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San Francisco, CA 94111

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FIRST AMENDMENT TO
AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP FOR
THE 370 MONTEREY BOULEVARD CONDOMINIUM PROJECT

THIS AMENDMENT to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the 370 Monterey Boulevard Condominium Project is made on the date hereinafter set forth by ROSARIO F. OCCHIPINTI, ISOLA M. OCCHIPINTI, CONCETTO J. OCCHIPINTI, Trustee of the Occhipinti Trust, SATSUKI OCCHIPINTI; and STEPHEN N. SARIBALIS and NICHOLAS S. SARIBALIS as Trustees under the Stephen N. Saribalis and Joanna P. Saribalis 1987 Trust ("Declarant") and is made pursuant to and in compliance with Section 19 of the original recorded Amended and Restated Declaration of Covenants, Conditions and Restrictions.

WHEREAS, ROSARIO F. OCCHIPINTI, ISOLA M. OCCHIPINTI, CONCETTO J. OCCHIPINTI, SATSUKI OCCHIPINTI, STEPHEN N. SARIBALIS and JOANNA SARIBALIS were the original Subdividers of all that certain real property located in the City and County of San Francisco, California, State of California and described in Exhibit "1" attached hereto and made a part hereof and as the original Subdividers were also the original Declarant; and

WHEREAS, CONCETTO J. OCCHIPINTI, as Trustee of the Occhipinti Trust, is the successor in interest to CONCETTO J. OCCHIPINTI and STEPHEN N. SARIBALIS and NICHOLAS S. SARIBALIS as Trustees under the Stephen N. Saribalis and Joanna P. Saribalis 1987 Trust are the successors in interest to Stephen Saribalis and Joanna Saribalis, and together with ROSARIA F. OCCHIPINTI, ISOLA M. OCCHIPINTI, and SATSUKI OCCHIPINTI constitute the Declarant herein; and

WHEREAS, none of the individual condominium units in the 370 Monterey Boulevard Condominium Project have been conveyed and all remain under the ownership of Declarant; and

WHEREAS, on April 25, 1994, the Declarant caused to be recorded an Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Declaration") for said property, which Declaration amended and restated the original Declaration, recorded June 3, 1983, in Book D535, at page 898 and following of, the Official Records of the City and County of San Francisco, State of California, and which original Declaration was revoked and

C:\WPDOCS\CONDO\OCCHIPAMND.COR
Revised 5.4.94

The undersigned has read, understood
& accepted pgs. 1 thru 63 and
acknowledges receipt of copy hereof.

Date _____

Date _____

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superseded by the Amended and Restated Declaration so that the original Declaration is of no further force or effect; and

WHEREAS, the property as described in Exhibit "1" constitutes a Condominium Project subject to the provisions of California law and, said Amended and Restated Declaration has been recorded in Real G117, Image 0081 and following of the Official Records of the City and County of San Francisco, State of California; and

WHEREAS, Declarant herein desires to amend the Amended and Restated Declaration in the manner hereinafter set forth:

NOW, THEREFORE, Declarant declares that the Amended and Restated Declaration shall hereby be amended as follows:

1. Declarant declares that Exhibit "D" of the Amended and Restated Declaration is hereby amended in its entirety as set forth Exhibit "2" attached to this First Amendment and made a part hereof and by this reference incorporated herein and by which said Exhibit "2" is substituted in the place and stead of the entirety of Exhibit "D" of the original Amended and Restated Declaration.

2. Declarant herein declares in all other respects, the Amended and Restated Declaration shall remain in its entirety as set forth in the original Amended and Restated Declaration as recorded on April 25, 1994, as hereinabove set forth.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment to said Amended and Restated Declaration on this 13th day of May, 1994.

"DECLARANT"

Rosario P. Occhipinti
ROSARIO P. OCCHIPINTI

Isola M. Occhipinti
ISOLA M. OCCHIPINTI

Concetto J. Occhipinti
CONCETTO J. OCCHIPINTI, Trustee
of the Occhipinti Trust of 1991.

