such maintenance, repair and/or reconstruction.

8.3 Utilities. Declarant hereby reserves to itself, and hereby grants to the Association, licenses and easements, together with the right to grant and transfer the same, over the Common Area and the Units for the installation, maintenance, service, repair, reconstruction and replacement of electric, telephone, cable television, water, gas and sanitary sewer lines; provided, however, that such installation, maintenance, service, repair, reconstruction and replacement shall not unreasonably interfere with any owner's use and enjoyment of the Common Area or its Unit, or damage or weaken any improvement constructed thereon or therein.

8.4 Drainage Facilities. Declarant hereby reserves to itself, and hereby grants to the Association, licenses and easements, together with the right to grant and transfer the same, over the Common Area and the Units for the installation, maintenance, service, repair, reconstruction and replacement of drainage facilities under the surface of the Land under the Common Area and Units; provided, however, that such installation, maintenance, service, repair, reconstruction and replacement shall not unreasonably interfere with any Owner's use and enjoyment of the Common Area or its Unit, or damage or weaken any improvement constructed thereon or therein.

8.5 Development and Sale. Declarant hereby reserves to itself, together with the right to grant and transfer the same, and reserves to others, including without limitation Declarant's agents, sales agents and representatives and prospective purchasers of Condominiums, licenses and easements over the Project for purposes of construction, maintenance, display, operation of sales offices and for incidental parking and exhibition purposes and related purposes in connection with the construction, development, and sale of Condominiums within the Project; provided, however, that the use thereof by Declarant and others shall not unreasonably interfere with the reasonable use and enjoyment of the Project by the Owners. Declarant may use any of the Condominiums owned by it as model homes in connection with exhibition of Condominiums for sale.

8.6 Discharge of Rights and Obligations. Declarant hereby reserves to itself, and hereby grants to the Association, licenses and easements, together with the right to grant and transfer the same, over the Common Area and Units for the purpose of permitting Declarant, the Association, the Board, the Architectural Committee, and other committees, bodies, agents or members thereof to exercise, fulfill and discharge their rights, powers, duties and obligations as described in the Governing Instruments.

8.7 Amendment to Eliminate Easements. So long as Declarant owns any Condominiums within the Property, this Declaration cannot be amended to modify or eliminate the easements herein reserved to Declarant or granted to the Association without prior express written approval of Declarant, and any attempt to do so shall be void and without effect. Any attempt to modify or eliminate this Section 8.7 shall likewise require the prior express written approval of Declarant, and shall be void and without effect without such approval.

## ARTICLE 9 Repair and Maintenance

9.1 Repair and Maintenance of Units by Owners. Except to the extent persons or entities other than the owner are expressly obligated under this Declaration to maintain a Unit or any portion thereof, each Owner shall, at its own expense, paint, replace, repair and maintain in a neat, safe, attractive, clean and orderly condition all portions of and improvements to its Unit, including without limitation plumbing and electrical repairs within the Unit, and shall otherwise be responsible for the compliance of such Unit with all of the requirements of this Declaration which are not expressly made the responsibility of persons or entities other than the Owner. All such repairs and maintenance pursuant to this Section 9.1 shall be subject to such rules therefor as the Association may from time to time establish.

9.2 Window Glass. Each Owner shall be responsible for the interior and exterior cleaning of all window glass and glass doors, if any, in the Condominium Building around the perimeter of such Owner's Unit, and the repair and replacement, as necessary, of all such window glass shall be accomplished by each Owner at such Owner's own expense.

9.3 Repair and Maintenance of the Common Area by the Association. Except to the extent that an Owner is

expressly obligated hereunder to maintain a portion of the Common Area, the Association shall be obligated to paint, replace, repair and maintain in a neat, safe, attractive, clean and orderly condition all portions of and improvements to the Common Area, including without limitation all portions of each Condominium Building (but excluding therefrom each Unit), all parking areas, all landscaping on the Common Area and all driveways or walkways. The costs thereof shall be paid out of the general funds of the Association, except as otherwise specified in this Declaration as payable by particular Owners, and shall constitute a part of the Common Expenses of the Association.

9.4 Damage to Common Areas Caused by Owner. In the event that the Board shall determine that the walls, ceilings, floors, doors or any other portion of a Condominium Building or Common Area have been damaged as a result of gross negligence or willful misconduct by an Owner or by such Owner's invitees, licensees, guests, Family or Lessees, or by other occupants of the Unit, such owner shall be obligated to reimburse the Association for repair of such damage in a timely manner, in accordance with such rules as the Board or Architectural Committee shall from time to time adopt, and in accordance with any plans and specifications furnished by the Board or Architectural Committee. In the event that such reimbursement shall not be made by such owner in a timely fashion, the amount thereof may be charged against the Condominium owned by such owner by means of a Special Assessment.

9.5 Maintenance of Public Utilities. Nothing contained in this Declaration shall require or obligate the Association to maintain, replace or restore the underground facilities of public utilities which are located within easements owned by such public utilities. However, the Association shall take such steps as are necessary or appropriate to insure so far as reasonably possible that such facilities are properly maintained, replaced or restored by such public utilities.

9.6 Maintenance of Streets, Etc. The Association shall be obligated to maintain all private streets and open spaces contained within the Project, as well as any portions of the Common Area the maintenance of which is not expressly made the obligation of Owners by the Governing Instruments.

## ARTICLE 10

### Insurance

10.1 Liability Insurance. The Board shall obtain and maintain in effect comprehensive public liability insurance insuring Declarant, the Association, the Board, committees and bodies of the Association and members of the Board and such committees and bodies, the agents and employees of each of the foregoing, and the Owners and their invitees, licensees, guests, Families and Lessees against any liability incident to the ownership or use of the Common Area, and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than \$1,000,000.00 single limit, and the Board shall be authorized to obtain such greater amounts of coverage as it may deem necessary or appropriate.

10.2 Fire and Extended Coverage Insurance. The Board shall obtain and maintain in force from time-to time a master or blanket policy of fire and extended coverage insurance for the current full insurable replacement value, without deduction for depreciation, of all of the Condominium Buildings and all improvements to the Common Area constructed by Declarant or the Association, but not including "tenant improvements" constructed or installed within Units by Owners, Lessees or other occupants, as covered in Section 10.9, below. Such policy and any endorsements thereon shall be in the form and content, for such term and with such insurer as may be satisfactory to any Institutional Mortgagee; and, if more than one Institutional Mortgagee exists, such policy and endorsements shall meet the-maximum standards of such Institutional Mortgagees. Such policy shall contain extended coverage and replacement cost endorsements, if available, and may include such other coverages or clauses as the Board may deem necessary or appropriate. Such policy shall be in such amounts as shall be determined from time to time by the Board, shall name as insured the Association, the Owners, Declarant (so long as Declarant is the owner of any of the Condominiums) and all Mortgagees as their respective interests may appear, and shall contain loss-payable endorsements in favor of such Mortgagees.

