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SIGNAL CAROUSEL APARTMENTS  
A General Partnership

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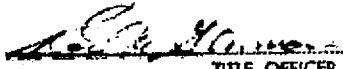
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
BY  
SIGNAL CAROUSEL APARTMENTS  
ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP

THIS DOCUMENT IS CERTIFIED TO BE A TRUE AND CORRECT COPY  
OF THE ORIGINAL DOCUMENT RECORDED 12-4-81  
AS INSTRUMENT NO. 81-382511  
IN THE OFFICE OF THE RECORDER OF SAN DIEGO COUNTY.

FIRST CENTENNIAL TITLE COMPANY

BY   
TITLE OFFICER

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**FOR**  
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**AND RESERVATION OF EASEMENTS**  
**BY**  
**SIGNAL CAROUSEL APARTMENTS**

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATIONS OF EASEMENTS  
BY  
SIGNAL CAROUSEL APARTMENTS  
ESTABLISHING A PLAN OF  
CONDOMINIUM OWNERSHIP

THIS DECLARATION ("Declaration") is made on this, the 8th day of April, in the year 1981, by SIGNAL CAROUSEL APARTMENTS, a General Partnership, ("Grantor"), whose address is 223 1/2 Seal Beach Boulevard, Seal Beach, California 90740.

P R E A M B L E

A. Grantor is the owner of real property ("Real Property") located in the City of San Diego, County of San Diego, State of California, described fully in Exhibit "A" attached hereto. Grantor has developed or intends to develop on the Real Property a statutory airspace condominium project containing a maximum of three hundred thirty-three (333) units in the manner and to the extent described fully in Exhibit "B" attached hereto. Grantor's Real Property and the improvements or proposed prospective improvements thereon collectively shall be referred to herein as the "Project."

B. It is the desire and intention of Grantor to subdivide the Project into condominium estates and to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all the condominium estates created.

C. Grantor hereby declares that all of the Project shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions, easements, conditions and covenants, liens and charges, all of which are declared and agreed to be in furtherance of a plan for the protection, subdivision, maintenance, improvement and sale of the Project for the purpose of enhancing the value, desirability and attractiveness of the Project. All provisions of this Declaration, including, without limitation, the easements, uses, obligations, covenants, conditions, restrictions, liens and charges hereof, are hereby imposed as equitable servitudes upon the Project. All of the limitations, restrictions, easements, conditions, covenants, liens and charges herein shall run with the land and shall be binding on and for the benefit of all of the Project and all parties having or acquiring any right, title or interest in the Project, or any part thereof, and their successors and assigns. Grantor further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code Section 1355, as amended.

D. Grantor, its successors, assigns and grantees, covenant and agree that the undivided interest in the Common Areas, the membership in the Association, any easements conveyed therewith and the fee titles to the respective Units conveyed therewith shall not be separated or separately sold, conveyed or transferred, and each such undivided interest, membership and easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit; provided, however, that this restriction upon the severability of the component interests of the Condominiums shall not extend beyond the period for which the right to partition the Project is suspended in accordance with Section 1354(b) of the California Civil Code and the provisions of Article XI hereof. Any conveyance by a Unit Owner of a Condominium or a Unit, or any portion thereof, shall be presumed to convey the entire Condominium, together with a membership in the Association.

**ARTICLE 1**  
**DEFINITIONS**

Unless otherwise expressly provided, the following words and phrases when used in this Declaration or any amendment thereto shall have the meanings hereinafter specified.

Section 1.01. Architectural Committee. "Architectural Committee" shall mean the Architectural Review Committee created pursuant to Article V of this Declaration.

Section 1.02. Articles. "Articles" shall mean the Articles of Incorporation of the Association as filed in the Office of the Secretary of State of the State of California, a true copy of which is attached hereto, marked Exhibit "C" and incorporated herein by this reference, as such Articles may be amended from time to time.

Section 1.03. Assessment, Annual. "Annual Assessment" shall mean a charge against a particular Unit Owner and his Condominium, representing a portion of the

costs of maintaining, improving, repairing and managing the Project and all other Common Expenses, including, but not limited to, operation costs for the Common Areas and the Reserved Common Area prior to the Grantor's obtaining a Permit for the construction and establishment of up to thirty-three (33) additional units as provided in Articles II and VI hereof, which is to be paid by each Unit Owner to the Association for Common Expenses in accordance with the provisions of Article V herein respecting Annual Assessment.

**Section 1.04. Assessment, Capital Improvement.** "Capital Improvement Assessment" shall mean a charge against each Unit Owner and his Condominium, representing a portion of the cost to the Association for installation or construction of any capital improvements on any of the Common Areas which the Association may from time to time authorize. Such charge shall be levied against and among all of the Condominiums in the Project in the same proportion as Annual Assessments, as provided herein.

**Section 1.05. Assessment, Reconstruction.** "Reconstruction Assessment" shall mean a charge against a particular Unit Owner and his Condominium, representing a portion of the cost to the Association for substantial repairs or reconstruction of any of the Common Areas which the Association may from time to time authorize, and which shall be levied against and among all of the Condominiums in the Project on the basis of the ratio the square footage of the floor area of the Unit to be assessed bears to the total square footage of floor area of all Units to be assessed.

**Section 1.06. Assessment, Special.** "Special Assessment" shall mean a charge against a particular Unit Owner and his Condominium, directly attributable to, or reimbursable by, the Unit Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration plus interest and other charges thereon as provided for in this Declaration.

**Section 1.07. Association.** "Association" shall mean CAROUSEL ISLE CONDOMINIUM ASSOCIATION, a California nonprofit corporation (formed pursuant to the Nonprofit Mutual Benefit Corporation Law of the State of California), its successors and assigns.

**Section 1.08. Beneficiary.** "Beneficiary" shall mean a mortgagee under a mortgage or a beneficiary under a deed of trust, as the case may be, and the assignees of such mortgagee or beneficiary.

**Section 1.09. Board or Board of Directors.** "Board of Directors" or "Board" shall mean the Board of Directors of the Association, elected in accordance with the By-Laws.

**Section 1.10. By-Laws.** "By-Laws" shall mean the By-Laws of the Association which have or will be adopted by the Board, initially in the form of Exhibit "D" attached hereto and fully incorporated herein by this reference, as such By-Laws may be amended by the Membership of the Association from time to time.

**Section 1.11. Close of Escrow.** "Close of Escrow" shall mean the date on which a deed is recorded conveying a Condominium pursuant to a Final Subdivision Public Report for the Project issued by the California Department of Real Estate.

**Section 1.12. Common Areas.** "Common Areas" shall mean and include all areas on the Project, as it may exist from time to time, except the Units. With respect only to maintenance by the Association, but not necessarily by way of fee title, the Common Areas shall include, but not be limited to, all gas, water, and waste pipes; all sewers; all ducts, chutes, conduits, wires, and other utility installations of the structure wherever located (except the outlets thereof when located within the Units); the lot upon which the structure is located and the airspace above the structure; all bearing walls; columns; unfinished floors; the roofs; foundation slabs; party walls; utility walls; foundations; private streets; walkways; swimming pool(s); whirlpool-spa and other recreation facilities; common stairways; laundry rooms; parking areas; and landscaping. The Common Areas shall be conveyed to the Unit Owners as portions of the Condominiums, as herein defined.

**Section 1.13. Common Areas, Reserved.** "Reserved Common Areas" shall mean and refer to any and all of those portions of the Common Areas on which up to thirty-three (33) additional Units of the Project may be constructed and established hereafter by Grantor, at its sole and exclusive discretion, and which are designated on the Condominium Plan, as defined herein, as the West, North and East Buildings. The Reserved Common Area shall be conveyed and transferred to, and owned by, a Trust holding title for the Grantor, as described and provided in Article II hereof, subject to the rights and privileges of Unit Owners, as herein provided for the use and enjoyment thereof.

**Section 1.14. Common Areas, Restricted.** "Restricted Common Areas" shall mean those portions of the Common Areas over which exclusive easements, if any, are reserved for the benefit of certain Unit Owners and their family members, guests and lessees, for storage compartments, tuck-under garage and open parking purposes, and respecting balcony and patio rails, walls, ceilings, windows, floors

and doors, if any, as such Restricted Common Areas are described in the Condominium Plan and assigned in the individual grant deeds of the respective Condominiums.

**Section 1.15. Common Expenses.** "Common Expenses" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Areas and Reserved Common Areas prior to Grantor's obtaining a Permit for the construction and establishment of up to thirty-three (33) additional Units in the Project as provided in Article II hereof, (including unpaid Annual Assessments, Special Assessments, Reconstruction Assessments and Capital Improvement Assessments); the costs of any and all utilities metered to more than one Unit and other commonly metered charges for the Project; the costs of any common trash collection and removal; costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all gardening, security and other services benefiting the Common Areas; the costs of fire, casualty and liability insurance, workers' compensation insurance, and other insurance covering the Project and the directors, officers and agents of the Association; the costs of bonding of the members of the Board; taxes paid by the Association, including any blanket tax assessed against the Project; amounts paid by the Association for discharge of any lien or encumbrance levied against the entire Project, or portions thereof; and the costs of any other item or items designated by, or in accordance with other expenses incurred by the Association, for any reason whatsoever in connection with the Project, for the common benefit of the Unit Owners.

**Section 1.16. Condominium.** Subject to Article II, "Condominium" shall mean an estate in real property as defined in California Civil Code 783 consisting of an equal one-third hundred thirty-third (1/333rd) undivided fee simple ownership interest (as a tenant-in-common) in the Common Areas, together with a separate ownership interest in fee in a Unit shown and described in the Condominium Plan, and all easements appurtenant thereto.

**Section 1.17. Condominium Plan.** "Condominium Plan" shall mean the engineering drawings and related materials, as modified and re-recorded from time to time, showing the diagrammatic floor plans of the Units, the boundaries of the Units, the Common Areas, the Restricted Common Areas and, where applicable, dimensions, specific alternative uses as authorized by this Declaration, and such other information reasonably necessary to identify a Condominium. A copy of the Condominium Plan for the Project, as filed with the California Department of Real Estate, is attached hereto as Exhibit "E".

**Section 1.18. Declaration.** "Declaration" shall mean the within Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as it may be amended from time to time as provided herein.

**Section 1.19. Deed of Trust.** "Deed of Trust" shall mean a mortgage or a deed of trust, as the case may be.

**Section 1.20. Family.** "Family" shall mean one or more persons each related to the other by blood, marriage or adoption, or a group of not more than four (4) Persons not all so related, inclusive of their domestic servants, who maintain a common household in a Residence.

**Section 1.21. Grantor.** "Grantor" shall mean Signal Carousel Apartments, a General Partnership, its successors and assigns, and any Person to whom or which it shall have assigned any of its rights hereunder by an express written assignment.

**Section 1.22. Improvements.** "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including, but not limited to, buildings, outbuildings, walkways, sprinkler pipes, tuck-under garages, spa-whirlpool, swimming pool, roads, driveways, parking areas, fences, screening walls, retaining walls, patio covers, awnings, stairs, decks, landscaping, hedges, windbreaks, the exterior surfaces of any visible structure, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures or such equipment, and private sewer systems.

**Section 1.23. Maintenance Funds.** "Maintenance Funds" shall mean the accounts created for receipts and disbursements of the Association pursuant to Article V, Section 5.02 hereof.

**Section 1.24. Manager.** "Manager" shall mean the Person, firm or corporation employed by the Association, and delegated certain duties, power or functions of the Association as limited by the provisions of this Declaration.

**Section 1.25. Member.** "Member" shall mean and refer to every Person holding a membership in the Association, pursuant to Article III, Section 3.03 hereof.

**Section 1.26. Mortgage.** "Mortgage" shall mean any mortgage or deed of trust or other conveyance of a Condominium or other portion of the Project to secure the performance of an obligation, which conveyance will be reconveyed upon the completion of such performance. The term "Deed of Trust" or "Trust Deed" when used shall be synonymous with the term "Mortgage".

**Section 1.27. Mortgagee, Mortgagor.** "Mortgagee" shall mean a Person to whom a mortgage is made and shall include the beneficiary of a Deed of Trust. Such term shall include, without limitation, a mortgagee that is a bank or savings and loan association, established mortgage company or other entity chartered under federal or state laws, any corporation or insurance company, or any federal or state agency. "Mortgagor" shall mean a Person who mortgages his or its property to another (i.e., the maker of a Mortgage), and shall include the Trustor of a Deed of Trust. The term "Trustor" shall be synonymous with the term "Mortgagor" and the term "Beneficiary" shall be synonymous with the term "Mortgagee."

**Section 1.28. Notice and Hearing.** "Notice and Hearing" shall mean written notice and a public hearing before the Board, at which the Unit Owner concerned shall have an opportunity to be heard in Person, or by counsel at the Unit Owner's expense, in the manner further provided in the By-Laws.

**Section 1.29. Person.** "Person" shall mean a natural individual, a corporation or any other entity with the legal right to hold title to Real Property.

**Section 1.30. Project.** "Project" shall mean that portion of the land described in Exhibit "A" attached to this Declaration which land is divided into Condominiums in accordance with Section 1350 of the California Civil Code, including the Common Areas and the Units therein.

**Section 1.31. Record, File.** "Record" or "File" shall mean, with respect to any document, the recordation or filing of such document in the office of the County Recorder of the County of San Diego, State of California.

**Section 1.32. Residence.** "Residence" shall mean and include a Unit, intended for use by a single family.

**Section 1.33. Restrictions.** "Restrictions" shall mean this Declaration, the Articles, the By-Laws, and the Rules and Regulations from time to time in effect.

**Section 1.34. Rules and Regulations.** "Rules and Regulations" shall mean the rules and regulations adopted by the Board pursuant to the By-Laws, as such Rules and Regulations may be amended from time to time.

**Section 1.35. Unit.** "Unit", as defined by California Civil Code Section 1350(2), shall mean the elements of a Condominium not owned in common with the Owners of other Condominiums in the Project. Each of the Units in the multi-family structure shall be a separate freehold estate, as separately shown, numbered and designated in the Condominium Plan. Each such Unit consists of the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, and doors (collectively referred to as "Surfaces"), and the living area space or spaces bounded by and contained within said Surfaces, as shown and defined in the Condominium Plan, together with a separately defined area of space bounded by and contained within the interior unfinished surfaces of perimeter walls, floors, ceilings, windows, guard rails, and doors of balconies and/or patios, if any, as described particularly and assigned in the Condominium Plan. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or a Unit constructed or reconstructed in substantial accordance with the Condominium Plan and the original plans thereof, if such plans are available, shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed, Condominium Plan or Declaration, regardless of settling or lateral movement of the building and regardless of minor variances between boundaries, as shown on the Condominium Plan or defined in the deed and Declaration, and the boundaries of a building as constructed or reconstructed.

**Section 1.36. Unit Owner.** "Unit Owner" or "Owner" shall mean the record owner, whether one or more Persons, of a fee simple interest in a Condominium, including Grantor with respect to each Condominium owned by Grantor, and including sellers under executory contracts of sale, but excluding those Persons holding title as security for the performance of an obligation or as a contract purchaser.

## ARTICLE II CREATION OF CONDOMINIUMS

**Section 2.01. Designation of Condominiums.** Grantor, in order to establish a plan of Condominium ownership for the Project, covenants and agrees that it hereby divides the Project into the following:

- (a) Three Hundred Thirty-Three (333) designated and legally described Units which are shown, defined and described on the recorded Condominium Plan for the Project, a copy of which is attached hereto as Exhibit "E". 300 of said 333 units presently physically exist. The 33 remaining Units, or any portion thereof, may be developed and built by Grantor, at its sole discretion, as Condominium Units to be annexed to the Project at some future time, pursuant to this Article.

(b) The Common Area consisting of the remainder of the Project, excepting the "Units" as shown on the Plan.

