



COVENANTS, CONDITIONS & RESTRICTIONS

FOR

Elm Plaza Homeowners Association



RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO :
TIMOTHY S. MURAKAMI
2049 CENTURY PARK EAST
SUITE 2460
LOS ANGELES, CA 90067

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DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
ELM PLAZA CONDOMINIUMS

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DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR ELM PLAZA CONDOMINIUMS

THIS DECLARATION is made this 17th day of September, 1987, by HOSSEIN MOALEJ, a married man as his sole and separate property, (hereinafter sometimes referred to as "Declarant").

R E C I T A L S:

A. Declarant is the owner in fee of that certain real property in the City of Long Beach, County of Los Angeles, State of California, described as follows:

Lot 1 of Tract 44563 in said City, County and State as per map recorded on in Book 1088, Pages 7 and 8 of Maps in the Office of the County Recorder of said County,

which real property so described is referred to herein as the "Property".

B. Declarant intends to develop the Property into a statutory condominium project under the provisions of California Civil Code Section 1350, et seq.

C. Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all of the condominiums and the owners thereof.

D. Declarant hereby establishes by this Declaration with respect to the Property, a plan for the individual ownership of the real property estates referred to herein as Units, as well as the co-ownership as tenants in common of the common areas of the Property by the owners of the Units located within the Property.

E. This development will be consistent with the overall development plan submitted to and approved by the Veterans Administration.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, liens, charges and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of such

real property, and every part thereof, in accordance with the plan for the improvement of such real property and division thereof into condominiums. All of the limitations, covenants, conditions, restrictions, and easements shall constitute equitable servitudes in accordance with Civil Code Section 1354 and shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of such real property.

ARTICLE I

DEFINITIONS

Unless the context otherwise requires :

1.01 "Approval" of the Association or the Architectural Committee shall mean prior written approval.

1.02 "Architectural Committee" shall mean the committee formed pursuant to the provisions of Article VII below.

1.03 "Articles" shall mean the articles of incorporation of the Association, as such Articles may be amended from time to time.

1.04 "Assessments" shall mean assessments of the Association levied against Owners of Condominiums located within the Property, and includes all types of assessments.

1.05 "Association" shall mean and refer to the ELM PLAZA HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the members of which shall be the Owners of Condominiums located within the Property.

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

1.07 "Bylaws" shall mean and refer to the bylaws of the Association as amended from time to time.

1.08 "Common Area" shall mean and refer to all land and real property included within the boundary lines of the Property, except all of the Units described and/or shown in this Declaration and in the Condominium Plan. Title to the Common Area is held in common by all of the Owners of Units located within the Property.

1.09 "Common Expenses" means and includes the actual and estimated expenses of operating the Property, and any reasonable

reserve for such purposes as found and determined appropriate by the Board, and all sums designated as Common Expenses by or pursuant to the Condominium Documents.

1.10 "Common Interest" means the proportionate undivided interest in the Common Area of the Property appurtenant to each Unit located within the Property.

1.11 "Condominium" shall mean a condominium as defined in Section 783 of the California Civil Code, and shall be an estate in real property consisting of (a) a separate fee estate in the air space encompassed by the boundaries of a Unit and in the other elements constituting a Unit, and (b) an undivided interest as a fee estate in that portion of the Common Area appurtenant to each Unit, subject to all matters of record.

1.12 "Condominium Building" shall mean and refer to a building or structure containing any portion of any Condominium Unit or Units.

1.13 "Condominium Documents" shall mean and include this Declaration, the exhibits, if any, attached hereto, the Articles, the Bylaws, the Condominium Plan, and the Rules as such items may be established from time to time and/or amended from time to time in accordance with their terms.

1.14 "Condominium Plan" shall mean and refer to the recorded diagrammatic floor plan of the Units built or to be built on the Property which identifies each Unit and shows its dimensions pursuant to California Civil Code 1351(e); the Condominium Plan is being recorded substantially concurrently with the recordation of this Declaration, and is by this reference incorporated herein and made a part hereof, including such amendments to the Condominium Plan as may from time to time be recorded.

1.15 "Declarant" shall mean and refer to Declarant as defined in the introductory paragraph of this Declaration and Declarant's successors and assigns, if such successors and assigns are specifically granted the rights and powers and burdened with the duties (if any) of Declarant hereunder by instrument of conveyance or other instrument recorded in the Office of the County Recorder for the County in which the Property is located.

1.16 "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements as from time to time amended.

1.17 "Institutional Lender" shall mean any bank, savings and loan association, insurance company, real estate investment trust, retirement fund trust, or other financial institution holding a recorded first mortgage on any Condominium.

1.18 "Manager" or "Managing Agent" shall mean the persons, firm or corporation engaged by the Association or the Declarant by contract and charged with the maintenance and upkeep of the Project.

1.19 "Member" shall mean and refer to a person entitled to membership in the Association as herein provided. The terms "Member" and "Regular Member" may be used interchangeably herein.

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

1.21 "Mortgagee" shall include a beneficiary or holder of a deed of trust as well as a mortgagee.

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

1.23 "Notice and a Hearing" shall mean notice and an opportunity for a hearing in the manner provided for the Bylaws.

1.24 "Owner" or "Owners" shall mean and refer to the record holder(s) of fee title to a Condominium within the Project. This shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a Condominium is sold under a recorded contract of sale to a purchaser who resides in the Condominium, the resident purchaser, rather than the fee owner, shall be considered the "Owner" as long as he resides in the Unit as a contract purchaser.

1.25 "Person" shall mean a natural person, a trustee, a corporation, a partnership, or other legal entity.

1.26 "Project" shall mean and refer to the Condominium Project developed or to be developed on the Property.

1.27 "Property" shall mean and refer to that certain real property described in paragraph A of the recitals to this Declaration, together with improvements now or hereafter constructed thereon.

1.28 "Restricted Common Area" shall mean any portion of the Common Area which has been designated and set aside herein or on the Condominium Plan for exclusive and/or restricted use of the nature described in Article III hereof, and the term "Common Area" shall include the "Restricted Common Area" unless otherwise specified herein.

1.29 "Restrictions" shall mean all of the terms, provisions and restrictions set forth in this Declaration, as said Declaration may be amended from time to time, and the rules of the Association and/or Architectural Committee promulgated in accordance with the provisions of this Declaration as such rules may be from time to time in effect, and the terms, provisions and restrictions of the Articles and Bylaws, as such instruments may be from time to time in effect.

1.30 "Rules" shall mean and refer to the rules from time to time promulgated and adopted by the Board and/or Architectural Committee as herein provided.

1.31 "Specified Common Areas" shall have the definition given to it in Section 23.01 of this Declaration.

1.32 (a) "Unit" shall mean a unit as defined in Section 1351(f) of the California Civil Code, i.e., the elements of a Condominium which are not owned in common with other Owners in the Project. Each Unit is designated as a Unit in the Condominium Plan for the Project and is identified by a separate number. The Units of the Project located or to be located on the Property are numbered 1 to 29, inclusive. A unit consists of all of those elements and areas shown and identified on the Condominium Plan as being a part of such Unit. Whenever reference is made in the Condominium Plan or in this Declaration to any of the Units, it shall be construed that the reference is made to the Unit as a whole and each of its component parts.

(b) Each Unit shall be a separate freehold estate, consisting of some or all of the elements more particularly shown on the Condominium Plan.

(c) The boundaries of the Units are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof and the interior surfaces of any fireplace firebox located within the Unit. Each Unit includes said surfaces, the portions of the buildings lying within said boundaries, the air space so encompassed, and all portions of all windows (including but not limited to interior and exterior surfaces thereof), the interior surfaces of which constitute any portion of a lateral boundary of the Unit, except as stated in Section 1.32(d) below.

(d) Each Unit includes the following items, if any, which may be located within the boundaries of the Unit, to wit: All windows and doors in said Unit, the forced air heating and air conditioning equipment, hot water heaters, dishwashers, ranges, ovens, utility installations and/or outlets, garbage disposal units, and that portion of any fireplace and chimney

structure located within the Unit, but the following are not a part of the Unit : bearing walls, columns, vertical supports, landings, slabs, floors (except as otherwise above provided with respect to the interior surfaces thereof), and the area above any ceiling which is constructed lower than the ceiling elevation of the Units shown on the Condominium Plan (except the interior surfaces thereof), roofs, foundations, patio walls, fences, exterior stairways and landings, elevators and related facilities, if any, trash enclosures, storage areas (unless otherwise specified in the Condominium Plan), any open parking spaces, walkways, lawns, pavements, trees and all other landscaping, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires, heating coils and other utility installations wherever located (except the outlets thereof when located within the Units). It is understood that flues, whether or not shown on the Condominium Plan, are part of the Common Area even if located within the boundaries of a Unit.

(e) All air space boundary lines intersect at right angles, unless otherwise indicated on the Condominium Plan.

(f) All ties to project boundaries from building corners are measured along the prolongation of the building line.

Each Unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to herein. In interpreting deeds and plans, the existing physical boundaries of the Unit constructed or reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries, rather than the metes and bounds, or other descriptions or elevations, expressed in the deed or Condominium Plan regardless of settling or lateral movement of buildings and regardless of minor variances between the boundaries shown on the Condominium Plan or in the deed and those of a building or structure. However, if at any time when any Condominium in the Project is conveyed, one or more buildings or structures in which Units or elements thereof shown on the Condominium Plan are to be located have not yet been built, each such Unit shall be deemed to have the boundaries shown on the Condominium Plan.