10.3 Other Insurance. The Board shall purchase and maintain workers' compensation insurance, to the extent that the same shall be required by law, for all employees of the Association. The Board shall also purchase and maintain in effect such insurance on personal property owned by the Association, and such other insurance, as it deems necessary.

10.4 Trustee. All insurance proceeds payable under Section 10.2, above, shall be paid to a trustee (hereinafter "Trustee"). The Trustee shall hold, distribute and expend such proceeds for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear, pursuant to the provisions of Article 11, below. The Trustee shall be appointed by the Board and shall be a commercial bank, or branch thereof, or a trust company in the County.

10.5 Waiver of Claims Against the Association and Others. As to each of the policies of insurance obtained by the Association hereunder which will not be voided or impaired thereby, the Owners, on behalf of themselves and their invitees, licensees, guests, Families and Lessees, hereby waive and release all claims against Declarant, the Association, the Board, committees and bodies of the Association, members of the Board and such committees and bodies and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence, willful misconduct or breach of any agreement by said persons, but only to the extent of insurance proceeds received in compensation for such loss.

10.6 Premiums and Settlements. Insurance premiums for any blanket insurance coverage and any other insurance obtained by the Board shall be a Common Expense to be included in the Regular Assessments levied by the Association. That portion of Regular Assessments attributable to the payment of insurance premiums shall be held in a separate account of the Association and used solely for the payment of such insurance premiums as they become due. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Following approval of a loss settlement by majority vote of the Board, any two members of the Board may sign a loss claim form or release form in connection with the settlement of a loss claim, and such signature shall be binding upon the Association and the Owners.

10.7 Annual Insurance Review. The Board shall annually determine whether the amounts and types of insurance it has obtained provide adequate coverage for the Project in light of increased construction costs, inflation, practice in the area in which the Project is located, or any other factor which tends to indicate that additional insurance policies and/or increased coverage under existing policies is necessary or desirable in order to protect the interests of the owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

10.8 Individual Insurance Prohibited. Except as expressly provided in Section 10.9, below, no Owner will separately insure its condominium or any part thereof against loss by fire or other casualty covered by any insurance carried under Section 10.2, above. Should any owner violate the provisions of this Section 10.8 or Section 10.9, below, and should any loss intended to be covered by insurance carried by the Association occur, and should the proceeds payable thereunder be reduced by reason of insurance carried by any Owner, such Owner shall pay to the Board or the Trustee, as the case may be, an amount equal to such reduction, for application to the same purposes as the proceeds, if not so reduced, would have been applied. In the event that such Owner has failed to pay such amount within 30 days of a written demand therefor by the Association or the Trustee, the Board may levy a special Assessment against the Condominium(s) owned by such owner for such amount. In the event that such Special Assessment is not paid within 30 days of its due date, the Board may effect the remedies of Article 5 of this Declaration.

10.9 Rights of Owners to Insure Personal Property and Tenant Improvements. Notwithstanding the other provisions of this Article 10, an Owner shall be permitted to insure its personal property against loss by fire or other casualty and may carry public liability insurance covering its individual liability for damage to property or injury or death to persons. In addition, any improvements made by an Owner to its Unit, or by previous Owners or other occupants of such Unit (but not including any improvements made to such Unit by Declarant or the Association) may be separately insured by such owner, provided that such insurance shall be limited to the type and nature of coverage commonly known as "tenant improvements" coverage. All such policies as may be carried by the Owners shall contain waivers of subrogation of claims against Declarant, the Association, the Board, committees and bodies of the Association, members of the Board and such committees and bodies and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence, willful misconduct, or breach of any agreement by said persons, but only to the extent of insurance proceeds received in compensation for such loss; provided, however, that such policies as may be carried by an Owner hereunder shall not adversely affect or diminish any liability under any insurance obtained by the Association, and that duplicate copies or certificates of such other policies shall be deposited with the Board.

10.10 Required Waiver. All policies of physical damage insurance shall provide for waiver of the following rights to the extent such waivers are obtainable at no extra cost from the respective insurers:

- (a) Subrogation of claims against Lessees;
- (b) Any defense based on co-insurance;
- (c) Any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;
- (d) Any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner, Lessee or other occupant of a Unit or arising from any act, neglect or omission of any named insured or the agents, contractors and employees of any named insured;
- (e) Notice of the assignment by any Owner of such owner's interest in the insurance by virtue of a conveyance of any Condominium;
- (f) Any right to require any assignment of any Mortgage to the insurer.

10.11 Requirements of Federal Agencies. Notwithstanding the foregoing provisions of this Article 10, the Association shall continuously maintain in effect such insurance and/or fidelity bond(s) as may be required by any Federal Agency, so long as any such Federal Agency is a Mortgagee or Owner, or insures or guarantees a Mortgage within the Property, except to the extent such coverage is not available or has been waived in writing by such Federal Agency.

## ARTICLE 11 Destruction of Improvements

11.1 Automatic Reconstruction. In the event of partial or total destruction of any Condominium Building, the following shall apply:

- (a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two reputable contractors, each such bid to include the obligation to obtain a performance bond, if the Board deems such a bond to be necessary or appropriate.

If the Board determines in good faith that none of the bids submitted under this Section 11.1(a) reasonably reflects the anticipated cost of reconstruction of the damaged Condominium Building, the Board shall proceed according to Section 11.2, below.

(b) The Board shall determine the amount of insurance proceeds, if any, payable by reason of the casualty.

(c) The Board shall determine whether the insurance proceeds, if any, will cover 85% or more of the estimated cost of reconstruction as determined pursuant to Section 11.1(a), above. If the Board finds that insurance proceeds will cover at least 85% of such estimated cost of reconstruction, the Board shall cause a notice to be sent to all Owners whose Units are in the partially or totally destroyed Condominium Building ("Affected Owners") and to all Institutional Mortgagees holding Mortgages upon Condominiums with Units in the partially or totally destroyed Condominium Building ("Affected Mortgagees"), setting forth such findings, informing such Affected Owners and Affected Mortgagees that the Board intends to commence reconstruction pursuant to this Declaration, and setting a deadline (which shall be in no event be sooner than 10 days nor later than 30 days after the date upon which the Board sends such notice) for the Affected owners to object in writing to the decision to reconstruct. In the event that 20% or more of the Affected Owners object in writing to such reconstruction on or before such deadline date, the Board shall call a meeting of the Affected Owners pursuant to Section 11.2, below. In the event that 20% or more of the Affected owners do not object in writing by such date, the Trustee shall pay such insurance proceeds as are available to the Board and the Board shall cause reconstruction to take place as promptly as practicable and shall, if necessary, levy Reconstruction Assessments against each Affected Owner's Condominium at such time and in such amount as the Board shall determine necessary to cover the costs of reconstruction in excess of insurance proceeds.