**Section 2.02. Interest in Common Area.** The ownership of each Unit shall include an equal, undivided One Three Hundred Thirty-Third (1/333rd) fee simple interest as a tenant in common in Lot 1 of Tract No. 10056 situated in the City and County of San Diego, State of California. Until the annexation of any or all of the 33 additional Units pursuant to this Article, each of the Owners of Units 1 through 300 inclusive, shall be granted a One Hundred Thirty-Third (1/333rd) interest as a tenant in common, and the Grantor shall retain Thirty-Three Hundred Thirty-Third (33/333rd) interests in such tenancy in common. As further provided in Article, in the event that a required City Building Permit has not been secured respecting the construction of any or all of the 33 additional Units to be built on the Reserved Common Areas, during the time period established in Section 2.05 hereof, then each of Units 1 through 300, inclusive, shall be conveyed an additional Thirty-Three Ninety-Nine Thousand Nine Hundredth (33/99900th) interest in the in the Common Areas and, thereafter in perpetuity, the Reserved Common Areas shall be extinguished and dissolved. In the event that a required City Building Permit has been secured respecting the construction of any or all of the 33 additional Units to be built on the Reserved Common Area in the time period established under Section 2.05, then each of the Units built and established shall be conveyed a proportionate interest as a tenant-in-common in the Common Areas such that all Units established in the Project have an equal, undivided interest in said Common Area. For example, if only ten (10) of the thirty-three additional Units are constructed and established in the Project, then the Unit Owners of each of the three hundred ten (310) Units then established and physically existing shall be conveyed an additional Twenty-Three One Hundred Three Thousand Two Hundred Thirtieth (23/103230th) interest in said tenancy in common, and the balance, if any, of Reserved Common Areas shall be extinguished and dissolved. To effect the transfer of any such interests in the Reserved Common Area, Grantor, upon conveyance of the first Unit in the Project to a purchaser, shall establish a Trust with an independent title insurance or escrow company and transfer to said Trust its Thirty-Three Hundred Thirty-Third (33/333rd) interests in the tenancy in common in the Common Areas. Except as provided herein, the undivided interest in the Common Areas established hereunder and to be conveyed with the respective Units cannot be changed, and Grantor, its successors, assigns, and grantees, covenant and agree that the undivided interests in the Common Areas and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

**Section 2.03 Condominium.** Each Unit, together with the respective fractional undivided interest in Lot 1 of Tract No. 10056, together with any exclusive easements in the Common Areas appurtenant thereto, is defined and hereinafter referred to as a "Condominium", and the ownership of each Condominium shall include a Unit and such fractional undivided interest in said Lot 1.

**Section 2.04. Restricted Common Area.** As defined in Section 1.14 hereof, the ownership of the Common Areas shall be subject to the exclusive easements provided herein for the benefit of each Owner for use and possession of the Balconies and Patios, if any, adjacent to respective Units, and parkin spaces and storage compartments, if any. All restrictions regarding the use and enjoyment of a Unit shall apply to such Restricted Common Areas, the use of which shall be conveyed to a Unit Owner.

**Section 2.05 Additional Units.** Grantor, or its successors, may, pursuant to the following provisions of this Section, from time to time and in Grantor's sole and exclusive discretion, establish up to thirty-three (33) additional Units in the Project on all or any part of the real property described herein as Reserved Common Area, at one time, or in successive increments, without the consent of or authorization by any or all of the Unit Owners, as provided below.

The establishment of additional Units within any of such Reserved Common Area shall become effective only when Grantor, or its successors, shall have secured and received a construction or building permit ("Permit") from the appropriate agency of the City and/or County of San Diego in connection with the development and construction of up to thirty-three additional Units on the Reserved Common Area. Any provisions herein to the contrary notwithstanding, the Grantor may prosecute the application and obtain the Permit without first securing the consent or permission of any of the Unit Owner's provided said application is made with and the Permit is issued by the appropriate City and/or County agency within five (5) years from the date of recording this Declaration. After said five year period, Grantor may not construct, or cause the construction of, any additional Units on and over the

Reserved Common Area without first securing the consent and permission of not less than two-thirds (2/3rds) of each class of the Membership of the Association.

Upon the issuance by the appropriate City and/or County governmental agency of a certificate of occupancy ("Certificate") respecting all of the additional Units constructed pursuant to the Permit, the additional Units constructed and so certified for occupancy shall become and constitute a part of all the Units in the Project, and the Association shall have, accept and exercise jurisdiction over such property as Units and the Common Areas of such property, as a part of the functions of the Association.

Any additional Units so established shall be limited to residential uses substantially similar to those uses allowed under this Declaration. Each additional Unit so established shall be separately assessed as a Unit for purposes of the maintenance and operation expense established by this Declaration, as further provided in Article VI.

Any provisions herein to the contrary notwithstanding, any additional Units established by the procedures set forth in this Section shall not alter or change the general common plan or scheme created by this Declaration, nor affect the provisions hereof as covenants running with the land or equitable servitudes, it being the express desire and intention of Grantor by this Declaration to establish a cohesive plan of such covenants and servitudes to be uniformly applicable to all portions of the Real Property.

In the event that all or a portion of the Reserved Common Area is not developed as additional Units within the time period specified in this Section, then Grantor shall cause said Reserved Common Area to be permanently landscaped in an appropriate manner consistent with the landscaping previously established for the Project and shall cause title to the Reserved Common Area to be conveyed and transferred, as provided herein, to the Owners of the then existing Units, free and clear of any and all rights and reservations of Grantor.

Grantor shall establish, prior to the close of escrow for the sale of the first additional Unit built by Grantor, a Trust ("Trust") to hold title to the Thirty-Three-Three Hundred Thirty-Third (33/333rd) interests in the Common Area, subject to certain conditions therein stated regarding the reconveyance of legal title to all or any portion of said interests the Trust to Grantor.

Prior to commencement of construction of any improvements on the Reserved Common Area, Grantor shall furnish appropriate lien and completion bonds, in the amount of the total cost of said construction, to and for the benefit of the Association to assure completion of any such improvements lien free. Grantor shall defend all claims against the Association for labor or materials or any damages or injury occasioned by or arising from Grantor's construction activities, and Grantor shall hold the Association harmless from any and all such claims, damages or injuries. Should Grantor fail to obtain and maintain any lien and completion bond required for the construction of any additional Units, the Trustee of the Trust, established by Grantor to hold title to all the additional Units to be built on the Reserved Common Area, shall not release or convey title to any of the additional Units constructed unless and until Grantor (1) secures and obtains all appropriate completion and lien bonds in sufficient dollar amounts with respect to the additional Units constructed, or (2) has actually completed construction of any additional Units on the Reserved Common Area and has served the Trustee with a certified, or conformed copy of, the Certificate and the last Notice of Completion respecting said additional Units. In addition to the above, the Association, any Unit Owner, or the Mortgagee of any physically existing Unit, shall be entitled to seek injunctive relief from the courts respecting Grantor's construction activities, as well as to seek any other appropriate legal relief to which such parties may be entitled under the terms of this Declaration regarding the failure to secure and obtain the appropriate completion and lien bonds.

In undertaking any such construction, Grantor shall use its best efforts not to interfere with the use and enjoyment by Unit Owners of their Units and the Common Areas.

During the period specified herein regarding Grantor's development and construction of additional Units, the Association, the Unit Owner's, and each of them, shall not interfere with Grantor's use of the Reserved Common Area nor make any use thereof not approved and consented to hereunder or by Grantor in a subsequent written agreement.

Notwithstanding anything to the contrary in this Declaration, Grantor shall landscape the Reserved Common Area in a manner consistent with the landscaping of the Common Areas, before the close of escrow respecting the sale of the first Unit in the entire Project (i.e., before the sale of the first of the 300 existing Units), or shall secure and obtain an appropriate and monetarily sufficient bond for the completion of the landscaping of said Reserved Common Area. Thereafter, the maintenance and upkeep of the Reserved Common Area shall be the responsibility of the Owners of physically existing Units as part of the Annual Assessment paid by each of them.

Anything to the contrary in this Declaration notwithstanding prior to written approval of Grantor will be required before any amendment to this Article shall be effective or enforceable.

### ARTICLE III CAROUSEL ISLE CONDOMINIUM ASSOCIATION

**Section 3.01. Organization of Association.** The Association is or shall be incorporated under the name of CAROUSEL ISLE CONDOMINIUM ASSOCIATION, as a corporation not for profit under the Nonprofit Mutual Benefit Corporation Law of the State of California.

**Section 3.02. Duties and Powers.** The duties and powers of the Association are those set forth in the Declaration, the Articles and By-Laws, together with its general and implied powers of a nonprofit corporation, which permit the Association generally to do any and all things that a corporation organized under the laws of the State of California may lawfully do which are necessary or proper, in operating for the peace, health, comfort, safety and general welfare of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, in the By-Laws and in this Declaration. From and after Close of Escrow for the sale of the first Condominium in the Project, the Association shall assume the payment of real property taxes assessed against the Project and accruing subsequent to such Close of Escrow, until such taxes are assessed directly against the Unit Owners and their individual Condominiums, and shall be charged with the duties and invested with the powers set forth in the Articles, the By-laws and this Declaration, including but without limitation, control and maintenance of the Common Areas and any Common Area facilities. Grantor shall furnish the Association with any and all tax statements in order to assist the Association in carrying out its obligations hereunder. The Association shall further have the right to install or construct capital improvements on the Common Areas, as provided herein. The Association may at any time, and from time to time reconstruct, replace or refinish any improvement or portion thereof upon the Common Areas in accordance with the original design, finish or standard of construction of such improvement; replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Areas, as further provided herein. The Association may employ personnel necessary for the effective operation and maintenance of the Common Areas, including the employment of legal, management and accounting services, as provided in this Declaration and the By-Laws.

**Section 3.03. Membership.** Every Unit Owner, upon becoming the Owner of a Condominium, shall automatically become 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. Ownership of a Condominium shall be the sole qualification for Membership in the Association. All memberships shall be appurtenant to the Condominium conveyed, and with the exception of Grantor, a Person shall be deemed a Unit Owner of a Condominium only upon recordation of a deed conveying the Condominium to such Person. No Owner shall hold more than one Membership in the Association even though such Owner may own, or own an interest in, more than one Condominium. A Person who holds an interest in a Condominium merely as security for performance of an obligation is not to be regarded as a Member. Except as may otherwise be provided herein, the rights, duties, privileges and obligations of all Members of the Association shall be provided in this Declaration, the Articles, the By-Laws and in the Rules and Regulations, and all their amendments.

**Section 3.04. Transfer.** The Membership held by any Unit Owner shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way, except upon the sale or encumbrance of such Unit Owner's Condominium, and then only to the purchaser or Beneficiary 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. A Class A Member who has sold his Condominium to a contract purchaser under an agreement to purchase shall be entitled to delegate to such contract purchaser his Membership rights in the Association. Such delegation shall be in writing and shall be delivered to the Board before such contract purchaser may vote. However, the contract seller shall remain liable for all charges and assessments attributable to this Condominium until fee title to the Condominium sold is transferred, as further provided in Article VI, Section 6.07 of this Declaration. In the event the Owner of any Condominium should fail or refuse to transfer the Membership registered in his name to the purchaser of such Condominium upon transfer of fee title thereto, the Board of Directors shall have the right to record the transfer upon the books of the Association.

**Section 3.05. Classes of Membership.** The Association shall have two (2) classes of voting Membership.

**Class A.** Class A Members shall be those Unit Owners described in Section 3.03 above, with the exception of Grantor for so long as there exists a Class B Membership. Class A Members shall be entitled to one (1) vote for each Condominium owned by such Class A Members. Grantor shall become a Class A Member with regard to Condominiums owned by Grantor upon conversion of Grantor's Class B Membership as provided below. When more than one (1) Person holds such interest in any Condominium, all such Persons shall be Members. The vote of such Condominium shall be exercised as they among themselves determine in accordance with Section 3.06 of this Article III of this Declaration, but in no event shall more than one (1) Class A vote be cast with respect to any Condominium.

**Class B.** The Class B Member shall be Grantor, and Grantor shall be entitled to three (3) votes for each Condominium owned by Grantor. The Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earlier:

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

(2) On the second anniversary of the original issuance of the Final Subdivision Public Report for the Project issued by the California Department of Real Estate. Any provision in the Restrictions calling for Membership approval of action to be taken by the Association, except provisions with respect to the action to enforce the obligations of the Grantor under any completion bond, shall expressly require the vote or written assent of the prescribed percentage of each class of Membership during the time that there are two outstanding classes of Membership. Any requirement elsewhere in the Articles of Incorporation, By-Laws, and Declaration, except with respect to the action to enforce the obligations of the Grantor under any completion bond, amendments to the Articles of Incorporation, amendments to the By-Laws, and amendments to the Declaration, that the vote of the Grantor shall be excluded and any such determination shall be applicable only if there has been a conversion of Class B to Class A shares and only for so long as the Grantor holds or directly controls twenty-five percent (25%) or more of the voting power of the Association.

All voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles and By-Laws of the Association.

**Section 3.06. Voting Rights.** At any meeting of the Association, each Unit Owner, except as otherwise provided in this Section 3.05 of this Article III with respect to the voting power of Grantor, shall be entitled to cast no more than one (1) vote for each Condominium owned as shown on the Condominium Plan. Notwithstanding anything to the contrary contained herein, no Unit Owner shall be entitled to cast a vote for any Unit owned unless the Unit Owner is paying, or is obligated to pay under this Declaration, Annual Assessments for Common Expenses and all other Assessments provided hereunder, respecting said Unit.

**Section 3.06.1. Co-Owner Voting.** Where there is more than one (1) record Unit Owner of a Condominium ("Co-Owners"), any or all of such Co-Owners shall be Members and may attend any meeting of the Association, but only one (1) of such Co-Owners shall be entitled to exercise the single vote to which the Condominium is entitled. Such Co-Owners shall from time to time all designate in writing one (1) of their number to vote. Fractional votes shall not be allowed, and the vote for each Condominium shall be exercised, if at all, as a unit. Where no voting Co-Owner is designated, if such designation has been revoked, or if more than one (1) Co-Owner exercises the voting rights for a particular Condominium, the vote for such Unit shall be exercised, or deemed exercised, as the majority of the Co-Owners of the Unit mutually agree. Unless the Board receives a written objection in advance from a Co-Owner, it shall be conclusively presumed for all purposes that the corresponding voting Co-Owner is acting with the consent of his or her Co-Owners. No vote shall be cast for any Condominium where the majority of the Co-Owners present in person or by proxy and representing such Condominium cannot agree to said vote or other action. The nonvoting Co-Owner or Co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Condominium and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the By-Laws of the Association, shall be deemed to be binding on all Unit Owners, their successors and assigns.

**Section 3.06.2. Cumulative Voting.** As further provided in Section 5.05 of the By-Laws, every Member entitled to vote at any election of Directors of the Board may cumulate his votes for Director. Voting for the Board of Directors shall be by secret written ballot. Cumulative voting in the election of Directors shall be prescribed for all elections in which more than two (2) Directors are to be elected. A Member shall have a number of votes equal to one (1) vote for each Condominium owned multiplied by the number of Directors to be elected, and may cast that number of votes for any one candidate or may distribute the votes among as many can-

didates as each Member desires. Each Member shall be entitled to cumulate his vote only if all candidates' names have been placed in nomination prior to voting and if the Member has given notice at the meeting, prior to the voting, of his intention to cumulate votes. The candidates receiving the highest number of votes up to the number of Directors to be elected shall be deemed elected. Notwithstanding anything to the contrary herein contained, such voting shall be in accordance with Section 7615 of the Mutual Benefit Nonprofit Corporations Law of California, as amended.