1.33 "Vote" means the vote of the Members entitled to exercise the voting power of the Association at any duly held regular or special meeting of the Members of the Association.

ARTICLE II

GENERAL USE RESTRICTIONS

2.01 Unit Use. Each Unit within the Property shall be used solely as a private single family dwelling unit and for purposes customarily associated therewith and for no other purposes, except such temporary uses by Declarant as shall be permitted hereunder while the Project is being developed and the Condominiums therein are being sold by Declarant.

2.02 Common Area Use. The use of the Common Areas within the Property shall be in accordance with and subject to such additional limitations as may be determined from time to time by the Association; provided, however, that any such limitation shall not be unreasonable and shall not be generally inconsistent with the provisions of this Declaration. Use of any Restricted Common Areas shall be subject to the limitations set forth in this Declaration and in the Rules.

2.03 Compliance with Laws: Insurance Rates. Nothing shall be done or kept in any Unit or in any Common Area which will increase the rate of insurance on any Unit or on any Common Area within the Property, without the approval of the Association. No Owner shall permit anything to be done or kept in his Unit or in any Common Area which will result in the cancellation of insurance on any Unit, or on any Common Area, or which would be in violation of any law. If by reason of the occupancy or use of said premises by any Owner, the rate of insurance on any building shall be increased, such Owner shall become personally liable for the additional insurance premiums.

2.04 Signs. Except for one sign per Condominium advertising such Condominium for sale or lease, having a standard format previously approved by the Board with a maximum face area of not to exceed six (6) square feet, which single sign per Condominium shall be placed in a location approved by the Board on a reasonable basis, no sign or other advertising device of any character shall be erected, maintained or displayed upon any portion of the Property, without the prior written consent of the Board; provided, however, that Declarant and its successors and assigns, as they are defined in Section 1.15 above, may for a period not to exceed five (5) years from the date of recordation of this Declaration erect and maintain any signs and other advertising devices or structures as it may deem necessary or proper in connection with the conduct of its operations for the development, improvement, sale and/or leasing of the property or any portion thereof.

2.05 Animals. No animals or birds of any kind shall be raised, bred or kept in any Condominium, or in any portion of the Property, except that no more than two (2) usual and ordinary household pets such as dogs, cats, birds, etc., may be kept, provided that they are not kept, bred, or maintained for any commercial purposes, and they are kept under reasonable control at all times. Notwithstanding the foregoing, no pets may be kept on the Property which result in an annoyance or are obnoxious to other Condominium Owners. No pets shall be allowed in the Common Area except as may be permitted by Rules of the Board. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. No dogs whose barking disturbs other Owners shall be permitted to remain on the Property. Owners shall prevent their pets from soiling any portion of the Common Area.

2.06 Nuisances. No obnoxious, illegal, or offensive activities shall be carried on upon any Condominium, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment by each of the Owners of his respective Unit, or which will impair the structural integrity of any building.

2.07 No Construction. No building, fence, wall, obstruction, screen, patio, patio cover, tent, awning, carport, carport cover, spa, hot tub, jacuzzi, improvement or structure of any kind shall be commenced, erected, painted or maintained within the Property, nor shall any alteration or improvement of any kind be made thereto, until the same has been approved by the Architectural Committee provided for in Article VII hereof. No landscaping of Common Areas or of patios or yards visible from the street or from the Common Area shall be undertaken by any Owner without the approval of the Architectural Committee, except no approval shall be required for landscaping any patio with natural plants, grass, trees and/or shrubs that grow low to the ground.

2.08 No Material Changes Permitted. Nothing shall be done in any Unit or in, on or to any building in any Common Area which would change or modify any such building or Unit to any material extent, except as otherwise provided herein, or except with the prior written approval of the Architectural Committee. The Architectural Committee shall determine, in its sole discretion, whether any proposed change or modification constitutes a material change. The owner of a unit may not make any improvement which impairs the structural integrity or mechanical systems or lessens the support of any portion of the common interest development.

Notwithstanding the foregoing, an owner may, pursuant to Civil Code Section 1360 or any successor statutes, do the following :

(a) Make any improvements or alterations within the boundaries of his or her separate interest that do not impair the structural integrity or mechanical systems or lessen the support of any portions of the common interest development.

(b) Modify a unit in a condominium project, at the owner's expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which could be hazardous to these persons. These modifications may also include modifications of the route from the public way to the door of the unit for the purposes of this paragraph if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted by this paragraph is subject to the following conditions :

(i) The modifications shall be consistent with applicable building code requirements.

(ii) The modifications shall be consistent with the intent of otherwise applicable provisions of the governing documents pertaining to safety or aesthetics.

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

(iv) Any owner who intends to modify a unit pursuant to this paragraph shall submit his or her plans and specifications to the Architectural Committee of the condominium project for review to determine whether the modifications will comply with the provisions of this paragraph. The Architectural Committee shall not deny approval of the proposed modifications under this paragraph without good cause.

Any change in the exterior appearance of a separate interest shall be in accordance with the governing documents and applicable provisions of law.

2.09 Parking and Vehicle Restrictions. No vehicles other than golf carts, passenger automobiles, stationwagons and other vehicles customarily used for means of general transportation shall be parked or stored in any Common Area, including any

Restricted Common Area, within the Property: provided, however, that temporary parking of boats, trailers, campers or other vehicles not customarily used for means of general transportation may be parked in an area designed for parking of such vehicles for a reasonably short duration and in accordance with Rules, if any, promulgated by the Board. No boat or vehicle shall be repaired or rebuilt in any Common Area, including any Restricted Common Area, within the Property. The term "vehicles customarily used for means of general transportation" as used herein may be defined and interpreted from time to time by the Board in any Rules it may promulgate. Without limiting the effect of the foregoing restrictions, no vehicles or boats of any kind shall be parked within the Property, except in garages and in areas from time to time improved for parking purposes, and specifically designated pursuant to the provisions of this Declaration and/or by Declarant and/or by the Board for such purpose. Parking areas within the Common Area of the Property at any time designated by Declarant and/or the Board as being exclusively for guest parking shall be used, so long as they are so designated for parking of vehicles of guests only and shall not be used for the parking of vehicles of occupants of any of the Condominiums located within the Property during such period.

2.10 Compliance. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of the Condominium Documents and Restrictions as lawfully amended from time to time, and failure to comply with any such provisions shall be grounds for an action to recover sums due, for damages, or for injunctive relief. These remedies are intended to be cumulative, and shall not prevent the exercise of any other right or remedy available at law or in equity.

2.11 Clothes Lines and Antennae. No exterior clothes line shall be erected or maintained and there shall be no drying or laundering of clothes on patios or other areas which are exposed to view from outside of an Owner's Unit or Restricted Common Area. No Owner, resident or lessee shall install wiring for electrical or telephone installation, television antennae, radio antennae, machines or air conditioning units, etc., on the exterior of the buildings of the Property or that protrude through the walls or the roof of the buildings, except as authorized by the Architectural Committee and approved by any governmental agency having jurisdiction. This Section shall not apply to, nor restrict, master antennae and head end system for a cable television system installed by Declarant or by a franchise cable television operator.

2.12 Trash. No unconcealed garbage or rubbish containers or similar items visible from any Common Area and/or other Units

shall be kept or maintained within the Property. Garbage or rubbish containers may be temporarily placed for pick-up subject to the Rules from time to time promulgated and in effect.

2.13 Garages. Except as permitted by the Board, any garage elements of Units shall be used only for reasonable and customary storage purposes and for the parking of vehicles customarily used for means of general transportation as such term is defined in Section 2.09 above. Garage doors shall be kept closed except when in actual use.

2.14 Window Covers. Curtains, drapes, shutters, or blinds may be installed as window coverings; however, any such covering visible from the street or Common Area shall be in color and patterns which are approved by the Board or its authorized Committee. No newspaper or aluminum foil shall be used as window coverings.

2.15 Waterbeds. No waterbeds shall be allowed except with the prior approval of the Architectural Committee. An Owner shall be fully liable to other Owners, their families, guests and invitees, and the Association for any damage to persons or property resulting from the placement, use, leaking, operation or movement of any waterbed in such Owner's Unit.

2.16 Liability of Owners for Damage to Common Areas. The Owner of each Unit shall be liable to the Association for all losses or damage to the Common Area or equipment or improvements thereon caused by such Owner or by any occupant of his Unit or guest (except for that portion of said damage, if any, fully covered by insurance), and in addition, for any costs thereby incurred, including without limitation reasonable attorneys' fees.

2.17 No Violation of Rules. There shall be no violation of the Restrictions. If any Owner, his family, servants, guests, licensees, lessees, or invitee violates the Restrictions, or any of them, disciplinary action may be taken in accordance with the Bylaws.

2.18 Maintenance of Air Conditioning equipment. Nothing to the contrary herein withstanding, unless otherwise specified in writing by the Association, any air conditioning equipment (including without limitation condensers) servicing a Unit shall be maintained and kept in good condition by the Owner(s) of such Unit at his or their own expense; and each Unit equipped with air conditioning shall have appurtenant thereto an easement over the Common Areas of the Project for the purpose of repairing, replacing and generally maintaining any air conditioning equipment servicing such Unit.