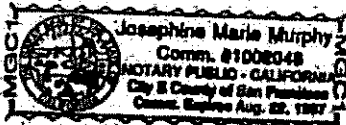
Satsuki Occhipinti
SATSUKI OCCHIPINTI

Stephen N. Saribalis and Nicholas S. Saribalis
STEPHEN N. SARIBALIS and NICHOLAS S. SARIBALIS
Trustees of
the Stephen N. Saribalis and
Joanna P. Saribalis 1987 Trust

F607687

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

On May 13, 1994, before me, Josephine Marie Murphy, personally
(date) (name and title)
appeared Rosario F. Occhipinti and Isola M. Occhipinti, personally known to me
- OR proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized capacity(ies), and
that by his/her/their signatures(s) on the instrument the person(s), or the
entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Josephine Marie Murphy
Signature of Notary

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

On May 13, 1994, before me, Josephine Marie Murphy, personally
(date) (name and title)

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



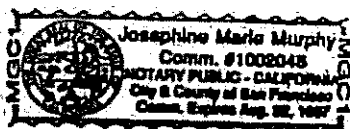
WITNESS my hand and official seal.

Josephine Marie Murphy
Signature of Notary

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

On May 17, 1994, before me, Josephine Marie Murphy, personally
(date) (name and title)

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



WITNESS my hand and official seal.

Josephine Marie Murphy
Signature of Notary

F607687

EXHIBIT "1"

THE LAND REFERRED TO HEREIN IS SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

ALL of that certain land as shown on map entitled "Map of 370 Monterey Boulevard, a Condominium Project", recorded November 23, 1981, in Condominium Map Book 18, Page 105, Official Records.

APN: LOT 55, BLOCK 3091

EXHIBIT "2"

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EXHIBIT "D"

370 MONTEREY BOULEVARD CONDOMINIUM ASSOCIATION

ALLOCATION OF ASSESSMENTS

The regular and special assessments as provided for in Section 10 of the Amended and Restated Covenants, Conditions and Restrictions shall be allocated to the individual units pursuant to Subsection 10.4.6 as follows:

<u>UNIT NO.</u>	<u>PERCENTAGE OF OWNERSHIP OF COMMON AREA</u>
101	4.85%
102	4.32%
103	6.34%
104	4.32%
105	3.62%
201	4.85%
202	4.32%
203	6.34%
204	4.32%
205	3.62%
206	6.54%
207	4.63%
208	4.82%
209	4.82%
210	4.86%
311	4.86%
312	4.82%
313	4.82%
314	4.63%
315	8.10%

10
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And When Recorded Mail To:

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Dooley, Johnson, Pardini,
Stumbos & Pollioni
505 Sansome St., 15th Floor
San Francisco, CA 94111

San Francisco Co Recorder's Office
Bruce Jamison, County Recorder

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Acct 11-FIDELITY NATIONAL Title Company
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AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
ESTABLISHING A PLAN OF CONDOMINIUM OWNERSHIP
FOR THE 370 MONTEREY BOULEVARD CONDOMINIUM ASSOCIATION

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EXHIBITS:

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- EXHIBIT B: GRANT DEED
- EXHIBIT C: ALLOCATION OF MAINTENANCE FUND ASSESSMENTS
- EXHIBIT D: INTEREST IN COMMON AREA
- EXHIBIT E: STORAGE AREA MAP

THIS AMENDED AND RESTATED DECLARATION ("Declaration") is made this day of , 1994 by ROSARIO F. OCCHIPINTI, ISOLA M. OCCHIPINTI, CONCETTO J. OCCHIPINTI, Trustee of the Occhipinti Trust, SATSUKI OCCHIPINTI, and STEPHEN N. SARIBALIS and NICHOLAS S. SARIBALIS as Trustees under the Stephen N. Saribalis and Joanna P. Saribalis 1987 Trust (hereinafter collectively referred to as "Declarant").

RECITALS

A. Declarant is the owner of certain real property located in the City and County of San Francisco, State of California, commonly known as 370 Monterey Boulevard, San Francisco, California and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

B. The Association, as defined in Section 1 below, was originally formed under and is currently operating under and subject to that certain Declaration of Covenants, Conditions and Restrictions Establishing a Plan of Condominium Ownership, dated May 23, 1983, and recorded on June 8, 1983 in Book D 535, beginning at Page 898 and following, Official Record of the Recorder of the City and County of San Francisco, State of California.

C. It is the desire of Declarant that said Declaration be amended and restated so that said Declaration may be made to more fully comply with and reflect the changes in the laws of the State of California and the Rules and Regulations of the Department of Real Estate of the State of California that have occurred since the recordation of said original Declaration.

D. Declarant declares that said Declaration is hereby amended and restated to read in its entirety as set forth below, that the original Declaration is revoked and superseded by this Amendment and that by this Declaration, Declarant intends to establish a plan of Condominium ownership for said real property.