**Section 3.07. Repair and Maintenance Rights and Duties of Association.** Subject to Article II pertaining to the construction and establishment of additional Units, subject to Article XII pertaining to eminent domain, and subject to Article XI pertaining to destruction of Improvements, the Association shall paint, maintain, repair and make necessary Improvements to the Common Areas or shall contract for such maintenance, repair and Improvements, to assure reasonable maintenance of the Common Areas; provided, however, that the Association shall not be responsible for or obligated to perform those items of maintenance, repair or Improvement of the Units or Restricted Common Areas, the maintenance of which is the responsibility of the Unit Owners as provided in Section 3.08 of this Article III. Association maintenance, repairs and Improvements shall include, without limitation, the right, without obligation to perform all corrective architectural, janitorial, landscaping and repair work within any Residence, if the Unit Owner fails to repair such Residence which is subject to his duty to maintain; the repair and payment for all centrally metered utilities, water charges, and mechanical and electrical equipment in the Common Areas; payment of all charges for any and all utilities which serve individual Units but which are subject to a common meter; payment of all expenses for common services including but without limitation trash pick-up, security gate and clustered mailboxes; payment of all Common Expenses and charges for water and utilities serving recreational amenities, and any common laundry areas and repair and maintenance of all walks, private streets and other means of ingress and egress within the Project. All such fees, maintenance, repairs and Improvements for the Project shall be paid for as Common Expenses out of the Association Maintenance Funds as provided in this Declaration. All work performed for and on behalf of a Unit Owner which is not a maintenance responsibility of the Association shall be charged to such Unit Owner as a Special Assessment, as herein provided. It shall further be the affirmative duty of the Board of Directors to require strict compliance with all provisions of this Declaration and to cause the Project to be inspected by the Architectural Committee for any violation thereof. The Association shall repair, maintain and replace, as necessary, any individual air conditioning compressor units located on the roof of the building; however, the cost of any such item of repair, replacement or maintenance shall be paid by the Unit Owners served by such equipment as a Special Assessment levied by the Board.

To the extent not assessed to or paid by the Unit Owners, the Association shall pay all real and personal property taxes and assessments levied upon any portion of the Project. In addition, if all of the Units in the Project are taxed under a blanket tax bill covering all of the Project, each Unit Owner shall pay his proportionate share of any installment due under said blanket tax bill to the Association at least ten (10) days prior to the delinquency date; and the Association shall transmit such taxes to the appropriate tax collection agency. Blanket taxes shall be allocated among the Unit Owners in the same ratio that Annual Assessments are assessed against the Unit Owners. The Association shall, at least forty-five (45) days prior to the delinquency date of any such blanket tax installment, deliver to each Unit Owner a copy of the tax bill, along with a written notice setting forth such Unit Owner's obligation to pay his proportionate share of such tax installment and the potential additional charges to such Unit Owner for failure to comply. The Association shall pay such taxes on behalf of any Unit Owner who does not pay his proportionate share, and shall use any available sums in the Operating Fund or borrow such sums as may be required to make such payments on behalf of delinquent Owners. The Association shall levy a Special Assessment in the amount of any such sum advanced against any delinquent Unit Owner, plus interest at the rate of ten percent (10%) per annum and may, in addition, include as part of such Special Assessment an amount necessary to reimburse the Association for any penalty or late charge actually assessed in connection with the blanket tax bill which late charge results from the failure of the delinquent Owner(s) to make timely payment of his proportionate share of such taxes. For so long as Grantor owns an interest in any Unit in the Project, the foregoing provisions relating to the collection of taxes in connection with a blanket tax bill on all or any portion of the Project may not be amended without the express written consent of Grantor.

**Section 3.08. Repair and Maintenance by Unit Owner.** Each Unit Owner shall maintain, repair, replace, paint, paper, plaster, tile, finish and restore or cause to be so maintained, repaired, replaced and restored, at his sole cost and expense, all portions of his Unit, including the windows and the interior surfaces of the walls,

ceilings, windows, floors, doors and permanent fixtures, in a clean, sanitary and attractive condition, in accordance with the Condominium Plan and the original construction design of the improvements in the Project. Notwithstanding the foregoing, no interior walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for such alteration or repair by the Architectural Committee. It shall further be the duty of each Unit Owner, at his sole cost and expense, to keep free from debris and in a reasonably good state of repair subject to the approval of the Architectural Committee, the Restricted Common Areas over which exclusive easements have been reserved for the benefit of such Unit Owner; provided, however, that no Unit Owner shall be responsible for the periodic structural repair, resurfacing, replacement or painting the Restricted Common Areas assigned to him, so long as such painting, repair or replacement is not caused by the willful or negligent acts of the Unit Owner or his Family, guests or tenants. It shall further be the duty of each Unit Owner to pay when due any and all charges for all utility services which services are not centrally metered but are separately metered to his Unit.

**Section 3.09. Use of Agent.** The Board of Directors, on behalf of the Association, may contract with a professional management agent for the performance of maintenance and repair and for conducting other activities on behalf of the Association, as further provided in the applicable provisions found elsewhere herein and in the By-Laws of the Association.

#### ARTICLE IV RIGHTS IN COMMON AREAS

**Section 4.01. Association Easement.** Subject to Grantor's rights and reservations as provided in Article II and VIII, the Association shall have an easement over the Common Areas for purposes described in this Declaration. Upon Close of Escrow for the sale of the first Condominium in the Project to a purchaser pursuant to a Final Subdivision Public Report issued by the California Department of Real Estate, the Association shall immediately become responsible for all maintenance, operation, control and expenses associated with the Common Areas.

**Section 4.02. Partition.** There shall be no judicial partition of the Common Areas, or any part thereof for the term of the Project, nor shall Grantor, any Unit Owner or any other Person acquiring any interest in any Condominium in the Project seek any such judicial partition.

**Section 4.03. Members' Easements of Use and Enjoyment of Common Areas.** Subject to the provisions of this Declaration, every Member of the Association shall have, for himself and his Family and guests, a non-exclusive easement of access, ingress, egress, use and enjoyment of, in, to and throughout the Common Area, and such easement shall be appurtenant to and shall pass with title to every Condominium in the Project. Such non-exclusive easements shall be subordinate to and shall not interfere with, exclusive easements appurtenant to Units over the Common Areas, if any.

**Section 4.04. Extent of Members' Easements.** The rights and easements of use and enjoyment of the Common Areas created by this Declaration shall be subject to Restrictions, including without limitation, the following:

(a) The right of the Association to limit the number of guests, and to adopt Association rules and regulations ("Rules and Regulations") regulating the use and enjoyment of the Common Areas;

(b) The right of the Association to charge reasonable admission and other fees for the use of any unassigned parking and storage spaces and any recreational facility situated on the Common Area;

(c) The right of the Association to borrow money to improve the Common Areas;

(d) The right of the Association to assign, rent, license or otherwise designate and control use of unassigned parking and storage spaces within the Common Area (other than those portions subject to exclusive easements appurtenant to Units, if any);

(e) The right of the Board to suspend the rights and easements of any Member, and the Persons deriving such rights and easements from any Member, for use and enjoyment of any recreation facilities located on the Common Areas, for any period during which the payment of any Annual, Special, Capital Improvement or Reconstruction Assessment against such Member and his Condominium remains delinquent, and, after Notice and Hearing as provided in the By-Laws, to suspend such rights and easements for the period set forth in the By-Laws for any violation of the Restrictions, it being understood that any suspension for either nonpayment of any Assessment or breach of the Restrictions shall not constitute a waiver or discharge of the Member's obligation to pay Assessments as provided herein;

(f) The right of the Association to consent to or otherwise cause the construction of additional Improvements on the Common Areas and to consent to or otherwise cause the alteration or removal of any existing Improvements on the Common Areas for the benefit of the Members of the Association;

(g) The right of the Association, acting through the Board, to consent to or join in the grant or conveyance of easements, licenses or rights-of-way in, on or over the Common Areas for purposes not inconsistent with the intended use of the Project as a residential Condominium project;

(h) The right of the Association, or its agents, to enter any Unit to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair for the benefit of the Common Areas or the Owners in common, or to make necessary repairs that the Unit Owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such Unit, and the obligation can be performed whether or not the Owner is present;

(i) Subject to the provisions of this Declaration, the right of each Unit Owner to the exclusive use and occupancy of the Restricted Common Areas allocated to his respective Unit;

(j) The rights and reservations of Grantor as set forth in this Declaration which include, without limitation, Grantor's reservations and rights respecting the Reserved Common Area and the construction of up to thirty-three additional Units thereon; and

(k) The right of the Association, acting through the Board, to reasonably restrict access to roofs, maintenance areas and other areas of the Project.

**Section 4.05. Delegation of Use.** Any Member entitled to the right and easement of use and enjoyment of the Common Areas may delegate, in accordance with the By-Laws, his right to use and enjoyment of the Common Areas to the members of his family, his guests, invitees, tenants, contract purchasers or subtenants who reside in his Condominium, or to such other persons as may be permitted by the By-Laws and Rules and Regulations, subject however to this Declaration, to the By-Laws and to the Rules and Regulations. However, if a Unit Owner of a Condominium has sold his Condominium to a contract purchaser or rented it, the Unit Owner, members of his family, his guests and invitees shall not be entitled to use and enjoy the Common Areas of the Project while the Unit Owner's Condominium is occupied by such contract purchaser or tenant. Instead, the contract purchaser or tenant, while occupying such Condominium, shall be entitled to use and enjoy the Common Areas of the Project and can delegate the rights of use and enjoyment in the same manner as if such contract purchaser or tenant were the Unit Owner of such Condominium during the period of his occupancy. Each Unit Owner shall notify the secretary of the Association of the names of any contract purchaser or tenant of such Unit Owner's Condominium. Each Unit Owner, contract purchaser or tenant also shall notify the secretary of the Association of the names of all persons to whom such Unit Owner, contract purchaser, or tenant has delegated any rights of use and enjoyment in the development and the relationship that such person bears to the Unit Owner, contract purchaser, or tenant. Any delegated rights of use and enjoyment are subject to the same Rules and Regulations to the same extent as the rights of Unit Owners are.

**Section 4.06. Waiver of Use.** No Member may exempt himself from personal liability for Assessments duly levied by the Association, nor effect the release of his Condominium from the liens and charges thereof, by waiver of the use and enjoyment of the Common Areas or by abandonment of his Condominium.

**Section 4.07. Damage by Member.** Each Member shall be liable to the Association for any damage to the Common Areas not fully reimbursed to the Association by insurance which may be sustained by reason of the negligence, willful misconduct or unauthorized or improper installation or maintenance of any Improvement by said Member, his guests, tenants or invitees, or any other Persons deriving their right and easement of use and enjoyment of the Common Areas from said Member, or his or their respective family and guests, both minor and adult. Notwithstanding the foregoing, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right, after Notice and Hearing as provided in the By-Laws, to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by such Member of the Person as for whom such Member may be liable as described above. In the case of joint ownership of a Condominium, the liability of such Unit Owners shall be joint and several, except to the extent that the Association shall have previously contracted in writing with such joint Unit Owners to the contrary. After Notice and Hearing as provided in the By-Laws, the cost of correcting such damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment

against the Condominium, and may be enforced as provided herein for the enforcement of other Assessments.

## ARTICLE V ARCHITECTURAL REVIEW COMMITTEE

**Section 5.01. Members of Committee.** The Architectural Review Committee, sometimes referred to in this Declaration as the "Architectural Committee" or the "Committee", shall consist of at least three (3) members. The initial members of the Committee shall consist of representatives of Grantor, whose business address is first listed on page one (1) of this Declaration. Regardless of the fact that Grantor may have then lost voting control within the Association, Grantor shall have the unrestricted right and power and power to appoint or remove a majority of the members of the Architectural Committee and to fill any vacancy of such majority until the "turnover date" which shall be the date on which either (a) Close of Escrow has occurred for the sale by Grantor of ninety percent (90%) of the Condominiums subject to this Declaration, or (b) five (5) years following the date of original issuance of the Final Subdivision Public Report for the Project issued by the California Department of Real Estate, whichever occurs earlier. Grantor may at any time assign in writing such powers of removal and appointment to any Person, subject to such terms and conditions as Grantor may choose to impose. Commencing one (1) year from the date of issuance of the Final Subdivision Public Report for the Project, the Board shall have the power to appoint one (1) member to the Architectural Committee, until the turnover date. Thereafter, the Board shall have the power to appoint and remove all of the members of the Architectural Committee. Members appointed to the Committee by the Board shall be from the Membership of the Association, but Persons appointed to the Architectural Committee by Grantor need not be Members of the Association.

**Section 5.02. Review of Proposed Construction.** With the exception of the plans and specifications drafted in connection with any additional Units to be constructed by Grantor pursuant to Article II hereof, the Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Declaration and perform such other duties as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with plans approved by the Committee. Subject to Articles II and VIII of this Declaration, no construction, alteration, addition, modification, decoration, redecoration, reconstruction or removal of an Improvement in the Project shall be commenced or maintained until the plans and specifications therefor showing the nature, kind, shape, height, width, elevation, color, materials and location of the same shall have been submitted to the Committee and approved in writing by the Committee. The Unit Owner shall obtain a written receipt for the plans and specifications from an authorized agent of the Committee. The Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the Project as a whole, or will not unreasonably interfere with the view of another Unit Owner; that the appearance of any structure affected thereby will be in harmony with the surrounding structures, that the construction thereof will not detract from the harmony, wholesomeness and attractiveness of the Common Areas or the enjoyment thereof by the Members; and that the upkeep and maintenance thereof will not become a burden on the Association. The Committee may condition its approval of proposals or plans and specifications for any Improvement (1) on such changes therein as it deems appropriate, (2) upon the agreement by the Person (referred to in this Section 5.02 as "applicant") submitting the same to grant appropriate easements to the Association for the maintenance of the improvements (as applicable), or (3) upon the agreement of the applicant to reimburse the Association for the cost of maintenance, or all three, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Committee shall also issue Architectural Committee Standards or guidelines setting forth specific standards of approval, procedures for the submission of plans for approval (including the requirement of a fee to the Association to accompany each application for approval), and any additional reasonable factors which it will take into consideration in reviewing submissions. The Committee may provide that the amount of such fee shall be uniform, or that it be determined in any other reasonable manner, such as based upon the reasonable cost of the construction, alterations or additions contemplated. The Committee may require such detail in plans and specifications submitted for its review as it deems proper, including without limitation, floor plans, site plans, drainage plans, elevation drawings and description or samples of exterior material and colors. Until receipt by the Committee of any required plans and specifications, the Committee may postpone review of any plan

submitted for approval. Decisions of the Committee and the reasons therefor shall be transmitted by the Committee to the applicant at the address set forth in the application for approval, within forty-five (45) days after receipt by the Committee of all materials required by the Committee. Notwithstanding anything to the contrary herein contained, any complete application properly submitted pursuant to, and in compliance with, this Section 5.02 shall be deemed approved, unless written disapproval or a request for additional information or materials by the Committee shall have been transmitted to the applicant within forty-five (45) days after the date of receipt by the Committee of all required materials.

**Section 5.03. Meetings of the Committee.** The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing designate a Committee Representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 5.08 of this Article V. In the absence of such designation, the vote of a majority of the Committee, or the written consent of a majority of the Committee taken without a meeting, shall constitute an act of the Committee.

**Section 5.04. No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent to any similar proposals, plans and specifications, drawings or matter whatsoever subsequently or additionally submitted for approval or consent.

**Section 5.05. Compensation of Members.** The members of the Committee shall receive no compensation for services rendered, other than reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder.

**Section 5.06. Correction of Defects.** Inspection of work and correction of defects therein shall proceed as follows:

(a) The Committee or its duly authorized representative may at any time inspect any improvement for which approval of plans is required under this Article V; provided, however, that the Committee's right of inspection of the improvement for which plans have been submitted and approved shall terminate sixty (60) days after such work of improvement shall have been completed and the respective Unit Owner shall have given written notice to the Committee of such completion. The Committee's rights of inspection shall not terminate pursuant to this paragraph in the event that plans for the work of improvement have not previously been submitted to and approved by the Committee. If, as a result of such inspection, the Committee finds that such improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Committee, it shall notify the Unit Owner in writing of failure to comply with this Article V within sixty (60) days from the date of inspection, specifying the particulars of noncompliance. The Committee shall have the authority to require the Unit Owner to take such action as may be necessary to remedy the noncompliance.

(b) If noncompliance exists, the Unit Owner shall immediately upon receipt of such notification commence to remedy or remove the same and shall complete such work within a period of not more than forty-five (45) days from the date that notice of the Committee ruling is given to the Unit Owner. The Committee shall determine the estimated cost of correcting or removing the same. If the Unit Owner does not comply with the Committee ruling within such period, the Board, as its option, may, after Notice and Hearing as provided in the By-Laws, record a Notice of Noncompliance in the Office of the County Recorder of San Diego County and may peacefully remove the noncomplying improvement or otherwise peacefully remedy the noncompliance, and the Unit Owner shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Unit Owner to the Association, the Board shall levy a Special Assessment against such Unit Owner for reimbursement collectible in the same manner as Annual Assessments

provided in this Declaration. The right of the Association to remove a noncomplying improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which the Association may have at law, in equity or pursuant to this Declaration.