2.19 Maintenance of Units and Certain Provisions Pertaining to Restricted Common Areas. Each Unit (including without limitation, all elements constituting a portion thereof) shall be maintained in good and clean condition and repair by the respective Owner(s) thereof (at their own expense). Any portion of a Unit visible to the public from the Common Areas and/or other Units, shall be painted a color which harmonizes with the color scheme of the building and which has been approved by the Architectural Committee. Nothing to the contrary herein withstanding, any fencing and exterior surfaces of the perimeter walls of the condominium buildings that bound any balconies, patios, and/or decks appurtenant to the Units within the Property are not a part of the Units, but rather are a part of the Common Area, and the following shall apply with respect thereto :

(a) Any such areas shall be kept neat and clean by and at the expense of the Owner(s) of the Units whose balconies, patios, and/or decks are adjoining and appurtenant thereto : and

(b) Any such fences and exterior surfaces of perimeter walls shall be maintained and painted by the Association as a common expense, as contemplated in Section 5.02(f) hereof.

2.20 Drainage. There shall be no interference with the established drainage pattern over any portion of the Property unless adequate provision is made for proper drainage and approval of the Architectural Committee is obtained. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Property is completed or the drainage which is shown on any plans approved by the Architectural Committee.

2.21 No Commercial Activity. No professional, commercial or industrial operations of any kind shall be conducted in or upon any Unit or the Common Areas, except such temporary uses by Declarant as may be permitted hereunder while the Property or any portion thereof is being developed and Condominiums therein are being sold by Declarant.

2.22 Rights Reserved by Declarant. Nothing in this Declaration or in the Condominium Documents shall limit the right of Declarant to complete excavation, grading and construction of the improvements within the Property owned in whole or in part by Declarant, or to alter the foregoing or to construct such additional improvements as Declarant from time to time deems advisable in the course of development of the Property or any portion thereof for so long as any Condominium within the Property remains unleased or unsold (but not to exceed five (5)

years from the date of recordation of this Declaration), or to use any Unit within the Property as a model home, or a construction, real estate sales, leasing or decorator office. For the shorter period of five (5) years from the date of recordation of this Declaration, or until Declarant no longer has an ownership interest in the Property, Declarant and its agents and invitees shall have the right to make reasonable use of any and all of the Common Areas within the Property for ingress, egress, development, sales and construction purposes.

ARTICLE III

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

3.01 Description of Project. The Project consists of the Property with Condominium Units and all other improvements located or to be located thereon. Reference is made to the Condominium Plan to supply further details concerning the Project.

3.02 Division of Property. The Property is hereby divided into the following separate real property estates :

(a) Units: Each of the Units is separately shown, numbered and designated in the Condominium Plan and is defined therein and in Article I above.

(b) Common Areas: The remaining portion of the Property, after excepting the Units, is the Common Area.

(c) Restricted Common Areas: Any portions of the Common Area shown and designated on the Condominium Plan as "Restricted Common Areas" are hereby set aside and allocated for the exclusive use of the owners of each Unit or Units to which such Restricted Common Areas are appurtenant, as shown on the Condominium Plan. Each Unit shall have appurtenant thereto any Restricted Common Areas shown on the Condominium Plan as designated to service such Unit. Declarant hereby expressly reserves for the benefit of each Condominium Owner an exclusive easement for use of any Restricted Common Areas shown on the Condominium Plan as being appurtenant to the Unit owned by him.

Any Restricted Common Areas may not be added to, modified or altered without the approval of the Architectural Committee. Any Restricted Common Areas within the Project shall be kept neat and clean and shall be maintained by the Owners of

the Condominium to which such Restricted Common Areas are appurtenant. The exterior surfaces of perimeter walls, floors, windows and doors of buildings adjoining any Restricted Common Areas constitute a portion of the boundaries of such Restricted Common Areas (but do not constitute a part of the Restricted Common Areas themselves) and shall be repaired, maintained and painted by the Association (except for the windows which shall be repaired, maintained and kept clean by the Owners whose Units are bounded by such windows, respectively). Any Restricted Common Areas shall be subject to such reasonable rules as may be from time to time promulgated by the Board. Subject to such reasonable rules, any Restricted Common Areas within the Property are reserved for the exclusive use of the Owners of the particular Unit to which such areas are appurtenant and their successors, assigns, tenants, agents and guests.

ARTICLE IV

ASSOCIATION, ADMINISTRATION, MEMBERSHIP

AND VOTING RIGHTS

4.01 Association to Manage and Operate Common Areas. The management, operation, maintenance and administration of the Common Areas of the Property shall be vested in the Association in accordance with the provisions of this Declaration, the Articles and the Bylaws, as all such instruments may be from time to time amended.

4.02 Membership. Upon becoming the Owner of a Unit, an Owner shall automatically be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

4.03 Joint Owner Disputes. The vote of each Condominium shall be cast as a unit, if cast at all; and fractional votes shall not be allowed. In the event the joint Owners of a Condominium are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any joint Owner casts a vote representing a certain Condominium, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other joint Owners of the same Condominium.

4.04 Transfer of Membership. Membership in the Association shall not be transferred, pledged or alienated in any

way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee in the case of an encumbrance of such Condominium. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association.

4.05 Membership Classes and Voting Rights. The Association shall have two (2) classes of voting membership as follows :

(a) Class A: Class A Members shall be all Owners with the exception of Declarant, for so long as there exists a Class B membership. Declarant shall become a Class A Member with regard to Units owned by Declarant upon conversion of Declarant's Class B membership as provided below. Each Unit shall be entitled to one (1) vote. When more than one person holds an ownership interest in any Unit, all such persons shall be Members of the Association, but in no event shall more than one (1) vote be cast with respect to any one Unit.

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

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

(ii) Upon the fourth (4th) anniversary of the original issuance of the Subdivision Public Report for the Property.

(c) Voting rights shall vest with respect to each Unit located within the Property upon consummation of the first sale of a Unit located within the Property.

4.06 Voting Requirements When There Are Two Outstanding Classes of Membership. With the exception of Article XXII hereof, in any provision in this Declaration or in any of the other Condominium Documents calling for approval of actions to be taken by the Association by a prescribed majority of the votes of Members other than Declarant, the required vote shall be as follows :

(a) At any time when there are both Class A and Class B Members, the required vote shall be the vote or written assent of a bare majority of the Class B voting power and the vote or written assent of the prescribed majority of the Class A voting power.

(b) After the conversion of Class B to Class A memberships, the required vote shall be the vote or written assent of a bare majority of the total voting power of the Association, as well as the vote or written assent of the prescribed majority of the total voting power of Members other than Declarant.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

5.01 General Statement and Limitations. The Association shall have the right and power to do all things reasonably necessary and/or desirable for the management, operation, maintenance and administration of the Property to the extent provided for herein: provided, however, that nothing to the contrary herein or in any of the other Condominium Documents withstanding, the Association shall not take any of the following actions, except with the vote or written assent of a majority of the voting power of the membership of the Association held by Members other than Declarant in accordance with the provisions of Section 4.06 of this Declaration:

(a) Enter into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Association for a term longer than one (1) year with the following exceptions:

(i) 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.

(ii) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years' duration, provided that the policy provides for short rate cancellation by the insured.

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

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

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

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

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

(d) Paying compensation to members of the Board, the Architectural Committee and/or the 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 and/or of the Architectural Committee and/or an officer of the Association to be reimbursed for expenses incurred in carrying on the activities of the Association.

5.02 Duties and Powers. In addition to the duties and powers enumerated in its Bylaws or elsewhere in this Declaration or in the other Condominium Documents, and without limiting the generality thereof, the Association shall :

(a) Have the authority to obtain, for the benefit of all of the Condominiums, water, sewer, electrical, gas and other necessary utility services as well as refuse collection and janitorial services, and to pay out of the assessments levied and collected in accordance herewith the charges and fees for the foregoing services.

(b) Make the necessary arrangements to provide the following insurance coverages :

(i) Obtain and maintain a master or blanket policy of fire insurance for one hundred percent (100%) of the full replacement value, without deduction for depreciation, of all improvements within the Property : such policy shall contain

extended coverage, vandalism and malicious mischief, and replacement cost endorsements and if available, shall also contain the special extended coverage endorsement commonly known as "All Risk" coverage, stipulated amount clause and determinable cash adjustment clause, or a similar clause to permit cash settlement covering the full value of the improvements on the Property in the event of destruction of improvements and the decision not to rebuild pursuant to the provisions of Article IX hereof. 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 and 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 a loss-payable endorsement in favor of the Trustee hereinafter described. Except as provided in this Section 5.02(b)(i) below, all insurance proceeds payable under the fire insurance policy carried pursuant to the provisions of this Section 5.02(b)(i) shall be paid to a Trustee. The Trustee shall hold, distribute and expend such proceeds for the benefit of the Owners, Mortgagees, Declarant and others, as their respective interests shall appear, pursuant to the provisions of Article IX hereof. The Trustee shall be appointed by the Board and shall be a commercial bank, or branch thereof, or a trust company with an office in the county in which the Property is located, which has agreed in writing to accept such trust. When proceeds from a single claim do not exceed Ten Thousand (\$10,000.00) Dollars, such proceeds shall be paid to the Association in trust to be used as provided in Article IX hereof. The said fire insurance policy may, in the discretion of the Board, provide for a deductible of not to exceed Two Thousand Dollars (\$2,000.00) per building per occurrence, with an aggregate deductible of Eight Thousand (\$8,000.00) Dollars per loss, provided that any such deductible feature is acceptable to the First Mortgagees named as insured under such fire insurance policy.

(i) Obtain and maintain a policy or policies insuring the Association, the Board, the Declarant, the Managing Agent and the Owners, and agents and employees of each of the foregoing, against any liability incident to the ownership and/or use of the Common Areas and, at the option of the Board, the Units within the Project, as normally covered by comprehensive general liability insurance, and if obtainable, a cross liability to each other insured. Said policy or policies shall have a minimum liability limit of ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for physical injury, death and/or property damage; such policy or policies shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent act of the Association or other Owners.