(d) The foregoing determinations shall be made by the Board as soon as possible. However, if such determinations cannot be made within 60 days of the date of destruction because of the unavailability or unacceptability of an insurance estimate or reconstruction bid, or otherwise, the Board shall immediately

call a meeting of the Affected Owners pursuant to section 11.2, below.

(e) If the Board determines that any Unit has become uninhabitable by reason of the total or partial destruction of the Condominium Building containing such Unit, Regular Assessments shall abate against the Condominium containing such Unit until the Board determines that the reconstruction of such Condominium Building has restored the habitability of such Unit. However, if the Board determines that such abatement will adversely and substantially affect the management, maintenance and operation of the Property, it may elect to disallow all or a portion of such abatement.

11.2 Reconstruction Pursuant to Meeting. If the Board determines that none of the bids submitted reasonably reflects anticipated reconstruction costs, if the Board determines that insurance proceeds will not cover at least 85% of the estimated cost of reconstruction, if 20% or more of the owners object in writing to a decision by the Board to reconstruct pursuant to Section 11.1, above, or if the Board does not make the determinations required under Section 11.1, above, within 60 days of the date of destruction, the Board shall call a meeting of the Affected Owners and give notice of such meeting, and any determinations leading to such meeting pursuant to this Section 11.2, to each Affected owner and each Affected Mortgagee in accordance with Section 17.3, below. Such meeting shall be held not less than 14 days nor more than 21 days after (a) the meeting at which the Board makes its determination that insurance proceeds will not cover at least 85% of the estimated cost of reconstruction or that none of the bids submitted reasonably reflects anticipated reconstruction costs, or (b) the deadline date indicated on the notice sent to the Affected Owners and Affected Mortgagees pursuant to Section 11.1(c), above, as the case may be. Unless the Affected Owners, by the vote or written assent of more than 50% of the total voting power of that portion of each class of membership in the Association represented among the Affected Owners, elects not to proceed with reconstruction, the Board shall cause reconstruction of the partially or totally destroyed Condominium Building to take place as promptly as practicable. If the Affected Owners do not elect not to proceed with reconstruction, the Board shall levy a Reconstruction Assessment against each Affected Owner's Condominium at such time and in such amount as the Board shall determine necessary to cover any costs of the reconstruction in excess of insurance proceeds.

11.3 Decision to Reconstruct; Procedure After Meeting. In the event that the Board undertakes reconstruction- pursuant to Section 11.2, above, the following shall apply:

(a) Immediately after such meeting, the Board shall notify, by first class registered or certified mail, all Affected Mortgagees of the decision to undertake reconstruction. The Board shall send a true copy of all such notices to the Trustee.

(b) As to each Condominium for which insurance proceeds have been paid to the Trustee, the Trustee to promptly upon the expiration of the appropriate time period shall pay all insurance proceeds allocable to such Condominium to a bonded disbursement control agency to be applied to reconstruction undertaken by the Association pursuant to Section 11.2, above.

(c) For the purposes of this Article 11, the amount of insurance proceeds "allocated" or "allocable" to a Condominium shall be determined pursuant to this Section 11.3(c). In the event that the insurance carrier allocates casualty insurance proceeds among Condominiums for which such proceeds are payable, such allocation shall be final and binding on all Owners, all Mortgagees, the Association, the Trustee and all other parties claiming an interest in the Project or any portion thereof or the insurance proceeds or any portion thereof. The Board shall make every possible effort to cause such insurance carrier to make such allocation. In the event that such allocation is not made, the Trustee shall allocate such proceeds among such Condominiums in a totally or partially destroyed Condominium Building in accordance with an appraisal conducted by a qualified real estate appraiser hired by the Board at the expense of the Association (such appraisal to be treated by the Association as a common Expense). Such allocation and such appraisal shall be final and binding upon the Association and all Owners.

11.4 Decision Not to Reconstruct; Procedure After Meeting. In the event that the Affected Owners elect not to reconstruct the partially or totally destroyed Condominium Building at the meeting called pursuant to Section 11.2, above, the Trustee shall apply the insurance proceeds as follows:

(a) The Trustee shall first apply insurance proceeds to the pro rata reduction or elimination, as the case may be, of all outstanding Mortgages encumbering condominiums for which insurance proceeds have been paid by reason of the casualty (such payments to be made, as between multiple Mortgagees whose Mortgages encumber a single Condominium, in the order of Mortgage priority); provided, however, that, as to any Condominium, the Trustee shall not pay insurance proceeds to any Mortgagee in an amount greater than (1) the outstanding indebtedness secured by the Mortgage or (2) the insurance proceeds allocable to said Condominium, whichever of (1) or (2) is the lesser.

(b) All proceeds allocated to Condominiums and remaining after payments to Mortgagees pursuant to section 11.4(a), above, shall be distributed by the Trustee to the Affected Owners after the deduction of an amount determined pursuant to Section 11.4(c), below.

(c) The Board shall levy a Reconstruction Assessment against all Affected Owners' Condominiums in an aggregate amount equal to the cost of clearing of the debris of totally or partially destroyed Condominium Buildings and cleaning of the area. The Trustee shall pay to the Board the amount of the Reconstruction Assessments levied against Affected Owners' Condominiums out of the insurance proceeds allocated to Affected owners prior to the distribution of such proceeds to the Affected Owners pursuant to Section 11.4(b), above. In the event that insurance proceeds allocated to any Affected Owner's Condominium, after deduction of proceeds paid to Mortgagees, are not sufficient to pay the entire Reconstruction Assessment levied against such Condominium, the Owner of such Condominium shall promptly pay any such excess.

11.5 Compliance With Condominium Plan. Any reconstruction undertaken pursuant to this Article 11 shall substantially conform to the Condominium Plan, as amended in accordance with Section 11.8, below.