(c) If for any reason the Committee fails to notify the Unit Owner of any noncompliance of previously submitted and approved plans within sixty (60) days after receipt of said written notice of completion from the Unit Owner, the improvement shall be deemed to be in accordance with said approved plans.

**Section 5.07. Non-Liability of Committee Members.** Neither Grantor, the Architectural Committee, nor any member of the Architectural Committee or the Board nor their duly authorized representatives shall be liable to the Association, or to the

Unit Owners, or to any of them, for any loss, damage or injury arising out of or in any way connected with the performance of the duties hereunder, unless due to the willful misconduct or bad faith of such Person. 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 most probably result to the immediate vicinity and the Project generally. The Committee shall take into consideration the aesthetic aspects of the architectural designs, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features. The Committee's approval or disapproval shall be based solely on the consideration set forth in this Article V, and the Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed an approval or warranty of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

Section 5.08. Variances. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may require. Such variances must be evidenced in writing, must be signed by a majority of the Committee, and shall become effective upon recordation in the Office of the County Recorder of San Diego County. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance and shall not necessarily serve as a basis for subsequent variances with respect to other Condominiums. The granting of any variance shall not affect in any way the Unit Owner's obligation to comply with all governmental laws and regulations affecting his use of the Residence.

#### ARTICLE VI

##### ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligation of Assessments. Grantor, for each physically existing Condominium owned by it in the Project, hereby covenants and agrees to pay, and each Unit Owner, by acceptance of a deed of a Condominium whether or not it shall be so expressed in any such deed, is deemed to covenant and agree, for each physically existing Condominium owned, to pay to the Association all Annual Assessments for Common Expenses and all applicable Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, all of such assessments to be established, made and collected as provided in this Declaration. Except as provided in Section 6.07 of this Article VI, all such assessments, together with interest, collection costs, and reasonable attorneys' fees, shall be a separate, distinct and personal obligation of the Person who was the Unit Owner of such Condominium at the time when the assessment fell due, and shall bind his heirs, devisees, personal representatives and assigns. If more than one Person was the Owner of a physically existing Condominium, the personal obligation to pay such assessments, respecting such Condominium shall be both joint and several. This personal obligation cannot be avoided by abandonment of the Condominium or by an offer to waive, or the waiver of, the use and enjoyment of all or any portion of the Common Areas.

Section 6.02. Maintenance Funds of Association. The Board of Directors shall establish no fewer than two (2) separate accounts (the "Maintenance Funds"), into which shall be deposited all monies paid to the Association, and from which disbursements shall be made, as provided herein, in the performance of functions by the Association under this Declaration. Each of the Maintenance Funds shall be established as separate trust savings or trust checking accounts at a banking or savings institution located within the County in which the Real Property is located. The Maintenance Funds shall include: (1) an Operating Fund for current Common Expenses of the Association, (2) a Reserve Fund for capital improvements, replacements, painting and repairs of the Common Areas (which cannot normally be expected to occur on an annual basis), and (3) any other funds which the Board of Directors may establish to the extent necessary under the provisions of this Declaration. The Board of Directors shall not commingle any amounts deposited into any of the Maintenance Funds with one another. Nothing contained herein shall limit, preclude or impair the establishment of additional Maintenance Funds by the Association, so long as the amounts assessed to, deposited into, and disbursed from any such Fund are earmarked for specified purposes authorized by this Declaration.

Section 6.03. Purpose of Assessments. The assessments levied by the Board of Directors on behalf of the Association shall be used exclusively to promote the

recreation, health, safety and welfare of the residents of the physically existing Condominiums and for the operation, replacements, improvements, maintenance and repairs of the Project. All amounts deposited into the Maintenance Funds must be used solely for the common benefit of all of the Unit Owners for purposes authorized by this Declaration, as amended from time to time. Disbursements from the Operating Fund shall be made by the Board of Directors for such purposes as may be necessary for the discharge of its responsibilities herein for the common benefit of all of the Unit Owners, other than those purposes for which disbursements from the Reserve Fund are to be used. Disbursements from the Reserve Fund shall be made by the Board of Directors for the respective purposes specified in this Article VI. Nothing in this Declaration shall be construed in such a way as to prohibit the Association from using the Operating Fund to abate any annoyance or nuisance emanating from outside the boundaries of the Project.

**Section 6.04. Basis of Maximum Annual Assessment.** Until the first day of the Association's fiscal year next following the Close of Escrow for the sale of the first physically existing Condominium to a purchaser pursuant to a Final Subdivision Public Report issued by the California Department of Real Estate, the maximum Annual Assessment under this Article VI shall be determined in accordance with the initial budget of the Association as approved by said California Department of Real Estate, and reflected in the most recent Final Subdivision Public Report issued thereby, for the sale of Condominiums in the Project. A copy of such initial budget as filed with the California Department of Real Estate, is attached hereto, marked Exhibit "F" and incorporated herein by this reference.

Said initial budget has been prepared and approved based on three hundred Units presently existing in the Project. Anything herein to the contrary notwithstanding, Grantor and any other Owner of a Unit which does not include a completed, physically existing, structural improvement for human occupancy, shall be exempt from the payment of the Annual Assessment respecting any of the thirty-three legally existing but physically unconstructed additional Units which may be built by Grantor pursuant to Article II hereof. Such exemption from payment of the Annual Assessment shall cease upon the earlier occurrence of any of the following:

(a) The issuance, by the appropriate City and/or County governmental agency, of a Certificate of Occupancy, or like instrument or document;

(b) The date, as indicated in the bond for the completion of any additional Units constructed and established by Grantor pursuant to Article II hereof, on which the obligee of said bond shall be entitled to exercise and pursue rights it may have thereunder against the surety of said bond; or

(c) The date of the close of escrow for the sale of the first Condominium of any additional Units constructed and established by Grantor under Article II hereof.

Upon the occurrence of any of the above, the Annual Assessment payable by each Condominium under this Article VI shall be amended and modified to reflect the establishment of any additional Units constructed by Grantor pursuant to Article II.

Therefore, Grantor, for each physically existing additional Unit owned by it in the Project, and each purchaser, for each of the additional Units owned by him/her, shall be responsible for and pay to the Association all Annual Assessment, as modified, for Common Expenses, and all applicable Special Assessments, Reconstruction Assessments and Capital Improvement Assessments, respecting each of the additional Units established as Condominiums of the Project.

Notwithstanding the provisions in this Article, all assessments levied against any additional Condominium shall be determined and levied on the same basis (i.e., on an equal or prorata basis) as indicated in the initial budget (as approved by the California Department of Real Estate), a copy of which is attached hereto as Exhibit "F" respecting any such additional Units which may be constructed and established by Grantor.

Should the Board of Directors determine that the initial maximum Annual Assessment is insufficient to meet the Common Expenses of the Association during the remainder of the Association's initial fiscal year, the Board of Directors may, by majority vote, increase that Annual Assessment by not more than twenty percent (20%) above the maximum Annual Assessment for such year reflected in the approved budget for the Association. Any proposed Annual Assessment in excess of twenty percent (20%) above the maximum Annual Assessment prior to the end of the Association's initial fiscal year shall be subject to approval by the vote or written assent of at least a majority of the voting power of the Association's Membership, which shall include a majority of the voting power of Members excluding the Grantor, and reported to the California Department of Real Estate.

(a) Commencing on the first day of the fiscal year next following the Close of Escrow for the sale of the first Condominium to a purchaser, the max-

imum Annual Assessment may be increased by the Board, above the maximum Annual Assessment for the previous year, without a vote of the Membership and effective no sooner than the first day of each fiscal year, in an amount no more than the greater of (1) twenty percent (20%), or (2) the percentage by which the U.S. Bureau of Labor Statistics, San Diego, Consumer Price Index For All Urban Consumers, has increased as of the date of the increase over the level of the Index as of the date the Annual Assessment was last established.

(b) Commencing on the first day of the fiscal year next following the Close of Escrow for the sale of the first Condominium of the whole Project to a purchaser pursuant to a Final Subdivision Public Report, the maximum Annual Assessment may be increased above the greater of (1) twenty percent (20%), or (2) said percentage by which the Index has so increased, by the vote or written assent of at least a majority of the voting power of the Association's Membership, which shall include a majority of the voting power of Members excluding the Grantor.

(c) Except as provided in Sections 6.04 and 6.05 of this Article VI, the Board of Directors may not fix an Annual Assessment at an amount which exceeds the maximum Annual Assessment.

Section 6.05. Commencement of Annual Assessments. The Board of Directors shall authorize and levy the amount of the Annual Assessment upon each physically existing Condominium, as provided herein, by majority vote of the Board. The initial Annual Assessment shall begin on all physically existing and constructed Condominiums (including unsold but physically existing Condominiums therein owned by Grantor) on the first day of the calendar month following Close of Escrow for the sale of the first physically existing Condominium in the Project. All Annual Assessments shall be assessed and levied against the Unit Owners and their Condominiums on the same basis (i.e., on an equal or prorated basis) as indicated in the initial budget (as approved by the California Department of Real Estate), a copy of which is attached hereto as Exhibit "F", as amended from time to time in accordance with the provisions of this Declaration. The Board shall fix the amount of the Annual Assessment against each Condominium at least thirty (30) days in advance of each Annual Assessment period.

Each Member shall pay to the Association his Annual Assessment in installments at such frequency and in such amounts, as established by the Board. Each Annual Assessment may be paid by the Member to the Association in one check or in separate checks as payments attributable to the deposits under the Operating Fund and the Reserve Fund. In the event that any installment of an Annual Assessment payment is less than the amount assessed and the payment does not specify the Maintenance Fund or Funds into which it should be deposited, the receipt by the Association from that Unit Owner shall be credited in order of priority first to the Operating Fund, until that portion of the Annual Assessment has been satisfied, and second to the Reserve Fund.

In the event that the Board shall determine that the estimate of total charges for the current year is, or will become, inadequate to meet all expenses of the Project for any reason, it shall immediately determine the approximate amount of such inadequacy. Subject to the provisions of Section 6.04 of this Article VI, the Board shall have the authority to levy, at any time by a majority vote, a supplemental Annual Assessment, reflecting a revision of the total charges to be assessed against each Condominium. In no event shall the sum of all increases in Annual Assessments levied by the Board in any fiscal year (including all supplemental Annual Assessments levied pursuant to this Section 6.05 and increases authorized pursuant to Section 6.04) exceed the maximum Annual Assessment for the previous fiscal year by more than twenty percent (20%) or the percentage increase in the Consumer Price Index, whichever is greater, unless such excess increase has first been approved by the vote or written assent of at least a majority of the voting power of the Association's Membership, which shall include a majority of the voting power of Members excluding the Grantor. Written notice of any change in the amount of Annual Assessments levied by the Association through the Board shall be given to all Members not less than thirty (30) days prior to the effective date of such change.

Section 6.06. Association Budgets. The Board of Directors shall cause to be prepared an annual report containing a balance sheet, an income statement reflecting income and expenditures of the Association for each fiscal year, including deposits in and withdrawals from the Reserve Fund and the Operating Fund, a statement of changes in financial position and a statement of the place where the names and addresses of the current Members are located. The Board shall distribute, or cause to be distributed, a copy of each such annual report to each Member, and to each first Mortgagee who has filed a written request for copies of the same with the Board of Directors, in the manner provided in the By-Laws of the Association. The Board of Directors may distribute, or cause to be distributed, financial statements to all Members in such greater frequency and at such further intervals as deemed appro-

appropriate by the Board of Directors of the Association. At least sixty (60) days prior to the beginning of each fiscal year, the Board of Directors shall prepare and distribute to the Membership of the Association, a written, itemized estimate (budget) of the income and expenses of the Association during such year in performing its functions under this Declaration (including a reasonable provision for contingencies and deposits into the Reserve Fund, less any expected income and accounting for any surplus from the prior year's respective Maintenance Fund). Each Annual Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of the amounts assessed and attributable to prospective deposits into the Reserve Fund and the Operating Fund.

**Section 6.07. Collection of Annual Assessments.** From and after the first day of the first month following Close of Escrow for the sale of the first physically existing Condominium in the Project, the Board of Directors shall fix and collect from each Member his pro rata share of the Annual Assessments, at such frequency as the Board shall determine. Annual Assessments for fractions of any month involved shall be prorated. Grantor shall pay its full pro rata share of the Annual Assessments on all physically existing, unsold Condominiums in the Project.

At the end of any fiscal year of the Association, the Membership may determine that all excess funds in the Operating Fund may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Annual Assessments. Upon dissolution of the Association incident to the abandonment or termination of the Project, any amounts remaining in any of the Maintenance Funds shall be distributed proportionately to or for the benefit of the Members.

Upon any voluntary or involuntary conveyance of a Condominium, the new Unit Owner ("Purchaser") shall be jointly and severally liable with the previous Unit Owner ("Seller") for all unpaid assessments levied by the Board of Directors against the Seller for his share of the Common Expenses up to the time the grant or conveyance was recorded, without prejudice to the right of the Purchaser to collect from the Seller therefor. However, any such Purchaser shall be entitled to a statement from the Board of Directors or the Management Agent of the Association, as the case may be, setting forth the amount of the unpaid assessments against the Seller due the Association; and such Purchaser shall not be liable for, nor shall the Condominium conveyed be liable for any unpaid assessments levied by the Board of Directors against the Seller in excess of the amount set forth in the statement. Notwithstanding anything to the contrary herein contained, in the case of a subordination of a lien for assessments to a first mortgage or first trust deed, the transfer of a Condominium as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first mortgage or first trust deed shall extinguish the lien of assessments which were due and payable prior to the transfer of the Condominium. The transfer of a Condominium as the result of a foreclosure or exercise of a power of sale shall not relieve the Purchaser, whether it be the former beneficiary of the first mortgage or trust deed or another individual or entity, from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 6.08. Capital Improvement Assessments.** Should the Board of Directors determine the need for a capital improvement or other such expenditure, the cost of which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for the then current fiscal year, then the vote or written consent of at least a majority of the voting power of the Association's Membership, which shall include a majority of the voting power of Members excluding the Grantor, as provided herein, shall be required to approve and render effective a Capital Improvement Assessment levied by the Board of Directors to cover the cost of such expenditure. Capital Improvement Assessments may be levied by the Board without the consent of the Members, if the aggregate cost of the expenditure does not exceed five percent (5%) of the budgeted gross expenses of the Association for the then current fiscal year. Such Capital Improvement Assessments shall be levied upon the same basis as that prescribed for the levying of Annual Assessments, provided herein.

**Section 6.09. Delinquency and Acceleration.** Any installment of an assessment provided for in this Declaration shall become delinquent if not paid on the due date, which shall be the first (1st) day of each month, unless some other due date is established by the Board of Directors of the Association. With respect to each installment of an assessment not paid within ten (10) days after its due date, the Board of Directors may, at its election, require the delinquent Unit Owner to pay a late charge not to exceed Five Dollars (\$5.00) or five percent (5%) of the amount of the delinquent installment, whichever is greater, together with interest at the maximum rate permitted by law on such delinquent sums, calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Annual Assessment is not paid within thirty (30) days after its

due date, the Board may mail a notice to the Unit Owner and to each first Mortgagee of a Condominium which has requested a copy of the notice. Such notice shall specify (1) the fact that the installment is delinquent; (2) the action required to cure the default; (3) a date, not less than thirty (30) days from the date the notice is mailed to the Unit Owner, by which such default must be cured; and (4) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Annual Assessment for the then current fiscal year and sale of the Condominium. The notice shall further inform the Unit Owner of his right to cure after acceleration and to bring a court action to assert the nonexistence of a default or any defense of the Unit Owner to acceleration and sale. If the delinquent installments of the Annual Assessment and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the Annual Assessment for the then current fiscal year, attributable to that Unit Owner and his Condominium, to be immediately due and payable without further demand and may enforce the collection of the full Annual Assessment and all charges thereon in any manner authorized by law and this Declaration.