(iii) If there is a steam boiler in operation in connection with the Property, then obtain and maintain boiler explosion insurance evidenced by a standard form of boiler and machinery insurance policy and providing as a minimum ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per accident per location, payable to the named insureds, except with respect to the interests of Owners in such proceeds, which shall be payable to the Association as trustee for their benefit as provided for below; such policy shall name as insureds the Owners, and their respective Mortgagees named in endorsements and Declarant, as their respective interests may appear.

(iv) If the Property is located in an area identified by the Secretary of Housing and Urban Development or any successor agency as an area having special flood hazards, then obtain and maintain a "blanket" policy of flood insurance on the Property in the amount of the aggregate of the outstanding principal balances of the mortgage loans on the Condominiums constituting the Project or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less; the proceeds of which insurance shall be payable to the named insureds, except for the interests of the Owners in such proceeds, which shall be payable to the Association as trustee for their benefit, as provided for below; which policy or policies shall insure the Owners, and their respective Mortgagees named in endorsements, and Declarant, as their respective interests may appear.

(v) Obtain and maintain fidelity coverage insurance against dishonest acts on the part of directors, officers, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association, if there are more than thirty (30) Units within the Property. Such insurance shall name the Association as the named insured and be written in an amount sufficient to provide protection which is in no event less than the estimated maximum of funds, including reserves in the custody of the Owners' Association or the management agent at any given time during the term of the Fidelity Bond. However, the bond should not be less than a sum equal to three (3) months aggregate assessments on all Units plus reserve funds. And appropriate endorsement to the policy shall be obtained and maintained to cover any persons who serve without compensation if the policy would not otherwise cover volunteers. Such insurance may be carried, at the option of the Association, if there are thirty (30) or less Units within the Property.

(vi) Deal with any such insurance referred to in this Section 5.02 as herein provided. The provisions of this Declaration shall control the rights and responsibilities of the Association, the Board and the Owners.

A. Except with respect to fire insurance proceeds payable to the Trustee as provided for in Section 5.02(b)(i) above, the Association is hereby appointed and shall be deemed trustee of the interests of all Owners in any insurance proceeds paid to it under any such policies, or under any policy or policies carried by the Owners in lieu of policies called for above, and shall have full power to receive and to receipt for their interests in such proceeds and to deal therewith and adjust same as provided for herein.

B. It shall be the duty of the Association to obtain and keep in full force and effect at all times the policy or policies of insurance referred to in these Sections 5.02(b) and (c) hereof; provided such insurance coverage is available and can be obtained and maintained at reasonable cost to the Association as determined in the sole discretion of the Board of the Association. If it is determined that such insurance coverage is not available at reasonable cost, then all Owners shall immediately be notified in writing and advised as to any change in coverage and/or to obtain and maintain coverage on their own behalf as provided for above.

C. So long as Declarant, its successors and assigns retain any interest in the Project, the Association shall, from time to time, immediately upon receipt of same, cause to be deposited with Declarant true copies of all insurance policies referred to in this Section 5.02 which are obtained by the Association.

D. Each and every policy of insurance described herein shall contain a provision that said policy or policies shall not be materially modified, cancelled, terminated or permitted to expire by their own terms without thirty (30) days' prior written notice from insurer to the Association, Declarant, Owners and their respective Mortgagees, as well as to every other person in interest who shall have requested in writing such notice from the insurer.

E. It should be understood that the Association is obligated, subject to the limitations herein provided, to provide only the insurance coverages required by Sections 5.02(b) and (c) herein, and that such coverages shall not, unless the Association shall notify the Owners otherwise in writing, include intra-unit public liability insurance; nor shall the insurance obtained by the Association, in the absence of such notice, provide

protection against many of the risks customarily covered under insurance policies designated as "homeowners" or "broad form homeowners" policies. The foregoing risks must be insured against by the Owners individually in order for the Owners to receive insurance protection against these risks.

F. The policies of insurance obtained by the Association as provided for in this Section 5.02 shall contain as appropriate the following provisions :

(1) Statements that such policies are primary and non-contributing;

(2) Statements that conduct of an Owner shall not constitute grounds for avoiding liability under such policy or policies;

(3) An express waiver of the carrier's right of subrogation against any Owner, member of the family of any Owner, the Association, the Board, the Manager, the Architectural Control Committee, Declarant, and agents and employees of each of the foregoing.

G. Each hazard insurance policy to be obtained and maintained pursuant to the provisions of this Declaration must be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class B/VI or better, or from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided it has a general policy holder's rating of at least A.

(c) Obtain and maintain workers' compensation insurance to the extent necessary to comply with any applicable laws.

(d) Obtain and maintain such other policies of insurance as the Association may deem appropriate.

(e) Subject to the provisions of Section 5.01 above, have the authority to obtain the services of a person or firm to manage the Common Areas and perform or cause to be performed all or any part of the duties and responsibilities of the Association (the "Manager") to the extent deemed advisable by the Association, as well as such other personnel as the Association shall determine shall be necessary or proper for the operation of the Common Areas, whether such personnel are employed directly by the Association or furnished by the Manager.

(f) Subject to the provisions of Sections 2.18, 2.19, and 3.02(c) above and the provisions of Article IX below, paint, maintain and repair the Common Areas within the Property, and the furnishings, equipment and landscaped areas, if any, located within such Common Areas and the fencing and exterior surfaces of perimeter walls, surrounding any patio and/or deck, and keep same in good and clean condition, except for those areas which are to be kept clean and/or maintained by the Owners pursuant to the provisions of Sections 2.18, 2.19 and 3.02(c) hereof. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner, or his guests, tenants, or invitees, the cost of which is not covered by insurance; the uninsured cost of such repairs or replacements shall be borne by the person causing the damage.

(g) Have the power to establish and maintain working capital, reserve and/or contingency funds in reasonable amounts to be determined by the Board. The board of directors of the association shall do all of the following :

(i) Review a current reconciliation of the association's operating accounts on at least a quarterly basis.

(ii) Review a current reconciliation of the association's reserve accounts on at least a quarterly basis.

(iii) Review, on at least a quarterly basis, the current year's actual reserve revenues and expenses compared to the current year's budget.

(iv) Review the latest account statements prepared by the financial institutions where the association has its operating and reserve accounts.

(v) Review an income and expense statement for the association's operating and reserve accounts on at least a quarterly basis.

(vi) As used in this section, "reserve accounts" means moneys that the association's board of directors has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components which the association is obligated to maintain.

(h) The Association shall have no responsibility to perform the functions referred to above in Section 5.02(g) until the first Condominium in the Project has been conveyed by Declarant.

(i) Discharge by payment, if necessary, any lien against the Common Area within the Property (including without limitation any general and/or special real property taxes and assessments which are or could become liens upon such area) and assess such costs and fees to the Member or Members responsible for the existence of said lien. Any such general and special real property tax and/or assessment may be contested or compromised by the Association, provided that it is paid or a bond insuring the payment is posted prior to the conveyance or other disposition of any property to satisfy its payment.

(j) Have the authority to adopt reasonable rules not inconsistent with this Declaration relating to the use of the Common Area and all facilities thereon, for the conduct of Owners, their families, tenants, guests and invitees with respect to the Property and other Owners. A copy of the Rules, as they may be from time to time adopted, amended or repealed, may but need not be mailed or otherwise delivered to each Owner, or recorded. Upon such mailing, delivery or recordation, the Rules shall have the same force and effect as if they were set forth in and made a part of this Declaration. In addition, as to any Owner having actual knowledge of any given properly adopted Rules, such Rules shall have the same force and effect and may be enforced against such Owner.

(k) With the approval of the Architectural Committee and the Veterans Administration, construct new improvements or additions to the Common Areas within the Property or demolish existing improvements thereon : provided that, in the case of any improvements, addition or demolition (other than maintenance or repairs to existing improvements) requiring a special assessment, the Association shall first comply with all other provisions of this Declaration, including but not limited to the provisions for levying such special assessment.

5.03 Delegation of Duties by Association. The Association may delegate any of its duties, powers or functions to any person, corporation or firm to act as Manager. Neither the Association nor the Members of its Board shall be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated.

5.04 Right of Entry. The Association shall have the right to enter into any Unit or any Common Area for the purpose of

ascertaining whether the provisions of this declaration have been or are being complied with, for the purpose of enforcing by peaceful means any of the provisions of this declaration and the Rules and Regulations or for the purpose of maintaining or repairing any such area as required by this Declaration. Entry into a Unit for emergency purposes may be immediate, provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry into a Unit for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner, shall be made at reasonable hours and with as little inconvenience as possible to the Owner, and any damage caused thereby shall be repaired by the entering party.

5.05 Budget, Financial Statements and Governing Documents.

The Board shall cause budgets and financial statements for the Association to be regularly prepared, and copies shall be distributed to each Member of the Association as follows :

(a) A pro-forma operating statement (budget) for each Association fiscal year shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the fiscal year. The budget shall include all of the following :

(i) The estimated revenue and expenses on an accrual basis;

(ii) The amount of the total cash reserves of the Association currently set aside;

(iii) An itemized estimate of the remaining life of, and the methods of funding used to defray future repair, replacement, or additions to major components of the Common Area for which the Association is responsible; and

(iv) A general statement addressing the procedures used by the Board in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas for which the Association is responsible.

(b) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a Condominium located within the Property, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed within sixty (60) days after the

accounting date. This operating statement shall include a schedule of assessments received and receivable; identified by Condominium number and the name of the person assessed.