11.6 Negotiations With Insurer. The Board shall have full authority, subject to the right of any Mortgagee which has requested the right to join the Board in negotiations, to negotiate in good faith with representatives of the insurer of a totally or partially destroyed Condominium Building or any other portion of the Common Area, and to

make settlement with the insurer for less than full insurance coverage on the damage to a Condominium Building or any other portion of the Common Area, in accordance with the provisions of Section 10.6, above. Any settlement made by the Board and any such Mortgagees in good faith shall be final and binding upon all owners.

11.7 Repair of Units. Installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the owner of that Unit and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

11.8 Amendment of Condominium Plan. In the event that reconstruction is to take place pursuant to this Article 11, the Board shall have the power to record an amendment to the Condominium Plan so that the Condominium Plan conforms to the Condominium Buildings as designed to be reconstructed; provided, however, that the Board shall not file an amendment to the Condominium Plan without the express prior written approval of all Mortgagees whose Mortgages encumber any Condominium the plan of which would be altered by such amendment. In the event that the Board, with the approval of such Mortgagees, decides to record such an amendment to the Condominium Plan, all owners and Mortgagees shall execute and acknowledge such amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. Such Owners and Mortgagees shall also execute such other documents or take such other actions as required to make such amendment effective. The Board shall cause a notice of change in the Condominium Plan to be sent to each Owner and Mortgagee within 10 days of the filing of such amendments in the office of the County Recorder of the County.

11.9 Reconstruction of Other Common Area. If any portion of the Common Area or any improvement thereon, other than a Condominium Building, is totally or partially destroyed, the Board shall cause reconstruction to take place by the earlier of (a) 30 days after the Association's receipt of the insurance proceeds payable by reason of such destruction, or (b) 90 days after such destruction. The Board shall thereafter cause reconstruction to be diligently and continuously prosecuted to completion within a reasonable period of time. The Trustee shall pay to a bonded disbursement control agency all insurance proceeds payable by reason of such destruction, to be applied to the costs of reconstruction. In the event that the insurance proceeds are not

sufficient to pay the costs of such reconstruction, the Board shall levy a Reconstruction Assessment against the Condominiums of all owners in a total amount equal to such difference. If the insurance proceeds exceed the cost of reconstruction, the Board shall either (a) distribute the excess in equal shares to each owner or the Mortgagee(s) of such Owner, as their interests may appear, or (b) retain the excess in the funds of the Association for application against Common Expenses.

11.10 Availability of Labor and Material. In determining whether the plans for a reconstructed Condominium Building are to be deemed to be in substantial conformance with the Condominium Plan, the Board may take into consideration the availability and expense of the labor and materials utilized in the original construction of such Condominium Building. If such labor or material is not available or is prohibitively expensive at the time of reconstruction, the Board may permit the substitution of other labor or material as it deems proper.

11.11 Contracting for Reconstruction. In the event that repair or reconstruction is undertaken pursuant to this Article 11, other than pursuant to Section 11.7, above, the Board or its authorized representatives shall have the sole authority and obligation to contract for such work as may be necessary for such repair and reconstruction.

11.12 Costs of Collecting Insurance Proceeds. If it should become necessary, in the judgment of the Board, for the Association to incur costs for appraisals, legal fees, court costs and similar expenses in order to determine or collect insurance proceeds, such costs shall be first deducted before distribution or application of insurance proceeds as provided in this Article 11.

## ARTICLE 12 Eminent Domain

12.1 Definition of Taking. The term "Taking" as used in this Article 12 shall mean condemnation by eminent domain, or sale under threat of such condemnation, of all or part of the Project.

12.2 Representation by Board in Condemnation Proceeding. The Board is hereby empowered, subject to the express limitations set forth in this Declaration, and further subject to the right of any Mortgagee which has requested the right to join the Board in the proceedings, to

act as the sole representative of the owners in all aspects of condemnation proceedings unless otherwise specified herein. The Board is further empowered, subject to the provisions of section 13.6, below, to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any action taken by the Board and any such Mortgagees in good faith shall be final and binding upon all owners.

12.3 Procedure After a Taking. In the event of a Taking, the Board shall distribute any award forthcoming from the taking authority according to the provisions of this Section 12.3 after deducting therefrom fees and expenses related to the condemnation proceeding, including, without limitation, fees for attorneys and appraisers and court costs. In the event that the Taking is by judgment of condemnation and said judgment apportions the award among the Owners affected by the Taking and their respective Mortgagees, the Board shall distribute the amount remaining after such deductions among such Owners and Mortgagees on the allocation basis set forth in such judgment. In the event that the Taking is by sale under threat of condemnation, or if the judgment of condemnation fails to apportion the award, the Board shall distribute the award among the Owners and their respective Mortgagees, as their interests may appear, based upon the relative values of the Condominiums affected by such Taking as determined by: (a) the appraised value of each Condominium prior to the Taking as determined by a qualified real estate appraiser hired by the Board at the expense of the Association (such appraisal to be treated by the Association as a Common Expense) and (b) the degree to which each Condominium has been affected by the Taking. The determination by such appraiser as to the value of each Condominium prior to the Taking and the determination by the Board as to the degree to which each Condominium has been affected by the Taking shall be final and binding upon the Association and all Owners. Nothing contained herein shall affect the priority as between an Owner and the Mortgagee(s) of its Condominium as to the portion of the condemnation award allocated to such Condominium. In no event shall any portion of such award be distributed by the Board to an Owner and/or the Mortgagee(s) of its Condominium in a total amount greater than the portion allocated hereunder to such Condominium.

12.4 Award for Owners' Personal Property and Relocation Allowances. Where all or part of the Project is taken, each Owner and/or the Mortgagee(s) of such owner shall have the exclusive right to claim all of the award specifically made for the personal property of such Owner,

and any specifically designated relocation, moving expense or allowance. Notwithstanding the foregoing provisions, the Board shall represent each Owner in connection with the recovery of any and all awards with respect to such portion, if any, of such owner's personal property as is, at the time of any Taking, as a matter of law, part of the real property comprising any Condominium or Condominium Building and shall allocate to such Owner so much of any award as is attributed by judgment during the Taking proceedings, or failing such attribution, attributed by the Board, to such portion of such owner's personal property.

12.5 Notice of Taking. The Board, immediately upon acquiring knowledge of any Taking or threat thereof with respect to the Project, or any portion thereof, shall promptly notify all Owners. Institutional Mortgagees shall be notified of a Taking or threat thereof in accordance with Paragraph 13.9, below.