DECLARATION

Declarant declares that the real property is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, servitudes, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code Sections 1350-1372 for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the real property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the real property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding upon and inure to the benefit of all parties having or acquiring any right, title or interest in the real property, and shall be binding upon and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is Declarant's express intent that this Declaration satisfy the requirements of California Civil Code Section 1353.

SECTION 1. DEFINITIONS

1.1 Architectural Committee. "Architectural Committee" means the committee of persons appointed pursuant to Section 18.2 of this Declaration.

1.2 Articles. "Articles" shall mean the Association's Articles of Incorporation, and any amendments thereto.

1.3 Association. "Association" shall mean and refer to an incorporated entity composed of the Owners of Units in the Development, known as 370 Monterey Boulevard Condominium Association, a California nonprofit mutual benefit corporation, its successors and assigns.

1.4 Association Rules. "Association Rules" shall mean the rules and regulations regulating the use and enjoyment of the Common Area adopted by the Board from time to time.

1.5 Board of Directors. "Board of Directors" or "Board" shall mean the Board of Directors of the Association elected pursuant to Section 9 of this Declaration.

1.6 Bylaws. "Bylaws" means the Amended and Restated Association Bylaws and any amendments thereto.

1.7 City and County. "City" and/or "County" shall mean and refer to the City and County of San Francisco.

1.8 Common Area. "Common Area" shall mean and refer to all of the Development which is not included within any Unit, as shown on the Condominium Plan. Common Area shall include, but shall not be limited to, Exclusive Use Common Area, all facilities and improvements located within the Common Area, including recreational facilities, driveways, open spaces, planted and landscaped areas, roofs, foundations, stairs, walkways, storm drainage pipelines, catch basins, sanitary sewer lines, manholes, cleanouts, pipes, ducts, flues, chutes, conduits, wires and other utility installations to the outlets, bearing walls and columns and girders to the unfinished surfaces thereof, regardless of location, and any and all other improvements which may be placed upon or located in the Common Area.

1.9 Condominium. "Condominium" shall mean and refer to an estate in real property as defined in Section 783 of the California Civil Code, consisting of an undivided interest as a tenant in common in and to the Common Area of the Development, together with a fee interest in a Unit and any other separate interests in the real property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium. All condominiums shall be conveyed and transferred by means of Grant Deeds substantially in the form attached hereto as Exhibit B.

1.10 Condominium Plan. "Condominium Plan" shall mean and refer to the Survey Map as described in and recorded pursuant to Section 1351(e) of the California Civil Code respecting the Development, and any amendments thereto.

1.11 Deck. "Deck" ("Balcony") shall mean and refer to that portion of the Common Area shown on the Condominium Plan as a Deck, and numbered D-206, 311, 312, 313, 314, 315, which Decks comprise a portion of the Exclusive Use Common Area. In the deeds to Units 201 through Units 404, 206, and units 311-315 Declarant shall grant to the Owner of said Units exclusive easements for the use and possession of Decks (Balconies). The Owners shall keep such Owners' Decks in a neat, attractive, and safe condition at all times.

1.12 Declarant. "Declarant" (as previously defined above) shall mean and refer to ROSARIO F. OCCHIPINTI, ISOLA M. OCCHIPINTI, CONCETTO J. OCCHIPINTI, Trustees of the Occhipinti Trust, SATSUKI OCCHIPINTI, STEPHEN N. SARIBALIS and NICHOLAS S. SARIBALIS as Trustees under the Stephen N. Saribalis and Joanna P. Saribalis Trust, and Declarant's successors and assigns, if such successors and assigns should acquire or hold record title to all or any portion of the Development for development purposes.

1.13 Declaration. "Declaration" means this Amended and Restated Declaration of Covenants, Conditions, and Restrictions and its amendments, modifications, or supplements.

1.14 Development. "Development" or "Project" shall mean and refer to the entire parcel of real property, divided or to be divided into Residential Condominiums, including all structures and improvements thereon, and as more particularly described in Civil Code Section 1351 (f).

1.15 Exclusive Use Common Area. "Exclusive Use Common Area" means those portions of the Common Area reserved for the exclusive use of Owners as described in this Declaration. Each such Exclusive Use Common Area shall be granted as an exclusive easement appurtenant to the applicable Owner's Unit and may not be conveyed or transferred apart from the Unit. The Exclusive Use Common Areas includes the Decks and Parking Spaces as described herein, together with the following portions of the Common Area designated to serve each respective Owner's Unit exclusively: shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware incident thereto, screens, windows, and hardware incident thereto. Internal and external telephone wiring designed to serve a separate unit, but located outside the boundaries of the separate unit, are exclusive use common areas allocated exclusively to that separate unit.