(c) An annual report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year :

(i) A balance sheet as of the end of the fiscal year;

(ii) An operating (income) statement for the fiscal year;

(iii) A statement of changes in financial position for the fiscal year;

(iv) Any information required to be reported under Section 8322 of the California Corporations Code concerning indemnifications and transactions with interested persons.

(d) Ordinarily the annual report referred to in Section 5.05(c) above shall be prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy for any fiscal year in which the gross income to the Association exceeds SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00).

(e) If the report referred to in Section 5.05(c) above is not prepared by a licensee, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without independent audit or review from the books and records of the Association.

(f) A statement as to the Association's policies and practices in enforcing the lien rights or other legal remedies for the default in the payment of its assessments against its Members shall be delivered within sixty (60) days prior to the beginning of the next fiscal year.

(g) Upon written request, the Association shall, within ten (10) days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the following items :

(i) A copy of the governing documents of the common interest development ;

(ii) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3 of the Civil Code, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3 ;

(iii) A copy of the most recent financial statement distributed pursuant to Section 1365 of the Civil Code ; and

(iv) A true statement in writing from an authorized representative of the association as to the amount of any assessments levied upon the owner's interest in the common interest development which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest, and costs of collection which, as to the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367 of the Civil Code.

(h) The Association shall make available to Unit Owners, Lenders, Holders, Insurers and Guarantors of the first Mortgage on any Unit, current copies of the Declaration, By-Laws and other rules governing the Condominium, and all other books, records, and financial statements of the Association. The Association shall make available to prospective purchasers, current copies of the Declaration, By-Laws or other rules governing the Condominium, and the most recent annual audited financial statement, if such is prepared. "Available" as used in this paragraph means available for inspection upon request during normal business hours or under other reasonable circumstances.

The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

5.06 Utility Easements. The Association is authorized and empowered to grant such licenses, easements and rights of way for sewer lines, water lines, underground conduits, telephone or cable television lines, storm drains and other utility purposes as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Units and/or Common Areas and/or for the preservation of the health, safety, convenience and welfare of the Owners, over, under, across and through those portions of the Common Areas of the Property upon which no building or other structure has been erected. Such licenses,

easements and rights of way may be granted at any time prior to twenty-one (21) years after the death of the individuals who have signed this Declaration and their issue who are in being as of the date hereof, and the right to grant such licenses, easements and rights of way is hereby expressly reserved in favor of Declarant with the right to grant same to the Association and/or to the others as herein contemplated; and Declarant and the Owners, upon request of the Association, shall take such actions (without being required to expend monies in connection therewith) and execute such instruments as may be reasonably necessary to implement and perfect the purposes of this Section 5.06.

5.07 Performance of Owner's Obligations by Association.

If any Owner shall fail to perform any maintenance type of obligation for which he is responsible hereunder or under the Restrictions or if any Owner shall fail to make the repairs or replacements which are his responsibility hereunder or under the Restrictions, then upon a vote of a majority of the Board, and after not less than thirty (30) days' notice to the Owner, the Association shall have the right (but not the obligation) to enter the Condominium of such Owner and/or any Restricted Common Area appurtenant thereto and undertake any such maintenance work and/or make such repairs or replacements, and the costs thereof shall be added to the assessments chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium.

5.08 Liability of Board Members, Manager and Architectural Committee Members.

No member of the Board nor of the Architectural Committee nor the Manager nor Declarant nor any officer of the Association shall be personally liable to any Owner, or any other party, for damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, the Architectural Committee, the Manager, Declarant, or any of the representatives or employees of any of the foregoing, provided that such Board member, Architectural Committee member, the Manager or Declarant has, upon the basis of such information as may be possessed by him, acted in good faith.

5.09 Commencement of the Association's Management Responsibility.

The Association's obligation to maintain, operate manage, and/or administer areas within the Property to be maintained, operated, managed and/or administered by the Association as called for in this Declaration, shall commence as to all such areas on the date of the consummation of the first conveyance to a buyer of a Condominium within the Property.

ARTICLE VI

COVENANT FOR ASSESSMENT

6.01 Creation of the Lien and Personal Liability. Declarant, for each Condominium owned by it within the Property, hereby covenants and agrees to pay, and each Owner of any Condominium within the Property by acceptance of a deed to or recorded contract of sale therefor, whether or not it shall be so expressed in such instrument, is deemed to covenant and agree to pay to the Association :

(a) Regular Assessments or charges :

(b) (i) Special Assessments for the purpose of defraying, in whole or in part, the cost of capital improvements to be made on the Property by the Association as herein provided, and/or for the purpose of defraying special common expenses other than for capital improvements and/or for the purpose of defraying the costs of any other action or undertaking on behalf of the Association, the funding for which is not otherwise provided for herein, and/or for the purposes set forth in Section 6.01(b)(ii) below, all subject to the provisions of Section 6.04 of this Article;

(ii) In the event the Board shall determine that the estimate of total regular assessments for the current year is or will become inadequate to meet all Common Expenses for such current year for any reason, it shall then immediately determine the approximate amount of such inadequacy and shall issue a supplemental estimate of the Common Expenses and shall determine the amount of additional assessment revenue required for the current year, and shall thereupon levy a special (supplemental) assessment against each Condominium and the Owners thereof, which special (supplemental) assessments shall set forth the date or dates when due : provided that the levy of any such special (supplemental) assessment shall be subject to the provisions of Section 6.04 below; and

(c) Reconstruction Assessments levied against each Owner and his Condominium by the Board in accordance with the provisions of Article IX (Destruction of Improvements) hereof, for the purpose of defraying the expense of the Association of reconstructing all or any portion of the damaged destroyed improvements located within the Common Areas of the Property.

All such assessments to be fixed, established and collected from time to time as herein provided.

All assessments, together with interest thereon, costs of collection thereof, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien, with power of sale, upon the real property estate against which each such assessment is made. The lien shall become effective upon recordation of a Notice of Claim of Lien in accordance with Section 6.08 of this Declaration. Each such assessment, together with such interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due, and shall bind his heirs, devisees, personal representatives, successors and assigns; provided, however, that the personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

6.02 Purpose of Assessments - Generally. The assessments levied by the Association shall be collected, accumulated and used exclusively to promote the recreation, health, safety, and welfare of the Members of the Association, including without limitation, use for the improvement and maintenance of the Common Area and the common facilities and the administration of the Property for the common good of the Owners. The Association shall not impose or collect an assessment penalty or fee that exceeds the amount necessary for the purpose or purposes for which it is levied.

6.03 Regular Assessments.

(a) The regular assessments levied by the Association shall be collected, accumulated and used generally for the maintenance and operation of the Common Area and common facilities, the administration of the Property and the Association, the establishment of reserves as contemplated in Section 8.12 hereof, and for such other purposes as may be from time to time reasonably determined by the Board, subject to such limitations as may be set forth in the Condominium Documents.

(b) Until January 1 of the year immediately following the year in which the first sale to a purchaser of a Condominium located within the Property is consummated, the regular assessment shall be \$1,243.08.

(c) From and after January 1 of the year immediately following such consummation of the first sale to a purchaser of a Condominium located within the Property, the amount of Regular Assessments shall be as determined by the Board annually in

accordance with the provisions of Section 6.07 hereof on a calendar year basis after giving due consideration to all relevant facts, including but not limited to current maintenance and operating costs, anticipated future needs of the Association, and the need for contingency and maintenance reserves.

(d) Notwithstanding the foregoing provisions of this Section 6.03, the Board may not, without the vote or written assent of a majority of the voting power of each class of membership, impose a regular annual assessment per Condominium which is more than ten percent (10%) greater than the regular annual assessment per Condominium for the immediately preceding fiscal year. Notwithstanding the provisions of the immediately preceding sentence, once there is only one class of membership, the Board must obtain the vote or written assent of a majority of the voting power of the Association residing in Owners, other than Declarant, in accordance with Section 4.06(b) of this Declaration, to impose the type of increase in assessments referred to in the immediately preceding sentence. The monthly assessments per Condominium for the partial year referred to in Section 6.03(b) above shall be annualized for the purpose of determining whether the proposed assessments per Condominium for the Association's first full calendar year are more or less than ten percent (10%) greater than the Regular Assessments per Condominium for such partial period.

6.04 Special Assessments.

(a) In addition to the Regular Assessments authorized above, the Board may levy, in any assessment year, Special Assessments for any of the purposes contemplated in Section 6.01(b) above; provided that, in accordance with the provisions of Section 4.06(b) of this Declaration, any such assessments exceeding five percent (5%) in the aggregate of the budgeted gross expenses of the Association for the assessment year in question shall require the approval by vote or written assent of Members entitled to exercise not less than a majority of the voting power of each class of Association membership, or, if there is only one class of membership, then the approval by vote or written assent of Members, other than Declarant, entitled to exercise a majority of the voting power of the Association. Written notice of the amount of any Special Assessment shall be sent to every Owner, the due date for payment of same shall be set forth in such notice, and to the extent reasonably

appropriate, each Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments. The above provisions with respect to Special Assessments do not apply in the case where individual extraordinary charges are levied against an Owner for any of the purposes described in Section 6.12 below (including without limitation where the individual extraordinary charge against an Owner is used by the Board as a remedy to reimburse the Association for the costs incurred in bringing the Member and/or his Condominium into compliance with the provisions of the Restrictions).