**Section 6.10. Notice of Lien.** The Board of Directors may cause to be recorded in the Office of the County Recorder of San Diego County a Notice of Assessment ("Notice of Lien") securing the payment of any assessment or installment thereof, levied by the Association against any Condominium Owner as provided in Section 1356 of the California Civil Code. Such Notice of Lien shall state the amount of such assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and recording such Notice of Lien, the expenses of collection in connection with any delinquent installments, reasonable attorneys' fees, a sufficient description of the Condominium against which the same has been assessed, the name and address of the Association, and the name of the Unit Owner thereof. Such Notice of Lien shall be signed by an authorized representative of the Association. Upon payment to the Association of the full amount claimed in the Notice of Lien, or other satisfaction thereof, the Board of Directors shall promptly cause to be recorded a Notice of Satisfaction and Release of Lien ("Notice of Release") stating the satisfaction and release of such amount claimed. The Board of Directors may demand and receive from the applicable Unit Owner a reasonable charge for the preparation and recordation of such Notice of Release before recording the same. Any purchaser or encumbrancer who has acted in good faith and extended value may rely upon such Notice of Release as conclusive evidence of the full satisfaction of the sums stated in the Notice of Lien.

**Section 6.11. Liens, Enforcement.** All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on the respective physically existing Condominium prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage or Deed of Trust) made in good faith and for value and recorded prior to the date on which the lien became effective, subject to the provisions of Article VI, Section 6.07 and Article XIII of the Declaration. Notwithstanding the foregoing, any assessment lien provided for hereunder shall be prior and superior to any declaration of homestead recorded after the recordation of this Declaration. Said lien shall become effective upon recordation of the Notice of Lien in the manner provided in Section 6.10 of this Article VI. Such lien shall relate only to the individual Condominium against which the Assessment was levied and not to the Project as a whole. It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Declaration by one or more of the alternative means of relief afforded by this Declaration. Such lien may be enforced by sale of the Condominium by the Association, its attorney or other persons authorized to make the sale, after failure of the Unit Owner to pay an assessment, or installment thereof, as provided herein. Such sale shall be conducted in accordance with the provisions of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any manner permitted by law. An action may be brought to foreclose the lien of the Association by the Board, or by any Unit Owner if the Board fails or refuses to act, after the expiration of at least thirty (30) days from the date on which the Notice of Lien was recorded; provided that at least ten (10) days have expired since a copy of the Notice of Lien was mailed to the Unit Owner affected thereby, and subject to the provisions of Section 6.09 of this Article VI in the event that the Board accelerates the due date of any Annual Assessment installments. In any such foreclosure, the Unit Owner shall be required to pay a reasonable rental for the Condominium, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Association, through its agents, shall have the power to bid on the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment

for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing the same, but this provision or any institution of suit to recover a money judgment shall not constitute an affirmation of the adequacy of money damages. Any recovery resulting from a suit in law or equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

## ARTICLE VII PROJECT EASEMENTS AND RIGHTS OF ENTRY

### Section 7.01. Easements.

(a) Access. Grantor expressly reserves for the benefit of the Unit owners in the Project reciprocal, nonexclusive easements for access, ingress and egress over all of the Common Areas, including any driveways currently existing in the Project or subsequently added thereto, and over the Reserved Common Area until such time as Grantor obtains the Permit respecting the establishment of up to forty-three (33) additional Units over the Reserved Common Area, pursuant to Article II hereof. Subject to the provisions of this Declaration governing use and enjoyment thereof, such easements may be used by Grantor, its successors, purchasers and all Unit Owners, members of their families, their guests, tenants and invitees, riding on or temporarily visiting the Project, for walkways, vehicular access and for other purposes reasonably necessary for use and enjoyment of a Condominium in the Project. The Board, with a vote or written consent of a majority of the Class A and Class B Members, shall have the right to grant easements and rights-of-way over the Common Areas to any Person after Close of Escrow for the sale of the first Condominium from Grantor in the Project. Such right shall include, without limitation, the power to grant and convey to any third party easements and rights-of-way in, over and under the Common Areas for the purpose of constructing, erecting, operating (or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and each purchaser, in accepting a deed to a Condominium, expressly consents to such easement. However, no such easement can be granted if it would interfere with the use, occupancy or enjoyment by any Owner of his Unit, any exclusive easements over any Common Areas appurtenant to the Unit, or the recreational facilities of the Project.

(b) Maintenance and Repair. Grantor expressly reserves for the benefit of the Board of Directors and all agents, officers and employees of the Association, nonexclusive easements over the Common Areas (including the Restricted Common Areas) as necessary to improve, maintain and repair the Common Areas, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Common Areas shall be appurtenant to, binding upon and shall pass with the title to every Condominium conveyed.

(c) Restricted Common Areas. Grantor expressly reserves for the benefit of certain Unit Owners exclusive easements appurtenant to their Units for use of those Restricted Common Areas depicted on the Condominium Plan, and designated as one (1) or two (2) numbered parking spaces, storage compartments, and/or tuck-under garages, if any, to be assigned to such Unit Owners as Restricted Common Areas in the Grant Deed to each individual Unit. Further, Grantor expressly reserves for the benefit of certain Unit Owners exclusive easements appurtenant to their Units for use of those Restricted Common Areas, depicted on the Condominium Plan (which may be defined as Common Areas on said Plan) respecting balcony and/or patio rails, walls, ceilings, windows, floors and doors, if any, and assigned in the individual grant deeds of the respective Condominiums. Unit Owners shall be entitled to exchange the Restricted Common Area parking space(s) and/or storage compartments, if any, assigned to their respective Units in their individual grant deeds, provided that (1) a reciprocal assignment identifying the exchanged Restricted Common Area parking space(s) and storage compartments, if any, the exchanging Owners, and their respective Condominiums, is (a) executed by the exchanging Owners and the first Mortgagees of such exchanging Owners, and (b) recorded, and (2) no exchange of a Restricted Common Area parking space(s) or storage compartment(s) shall be effective if any Unit participating in such an exchange would not have at least one (1) parking space, or one (1) storage compartment, if any, which ever the case may be, to which it was originally entitled, subsequent to the exchange. A copy of the recorded reciprocal assignment shall be delivered to the Board of Directors as soon as possible after recordation.

(d) Utility Easements. Grantor expressly reserves for the benefit of the Association the right of Grantor to grant additional easements and rights-of-way in, on, over and under the Project to utility companies and public agencies, as

necessary, for the property development and disposal of the Property, until Close of Escrow for the sale of the last Condominium from Grantor pursuant to a Final Subdivision Public Report issued by the California Department of Real Estate.

(e) Encroachments. Grantor, the Association and Unit Owners of contiguous Residences shall have a reciprocal easement appurtenant to each of the Residences over the Residences and the Common Areas for the purpose of (1) accommodating any existing encroachment of any wall of the building, and (2) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or natural settling of the building or any other portion of the Project housing their respective Units. There are specifically reserved for the benefit of the Unit Owners easements and reciprocal negative easements for utility services and repairs, replacement and maintenance of the same over all of the Common Areas. The foregoing easements shall be as not to unreasonably interfere with the use and enjoyment by the Unit Owners of adjoining Residences. No portion of the Common Areas, including, without limitation, parking spaces and other amenities contemplated as a part of the Project, are proposed to be leased by Grantor to the Unit Owners or to the Association.

Section 7.02. Rights of Entry. The Board of Directors shall have a limited right of entry in and upon the Common Areas and the exterior of all Units for the purpose of inspecting the Project, and taking whatever corrective action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Declaration. However, nothing herein shall be construed to impose any obligation upon the Association to improve, maintain or repair any property or Improvements required to be maintained or repaired by the Unit Owner. Nothing in this Article VII shall in any manner limit the right of the Unit Owner to exclusive occupancy and control over the interior of his Unit. However, a Unit Owner shall permit an immediate right of entry to the Board of Directors or any other person authorized by the Board of Directors, as reasonably necessary, such as in case of any emergency originating in or threatening his Unit, whether the Unit Owner is present or not. Furthermore, a Unit Owner shall permit other Unit Owners, or their representatives, to enter his Residence for the purpose of performing required installation, alterations or repairs to the mechanical or electrical services including, without limitation, installation of television antennae and related cables, to a Residence, provided that such requests for entry are made in advance and that entry is at a reasonable and convenient time to the Owner whose Unit is being entered; provided further, that the entered Unit is left in substantially the same condition as existed immediately preceding such entry. In case of an emergency, such right of entry shall be immediate. Upon receipt of reasonable notice from the Association (which shall in no event be less than seven (7) days) each Unit Owner shall vacate his or her Unit in order to accommodate efforts by the Association to eradicate the infestation of wood destroying or other pests and organisms from the Common Areas or to perform any other maintenance or repairs pursuant to this Declaration. The Association, acting through its Board, shall have the right of entry to the Units and the right to remove Unit Owners from their Units, as necessary, to accomplish its duties under this Declaration, including without limitation its obligations with respect to construction, maintenance, improvements or repairs of the Common Areas which necessitate the entry of any or all Units to affectuate such construction, maintenance, improvements or repairs, or to make necessary repairs that a Unit Owner who is obligated to do so pursuant to this Declaration fails or refuses to do. The cost of eradicating any such infestation or of performing any such maintenance or repairs shall be a Common Expense of the Association; however, each Unit Owner shall bear his or her own costs of temporary relocation.

## ARTICLE VIII GRANTOR'S RIGHTS AND RESERVATIONS

Nothing in the Restrictions shall limit, and no Unit Owner or the Association shall do anything to interfere with, the right of Grantor to subdivide or resubdivide any portion of the Project, including, but not limited to, the construction and establishment by Grantor of up to thirty-three additional Units on the Reserved Common Area as provided under Article II hereof, or to complete refurbishment of Improvements to and on the Common Areas, Reserved Common Area, or any portion of the Project owned solely or partially by Grantor, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements as Grantor deems advisable in the course of development of the Project so long as any Condominium in the Project is owned by Grantor. Such right shall include, but shall not be limited to, such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary for the conduct of its business of completing the work and disposing of the same by sale, lease or otherwise. Each Unit Owner by accepting a deed to a Condominium hereby acknowledges that the activities of Grantor may

temporarily or permanently impair the view of such Owner and may constitute a temporary inconvenience or nuisance to the Unit Owners, and hereby consents to such impairment, inconvenience or nuisance. This Declaration shall not limit the right of Grantor at any time prior to acquisition of title to a Condominium in the Project by a purchaser from Grantor to establish on that Condominium additional licenses, easements, reservations and right-of-way to itself, to utility companies, or to others as may from time to time be reasonably necessary to the proper development and disposal of the Project. Grantor may use any Condominiums owned by Grantor in the Project as models, real estate sales or leasing offices. All or any part of the rights of Grantor hereunder and elsewhere in these Restrictions may be assigned by Grantor to any successor in interest to any portion of Grantor's interest in any portion of the Project by an express written assignment recorded in the Office of the San Diego County Recorder. Notwithstanding any other provision of this Declaration, the prior written approval of Grantor, as developer of the Project, will be required before any amendment to this Article shall be effective. Each Unit Owner hereby grants, upon acceptance of his deed to his Unit, an irrevocable, special power of attorney (coupled with an interest) to Grantor to execute and record all documents and maps necessary to allow Grantor to exercise its rights under Article II and this Article. Grantor shall be entitled to the nonexclusive use of the Common Areas and any recreational facilities thereon, without further cost for access, ingress, egress, use or enjoyment, in order to show the Project to its prospective purchasers and dispose of the Project as provided herein; provided that such access and use by Grantor shall not unreasonably interfere with the rights of the Unit Owners.

#### ARTICLE IX RESIDENCE AND USE RESTRICTIONS

All of the Project shall be held, used and enjoyed subject to the following limitations and restrictions, subject to the exemptions of Grantor set forth here and elsewhere in this Declaration.

Section 9.01. Single Family Residences. Units shall be used exclusively for single family residential purposes, subject to the exemption granted Grantor under Article VIII of this Declaration. A Unit Owner may rent his Unit to a single family provided that such Unit is rented for a term greater than thirty (30) days. Subject to all the provisions of the Restrictions, and as further required by Section 9.10 hereof, any Lease or rental agreement respecting the renting of a Condominium by a Unit Owner shall be in writing and must specify that the Tenant shall abide by and be subject to all provisions of the Restrictions.

Section 9.02. Parking Facilities and Vehicular Restrictions. At least Four hundred seventy-one (471) parking spaces shall be permanently maintained as parking facilities. No parking space may be sold, leased, sub-leased, assigned, transferred, or given to a Person not an Owner or resident of a Unit in the Condominium. Parking spaces must be owned and used solely by the Owners of the Condominium Units for the parking of their personal vehicles. A minimum of one (1) parking space shall be assigned to each dwelling Unit. At all times, said one (1) parking space per Unit must be retained for use in conjunction with the Condominium Unit with which it has been conveyed, and, subject to Article VII, Section 7.01, may not be leased, sub-leased, sold or given to others regardless of residency. Each Unit Owner shall have an exclusive easement to his parking space(s). Said parking space(s) shall be designated in writing by the Board and shall be located as conveniently with respect to the location of such Owner's Unit as practical conditions may permit. The decision of the Board as to the assignment, re-assignment or location of or the condition or other matter related to any parking space shall be final and conclusive as to the rights of any Owner concerning such parking space(s). Subject to the rights of the Association, each Owner having such an exclusive easement for parking and related purposes shall keep his parking space(s) in a neat, clean, attractive and safe condition at all times. The Association shall have the right to assign or license or otherwise designate and control use of any parking space which is not subject to an exclusive easement in favor of a Unit. Unless otherwise permitted by the Board, no Owner shall park, store, leave or keep, or cause to be parked, stored, left or kept anywhere on the Project any large commercial-type vehicle (including, but not limited to, any dump truck, cement mixer truck, oil or gas truck or delivery truck), any recreational vehicle (including, but not limited to, any camper unit, house car or motor home), bus, trailer, trailer coach, camp trailer, boat, aircraft, mobile home, inoperable vehicle or any other similar vehicle. No owner shall use the above-mentioned vehicles as a living area while such vehicles are located on the Project. In addition, no Owner shall park, store, leave or keep, or cause to be parked, stored, left or kept anywhere on the Project any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. Only passenger motor vehicles may be parked in the tuckunder or open parking

spaces which constitute Restricted Common Areas, and such areas shall not be converted for the purposes of living or recreational activities therein. There shall be no parking in the driveways, if to do so will or may obstruct free traffic flow, constitute a nuisance, or otherwise create a safety hazard. All garage doors shall remain closed at all times except when being used to enter and exist. The Architectural Committee shall determine, in its sole discretion, whether there is noncompliance with the parking and vehicular restrictions herein. There shall be no restoring or repairing of vehicles permitted anywhere on the Project. Any additional guest parking spaces which may constitute a part of the Common Areas shall be subject to reasonable control and use limitation by the Board of Directors. Without in any way limiting the obligations of the Unit Owners as elsewhere herein described, the Association, or agency representing Association, shall have the right, and shall be obligated, to enforce all parking restrictions herein set forth and to remove any vehicles in violation thereof in accordance with the provisions of Section 22658 of the California Vehicle Code, or other applicable laws, codes, and statutes. If, for any reason, the Unit Owners shall fail to enforce said parking restrictions, the City of San Diego, California shall have the right, but not the duty, to enforce said parking restrictions in accordance with the California Vehicle Code and all other applicable laws, codes, statutes and local ordinances.