1.16 Member. "Member" shall mean and refer to every person or entity holding a membership in the Association.

1.17 Mortgage and Mortgages. "Mortgage" shall mean and refer to a mortgage or deed of trust encumbering a Condominium or other portion of the Development. A "Mortgagee" shall include the beneficiary under a deed of trust as well as the mortgagee under a mortgage, as well as any guarantor or insurer of a Mortgage. An "institutional" Mortgagee is a Mortgagee that is a bank, a savings and loan association, or an established mortgage company or other entity chartered under federal or state law whose principal business is lending money on the security of real property or investing in such loans, or any insurance company, or any federal or state agency or instrumentality, including without limitation the Federal National Mortgage Association ("FNMA") and

the Federal Home Loan Mortgage Corporation ("FHLMC"). "First Mortgage" and "First Mortgage" shall mean a Mortgage or Mortgagees with priority over all other Mortgages and Mortgagees, respectively, encumbering the same Condominium or other portion of the Development.

1.18 Owner. "Owner" shall mean and refer to each person or entity (including Declarant) holding a record ownership interest in a Condominium. "Owner" shall also include a contract purchaser pursuant to a contract of sale recorded in the Office of the County Recorder, provided that the vendor under such contract of sale has assigned all of his rights, title and interest to participate in the Association to the contract purchaser thereunder, and such assignment is either contained in said contract of sale or is otherwise recorded in the Office of the County Recorder. "Owner" shall also mean a Member of the Association. Ownership of a Condominium shall include membership in the Association. "Owner" shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation or as a contract purchaser under a contract of sale which does not satisfy the conditions set forth in this paragraph.

1.19 Parking Space. "Parking Space" shall mean and refer to each portion of the Common Area shown on the Condominium Plan as individual parking areas and designated and numbered P-1 through P-20 which Parking Spaces constitute portions of the Exclusive Use Common Area. Parking Space P-10 is more particularly delineated in Exhibit "F" attached hereto. An exclusive easement for the use and possession of one (1) Parking Space shall be granted by Declarant to the Owner of each residential Unit in the deed to each residential Unit. Each Parking Space shall be appurtenant to the residential Unit with which it is originally conveyed, and may not thereafter be conveyed separately from such residential Unit. Each Owner shall keep such Owner's Parking Space in a neat, clean, attractive, and safe condition at all times.

1.20 Project. "Project" means the entire Property, as described in Exhibit A attached hereto, and the improvements on the Property.

1.21 Single Family. "Single Family" shall mean and refer to one or more persons, each related to the other by birth, marriage, or legal adoption, not to exceed four (4) such persons, or a group of not more than four (4) persons not so related, together with their domestic servants, who maintain a common household in a Unit.

1.22 Storage Area. "Storage Areas" shall mean and refer to those portions of the Common Area shown on the Condominium Plan and Exhibit "E" as individual storage areas and designated and numbered S-1, S-2, S-4, S-7, S-9, S-10, S-11, S-13 and S-14 and as certain of such storage areas that have been subdivided and designated and shown on Exhibit "E" and numbered as S-3A, S-3B, S-5A, S-5B, S-6A, S-6A, S-6B, S-8A, S-8B, S-8C and S-20, which has been newly constructed; all of which storage areas constitute portions of the Exclusive Use Common Area. An exclusive right for the use and possession of one such storage area shall be assigned by the Association to specific units. Each storage area shall be appurtenant to the unit to which it is originally assigned and cannot be assigned for use except to a specific unit.

1.23 Subdivision Map. "Subdivision Map" or "Map" means the recorded final Subdivision Map described in the Recitals.

1.24 Unit. "Unit" shall mean and refer to the elements of a Condominium, that are not owned in common with the other Owners of Condominiums in the Development, such Units and their respective elements and boundaries being more particularly shown and described on the Condominium Plan, deeds conveying Condominiums, and this Declaration. In interpreting deeds and plans, the existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be boundaries rather than the description expressed in any deeds or in the Condominium Plan, regardless of any minor variance between boundaries shown in any deeds or plans and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component elements.