(b) The provisions of Section 6.03(d) or of Section 6.04(a) do not limit assessment increases for the following purposes :

(i) The maintenance or repair of the common areas or other areas which the association is obligated to maintain or repair, including, but not limited to, the payment of insurance premiums, the payment of utility bills, the costs incurred in maintaining or repairing structures or improvements, and funding reserves.

(ii) Addressing emergency situations.

(c) Any assessment increases above fifteen percent (15%) for the categories noted in Section 6.04(b)(i) and (ii) must be approved by (a) a majority of the voting power of the Association and (b) so long as there is a Class B membership a majority of the voting power of the members other than the Declarant.

6.05 Uniform Rate of Assessment. Except as otherwise provided in Section 6.04 above, Regular Assessments and Special Assessments must be fixed at a uniform rate for all Condominiums then subject to assessment by the Association ; thus each Condominium (and the Owners thereof) subject to assessment by the Association at the time any of the foregoing types of assessments are levied shall be liable to the extent herein provided for that proportion of the overall assessment levied as the number one (1) bears to the total number of Condominiums then subject to assessment by the Association.

6.06 Date of Commencement of Regular Assessments; Due Dates of Assessments.

(a) The Regular Assessments provided for herein shall commence as to all Condominiums located within the Property on the first day of the month following the month during which the first conveyance of a Condominium to a purchaser occurs.

(b) Except for the partial first year which is dealt with in Section 6.03(b) above, Regular Assessments shall be levied on a calendar year basis. All Regular Assessments shall be due and payable in monthly installments, in advance, on the first day of each and every month, or in such other manner and at such other times as the Board of the Association may from time to time establish.

(c) The due date of any individual Extraordinary Assessment referred to in Section 6.01(c) hereof shall be fixed in the resolution authorizing such assessment and shall be set forth in the Notice of Assessment given to the Member liable therefor.

6.07 Duties of the Board of Directors as to Assessments.
The Board of Directors of the Association shall fix the amount of the Regular Assessment against each Condominium on an annual basis for each calendar year at least thirty (30) days in advance of the commencement of such period and shall, at that time, prepare a roster of the Condominiums within the Property, and all types of assessments applicable thereto, which shall be kept in such place as may be from time to time designated by the Board of the Association, provided that same shall be open to inspection by any Owner during normal business hours.

Written notice of the Regular Assessments shall be sent to every Owner on an annual basis at least thirty (30) days in advance of the commencement of the applicable calendar year, and such notice shall specify when installment payments shall be due and payable. Nothing to the contrary herein withstanding, if the Regular Assessment is not made as required for any calendar year, then the Regular Assessment for the last prior calendar year shall be deemed automatically assessed against the Owners of each Condominium then subject to assessment, and installment payments based on such amount shall be payable on the regular payment dates until changed by new or supplementary assessment.

Upon demand, the Association shall furnish to any Owner and/or Mortgagee whose Condominium is liable for any Regular, Special, Reconstruction and/or Extraordinary Assessments, a certificate in writing signed by an officer of the Association setting forth the nature and extent of such assessments, the due dates thereof, and whether or not any delinquency exists. Such certificates shall be conclusive evidence of payment of any assessments or portion thereof therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of any such certificate.

6.08 Effect of Nonpayment of Assessments : Delinquency and Remedies of the Association.

(a) If any assessment, Regular, Special or Reconstruction or any portion thereof, is not paid on the date when due, then such assessment or portion thereof not paid when due shall be deemed delinquent fifteen (15) days after the due date and shall, together with interest thereon at the rate of ten percent (10%) per annum until paid, and costs of collection reasonably incurred, including but not limited to reasonable attorneys' fees as provided for below, become a continuing lien on the Condominium against which such assessments was made when such lien is perfected by the recordation of a "Notice of Claim of Lien" against the Owner's fee interest in such Condominium in the manner provided for in Section 6.08(b) below. Upon recordation of a Notice of Claim of Lien against a Condominium, such lien shall constitute a lien on the Condominium prior and superior to all other monetary liens on the Owner's fee interest except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first mortgage of record made in good faith and for value.

(b) Any assessment imposed pursuant to the terms of this declaration, if delinquent, shall include a late charge in the maximum amount which shall be imposed by the Board in accordance with and subject to the limitations of California Civil Code Section 1366 or any successor statutes. Interest shall accrue on all sums imposed in accordance with this Article, including the delinquent assessment, reasonable costs of collection and late charges, at an annual percentage rate of ten percent (10%) per annum, commencing thirty (30) days after the assessment becomes due.

(c) 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 personally obligated to pay the assessment and all charges relating thereto (and such action may be brought without foreclosing or waiving any lien securing such amount); or, upon compliance with the notice provisions set forth in Section 6.08(d) below, the Association may foreclose the lien against the Condominium, and there shall be added to the amount of such assessment or any portion thereof, the interest thereon at the rate of ten percent (10%) per annum and all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting the delinquent assessment. In lieu of judicially foreclosing the lien, the Association, at its option, may foreclose such lien by proceeding under a power of sale as provided for in Section 6.08(e) below,

such a power of sale being given to the Association as to each and every Unit for the purpose of collecting delinquent assessments. Each Owner vests in the Association, its successors or assigns, the right and power to bring all actions at law or of lien foreclosure against such Owner or other Owners for purposes of collecting delinquent assessments.

(d) No action shall be brought to foreclose the lien, or to proceed under the power of sale, until at least thirty (30) days after a notice of Claim of Lien, executed by a duly authorized representative of the Association, has been recorded with the County Recorder for the county in which the Property is located, said Notice setting forth the amount claimed (which may include interest as provided for above, expenses of collection, including reasonable attorneys' fees, and accrued late payment charges), a legal description of the Condominium being assessed, the name of the record owner or reputed owner thereof, and the name and address of the Association as claimant, and the name and address of the trustee authorized by this Association to enforce the lien by nonjudicial sale. A copy of said Notice of Claim of Lien shall be deposited in the United States mail, certified or registered, and postage prepaid, addressed to the Owner of the Condominium using the address of the said Condominium or using such other address as may have been previously given in writing to the Association by such Owner.

(e) Any such sale provided for above shall be conducted in accordance with the provisions of Sections 2924-2924h of the Civil Code of the State of California, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted or provided by law. The Association, through its duly authorized agents, shall have the power to bid on the Condominium at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

(f) Upon the timely curing of any default or which a Notice of Claim of Lien under Section 6.08(d) or Section 2.10 of this Declaration was recorded by the Association, the officers of the Association are hereby authorized to record an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee to be determined by the Association to cover the cost of preparing and recording such release together with the payment of such other costs, interest or fees as shall have been incurred (including but not limited to reasonable attorneys' fees).

(g) The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder or by law.

(h) Unless sooner satisfied or released, or the enforcement thereof initiated, any lien arising as herein provided shall expire and be of no further force and effect one (1) year from the date of recordation of the aforementioned Notice of Claim of Lien; provided, however, that said one (1) year period may be extended by the Association for a period of not to exceed one (1) additional year by recording a written Notice of Extension thereof.

6.09 Assessment of Condominiums Owned by Declarant; Except as otherwise specifically provided in this Declaration, each Condominium owned by Declarant within the Property then subject to assessment by the Association shall be assessed to the same extent and in the same manner as any Condominium owned by any individual Owner.

6.10 Capitalization of the Association. Upon acquisition of record title to a lot from Declarant, each owner shall contribute to the capital of the Association an amount equal to one-sixth (1/6th) the amount of the then annual assessment for his lot, as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed from the escrow to the account of the Association. This amount does not represent a prepayment of two (2) months maintenance assessments, but is the sum in addition to the estimated initial maintenance charge. Prior to the close of the first sales escrow Declarant shall deposit into escrow an amount equal to one-sixth (1/6th) of the then annual assessment for all the units.

6.11 Nonuse and Abandonment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Condominium.

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

6.13 Extraordinary Charges. Declarant, for each Condominium owned by it within the Property, hereby covenants and agrees to pay, and each Owner of any Condominium within the Property by acceptance of a deed or recorded contract of sale therefor, whether or not it shall be so expressed in such instrument, is deemed to covenant and agree to pay to the Association, the following :

(a) Charges levied against individual Condominium Owners by the Board in accordance with Sections 5.02(i), 5.07 or 9.03 ;

(b) Charges required to pay for or reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent act of the individual Owner, his or her family, guests, tenants, lessees and/or invitees and not caused by ordinary wear and tear; and/or

(c) Charges levied by the Board to pay for or reimburse the Association for costs incurred in bringing any Owner or his Condominium into compliance with the provisions of the Restrictions.

Each such charge shall be the personal obligation of the persons(s) who was the Owner of such Condominium at the time the charge arose and shall bind his heirs, devisees, personal representatives and assigns, provided however, that the personal obligation for the delinquent charge shall not pass to the Owner's successor in title unless expressly assumed by them, and provided further, that unlike the regular, special or reconstruction assessments, the above-described charges shall not become a lien against the Owner's Condominium which is enforceable by a sale of the interest pursuant to Sections 2924, 2924(b) or 2924(c) of the California Civil Code. The basis and due date for such charge and Owner(s) responsibility for same shall be fixed by resolution to the Board. Written notice of the charge shall be delivered to the responsible Owner(s). An extraordinary charge not paid when due shall be subject to the same late charge and payment of interest as provided for delinquent assessments pursuant to Section 6.08 above. An extraordinary charge, together with late charge, interest thereon and costs of collection including without limitation reasonable attorneys' fees, may be fixed and established by the Board from time to time as herein provided.