**Section 9.03. Nuisances.** No noxious or offensive activities (including, but not limited to, the repair of automobiles or other motorized vehicles) shall be carried on or within the Project. Nothing shall be done on or within the Project that may be or may become an annoyance or nuisance to the residents of the Project, or that in any way interferes with the quiet enjoyment of occupants of Condominiums. Specifically, no horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of a Residence and its contents, shall be placed or used in any such Residence. No loud noises, noxious odors, noisy or smokey vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or items which may unreasonably interfere with television or radio reception of any Owner in the Project, shall be located, used or placed on any portion of the Project, or exposed to the view of other Owners without the prior written approval of the Architectural Committee. Unless otherwise permitted by the Board, no Resident shall serve food or beverages, cook, barbeque or engage in similar activity, except within such Resident's Unit or except within those portions of the Common Areas subject to exclusive easements appurtenant to such Resident's Unit. The Board of Directors of the Association shall have the sole right to determine if any noise, odor, or activity producing such noise or odor constitutes a nuisance. No Unit Owner shall permit or cause anything to be done or kept upon the Project which will increase the rate of insurance thereon, or result in the cancellation of such insurance, or which will obstruct or interfere with the rights of other Unit Owners, nor will he commit or permit any nuisance thereon. Each Unit Owner shall comply with all of the requirements of the local or state health authorities and with all other governmental authorities with respect to the occupancy and use of a Residence. Each Unit Owner shall be accountable to the Association and other Unit Owners for the conduct and behavior of children visiting his Unit and other family members or persons residing in or visiting his Unit; and any damage to the Common Areas, personal property of the Association, or property of another Unit Owner, caused by such children or other family members, shall be repaired at the sole expense of the Unit Owner with whom said children or other family members or persons are residing or visiting.

**Section 9.04. Signs.** No sign, poster, display or other advertising device of any character shall be erected or maintained anywhere on the Project, or shown or displayed to the public view on or from any Unit or Common Areas, without the prior written consent of the Architectural Committee; provided, however, that the restrictions of this Section shall not apply to any sign or notice of customary and reasonable dimension which states the Residence is for rent or sale. Such sign or notice may only be placed within a Unit and not upon any portion of the Common Areas and the specific location and design of said sign or notice shall be subject to the approval of the Board. The Board of Directors may erect within the Common Areas a master directory of Units which are for sale or for lease. Address identification signs and mail boxes shall be maintained by the Board of Directors. This Section shall not apply to any signs used by Grantor, its agents or designees in connection with the sale and any construction, improvement or alteration of the Condominiums or Real Property within the Project as set forth in Article VIII. Notwithstanding the foregoing, nothing herein contained shall be construed in such a manner as to permit or require the maintenance of any sign or notice which is not in conformance with any ordinance of the City of San Diego.

**Section 9.05. Inside and Outside Installations.** No outside installation of any type, including, but not limited to, a television or radio pole, antennae, clothes-lines, flag poles or other external fixtures shall be constructed, erected or main-

tained on or within the Common Areas of any Unit within the Project, except those installed or erected by Grantor as a part of the initial construction of the Project and except as may be installed by, or with the prior consent of the Architectural Committee, or any replacements thereof. No balcony covers, wiring, or installation of air conditioning, water softeners, or other machines or equipment other than that originally installed by Grantor, and their replacements, shall be installed on the exterior of the building of the Project or be allowed to protrude through the walls or roofs of the buildings of any structure within the Project, unless the prior written approval of the Architectural Committee is secured. Each Unit Owner shall have the right to maintain television and/or radio antennae within completely enclosed portions of his/her Unit. However, if cable television, or similar system, is or becomes available to such Owner, his/her right to maintain such antennae within completely enclosed portions of his/her Unit shall terminate immediately, unless the Board authorizes their continued maintenance. Outdoor patio lounge furniture, plants and barbecue equipment may be maintained pursuant to the rules and procedures of the Architectural Committee. The type and color of window coverings visible from and exposed to the outside, shall be uniform from Unit to Unit, and within each Unit, in color and shade; and any variation thereof shall be subject to the prior written approval of the Architectural Committee. Notwithstanding the specificity of the foregoing, no exterior addition, change or alteration to any Residence shall be commenced without the prior written approval of the Architectural Committee. Nothing shall be done in any Unit or in, or on to the Common Areas which will or may tend to impair the structural integrity of any building in the Project or which would structurally alter any such building except as otherwise expressly provided herein. There shall be no alteration, repair or replacement of wall or floor coverings, including, but not limited to, wall-to-wall carpeting, within any Unit which may diminish the effectiveness of the sound control engineering within the building in the Project unless and until written permission and approval is obtained from the Board and the Owner(s) of the Unit(s) directly beneath and to the sides of the Unit being so modified. No interior wall in any of the buildings of the Project shall be pierced or otherwise altered in any way, without the prior approval of the Architectural Committee and a structural engineering analysis. No Unit Owner shall cause or permit any mechanic's lien to be filed against any portion of the Project or labor or materials alleged to have been furnished or delivered to the Project or a Condominium Unit for such Unit Owner. Any such Unit Owner shall immediately cause such lien to be discharged within five (5) days after notice to the Unit Owner from the Board; the Board may discharge the lien and charge the Unit Owner with a Special Assessment for such cost of discharge after Notice and Hearing.

**Section 9.06. Animal Regulations.** No animals, livestock, rodents, reptiles, insects, fish, poultry or other animals of any kind shall be kept in any Residence or elsewhere within the Project, except that usual and ordinary domestic dogs, cats, fish and birds inside bird cages may be kept as household pets within any Residence provided that they are not kept, bred or raised therein for commercial purposes or in unreasonable quantities or sizes. As used in the Declaration, "unreasonable quantities" shall ordinarily mean no more than two (2) pets per Residence; "unreasonable sizes" shall mean no pet weighing more than twenty (20) pounds; provided, however, that the Architectural Committee or the Board may determine that a reasonable number in any instance may be more or less. The Board shall have the right to limit the size of pets and may prohibit maintenance of any animal which constitutes, in the sole opinion of the Board of Directors, a nuisance to any other Unit Owner. Animals belonging to Unit Owners, occupants or their licensees, tenants, invitees within the Property must be either kept within an enclosure, an enclosed balcony or on a leash being held by a person capable of controlling the animal. Furthermore, any Unit Owner shall be absolutely liable to each and all remaining Unit Owners, their families, guests and invitees, for any unreasonable noise, damage to person or property caused by any animals brought or kept upon the Property by a Unit Owner or by members of his family, his tenants or his guests and it shall be the absolute duty and responsibility of each such Unit Owner to clean up after such animals which have defecated, deposited droppings or otherwise used any portion of the Common Areas.

**Section 9.07. View Obstructions.** No vegetation or other obstruction shall be planted or maintained upon any balcony in such location or of such height as unreasonably obstruct the view from any other Residence in the vicinity thereof. In the event of a dispute between Unit Owners as to the obstruction of a view from a Residence, such dispute shall be submitted to the Architectural Committee, whose decision in such matters shall be binding. Any such obstruction shall, upon request of the Architectural Committee, be removed or otherwise altered to the satisfaction of the Board of Directors, by the Unit Owner of the Residence upon which said obstruction is located. Any item or vegetation maintained upon any balcony which item or vegetation is exposed to the view of any Unit Owner, shall be

moved or otherwise altered to the satisfaction of the Architectural Committee, if such Committee determines that the maintenance of such item or vegetation in its then existing state is contrary to the purposes or provisions of this Declaration. The Architectural Committee shall ensure that the vegetation on the Common Areas and Reserved Common Areas maintained by the Association is cut frequently, so that the view of any Unit Owner is not unreasonably obstructed.

**Section 9.08. Business or Commercial Activity.** No business or commercial activity shall be maintained or conducted in any Residence, except that Grantor or a person designated by the Board of Directors as the agent of the Association for purposes of managing the Project may maintain management or sales offices and facilities in a Residence or in a temporary structure constructed on the Project. Furthermore, no part of the Project shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such non-residential purpose, subject to Grantor's rights reserved by the Restrictions, without first obtaining written approval from the Association. Notwithstanding the foregoing, professional and administrative occupations may be carried on within the Units but only incidental to the use of the Unit as a residence and so long as there exists no external evidence thereof; and provided further that all of the applicable requirements of the County of San Diego are satisfied. No Unit Owner shall use his Condominium in such a manner as to interfere unreasonably with the business of Grantor in selling Condominiums in the Project; as set forth in Article VIII of this Declaration, or with the construction and establishment of any additional Units by Grantor as provided under Article II hereof.

**Section 9.09. Rubbish Removal.** Trash, garbage, or other waste shall be disposed of only by depositing same into a designated trash container. No portion of the Project shall be used for the storage of building materials, refuse or any other materials, other than in connection with approved construction. There shall be no exterior fires whatsoever except barbecue fires contained within receptacles therefor. The cost of trash collection and removal and trash bin rentals shall be borne by the Association and shall constitute a portion of the Common Expenses.

**Section 9.10. Further Subdivision and Rental of Units.** Subject to Grantor's rights under Articles II and VIII, unless at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each mortgage owned), or Units Owners (other than Grantor) have given their prior written approval, and all applicable laws and regulations have been complied with, no Unit Owner shall further subdivide his Unit (physically or legally); provided, however, that this provision shall not be construed to limit the right of a Unit Owner to rent or lease all of his Unit by means of a written lease or rental agreement subject to the Restrictions. No Unit Owner shall be permitted to lease or rent his Unit for transient or hotel purposes. The terms of any such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and the By-Laws of the Association and shall (a) expressly refer to this Declaration and contain a covenant by the lessee or tenant that he accepts the leasehold estate subject to this Declaration, and (b) contain either a covenant that the lessee or tenant agrees to perform and comply with the restrictions herein or adequate provisions to permit entry and other actions by the lessor for the purpose of performing and complying with these Restrictions. Any failure by the lessee of such Unit to comply with the terms of this Declaration or the By-Laws of the Association shall constitute a default under the lease or rental agreement. Notwithstanding the foregoing, no Unit in the Project may be partitioned or subdivided without the prior written approval of the holder of any first Mortgage lien on such Unit; and this Section may not be amended without the prior written approval of the holders of at least seventy-five percent (75%) of the first Mortgagees of Condominiums in the Project.

**Section 9.11. Oil Drilling.** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in the Project, and no oil wells, tanks, tunnels or mineral excavations or shafts shall be permitted on the surface of the Project or within five hundred (500) feet below the surface of the Project. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted on the Project.

**Section 9.12. Fences, etc.** No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Project except those that are installed in accordance with the original construction of the Project, and their replacements, or as are authorized and approved by the Board.

**Section 9.13. Outside Drying and Laundering.** No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes on balconies, patios, porches or other areas.

**Section 9.14. Compliance With Laws, etc.** Nothing shall be done or kept in any Unit or in the Common Areas that might increase the rate of, or cause the can-

cellation of, insurance on the Project, or any portion of the Project without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his/or Unit that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow furniture, furnishings or other personal property belonging to such Owner to remain within any portion of the Common Areas except portions subject to exclusive easements over Common Areas appurtenant to such Owner's Unit and except as may otherwise be authorized by the Restrictions or the Board.

**Section 9.15. Violation of Restrictions.** There shall be no violation of the Restrictions, including without limitation the Rules and Regulations, once adopted by the Board. If any Member, his Family, guest, or any licensee, lessee or invitee violates the Restrictions, including the Rules and Regulations, after due Notice and hearing the Board may impose a reasonable Special Assessment upon such Owner for each violation and may suspend or condition such Member's right to use any recreational facilities on the Common Areas. Before invoking any such measure, the Board shall give such Member Notice and an opportunity for a formal Hearing, as further provided in the By-Laws. Any such suspension or conditional suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any assessment after the same becomes delinquent), may be imposed for so long as the violation continues.

## ARTICLE X INSURANCE

**Section 10.01. Duty to Obtain Insurance; Types.** The Board shall obtain and maintain or cause to be obtained and continued in effect adequate blanket public liability Insurance (including medical payments), with such limits as may be considered acceptable to the Federal National Mortgage Association (not less than \$1 million covering all claims for personal injury and property damage arising out of a single occurrence), insuring against liability for bodily injury, death and property damage due to or arising from the activities of the Association and its Members, with respect to the Common Areas and any other property under its jurisdiction, including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Board shall also obtain and maintain or cause to be obtained and continued in effect a blanket policy of fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Areas, and those portions of the Units consisting of all built-in or set-in appliances, cabinets and initial basic floor coverings, all as provided in the plans and specifications for the Project. Such insurance shall be maintained for the benefit of the Association, the Unit Owners, and the Mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein. The Board of Directors shall purchase such other insurance, as necessary, including but not limited to, errors and omissions, directors, officers and agents liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker's compensation, and such other risks as shall customarily be covered with respect to condominium projects similar in construction, location and use. Fidelity bond coverage must be obtained by the Association for any person or entity handling funds of the Association, including, but not limited to, officers, directors, trustees and employees of the Association and employees of the professional managing agent of the Association. Notwithstanding any other provisions to the contrary herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for condominium projects established by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC"), so long as any of which is a Mortgagee or Owner of a Condominium within the Project, except to the extent such coverage is not available or has been waived in writing by the FNMA, GNMA and FHLMC, as applicable.

**Section 10.02. Waiver of Claims Against Association.** As to all policies of insurance maintained by or for the benefit of the Association and the Unit Owners, which policies will not be voided or impaired thereby, the Association and the Unit Owners hereby waive and release all claims against one another, the Board of Directors and Grantor, to the extent of the insurance proceeds available, whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said Persons.

**Section 10.03. Rights and Duty of Unit Owner to Insure.** It shall be the responsibility of each Unit Owner to provide insurance on his/her personal property and upon all other property and improvements within his/her Units. Nothing herein shall preclude any Unit Owner from carrying any public liability insurance as he/she

may deem desirable to cover his/her individual liability for damage to person or property occurring inside his/her individual Unit or elsewhere upon the Project. All policies as may be carried by Unit Owners shall contain waivers of subrogation of claims against Grantor, the Association, the Board, the officers of the Association and all other Unit Owners. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Unit Owner, such Unit Owner shall assign the proceeds of such insurance carried by him/her to the Association, to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

**Section 10.04. Notice of Expiration Requirements.** If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be cancelled or terminated, or expired by their terms, without ten (10) days prior written notice to the Board, Grantor, Unit Owners and their respective first Mortgagees and every other Person in interest who shall have requested such notice of the insurer.

**Section 10.05. Insurance Premiums.** Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the Board of Directors shall be a Common Expense to be included in the Annual Assessments levied by the Association, collected from the Unit Owners; and the portion of such payments necessary for the required insurance premiums shall be separately accounted for by the Association in the Reserve Fund, to be used solely for the payment of premiums of required insurance as such premiums become due.

**Section 10.06. Trustee for Policies.** The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Section 10.01 of this Article shall be paid to the Board of Directors as Trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as proved in Article XI of this Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire, of first Mortgagees who have filed written requests within ten (10) days of receipt of Notice of any damage or destruction as provided in Article XI, Section 11.05 of this Declaration. Any two Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

**Section 10.07. Actions as Trustee.** Except as otherwise specifically provided in this Declaration, the Board, acting on behalf of the Association and all Unit Owners, shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance, in a manner satisfactory to seventy-five percent (75%) of the first Mortgagees of the Condominiums who have filed requests under Section 10.04 of this Article to the extent such first Mortgagees desire to participate. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees who have requested the same in writing.

**Section 10.08. Annual Insurance Review.** The Board shall review the insurance carried by or on behalf of the Association at least annually, for the purpose of determining the amount of the casualty and fire insurance referred to in Section 10.01 above. If economically feasible, the Board shall obtain a current appraisal of the full replacement value of the Improvements in the Property except for foundations and footings, without deduction for depreciation, from a qualified independent insurance appraiser, prior to each such annual review.

**Section 10.09. Required Waiver.** All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

- (a) subrogation of claims against the Unit Owners and the tenants of the Unit Owners;
- (b) any defense based upon co-insurance;
- (c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance not carried by the Association;

(d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Unit Owner or any tenant of any Unit Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured;

(e) any right of the insurer to repair, rebuild or replace, and, in the event the building is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the Improvements insured;

(f) notice of the assignment of any Unit Owner of its interest in the insurance by virtue of a conveyance of any Condominium; and

(g) any right to require any assignment of any mortgage to the insurer.