12.6 Inverse Condemnation. The Board is authorized to bring an action in inverse condemnation on behalf of the Association and all of the affected owners upon a determination by the Board that such an action is necessary or appropriate. In the event that such an action is brought, the provisions of this Article 12 shall apply to the procedures for obtaining and allocating any award or damages obtained as a result of such an action to the same extent as to a Taking.

12.7 Change of Condominium Plan. In the event of a Taking, and notwithstanding any other provision of this Declaration, the Board may amend the Condominium Plan in order to reflect the change in the Project. In the event that the Board decides to record such an amendment to the Condominium Plan, all owners and Mortgagees shall execute and acknowledge said amendment so that it will comply with Section 1351 of the California Civil Code or any similar statute then in effect. Such Owners and Mortgagees shall also execute such other documents or take such other actions as required to make such amendment effective. The Board shall cause a notice of change in the Condominium Plan to be sent to each Owner and Mortgagee within 10 days of the filing of such amendments in the Office of the County Recorder for the County.

### ARTICLE 13 Rights of Lenders

13.1 Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration

requires the Association or the Board to deliver to Mortgagees unless and until such Mortgagee, or its agent, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Condominium within the Project. Wherever the approval of all or a specified percentage of Mortgagees, or of Mortgagees holding specific types of Mortgages, is required pursuant to this Declaration, it shall be deemed to mean the vote or approval of all or a specified percentage of only those Mortgagees which have delivered such notice to the Board. Notwithstanding the foregoing, if any right of a Mortgagee under this Declaration is conditioned on a specific written request to the Association or the Board, in addition to having delivered the notice provided in this Section 13.1, a Mortgagee must also make such request, either in a separate writing delivered to the Board or in the notice provided above in this Section 13.1, in order to be entitled to such right. Except as provided in this Section 13.1, a Mortgagee's rights pursuant to this Declaration, including without limitation the priority of the lien of Mortgages over the lien of Assessments levied by the Association or the Board hereunder, shall not be affected by the failure of such Mortgagee to deliver a notice to the Board pursuant to this Section 13.1. Any notice or request delivered to the Board by a Mortgagee shall remain effective without any further action by such Mortgagee for so long as the facts set forth in such notice or request remain unchanged.

13.2 Priority of Mortgage Lien. No breach of any of the covenants, conditions, restrictions, easements, limitations or reservations contained in this Declaration, nor the enforcement of any of the liens or charges provided by this Declaration, shall affect, impair, defeat or render invalid the lien or charge of any First Mortgage made in good faith and for value encumbering any Condominium, but all of said covenants, conditions, restrictions, easements, limitations, reservations, liens and charges shall be binding upon and effective against any Owner whose title is derived through a foreclosure or trustee's sale, or otherwise, with respect to a Condominium, except as otherwise provided in this Article 13.

13.3 Subordination of the Assessment Lien. The lien of the Assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Condominium(s) within the Project subject to Assessment; provided, however, that such subordination shall apply only to Assessments which have become due and payable prior to a sale or transfer of such Condominium pursuant to a decree of foreclosure respecting such Mortgage,

sale under a power of sale included in any such Mortgage. The person or entity taking title to such Condominium as a result of such sale or transfer shall take title free of any lien or claim against such Condominium for unpaid Assessments or other charges pursuant to this Declaration prior to the date such person or entity takes such title, except for liens or claims for a share of such Assessments resulting from a reallocation of such Assessments upon all Condominiums within the Project, but such sale or transfer shall not relieve such Condominium from liability for any Assessments thereafter becoming due, or from the lien of any such subsequent Assessments. Nothing in this Section 13.3 shall be construed to release any owner from its obligation to pay any Assessment levied pursuant to this Declaration during the period of ownership of its Condominium.

13.4 Curing Defaults. A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is noncurable or of a type which is not practical or feasible to cure.

13.5 Resale. It is intended that any loan to facilitate the resale of any Condominium after judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and any Mortgagee who makes such a loan shall be entitled to all of the rights and protections afforded to other Mortgagees.

13.6 75% Vote of Institutional Mortgagees or Owners. Except upon the express prior written approval of either (i) at least 75% of the votes of Institutional Mortgagees holding first priority Mortgages upon Condominiums within the Project, based upon one vote for each first priority Mortgage held, or (ii) at least 75% of the Owners other than Declarant, neither the Association nor the Board nor the owners shall be entitled to do any of the following:

(a) By act or omission, seek to abandon or terminate the Project, or the condominium status of the Project, except for abandonment provided by statute;

(b) Change the pro rata ownership interests or obligations of any individual Condominium as the same are set forth in this Declaration for the purpose of (i) levying Assessments or other 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;

(c) Partition or subdivide any Condominium, except for partition by sale as to a Condominium owned by two or more co-tenants, as permitted pursuant to Section 14.1, below;

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell, transfer or alienate the Common Area; provided, however, that the granting of easements for public utilities or other public purposes consistent with the intended use of the Common Area shall not require such approval. This provision is not intended to restrict or otherwise prohibit an owner from selling or encumbering its own Condominium;

(e) Use hazard insurance proceeds received as a result of damage or destruction to any property within the Project (whether to Units or to Common Area) for purposes other than the repair, replacement or reconstruction of such property, except as provided by statute in case of substantial loss to Units and/or Common Area;

(f) Amend any provision of the Governing Instruments which provision is required by the rules, regulations or guidelines of programs administered by any Federal Agencies involved in the Project;

(g) Make a voluntary sale of the Project or any portion thereof to a condemning authority, as provided in Section 12.2, above, in lieu of engaging in a condemnation action.

13.7 Other Rights of Institutional Mortgagees. Any Institutional Mortgagee or its agent shall, upon written request to the Association, be entitled to:

(a) Inspect the books and records of the Association during normal business hours.

(b) Receive the annual financial statements of the Association within 90 days following the end of the Association's fiscal year.

(c) Receive written notice of all regular and special meetings of the Association and all meetings of the Board, and Institutional Mortgagees shall further be entitled to designate a representative to attend any such meeting; provided, however, that nothing contained

in this Section 13.7 shall give an Institutional Mortgagee or its agent the right to call a meeting of the Board, the Association or the Owners for any purpose or to vote at any such meeting.

(d) Receive written notification from the Association of any default in the performance of the obligations imposed by the Governing Instruments upon the Owner whose Condominium is encumbered by such Institutional Mortgagee's Mortgage, which default has not been cured within 60 days of request therefor by the Association.

13.8 Mortgagees' Furnishing Information. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any loan encumbering a Condominium.