ARTICLE VII

ARCHITECTURAL COMMITTEE

AND ARCHITECTURAL CONTROL

7.01 Architectural Control.

(a) Except as provided in Section 7.01(c) below, no person shall install, erect, attach, apply, paste, hinge, screw, nail, build or construct lighting devices, shades, screens,

awnings, patio covers, decorations, fences, aerials, antennae, radio or television broadcasting or receiving devices, or paint or make any changes or otherwise alter whatsoever the structural aspects or the exterior of any building or structure containing the Units or any Restricted Common Areas constructed or to be constructed within the Property, or install any landscaping (other than plants, bushes and/or flowers that grow low to the ground) on the Property or any portion thereof. For the purpose of this Section 7.01(a), the term "exterior" shall mean any outside walls, outward surfaces, roofs, outside doors, or other outside structures of said building or improvements.

(b) Except as provided in Section 7.01(c) below, no person shall commence, erect, install, alter, paint or maintain any buildings, fences, obstructions, patios, patio covers, tents, carports, carport covers, jacuzzis, hot tubs, spas, waterbeds, improvements, walkways, slabs, sidewalks, curbs, gutters, porches, driveways, lighting, decorations, aerials, antennae, radio or television broadcasting or receiving devices, or other structures of any kind within the Common Areas of the Property.

(c) No person shall perform any of the prohibited acts specifically described in Section 7.01(a) and (b) above until the complete plans and specifications showing the nature, type, shape, color, size, materials and locations of such improvements, alterations, etc., shall have been submitted to and approved in writing by the Architectural Committee: in making its determination, the Architectural Committee shall consider, inter alia, the factors described in Section 7.07 below. Nothing contained herein shall be deemed to require Declarant and/or its successors and assigns described in Section 1.15 above to obtain Architectural Committee approval in connection with the original construction of the improvements on the Property or any portion thereof.

7.02 Architectural Committee. The Architectural Committee shall consist of three (3) members. The procedures for appointment and replacement of members of the Architectural Committee shall be as follows ;

(a) Declarant may appoint all of the original Members of the Architectural Committee and all replacements until the first anniversary of the issuance by the California Department of Real Estate of the initial final Public Report for the Property. The original Members of the Architectural Committee hereby appointed by Declarant shall be as follows :

- (i) HOSSEIN MOALEJ
- (ii) NILOUFAR MOALEJ
- (iii) PARGOL MOALEJ

The Architectural Committee's initial address is :

726 ELM
LONG BEACH, CALIFORNIA

Such address may be changed from time to time by recording in the County in which the Property is located an instrument referencing the Property and this Declaration and setting forth the new address, or by giving notice of such new address to all Owners within the Property.

(b) Declarant hereby reserves to itself the power to appoint a majority of the members of the Architectural Committee until ninety percent (90%) of all of the Condominiums in the Property have been sold or until the fifth (5th) anniversary of the issuance by the California Department of Real Estate of the initial final Public Report for the Property, whichever first occurs.

(c) After one (1) year from the date of the issuance by the California Department of Real Estate of the initial final Public Report for the Property, the Board of the Association shall have the power to appoint one member to the Architectural Committee until ninety percent (90%) of all of the Condominiums within the Property have been sold or until the fifth (5th) anniversary date of the initial issuance by the California Department of Real Estate of the final Public Report for the Property, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the architectural Committee.

(d) Members appointed to the Architectural Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Committee by Declarant need not be members of the Association.

7.03 Certain Procedures of Architectural Committee. In the event any member is unable to or unwilling to serve on said Architectural Committee, the remaining member or members shall have full authority to approve or disapprove such proposed alteration, modification, addition, deletion, or other proposed form of change. The membership of said committee or any representative appointed thereby if other than as stated in this Declaration, shall be evidenced by a certificate of identity, which shall be executed by at least one member of said committee or by Declarant or by an authorized officer of the Association, as appropriate; which certificate shall then be conclusive evidence thereof in favor of any person relying thereon in good faith. In

the event the Architectural Committee or the representative appointed by the committee fails to approve or disapprove such proposed alteration, modification, addition, deletion or other proposed form of change within thirty (30) days after said complete plans and specifications have been submitted to it, such approval will be deemed to have been given and the provisions of this Declaration requiring any such approval shall be deemed to have been complied with. Such complete plans and specifications shall be personally delivered to any member of the Architectural Committee or mailed to the committee via certified mail, return receipt requested, postage prepaid. The plans and specifications shall be deemed submitted to the Architectural Committee upon the date of receipt by the committee of such plans and specifications.

7.04 Entry. The Architectural Committee, in performing its duties, shall have the same rights of entry as the Association as set forth in Section 5.04 hereof.

7.05 Enforcement by Owners. Any Owner within the Project may by appropriate legal action enforce remedies for violations of this Article VII in the event that the Association fails to take remedial action within a reasonable period of time after knowledge by the Association of the particular violation.

7.06 No Waiver. The approval of the Architectural Committee to any proposals or plans and specifications or drawings for work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval and consent as to any similar proposals, plans and specifications, drawings or any other matter which is subsequently or additionally submitted for approval or consent.

7.07 No Liability; Basis for Review.

(a) Neither the Architectural Committee nor any member thereof shall be liable in damages or otherwise to the Association or to anyone submitting plans and specifications for approval or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties hereunder, unless due to the willful misconduct or bad faith of the Architectural Committee and/or any individual member thereof (in which event only those persons actually guilty of misconduct and/or bad faith shall be liable).

(b) The Architectural Committee shall review and approve or disapprove all plans submitted to it for any proposed

improvement, alteration or addition, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the Property in the immediate area surrounding the Property. The Architectural Committee shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials, harmony of external design with existing structures, location in relation to surrounding structures, topography and finished grade elevation, and similar features, but shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Notwithstanding the foregoing, the Architectural Committee's approval of the installation of solar heating units shall not be unreasonably withheld.

7.08 Rules and Regulations. The Architectural Committee may from time to time, in its sole discretion, adopt, amend and repeal Rules and Regulations interpreting and implementing the provisions hereof.

7.09 Compensation of Members. The members of the Architectural Committee shall receive no compensation for services rendered, other than reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder, unless any such compensation arrangement has been approved by vote or written assent of a majority of the voting power of each class of membership of the Association.

ARTICLE VIII

MORTGAGE PROTECTION

Notwithstanding any other provisions of this Declaration :

8.01 Subordination of Lien and Foreclosure.

(a) Any lien created or claimed under the provisions of this Declaration (including without limitation any assessment lien provided for under the provisions of Article VI above) is expressly made subject and subordinate to the rights of any first mortgage that encumbers all or a portion of the Property, or any Condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien.

(b) If any Condominium is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of such mortgage. Upon foreclosure of a first mortgage, the foreclosure-purchaser shall take title to the Condominium free of the lien for assessments, or installments, that have accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure-purchaser shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure purchaser acquired title to the Condominium. The subsequently levied assessments or other charges may include previously unpaid assessments provided all Owners, including the foreclosure-purchaser and his successors and assigns, are required to pay their proportionate share as provided for herein.

8.02 Mortgagees Not Required to Cure Certain Breaches. A first mortgagee who acquires title by judicial foreclosure or as a result of a trustee's sale under the power of sale provisions of such first mortgage shall not be obligated to cure a then-existing breach of this Declaration which is of a type not reasonably practical or feasible for such acquirer to cure.

8.03 Effect of Breach of Declaration. No breach of any of the covenants, restrictions or provisions contained in this Declaration shall cause any forfeiture of title or reversion or bestow any right of re-entry whatsoever, nor shall any such breach defeat or render invalid the lien of any mortgage made in good faith and for value as to the Property or any part thereof, but said covenants, restrictions and provisions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale or otherwise, and such a breach may be enjoined or abated by Declarant, its successors and assigns, by the Association, or by any Owner, by action of court of competent jurisdiction, and damages may also be awarded against such violation.

8.04 Notification of Breach. Subject to Section 8.15, the holder of a first mortgage on a Condominium located within the Property, upon written request, shall be entitled to written notification from the Association of any default by the mortgagor of such Condominium in the performance of such mortgagor's obligations under this Declaration, the Association Bylaws, and/or with respect to any rule promulgated by the Association or the Architectural Committee pursuant to the provisions of this Declaration, which default is not cured within sixty (60) days.

8.05 Exemption From Right of First Refusal. Any holder of a first mortgage or deed of trust who obtains title to a Condominium pursuant to the remedies provided in the mortgage or by foreclosure of the mortgage through judicial or trustee sale proceedings or by acceptance of a deed in lieu of foreclosure shall be exempt from any "right of first refusal" which might at any time or from time to time be provided for in this Declaration, the Association's Bylaws or by any of the documents referred to herein.

8.06 Restrictions on Certain Changes.

(a) Unless at least two-thirds (2/3) of the holders of first mortgages (based upon one vote for each first mortgage) or Owners (other than Declarant) of Condominiums located within the Property have given their prior written approval, the Association shall not be entitled to :

(i) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas or any portion thereof. Nothing to the contrary herein withstanding, the granting of easements for public utilities, or for other purposes consistent with the intended use of the Common Areas and consistent with the easements referred to and/or provided for in this Declaration shall not be deemed a transfer within the meaning of this subsection.

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

(iii) Partition or subdivide any Condominium.

(iv) By act or omission seek to abandon or terminate the Condominium Project, except for abandonment provided by statute in the case of substantial loss to the Units and/or Common Areas within the Property.

(v) Use hazard insurance proceeds for losses to any condominium property (whether to Units or to Common Area) for other than the repair, replacement or reconstruction of such condominium property, except as provided by statute in case of substantial loss to the Units and/or Common Area within the Property.