## ARTICLE XI DESTRUCTION OF IMPROVEMENTS

**Section 11.01. Restoration of the Project.** Except as otherwise provided in this Declaration, in the event of partial or total destruction of the Improvements of the Project, or any portion thereof, which is the responsibility of the Association to repair or replace, it shall be the duty of the Association to restore, repair and rebuild the same in conformity with the building codes as they exist at the time of reconstruction, as promptly as practical, and in accordance with building plans first approved by the City of San Diego ("City"). The proceeds of any insurance maintained pursuant to Article X hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The Board shall be authorized to have prepared the necessary documents including, but not limited to, the preparation and application for approval of a new subdivision tract map, to be approved by the appropriate state and local governmental agencies to effect such reconstruction as promptly as practical. The Project shall be reconstructed or rebuilt substantially in accordance with the Condominium Plan and the original construction plans if they are available, unless changes recommended by the Architectural Committee shall have been approved in writing by seventy-five percent (75%) of the Unit Owners and seventy-five percent (75%) of the holders of record of first Mortgages upon all Condominiums in the Project. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair, a Reconstruction Assessment of the Unit Owners shall be levied by the Board of Directors to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repair, the Unit Owners by the vote of not less than seventy-five percent (75%) of the Unit Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting of the Members of the Association, together with the approval of at least seventy-five percent (75%) of the first Mortgagees of record of the Condominiums in the Project, shall determine whether the Association shall be authorized to levy a Reconstruction Assessment and proceed with such restoration and repair. In the event of a determination by the Unit Owners and their Mortgagees as provided above that the cost of such restoration and repair would be substantial and that it would not be in their best interests to proceed with the same, the Unit Owners may, at their discretion, proceed as provided in Section 11.02 below.

**Section 11.02. Sale of Project.** In the event that the amount available from the proceeds of the insurance policies maintained by the Association shall be less than eighty-five percent (85%) of the cost of reconstruction, a certificate of the resolution authorizing such reconstruction shall be filed with the San Diego County Recorder within six (6) months from the date of such destruction and in the event of a failure to record such certificate within said period, it shall be conclusively presumed that the Unit Owners have determined not to rebuild said Improvements. In the event of a determination not to rebuild, the Association, acting through a majority of the Board as provided in Section 1355(b) of the California Civil Code, shall be authorized to have prepared, executed and recorded, as promptly as practical, the Certificate and such other documents and instruments as may be necessary for the Association to consummate the sale of the Property at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be divided proportionately among Unit Owners, such proportions to be determined in accordance with the relative appraised fair market valuation of the Condominiums as of the date of destruction (or condemnation), expressed as percentages, and computed by dividing such appraised fair

market valuation of each Condominium by the total of such appraised valuations of all Condominiums in the Project. The Board is hereby authorized to hire one or more appraisers for such purpose and the cost of such appraisals shall be a Common Expense of the Association. Notwithstanding the foregoing, the balance then due on any valid encumbrance of record shall be first paid in order of priority, before the distribution of any proceeds to a Unit Owner whose Condominium is so encumbered.

**Section 11.03. Right to Partition.** No Unit Owner shall have the right to partition his interest in the Condominium and there shall be no judicial partition of the Project, or any part thereof; except that in the event that a certificate of a resolution to rebuild or restore the Project has not been recorded as provided above, within six (6) months from the date of any partial or total destruction, or if restoration has not actually commenced within said period, then conditions for partition as set forth in Subdivision (4) of Section 1354(b) of the California Civil Code shall be deemed to have been satisfied. Nothing herein shall be deemed to prevent partition of a co-tenancy in any Condominium. Except as provided above, each Unit Owner and the successors of each Unit Owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the Units and for the benefit of all other Unit Owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the Project and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment. Notwithstanding anything to the contrary hereinabove, a Unit Owner shall have the right to partition upon showing that the conditions of Section 1354 of the California Civil Code have been satisfied.

**Section 11.04. Interior Damage.** With the exception of any casualty or damage insured against by the Association pursuant to Article X, Section 10.01 of this Declaration, restoration and repair of any damage to the interior of any individual Residence, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the Unit Owner of the Residence so damaged. In the event of a determination to rebuild the Project after partial or total destruction, as provided herein, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee.

**Section 11.05. Notice to Unit Owners and Listed Mortgagees.** The Board, immediately upon having knowledge of any damage or destruction (1) to the Common Areas, or any portion thereof, or to the Reserved Common Areas prior to the time Grantor obtains the Permit to construct and establish additional Units as provided under Article II, which damage or destruction is substantial or may be restored only at a cost exceeding Ten Thousand Dollars (\$10,000), or (2) to any individual Unit which damage or destruction may only be restored at a cost exceeding One Thousand Dollars (\$1,000), shall promptly notify all Unit Owners, all institutional holders of first Mortgages on Condominiums in the Project, and all other Mortgagees who have filed a written request for such notice with the Board.

## ARTICLE XII EMINENT DOMAIN

**Section 12.01. Definitions; Total Taking, Partial Taking, Special Partial Taking.** The Term "taking" as used in this Article shall mean condemnation by exercise of power of eminent domain or by sale under threat of the exercise of the power of eminent domain. A "Total Taking" shall occur if there is a permanent taking by eminent domain of an interest in all or part of the Common Areas or of all or part of one or more Units, such that the ownership, operation and use of the Project in accordance with the provisions of this Declaration is substantially and adversely affected, and within one hundred twenty (120) days after the effective date of the taking the Unit Owners of any Units (i) not taken, or (ii) only partially taken and capable of being restored to at least ninety-five percent (95%) of their floor area and to substantially their condition prior to the taking (collectively the "Remaining Units") do not by affirmative vote of a majority of their entire voting interest (without adjustment among such Units for relative voting rights because of such partial taking) approve the continuation of the Project and the repair, restoration and replacement to the extent feasible of the Common Areas and the Remaining Units. A "Partial Taking" shall occur if there is any other permanent taking of the property. A Partial Taking shall include, without limitation, a "Special Partial Taking" which is described herein as a taking of all or part of one or more Units, as Units, subject to all of the provisions of this Declaration, without involving any taking of the Common Areas except to the extent of the proportionate interest therein of the Units taken, so that the taking authority becomes a successor in title to the Unit Owner or Unit Owners of the Condominium or Condominiums so taken with the same effect as if such Units were purchased by the Taking authority. Following any taking which in the opinion of the

Board of Directors would constitute a Total Taking in the absence of the affirmative vote of the Remaining Unit Owners as required by the foregoing provisions, the Board of Directors shall call a special meeting of the Remaining Unit Owners to be held promptly, and in any event within sixty (60) days after the effective date of such taking, to determine if such Remaining Unit Owners will, or will not, decide to continue the Project as provided herein.

**Section 12.02. Awards; Repair; Restoration and Replacement.**

(a) In the event of a Total Taking, the Board of Directors shall: (i) except as provided in Section 12.03 of this Article, represent all of the Unit Owners in an action to recover any and all awards, subject to the right of all first Mortgagees of record, upon request, to join in the proceedings, (ii) proceed with the sale of that portion of the Project which was not included in the condemnation proceedings, and (iii) distribute the net proceeds of such sale and any condemnation award, after deducting any incidental fees and expenses, in the same proportion and in the same manner as provided in Article XI, Section 11.02.

(b) In the event of a Partial Taking, other than a Special Partial Taking, the provisions of Section 12.02(a) (i) of this Article shall be applicable. The net proceeds of the Partial Taking awards shall be held by the Board of Directors, after deducting related fees and expenses and the portions of the awards allotted in the taking proceedings or, failing such allotment, allotted by the Board of Directors to (i) Units totally taken or partially taken and not capable of being restored to at least ninety-five percent (95%) of their floor area and substantially their condition prior to the taking, and (ii) Units taken in the same manner as in a Special Partial Taking except that the taking is made subject to only some or to none of the By-Laws and the Rules and Regulations (collectively the "Taken Units").

The proceeds of the Partial Taking award allotted to the Taken Units shall be paid to the Unit Owners respectively entitled thereto; provided, however, that such proceeds shall first be applied to the balance then due on any Mortgages of Record in order of priority before the distribution of any such proceeds to any Unit Owner whose Condominium is subject to any such Mortgage. First Mortgagees of Record with respect to the Remaining Units affected by such Partial Taking shall be entitled to severance damages payable out of the award proceeds held by the Board of Directors to the extent that such Mortgagees can prove that their security has been impaired by such taking. The balance of the net proceeds shall then be applied to the repair, restoration and replacement of the Common Areas and the Remaining Units (but not Unit Owners' personal property nor those portions of the Units which the Unit Owners are obligated to restore) to as nearly their condition prior to the taking as may be feasible, in the same manner and under the same provisions applicable to the proceeds of insurance as set forth in Article XI hereof, except for any provisions relating to Unit Owners' personal property. Any funds held for restoration by the Board of Directors following completion thereof shall be disposed of, in each case in the same manner as provided in Article XI, Section 11.02, except that the total amount of the award payable to any Member and his mortgagee or mortgagees for a destroyed Unit or Units shall not exceed the value of said Member's Condominium interest.

In the event that the funds held for restoration by the Board of Directors are less than the cost of restoration and repair, a Reconstruction Assessment of the Remaining Unit Owners, with each Remaining Unit Owner contributing a sum in the same proportion as Annual Assessments paid by such Unit Owner, may be levied by the Board of Directors to provide the necessary additional funds for such reconstruction. In no event shall the Board of Directors be required to undertake any repair or restoration work or make any payments with respect to any Unit in excess of that portion of the awards reasonably attributable to the loss to that Unit. Following any Partial Taking, the Association and the Project shall continue, subject to and with the benefit of all the provisions of this Declaration, so far as applicable to the Remaining Units, and the voting interests of the Unit Owners shall be the same.

(c) In the event of a Special Partial Taking or a temporary taking of any Condominium the Unit Owner of the Condominium taken, together with his mortgagees, shall have exclusive rights to prosecute the proceedings for the respective taking awards and to retain the proceeds thereof. In the event of a temporary taking of Common Areas, the Board of Directors shall have exclusive rights to prosecute the proceedings for the respective taking awards and shall apply the proceeds thereof to reduce Common Expenses.

**Section 12.03. Awards for Unit Owners' Personal Property and Relocation**

**Allowances.** Where all or part of the Project is taken by eminent domain, each Unit Owner shall have the exclusive right to claim all of the award made for such Unit Owners' personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, however, or the provisions of Sections 12.01 and 12.02, the Board of Directors, except in the case of a Special Partial Taking, shall represent

each Unit Owner in an action to recover all awards with respect to such portion, if any, of a Unit Owner's personal property which is at the time of any taking, as a matter of law, part of the real estate comprising any Unit, and shall allocate to such Unit Owner so much of any awards as is allotted in the taking proceedings or, failing such allotment, allotted by the Board of Directors to such Unit Owner's personal property. The amount so allocated shall be paid to the Unit Owner entitled thereto, whether or not the Unit in which such Unit Owner's personal property was located is to be restored by the Board of Directors. Notwithstanding restoration of the Unit, the Board of Directors shall have no responsibility for restoration of such Unit Owner's personal property.

Section 12.04. Notice to Unit Owners and Listed Mortgagees. The Board of Directors, immediately upon having knowledge of any taking by eminent domain of the Project, or any portion thereof, or any threat thereof, shall promptly notify all Unit Owners, all institutional holders of first Mortgages on Condominiums in the Project and those Mortgagees who have filed a written request for such notice with the Board.

### ARTICLE XIII RIGHTS OF MORTGAGEES

Notwithstanding any other provision of this Declaration, no amendment or violation of this Declaration shall operate to defeat or render invalid the rights of the Beneficiary under any Deed of Trust upon a Condominium made in good faith and for value, provided that after the foreclosure of any such Deed of Trust such Condominium shall remain subject to this Declaration, as amended. Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce The Federal Home Loan Mortgage Corporation ("FHLMC"), the Government National Mortgage Association ("GNMA") and the Federal National Mortgage Association ("FNMA") to participate in the financing of the sale of Condominiums within the Project, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC, FNMA, GNMA, VA and FHA, conflict with any other provisions of this Declaration or any other of the Restrictions, these added restrictions shall control):

(a) Each first Mortgagee of a Mortgage encumbering any Condominium, upon filing a written request for notification with the Board, is 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 the Restrictions, the Articles or the By-Laws (collectively referred to as the "Project Documents"), which default is not cured within thirty (30) days after the Association learns of such default. For purposes of this Declaration, a "first Mortgagee" shall mean a Mortgagee of a Mortgage with first priority over other Mortgages.

(b) Every Unit Owner, including every first Mortgagee of a Mortgage encumbering any Condominium, which obtains title to such Condominium pursuant to the remedies provided in such Mortgage, or pursuant to foreclosure of the Mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal."

(c) Each first Mortgagee of a Mortgage encumbering any Condominium, which obtains title to such condominium, pursuant to judicial foreclosure or the powers provided in such Mortgage, shall take title to such Condominium free and clear of any claims for unpaid assessments or charges against such Condominium which accrued prior to the time such holder acquires title to such Condominium.

(d) Unless at least seventy-five percent (75%) of the first Mortgagees (based upon one vote for each Mortgage owned) or seventy-five percent (75%) of the Unit Owners (other than Grantor) have given their prior written approval, neither the Association nor the Unit Owners shall:

- (1) by act or omission seek to abandon or terminate the Project;
- (2) change the method of determining the obligations, assessment dues or other charges (other than Special Assessments or late charges imposed by the Board in accordance with the provisions of this Declaration) which may be levied against any Unit Owner, or the method of allocating distributions of hazard insurance proceeds or condemnation awards;
- (3) by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of the Common Areas of the Project;
- (4) partition or subdivide any Condominium Unit;
- (5) fail to maintain Fire and Extended Coverage on insurable Common Areas as provided in Article XI of this Declaration;

(6) use hazard insurance proceeds for losses to improvements on any Common Areas for other than the repair, replacement or reconstruction of such improvements, subject to the provisions of Article XI of this Declaration; or

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

(e) First Mortgagees, upon written request, shall have the right to (1) examine the books and records of the Association during normal business hours, (2) obtain from the Association audited annual financial reports and other financial data, but only if said reports are prepared by the Association in the regular course of business, (3) receive written notice of all meetings of the Unit Owners, and (4) designate in writing a representative to attend all such meetings.

(f) All first Mortgagees, upon written request, shall be given thirty (30) days written notice prior to the effective date of any proposed, material amendment to the Restrictions or the Articles or By-Laws, and prior to the effective date of any termination of an agreement for professional management of the Project following any decision of the Unit Owners to assume self-management of the Project.

(g) The Common Area Reserve Fund described in Article VI of this Declaration must be funded by regular scheduled monthly, quarterly, or semi-annual payments rather than by large Special Assessments.

(h) The Board shall secure and cause to be maintained in force at all times a fidelity bond for any Person handling funds of the Association, including, but not limited to, employees of the professional Manager.

(i) In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first Mortgages encumbering Condominiums. Each Unit Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential Mortgage borrowers and potential sellers of their residential Condominiums, if such agencies approve the Project as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any Mortgage encumbering a Condominium.

(j) Each Unit Owner hereby authorizes the first Mortgagee of a first Mortgage on his Condominium to furnish information to the Board concerning the status of such first Mortgage and the loan which it secures.

#### ARTICLE XIV DURATION AND AMENDMENT

Section 14.01. Duration. This Declaration shall continue in full force for a term of fifty (50) years from the date hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded in the public records, San Diego County, California, meeting the requirements of an amendment to this Declaration as set forth in Section 14.03 of this Article XIV. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Unit from the concomitant Membership in the Association, as long as this Declaration shall continue in full force and effect. The provisions of this Article are subject to the provisions of Sections 11.02 and 12.02 of this Declaration.

Section 14.02. Amendment Before Close of First Sale. Before the close of the first sale of a physically existing Condominium in the Project to a purchaser other than Grantor, this Declaration, and any amendments to it, may be amended in any respect or revoked by the execution by Grantor of an instrument amending or revoking the Declaration, subject to the approval of the California Department of Real Estate. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the San Diego County Recorder.

Section 14.03. Amendment After Close of First Sale. After the close of the first sale of a physically existing Condominium in the Project to a purchaser other than Grantor, notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. A resolution adopt-

ing a proposed amendment may be proposed by a Unit Owner at a meeting of Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of seventy-five percent (75%) of the total voting power of the Association and fifty-one percent (51%) of the voting power residing in Members other than the Grantor. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment shall be effective when the Certificate of Amendment is recorded in the public records, San Diego County, California. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by the record holders of seventy-five percent (75%) of the first Mortgages on all of the Condominiums in the Project at the time of such amendment, based upon one vote for each Mortgage owned:

(a) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to encumbrancers as provided in Articles VI, X, XI, XII, XIII and XIV hereof.