13.9 Notice of Destruction or Taking. In the event that any Unit or Condominium Building or Common Area and any improvements thereto or any portion thereof is substantially damaged or is made the subject of any condemnation proceeding in eminent domain or is otherwise sought to be acquired by a condemning authority, the Board shall promptly notify any Institutional Mortgagee holding a lien upon any Condominium affected by such destruction, Taking or threatened Taking. As used herein, "substantially damaged" shall mean damage exceeding \$10,000.00 with respect to a Condominium Building or to the Common Area or any portion thereof and \$2,500.00 with respect to a Unit.

13.10 Payments of Taxes or Premiums by Institutional Mortgagees. Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area, unless such taxes or charges are separately assessed against the owners, in which case the rights of Institutional Mortgagees shall be governed by the provisions of their Mortgages. Institutional Mortgagees may, jointly or singly, also pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area, and Institutional Mortgagees making such payments shall be entitled to immediate reimbursement therefor from the Association.

13.11 Liens of Prior Taxes, Assessments and Charges. All taxes, Assessments and charges which may become liens prior to the lien of a first priority Mortgage pursuant to applicable law shall relate only to the individual Condominium subject to such tax, Assessment or charge and not to the Project as a whole.

13.12 Insurance and Condemnation Proceeds. Notwithstanding any provision of the Governing Instruments to the contrary, no provision of the Governing Instruments shall be construed so as to give an owner or any other person or entity priority over any rights of a Mortgagee holding a first priority Mortgage upon a Condominium, pursuant to the terms of such Mortgage, in the event of a distribution to the Owner of such Condominium of insurance proceeds or condemnation proceeds for losses to, or a Taking of, one or more Units and/or any Common Area.

13.13 Conflicts. In the event of any conflict between any of the provisions of this Article 13 and any of the other provisions of this Declaration, the provisions of this Article 13 shall control.

ARTICLE 14  
Limitations Upon The Right To  
Partition and Severance

14.1 No Partition. Except as provided by law, and subject to the provisions of Section 13.6, above, there shall be no partition of the Project or any portion thereof; provided that nothing contained in this Section 14.1 shall be deemed to prevent a partition by sale as to a Condominium owned by two or more co-tenants, if the express prior written consent of the Institutional Mortgagee(s) whose Mortgage(s) encumber such Condominium has first been obtained.

14.2 No Severance. The elements of a Condominium are inseparable, and each owner agrees that it shall not, while this Declaration or any similar declaration is in effect, make any conveyance of less than an entire Condominium. Any conveyance made in contravention of this Section 14.2 shall be void. The provisions of this Section 14.2 shall, in the event of issuance of a judicial decree of partition of the Project, terminate on the date that such judicial partition shall be decreed.

14.3 Proceeds of Partition Sale.

(a) Whenever an action is brought, as provided by law, for the partition by sale of the Project, a portion of the proceeds of such sale shall be allocated to each Condominium subject to such partition in accordance with an appraisal conducted by a qualified real estate appraiser hired by the Board at the expense of the Association (such appraisal to be treated by the Association as a Common Expense). Such allocation and such appraisal shall be final and binding upon the Association and all Owners.

(b) The distribution of the proceeds of any such partition sale shall be adjusted as necessary to reflect any prior distribution of insurance proceeds or condemnation award as may have been made to Owners and/or their Mortgagees pursuant to the Articles 11 and/or 12 of this Declaration. In the event of any such partition and sale, the liens and provisions of any Mortgage or Assessment lien encumbering a Condominium shall extend to the interest in the proceeds of such partition and sale of the Owner of such Condominium. The Owner's share of such proceeds shall not be distributed to such Owner except upon the prior payment of any Mortgage or Assessment lien encumbering such proceeds as aforesaid.

ARTICLE 15  
Protection of the Property from Liens

15.1 Association to Defend Certain Actions. In the event that a lawsuit is brought against all or substantially all of the Owners which will or could result in any lien or encumbrance being levied against the entire Project or all of the Condominiums therein, the Association shall defend such lawsuit and the costs of such defense shall be paid through Special Assessments against all of the Condominiums; provided, however, that in the event that an insurance carrier is obligated to provide such defense under a policy of insurance carried by the Association, the Association shall be relieved of the obligation to provide such defense. Nothing contained herein shall in any way limit the rights of any Owner to retain counsel of its choice to represent it in such lawsuit at its own expense. In the event that an Owner so chooses, such Owner shall not be relieved of liability for the Special Assessment provided for in this section 15.1.

15.2 Payment of Liens. In the event that a lien or encumbrance not covered by California Civil Code Section 1357, or a similar statutory provision, attaches to all or substantially all of the Project by reason of a judgment or otherwise, the Association shall promptly take the appropriate steps to remove such lien, including, without limitation, the payment of money and/or the posting of a bond. The Association shall have the power to borrow money and to take such other steps as are necessary to free the Project of any such liens.

15.3 Owners to be Specially Assessed. Simultaneously with any action taken pursuant to Section 15.2, above, the Association shall levy an appropriate Special Assessment against each of the Condominiums subject to the lien or encumbrance which caused the Association to take action pursuant to Section 15.2, above, the aggregate amount of which Special Assessment shall be equal to the total amount expended by the Association in removing such lien or encumbrance. In the event that such Special Assessment is not paid within 30 days of its due date, the Board may effect the remedies of Article 5 of this Declaration.

15.4 Reimbursement by Certain Owners. In the event that it shall be proven in a court of law of competent jurisdiction over the claim or claims causing the Association to take action under this Article 15 that a judgment resulting in a lien on all or a portion of the Project was primarily due to the acts or omissions of a particular owner or invitees, licensees, guests, Family or Lessees of such owner, such Owner shall reimburse the Association for all expenses incurred by it pursuant to the provisions of this Article 15. Failing such reimbursement, the Board may levy a Special Assessment upon such Owner's Condominium in the amount owing by such Owner for such reimbursement, and may effect the remedies of Article 5 of this Declaration if such Special Assessment is not paid within 30 days of its due date. Upon such reimbursement, the Association shall distribute the funds received to the owners against whose Condominiums Special Assessments were levied pursuant to the provisions of this Article 15.

#### ARTICLE 16

There is no Article 16.

#### ARTICLE 17

##### General Provisions

17.1 Duration. The covenants, conditions, restrictions, easements, limitations, reservations, liens and charges of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable as provided herein by the Association, or by the Owner, including Declarant, of any Condominium subject to this Declaration, their respective legal representatives, heirs, successors and assigns. The covenants, conditions, restrictions, easements, limitations, reservations, liens and charges of this Declaration are imposed upon the Property as a servitude in favor of the Property and each portion thereof

as the dominant tenement, for a term of 60 years from the date this Declaration is recorded, after which time said covenants, conditions, restrictions, easements, reservations, liens and charges shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then owners, has been recorded in the Office of the County Recorder of the County at least one year prior to the end of any such period, agreeing to change or cancel and terminate said covenants, conditions, restrictions, easements, reservations, liens and charges in whole or in part.