(b) Each Mortgagee shall inform the Association in writing of its :

- (i) Current mailing address ; and
- (ii) Request to be notified prior to any of the above actions.

8.07 Inspection of Association Books and Records. The holder of any first mortgage on a Condominium shall have the right to examine the books and records of the Association.

8.08 Condemnation Awards and Insurance Proceeds. Nothing contained in this Declaration or in any of the Condominium Documents shall be construed as giving any Condominium Owner or any other party priority over any rights of first mortgagees of Condominiums pursuant to their mortgages in the case of distribution to Condominium Owners of insurance proceeds or condemnation awards for losses to or taking of Condominium Units or Common Area.

8.09 Mortgagee's Right to Attend Meetings. Because of its financial interest in the Property, a mortgagee may appear (but may not vote) at meetings of the Owners and the Board.

8.10 Payments by Mortgagees. Mortgagees of Condominiums within the Property 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 and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area improvements within the Property and, upon making any such payments, such mortgagees shall be owed immediate reimbursement therefor from the Association.

8.11 Loss Payable Endorsement. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses naming the mortgagees who encumber Condominiums by mortgage, as their interests may appear.

8.12 Establishment of Adequate Reserve Fund. Regular Assessments shall include an adequate amount to create a reserve fund for maintenance, repairs and replacement of those portions of the Common Areas located within the Property that must be replaced on a periodic basis.

8.13 Agreements for Professional Management and/or for Services of Declarant. Nothing to the contrary in the Condominium Documents withstanding, no agreement for professional management of the Property or any portion thereof, nor any other contract providing for services of the Declarant, shall exceed three (3) years in length, and any such agreement shall provide

for termination by either party without cause and without payment of a termination fee on not more than ninety (90) days' written notice.

8.14 Amenities. Unless otherwise herein specifically provided, all amenities [such as guest parking, recreational areas and facilities, and service areas] shall be available for use by Owners, and all such amenities with respect to which regular or special assessments for maintenance or other uses may be levied shall constitute Common Area. All such amenities shall be covered on an undivided interest basis as a part of the Common Areas by any first mortgage on a Unit, free of encumbrances except for covenants, conditions, restrictions, reservations, rights and easements which are consistent with the intended use of such amenities by the Association and the Owners (including without limitation, any easements granted for public utilities or for other public purposes).

8.15 Filing of Notice: Notices and Approvals. A Mortgagee shall not be entitled to receive any notice which this Declaration requires the Association to deliver to Mortgagees unless and until such Mortgagee, or its mortgage servicing contractor, has delivered to the Board a written notice stating that such Mortgagee is the holder of a Mortgage encumbering a Unit within the Property. Such notice shall state which Unit or Units are encumbered by such Mortgage and shall further state whether such Mortgagee is a first mortgagee. Except as provided in this Section 8.15, 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 hereunder shall not be affected by the failure to deliver a notice to the Board. 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 substantially unchanged.

8.16 Governmental Financing Programs. If Declarant at any time or from time to time elects to use a financing program for the Property which involves any types of mortgage insurance issued by a governmental agency or quasi governmental agency such as the Federal Housing Administration (FHA herein) and/or involves the sale of first mortgages to a governmental agency or quasi governmental agency such as Federal Home Loan Mortgage Corporation (FHLMC herein) and/or involves a Federal National Mortgage Association (FNMA herein) type of program (the aforementioned programs being collectively referred to herein as "Governmental Financing Programs"), then it is intended that the Association and the Owners shall take whatever reasonable steps are necessary to satisfy the then existing requirements for any

such Governmental Financing Program selected by Declarant, including without limitation the requirement: that, when available, the Association shall obtain and maintain such types of coverages of insurance, evidenced by policies of insurance and endorsements, when applicable, in such form and issued by such carriers as shall from time to time meet the requirements of the particular Governmental Financing Program involved which apply to the Property. Under such circumstances all policies of hazard insurance required to be obtained and maintained pursuant to the provisions of this Section 8.16 must contain or have attached the standard mortgagee clause commonly accepted by private institutional mortgage investors for similar projects in the area in which the Property is located. The Association agrees to give written notice to the Federal Home Loan Mortgage Corporation ("FHLMC") or its designated representative of any loss to, or taking of, the Common Area if such loss or taking exceed Ten Thousand Dollars (\$10,000.00) or damage to a Condominium covered by a first Mortgage purchased in whole or in part by the FHLMC which damage exceeds One Thousand Dollars (\$1,000.00)

8.17 Estoppel Certificate. The Association shall, at the request of a mortgagee of an interest in any Condominium located within the Property, report any unpaid assessments due from the Owner of such interest in the Condominium.

ARTICLE IX

DESTRUCTION OF IMPROVEMENTS

9.01 Automatic Reconstruction. In the event of partial or total destruction of any Condominium Building, the Board shall promptly take the following actions :

(a) The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from at least two (2) reputable contractors, including the obligation to obtain a performance bond, if the Board deems the same to be necessary or appropriate, and obtaining one or more independent appraisals if the Board deems such appraisal or appraisals to be necessary or desirable.

(b) The Board shall determine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer of said Condominium Building.

(c) The Board shall meet and determine whether the insurance proceeds, if any, will cover eighty-five percent (85%) or more of the estimated cost of reconstruction as determined

pursuant to Section 9.01(a) hereof, or whether the portion of the estimated cost not covered by insurance is less than Two Thousand Dollars (\$2,000) per Unit located within the Project. Such percentage covered by insurance or such cost per unit shall hereinafter be referred to as the "Acceptable Range of Reconstruction Cost." If the Board finds that a bid obtained under this Section is within the Acceptable Range of Reconstruction Cost, the Board shall cause a notice to be sent to all Owners of Condominiums in the Project and to the First Mortgagees of Mortgages encumbering Condominiums within the Project setting forth such findings and informing said Owners and said First Mortgagees that the Board intends to commence reconstruction pursuant to this Declaration. In the event that at least twenty percent (20%) of the Owners, based on one (1) vote for each Unit, object in writing to such reconstruction by the date indicated therefor on such notice, which in no event shall be sooner than ten (10) days or later than thirty (30) days after the date on which the Board sends such notice to the Members, the Board shall call a meeting of the Owners pursuant to Section 9.02 below. In the event the foregoing requirements are satisfied and the requisite number of Owners do not object in writing by such date, the Board shall cause reconstruction to take place as promptly as practicable and shall levy a Reconstruction Assessment against each Condominium within the Project and against the Owners thereof, at such time and in such amount as the Board shall determine is necessary to cover the aggregate costs of reconstruction in excess of insurance proceeds. Such Reconstruction Assessment shall be levied upon the basis of the ratio of the square footage of the floor area of each Unit to the total square footage of the floor area of all Units to be assessed. Notwithstanding the foregoing, if the insurance proceeds exceed the cost of reconstruction, the Board shall cause reconstruction to take place as promptly as practicable but shall not levy a Reconstruction Assessment; and any excess insurance proceeds shall be distributed by the Board to the Owners and their Mortgagees, as their respective interest shall appear, based on the relative fair market values of the Units at the time of the destruction, as established by an independent appraisal conducted by an M.A.I. Appraiser selected by the Trustee appointed pursuant to Section 5.02(b)(i) of this Declaration. If the Board in good faith determines that none of the bids submitted under this Section reasonably reflects the Acceptable Range of Reconstruction Costs, the Board shall proceed according to Section 9.02 hereof.

(d) The foregoing determinations shall be made by the Board as soon as possible. However, if such determinations cannot be made within sixty (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 9.02 of this Article.

(e) If the Board determines that any Unit has become uninhabitable by reason of its total or partial destruction, Regular Assessments shall abate against the Owner thereof until the Board determines that the reconstruction of the Unit has restored its habitability. However, if the Board determines that such abatement will adversely and substantially affect the management, maintenance and operation of the Property, it may in its sole and absolute discretion elect to disallow such abatement.

9.02 Meeting. If the Board determines that the requirements of the Acceptable Range of Reconstruction Cost have not been met, or if the requisite number of Owners object in writing to a decision by the Board to reconstruct pursuant to Section 9.01 or 9.11 hereof, the Board shall call a meeting of the Owners by mailing notice thereof to each Owner at his address as shown on the records of the Association. Such meeting shall be held not less than fourteen (14) days and not more than twenty-one (21) days after (i) the meeting at which the Board makes its determination that the cost of reconstruction was not within the acceptable Range of Reconstruction Cost, or (ii) the date indicated on the notice of the Board sent to Members pursuant to Section 9.01(c) or 9.11 hereof, as the case may be. The Owners may, by a two-thirds (2/3) vote at such meeting or by the written consent of not less than two-thirds (2/3) of the Owners, based on one (1) vote for each Unit, determine not to proceed with the reconstruction.

9.03 Decision to Reconstruct: Procedure After Meeting. In the event that the Owners do not vote against reconstruction of the partially or totally destroyed Condominium Building pursuant to Section 9.02 hereof, the Board shall levy a Reconstruction Assessment against each Condominium in the Project and against the Owners thereof, at such time and in such aggregate amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds. Each Condominium's pro rata share of such aggregate amount shall be determined on the same basis as is provided for in Section 9.01(c) hereof. In addition, the following shall apply :

(a) Immediately after such meeting, the Board shall notify by first-class mail, registered or certified, all first mortgagees of Condominiums within the Project of the Association's decision to undertake reconstruction. The Board shall also send a true copy of all such notices to the Trustee.