(b) Any amendment which would necessitate an encumbrancer after it has acquired a Condominium through foreclosure to pay more than its proportionate share of any unpaid assessment or assessments accruing after such foreclosure.

(c) Any amendment which would or could result in an encumbrance being cancelled by forfeiture, or in the individual Condominium not being separately assessed for tax purposes.

(d) Any amendment which would or could result in termination or abandonment of the Project or partition or subdivision of a Condominium Unit, in any manner inconsistent with the provisions of this Declaration.

(e) Any amendment which would subject any Unit Owner to a right of first refusal or other such restriction in favor of the Association, in the event such Unit Owner exercises his right to sell, transfer or otherwise convey his Condominium.

A Certificate, signed and sworn to by two (2) officers of the Association that the record Owners of seventy-five percent (75%) of the Condominiums have either voted for or consented in writing to any amendment adopted as above provided, when recorded, shall be conclusive evidence of such fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least four (4) years. The Certificate reflecting any amendment which requires the written consent of any of the record holders of first Mortgages shall be signed and sworn to by such first Mortgagees. When such Certificate is recorded, it shall be noted that such amendment has been so approved.

All amendments or revocations of this Declaration shall comply with the provisions of California Business and Professions Code Section 11018.7, to the extent said section is applicable, and not otherwise determined by the provisions of the Restrictions.

Section 14.04. Protection of Grantor. The prior written approval of Grantor, as developer of the Project, will be required before any amendment, which would impair or diminish the rights of Grantor to complete the Project or sell or lease Condominiums therein in accordance with this Declaration, shall become effective.

Section 14.05. Reliance On Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

#### ARTICLE XV ENFORCEMENT OF CERTAIN BONDED OBLIGATIONS

Section 15.01. Consideration by Board of Directors. In the event that (1) the Improvements to be located on the Common Areas are not completed prior to the issuance of a Final Subdivision Public Report by the California Department of Real Estate for the sale of Condominiums in the Project, and (2) the Association is obligee under a bond or other arrangement ("Bond") required by the Department of Real Estate to secure performance of the commitment of Grantor to complete the Improvements, the Board of Directors of the Association shall consider and vote on the question of action by the Association to enforce the obligations under the Bond, with respect to any such Improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that Improvement in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any Improvement on the Common Areas, the Board shall consider and vote on the aforesaid question, if a Notice of Completion has not been filed, within thirty (30) days after the expiration of the extension. The aforementioned rights of and procedures to be followed by the Association respecting the bonded obligations of Grantor shall apply in the same manner and to the same extent with regard to any bonded obligations of Grantor required in connection with the construction and establishment of any additional Units by Grantor as provided in Article II hereof.

Section 15.02. Consideration by the Members. A special meeting of Members, for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the Bond or on the failure of the Board to consider and vote on the question, shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting, signed by Members representing five percent (5%) of the total voting power residing in the Class A Membership of the Association. At said special meeting, a vote of a majority of the voting power residing in Members of the Association other than the Grantor to take action to enforce the obligations under the Bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

## ARTICLE XVI GENERAL PROVISIONS

Section 16.01. Legal Proceedings. The failure of any Unit Owner, his Family, guests, employees, invitees and tenants to comply with any of the Restrictions, after Notice and Hearing as set forth in the By-Laws of the Association (except for the nonpayment of any Assessments provided for herein), shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision, or any other provision hereof. The Board, any Unit Owner (not at the time in default hereunder), or Grantor shall be entitled to bring an action for damages against any defaulting Unit Owner, and in addition may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant thereto shall include a sum for attorneys' fees in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

Section 16.02. Violation of Restrictions. Without in any way limiting the generality of the foregoing, in the event that the Board determines that there is a violation of any provision of the Restrictions, then the Board shall give written Notice to the Unit Owner of the condition or violation. The Board, after giving such Unit Owner an opportunity for Notice and Hearing, may undertake to remedy such condition or violation complained of, and the cost thereof shall be charged to the Unit Owner and his Condominium. Such cost shall be deemed to be a Special Assessment to such Unit Owner, and his Condominium, and shall be subject to levy, enforcement and collection by the Board in accordance with the assessment lien procedure provided for in this Declaration.

Section 16.03. Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or unenforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

Section 16.04. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of a residential condominium development and for the maintenance of Common Areas, and any violation of this Declaration shall be deemed and conclusively presumed to be a nuisance.

Section 16.05. Headings; Gender. The Article and Section headings, titles and captions have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. As used herein, the singular shall include the plural and the masculine, feminine and neuter shall mean the same.

Section 16.06. Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration governing the Project, together with the covenants and restrictions established upon any other property, as one plan.

Section 16.07. Use of Recreational Facilities. The Board of Directors shall have the right to limit the number of guests that a Unit Owner may permit to use any open parking and recreational facilities on the Common Areas, and the Board shall have the right to set further reasonable restrictions on the time and manner of use of said parking areas and recreational facilities, in accordance with the Rules and Regulations, and as further provided in this Declaration.

**Section 16.08. No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Real Property of the Project to the public, or for any public use.

**Section 16.09. No Representations or Warranties.** No representations or warranties of any kind, express or implied, have been given or made by Grantor, or its agents or employees in connection with the Project, or any portion thereof, their physical condition, zoning, compliance with applicable laws, fitness for intended use, or in connection with the subdivision, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof as a Condominium Project, except as specifically and expressly set forth in this Declaration and except as may be filed by Grantor from time to time with the California Department of Real Estate or with any other governmental authority. Each Unit Owner by accepting his or her deed to a Condominium in the Project, acknowledges and understands that the Condominiums are not new but are part of a conversion of an existing project that was rented as an apartment project for at least five (5) years prior to the recordation of this Declaration.

**Section 16.10. Non-liability and Indemnification.** No right, power, or responsibility conferred on the Board or the Architectural Committee by this Declaration, the Articles or the By-Laws shall be construed as a duty, obligation or disability charged upon the Board, the Committee, any member of the Board or of the Committee, or any other officer, employee or agent of the Association. No such Person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damage result from such Person's willful or malicious misconduct. No such Person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Person's negligence or willful or malicious misconduct.

The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person to impose liability on such Person for his Official Acts, provided that:

(a) The Board determines that such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the Association;

(b) In the case of a criminal proceeding, the Board determines that such Person had no reasonable cause to believe his conduct was unlawful; and

(c) In the case of an action or threatened action by or in the right of the Association, the Board determines that such Person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstance.

Any determination of the Board required under this Section 16.10 must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the Person to be indemnified shall not be entitled to vote.

Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 16.10 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

Notwithstanding the foregoing, no employee, officer, or director of Grantor, serving the Association as an appointee of Grantor, shall be granted indemnification hereunder.

The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any Person entitled to such indemnification.

**Section 16.11. Notices.** Except as otherwise provided in this Declaration, in each instance in which notice is to be given to a Unit Owner, the same shall be in writing and may be delivered personally to the Unit Owner, in which case personal delivery of such notice to one or more co-owners of a Condominium or to any general partner of a partnership owning a Condominium shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, properly addressed to the Unit Owner at the most recent address furnished by such Unit Owner to the Association.

or, if no such address shall have been furnished, to the street address of such Unit. Such notice shall be deemed delivered seventy-two (72) hours after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors, in which case the notice provisions of the By-Laws of the Association shall control. Any notice to be given to the Association may be delivered personally to any Member of the Board, or sent by United States mail, postage prepaid, properly addressed to the Association at such address as shall be fixed from time to time and circulated to all Unit Owners.

Section 16.12. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the By-Laws of the Association, the terms and provisions of this Declaration shall prevail.

#### ARTICLE XVII ADDITIONAL DECLARATIONS

Section 17.01 City's Right of Inspection. Prior to the close of escrow for the sale of the first physically existing Condominium of the Project, each Unit may be inspected by the City of San Diego, at the City's sole election. Each Unit so inspected and accepted and each Unit intentionally not inspected by the City shall be deemed in compliance with the requirements and exceptions for Tract Map No. 10056.

[SIGNATURES ON PAGE 36]

THIS DECLARATION has been executed as of the day and date first written above.

"GRANTOR"

SIGNAL CAROUSEL APARTMENTS  
A General Partnership

By: \_\_\_\_\_  
Joseph T. Kung  
A Managing Partner

By: \_\_\_\_\_  
Ivan W. Halperin  
A Managing Partner

ACKNOWLEDGEMENT

STATE OF CALIFORNIA        )  
                                  )  
COUNTY OF LOS ANGELES    )    ss.

On this, the 8th day of April, in the year 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared JOSEPH T. KUNG, and IVAN W. HALPERIN, known to me to be two of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

SGCR01H


SUBORDINATION AGREEMENT

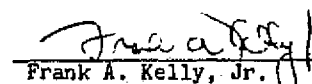
The undersigned ("Beneficiary"), as holder of the beneficial interest in and under that certain Deed of Trust dated March 5, 1969, and recorded on March 18, 1969 in the Office of the San Diego County Recorder, as File No. 47525 ("Deed of Trust"), which Deed of Trust is by and among The Norman Company, a Partnership, as Trustor, Title Insurance & Trust Company, a California corporation, as Trustee, and Aetna Life Insurance Company, a Connecticut corporation, as Beneficiary, and where said Deed of Trust was modified by an Agreement recorded October 11, 1974 as File No. 74-272584, hereby expressly subordinates said Deed of Trust and its beneficial interest thereunder to a certain Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements by Signal Carousel Apartments Establishing A Plan Of Condominium Ownership ("Declaration"), and agrees that said Declaration is and shall be, in perpetuity, in all respects prior and superior to said Deed of Trust.

DATED: April 23, 1981.

BENEFICIARY

Aetna Life Insurance Company  
a Connecticut corporation

By:   
Its Raymond E. Smith  
Assistant Vice President

By:   
Its Frank A. Kelly, Jr.  
Assistant Secretary

ACKNOWLEDGEMENT

STATE CONNECTICUT )  
 ) ss.  
COUNTY OF HARTFORD )

On this, the 23rd day of April, in the year 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Raymond E. Smith, known to me to be the ~~Asst. Vice~~ President and Frank A. Kelly Jr., known to me to be the ~~Assistant~~ Secretary, of Aetna Life Insurance Company, a Connecticut corporation, said corporation being known to me to be the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws of a resolution of its board of directors.

WITNESS my hand and official seal.

Nicole L. Mollieur  
Notary Public in and for said State

**NICOLE L. MOLLEUR, Notary Public**  
**Within and for the State of Connecticut**  
**My Commission Expires March 31, 1984.**

SUBORDINATION AGREEMENT

The undersigned ("Beneficiary"), as holder of the beneficial interest in and under that certain Deed of Trust dated July 22, 1981, and recorded on August 3, 1981, in the Office of the San Diego County Recorder, as File No. 81-244345 ("Deed of Trust"), which Deed of Trust is by and between Signal Carousel Apartments, a California general partnership; as Trustor, and Imperial Bancorp, as Trustee, and which designates Imperial Bancorp the Beneficiary thereof, hereby expressly subordinates said Deed of Trust and its beneficial interest thereunder, and any and all amendments thereto made subsequent hereto, to the foregoing Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements by Signal Carousel Apartments Establishing A Plan of Condominium Ownership ("Declaration"), and agrees that said Declaration is and shall be, in perpetuity, in all respects prior and superior to said Deed of Trust.

DATED: November 20, 1981.

**BENEFICIARY**

IMPERIAL BANK  
A California corporation

By: 

Its Regional Vice President

By: 

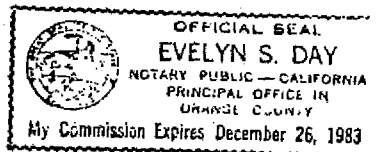
Its Assistant Vice President

ACKNOWLEDGEMENT

STATE OF CALIFORNIA       )  
                                  ORANGE       )  
COUNTY OF ~~SAN ANGELES~~       ) ss.

On this, the 20th day of November, in the year 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared C. H. Gossert, known to me to be Regional Vice President and Nancy Foster, known to me to be the Assistant Vice President, of Imperial Bank, the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws of a resolution of its board of directors.

WITNESS my hand and official seal.



*Evelyn S. Day*  
Notary Public in and for said State

SUBORDINATION AGREEMENT

The undersigned ("Beneficiary"), as holder of the beneficial interest in and under that certain Deed of Trust dated March 13, 1980, and recorded on March 18, 1980 in the Office of the San Diego County Recorder, as File No. 80-092430 ("Deed of Trust"), which Deed of Trust is by and among The Wilson-Mayberry Partnership, a California general partnership, as Trustor, First Charter Financial Corporation, a California corporation, as Trustee, and American Savings & Loan Association, a California corporation, as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereunder to the foregoing Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements by Signal Carousel Apartments Establishing A Plan Of Condominium Ownership ("Declaration"), and agrees that said Declaration is and shall be, in perpetuity, in all respects prior and superior to said Deed of Trust.

DATED: April 8, 1981.

BENEFICIARY

American Savings & Loan Association  
a California corporation

By: Norman A. MacLeod  
Norman A. MacLeod  
Its Executive Vice President

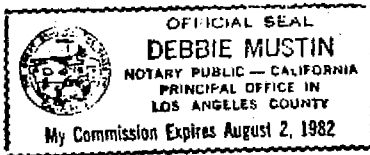
By: Virginia A. Davis  
Virginia A. Davis  
Its Assistant Secretary

ACKNOWLEDGEMENT

STATE OF CALIFORNIA     )  
                                  )  
COUNTY OF LOS ANGELES    )     ss.

On this, the 8<sup>th</sup> day of April, in the year 1981, before me, the undersigned, a Notary Public in and for said County and State, personally appeared NICHOLAS D. MACKAY, known to me to be the <sup>EXEC</sup> President and VERGINIA R. DALL, known to me to be the Asst Secretary of American Savings and Loan Association, a California corporation, said corporation being known to me to be the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws of a resolution of its board of directors.

WITNESS my hand and official seal.



Debbie Mustin  
Notary Public in and for said State

**EXHIBIT "A"**  
**DESCRIPTION OF REAL PROPERTY**

**THE LEGAL DESCRIPTION IS AS FOLLOWS:**

**LOT 1 OF THE CAROUSEL ISLE SUBDIVISION,  
IN THE CITY OF SAN DIEGO, COUNTY OF SAN  
DIEGO, STATE OF CALIFORNIA, ACCORDING  
TO MAP THEREOF NUMBER 10056, FILED IN  
THE OFFICE OF THE COUNTY RECORDER FOR  
SAID COUNTY ON APRIL 8, 1981.**

**EXHIBIT "A"**  
**DESCRIPTION OF REAL PROPERTY**

**EXHIBIT "B"**  
**DESCRIPTION OF IMPROVEMENTS**

1. Grantor has purchased the Carousel Isle Apartments located at 3050 Rue D'Orleans in the City of San Diego, which is adjacent to the Mission Bay Area. The site is improved with a four-story residential structure containing 300 dwelling units. Grantor has plans to construct and establish as part of the Project, up to 33 additional two-bedroom townhouse units, which shall be located on three corners of the lot. On-site amenities include lighted tennis courts, a swimming pool, a whirlpool-spa, steam rooms, volley ball courts, a reception room with billiards and ping pong tables, saunas, separate men's and women's gyms, and individual barbeque areas.
2. The Complex shall be renovated and placed in general good repair, at least to the extent indicated below, including the updating of all the premises to required building codes. Grantor shall: (1) landscape the premises; (2) install smoke detector devices in each dwelling Unit as required by the San Diego Building Code; (3) and otherwise perform, or provide for in an approved manner, all other conditions imposed by the City of San Diego and the California Coastal Commission in connection with the approval of the Final Tract Map.
3. The Common Area is all of Lot 1 of Carousel Isle subdivision in the City of San Diego, County of San Diego, State of California, according to map thereof No. 10056, filed in the Office of the County Recorder of said County, on April 8, 1981, except Units 1 through 333 inclusive, as shown and defined in the Condominium Plan, a copy of which is attached to the Declaration as Exhibit E, and excepting further any easements and other reservations of record.

**EXHIBIT "B"**  
**DESCRIPTION OF IMPROVEMENTS**