17.2 Actions by Joint Owners. In the event that a Condominium is owned by more than one person or entity, any one of such persons or entities may sign any instrument or document provided for under this Declaration, or provide any consent or approval provided under this Declaration, on behalf of all such persons or entities.

17.3 Notices. Any notice permitted or required to be given to any Owner, Member or Mortgagee under the provisions of this Declaration shall be in writing and shall be deemed to have been properly given when delivered personally or sent by United States mail postage prepaid to the last known address of such Owner, Member or Mortgagee on the records of the Association at the time of such mailing or to such address as such owner, Member or Mortgagee shall have provided to the Association for purposes of such notice, or, if no such address shall have been furnished, in the case of owners and Members, to the street address of the Unit of such owner or Member, and in the case of Mortgagees, to any office of such Mortgagee. In the event that a Condominium is owned by more than one person or entity, any notice to the Owner may be delivered or sent to any one of such persons or entities. Any notice sent by mail shall be deemed received two days after deposit in the United States mail.

17.4 Enforcement.

(a) The Association or any owner, including Declarant, shall have the right to enforce by proceedings at law or in equity all covenants, conditions, restrictions, easements, reservations, liens and charges now or hereafter imposed by the Governing Instruments, including without limitation the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these

covenants, conditions, restrictions, easements, reservations, liens or charges so as to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation; provided, however, that the Association and/or the Board shall have the exclusive right of enforcement of Association Rules and Assessment liens.

(b) So long as Declarant is the Owner of any Condominium, Declarant or any agent of Declarant shall have the right, during reasonable hours and after reasonable notice, to enter within and inspect any Unit for the purpose of ascertaining whether the provisions of the Governing Instruments are being complied with, and shall not be liable for or deemed guilty of a trespass in connection with such entry and inspection.

(c) Should any owner fail to comply with the provisions of Article 7 of this Declaration and should any such failure continue for a period of 30 days following written notice of such failure from Declarant or the Association to such Owner, Declarant and the Association shall have the right, but not the duty, to correct any such noncompliance, and the cost thereof shall be borne by such Owner. In the event that such costs are not paid to the Association within 30 days after Declarant or the Association has furnished a statement therefor, Declarant or the Board shall have the right, but not the duty, to levy a Special Assessment against such Owner's Condominium to cover the costs of correction, if any, of such noncompliance, and Declarant or the Board, as the case may be, shall have the right to effect the remedies of Article 5 of this Declaration if any such Special Assessment is not timely paid. No one or more failures or refusals by Declarant or the Board to enforce compliance with any provision of Article 7 of this Declaration shall be deemed a waiver of the right of the Association to enforce compliance with or correct noncompliance with the same or a different provision of Article 7 of this Declaration at a later time. The rights of Declarant under this Section 17.3(c) shall terminate when Declarant no longer owns any Condominiums.

(d) For so long as Declarant owns any Condominiums, Declarant shall have the right, but not the duty, in the event that the Association shall fail to perform repair or maintenance of the Common Area and such failure of the Association shall continue for a

period of 30 days following written notice of such failure from Declarant to the Association, to perform or cause to be performed all or a portion of such repair and maintenance work, and the costs thereof shall be borne by the Association. In the event that such costs are not paid to Declarant within 30 days after Declarant has furnished to the Association a statement therefor, Declarant shall have the right, but not the duty, to institute an action at law against the Association for such costs, together with all costs of collecting same, including court costs and reasonable attorneys' fees. No one or more failures or refusals by Declarant to perform or cause to be performed such repair and maintenance work shall be construed as a waiver of the right of Declarant to perform or cause to be performed such work at a later time as to the same or different repair and work. The rights of Declarant set forth in this Section 17.3(d) shall terminate when Declarant no longer is the owner of any Condominium within the Project.

(e) Every act or omission whereby any covenant, condition, restriction, easement, reservation, lien or charge contained in this Declaration is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy either public or private allowed by law or equity shall be applicable against every such act or omission and may be exercised by the Association or any owner, including Declarant, subject to the provisions of this Declaration. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

(f) In any legal or equitable proceeding for the enforcement of, or to restrain the violation of, these covenants, conditions, restrictions, easements, limitations, reservations, liens, or charges or any provisions of this Declaration, the losing party or parties shall pay the attorneys' fees of the prevailing party or parties in such amount as may be fixed by the court in such proceedings. In the event that the Association is a prevailing party in any action against an Owner or Member, the Board may levy a Special Assessment in the amount of such attorneys' fees upon the Condominium of such Owner or Member, and effect the remedies of Article 5 of this Declaration in the event of nonpayment of such Special Assessment.

(g) Failure by Declarant, the Association or any Owner to enforce any covenant, condition, restriction, easement, reservation, lien or charge contained in this Declaration shall in no event be deemed to be a waiver of the right to do so thereafter.

(h) Nothing contained in this Declaration shall be deemed to require Declarant to enforce any covenant, condition, restriction, easement, limitation, reservation, lien, charge or provision of this Declaration.

17.5 Severability. Invalidation of any one of these covenants, conditions, restrictions, easements, limitations, reservations, liens or charges by judgment, court order or ruling or order of any governmental agency shall not in any way affect any other provisions, which shall remain in full force and effect. Declarant makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration.

17.6 Headings. Article and Section headings are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope or intent of the particular provision to which they refer.

17.7 Singular Includes Plural. Whenever the context of this Declaration so requires, the singular shall include the plural, and vice versa, the masculine shall include the feminine, and vice versa, and the neuter shall include either the masculine or the feminine, and vice versa.

17.8 Construction. The provisions of this Declaration shall be liberally construed so as to effectuate its purpose of creating a uniform plan for the development of a residential community with common areas and for the maintenance of such areas.

17.9 Construction by Declarant. Nothing in this Declaration shall limit the right of Declarant to commence and complete construction of improvements within the Project, to alter the Project or the Units, Condominium Buildings, or Common Area, or to construct such additional improvements as Declarant deems advisable prior to the completion and sale of all Condominiums within the Project. Declarant reserves the right to alter its construction and development plans and designs as it deems appropriate. This Declaration shall not limit the right of Declarant at any time prior to acquisition

of title by a purchaser from Declarant to establish within the Project additional easements, licenses, reservations and rights-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary or appropriate to the proper development and disposal of the Project.

17.10 No liability of Officials. To the fullest extent permitted by law, neither the Association, nor the Board, nor any member of the Board or officer or agent of the Association or member of any committee of the Association shall be liable to the Association or any Member, or to any owner, invitee, licensee, guest or Lessee of an owner, or to any other occupant of the Project or any portion thereof or any other person for any damage, loss or other liability suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, omission, error, negligence or the like made in good faith within what the Association, Board or such member of the Board, officer or agent of the Association or member of such committee reasonably believed to be the scope of their rights, powers, duties and obligations and in the best interests of the Association.

17.11 Obligations of Owners and Members. The terms and provisions set forth in the Governing Instruments are binding upon all of the Project and upon the Association and each Member, as well as all members of committees or other bodies appointed pursuant to this Declaration, and upon all Owners and their invitees, licensees, guests, Families and Lessees and other occupants or users of the Project or any portion thereof. Each Member shall exercise its best efforts to cause the Association to perform all of the duties and obligations of the Association as set forth in the Governing Instruments.

17.12 Leases. Any owner who shall lease its Unit to any Lessee shall be responsible for assuring compliance by such Lessee with all of the covenants, conditions, restrictions, easements, limitations, reservations, liens and charges of this Declaration. Any lease agreement between an Owner and a Lessee shall provide that the terms of the lease shall be subject in all respects to the provisions of the Governing Instruments and Association Rules, and that any failure by the Lessee to comply with the terms of same shall be a default under the lease. All such leases shall be in writing. In the event that any Owner does not evict any Lessee who has failed or refused to comply with the provisions of the Governing Instruments or Association Rules, the Association and/or Declarant, following 15 days written

notice to such Owner, shall have the right, but not the duty, to institute legal, equitable or administrative proceedings for or on behalf of such Owner so as to enforce the provisions of the Governing Instruments and Association Rules or so as to evict such Lessee (which proceedings may include, without limitation, unlawful detainer), and all costs of such proceedings, including attorneys' fees, shall be the obligation of such Owner and may be collected by a Special Assessment enforceable pursuant to Article 5 of this Declaration. The rights of Declarant set forth in this Section 17.12 shall terminate when Declarant no longer is the Owner of any Condominium within the Project.

17.13 Mergers and Consolidations. Upon the merger or consolidation of the Association with another association, the Association's properties, rights and obligations may be transferred to the surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions, restrictions, easements, limitations, reservations, liens and charges established by this Declaration together with the covenants, conditions, restrictions, easements, limitations, reservations, liens and charges established upon any other property, as one general plan and scheme or in such other plan of administration as the surviving or consolidated corporation deems reasonable.

17.14 Assignment of Rights and/or Duties. Any or all of the rights and/or duties, if any, of Declarant under this Declaration may be assigned or delegated to any other person or entity and upon any such assignment or delegation any such person or entity shall, to the extent of such assignment or delegation, have the same rights and/or duties as are given to and/or assumed by Declarant under this Declaration, and thereupon Declarant shall be relieved of the performance of any further duty under this Declaration to the extent of such assignment or delegation.

17.15 Successors and Assigns. This Declaration shall be binding upon, and shall inure to the benefit of, the successors and assigns of Declarant as provided herein, and the successors, assigns, heirs, personal representatives, and Lessees of the owners.

17.16 Enforcement of Bonded Obligations. In the event that the improvements to the Common Area have not been

completed prior to the issuance of a Final Subdivision Public Report covering the Project by the California Department of Real Estate and the Association is obligee under a bond or other arrangement ("Bond") to secure performance of the commitment of Declarant to complete such improvements, the following provisions shall apply:

(a) 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 60 days after the completion date specified for such improvements 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 30 days after the expiration of such extension.

(b) In the event that the Board determines not to initiate action to enforce the obligations under the Bond, or in the event that the Board fails to consider and vote on such question as provided above, the Board shall call a special meeting of the Association for the purpose of voting to override such decision or such failure to act by the Board. Such meeting shall be called according to the provisions of the By-Laws dealing with meetings of the Association, but in any event such meeting shall be held not less than 15 days nor more than 30 days after receipt by the Board of a petition for such meeting signed by Members representing 10% of the total voting power of the Association.

(c) The only Members entitled to vote at such meeting of the Association shall be Members other than Declarant. A vote at such meeting of a majority of the total voting power of such Members other than Declarant to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement such decision by initiating and pursuing appropriate action in the name of the Association.

17.17 Amendment of Declaration.

(a) Prior to first sale. Prior to the recording of a deed for the first sale of a Condominium to a purchaser other than Declarant, this Declaration may be

amended in any respect or revoked by the execution by Declarant of an instrument amending or revoking same.

(b) Two-class voting structure. For so long as there are two classes of voting membership in the Association, this Declaration may be amended by the vote or written assent of at least 66-2/3% of the voting power of each class of membership in the Association.

(c) Single-class voting structure. At any time in which only one class of voting membership of the Association shall exist, this Declaration may be amended by the vote or written assent of Members representing both at least 66-2/3% of the total voting power of the Association and at least 66-2/3% of the votes of Members other than Declarant.

(d) Limitation upon Amendment. The percentage of the voting power of the Association- or of Members other than Declarant necessary to amend a specific clause or provision of this Declaration shall not be less than the percentage of affirmative votes prescribed, if any, for action to be taken under that clause.

(e) Recording. Any instrument amending or revoking this Declaration or any portion thereof shall be acknowledged and recorded in the office of the County Recorder of the County.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand as of the day and year first above written.

"Declarant":

**MISSION INVESTMENT TRUST**

By : \_\_\_\_\_  
Gregory C. Welton  
President

By: \_\_\_\_\_  
G. Joseph LaBreche  
Executive Vice President

STATE OF CALIFORNIA )

SS.

COUNTY OF SAN DIEGO )

On November 20, 1979, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GREGORY C. WELTON, known to me to be the President, and G. JOSEPH LABRECHE, known to me to be the Executive Vice President, of the California Business Trust that executed the within instrument, and acknowledged to me that such Trust executed the within instrument pursuant to its by-laws or a resolution of its Board of Trustees.

(SEAL)

Signature

Notary Public

EXIFIBIT "A"

Lots 1 through 11 inclusive, Lots 17 and 18, and Lots 34 and 35, in Block 117 of Pacific Beach, in the City of San Diego, County of San Diego, State of California, according to Map-thereof No. 943 filed in the office of County Recorder of San Diego County, April 3, 1905.