1.25 Regular Assessment. Regular Assessment shall mean and refer to an assessment to defray that portion of the expenses of the Association attributable to maintaining, improving, repairing, insuring and managing the Condominium Project and reasonable reserves for costs and expenses to be incurred, chargeable to the Owner of each respective Condominium; but shall not include the cost of any construction, reconstruction or unanticipated repair or replacement of a described capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto.

1.26 Special Assessment. A "Special Assessment" shall mean and refer to any levy or charge to defray the costs of any action or undertaking on behalf of the Association which is not covered by or included in a regular assessment as defined in paragraph I, Subparagraph (i), of these Covenants, Conditions and Restrictions; except that a monetary penalty imposed by the association as a disciplinary measure for failure of a Member to comply with the governing instruments or as a means of reimbursing the Association for cost incurred by the Association in the repair of damage to Common Areas and facilities for which the Member was allegedly responsible or in bringing the Member and his subdivision interest into compliance with the governing instruments shall not constitute a Special Assessment and may not be enforced as a lien against the Member's subdivision interest under Sections 2924, 2924(b) and 2924(c) of the Civil Code. Special Assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year cannot be assessed during any such fiscal year without first obtaining the vote or written assent of a majority of the voting power of the Association residing in Members other than the subdivider.

1.27 Patios. Each Owner of Units 206, 207, 208, 209 and 210 shall have an exclusive easement to use and enjoy that portion of the common Area adjacent to his or her Unit designated on the Condominium Plan as a Patio Area, and bearing his or her Unit number. Each Owner shall keep his or her patio in a neat clean, attractive, and safe condition at all times. The Association shall maintain, repair, and replace all fences surrounding any Patio Area and shall bill each owner whose unit

is adjacent to such Patio Area for the cost of such maintenance, repair, or replacement, which shall be deemed to be a portion of the regular monthly assessment applicable to such unit in the month assessed.

SECTION 2. PROPERTY RIGHTS, RIGHTS OF ENJOYMENT, AND EASEMENTS

2.1 Ownership of Condominium. Ownership of each Condominium within the Development shall include a Residential Unit, membership in the Association, and any appurtenant exclusive easements and/or other rights with respect to the Exclusive Use Common Area, as applicable, all as described in this Declaration, in each Condominium Deed, or on the Condominium Plan.

2.2 Nonexclusive Easements of Enjoyment, Etc. Every Owner of a Condominium, together with the Association, shall have a nonexclusive easement of use and enjoyment in and to and throughout the Common Area and for ingress, egress and support over and through the Common Area; provided, however, that such nonexclusive easements shall be subordinate to, and shall not interfere with, rights of Owners with respect to the Exclusive Use Common Area, as applicable. Each such easement shall be appurtenant to and pass with the title to every Lot and Unit, subject to the following rights and restrictions:

2.2.1 The right of the Association to limit the number of residential guests, to enforce and to adopt Association rules and regulations regulating the use and enjoyment of the Common Area (the "Association Rules");

2.2.2 Subject to the provision of Section 6, the right of the Association to borrow money to improve, repair or maintain the Common Area; and

2.2.3 The right of the Association to assign, rent, license or otherwise control use of any unassigned parking and storage spaces within the Common Area.

2.3 Entry or Use Rights. Each condominium and its unit or the Common Area, as the case may be, shall be subject to the following rights of entry and use:

2.3.1 The right of Declarant or its designees to enter upon any portion of the Project to construct the improvements to the Property and to make repairs and remedy construction defects, provided that such entry shall not interfere with the use or occupancy of any occupied unit unless authorized by its Owner, which authorization shall not be unreasonably withheld;

2.3.2 The right of the Association, or its agents, to enter any unit to cure any violation or breach of this Declaration or the Bylaws or the Association Rules, provided that at least thirty (30) days prior written notice of such violation or breach (except in cases of emergency) has been given to the Owner, and provided that, within the thirty (30) day period such Owner has not acted to cure such violation or breach. The Association shall be entitled to

levy a special assessment for its costs of effecting such cure against the Owner in accordance with the procedures in Sections 10 and 11 herein; and

2.3.3 The right of the Association, or its agents, to enter any of the units to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair for the benefit of the Common Area or the Owners in common; watering, planting, cutting, removing, and otherwise caring for the landscaping upon the Common Area, cleaning, repairing, replacing and otherwise maintaining or causing to be maintained underground utility lines serving each unit. The rights of entry and cure shall be immediate in case of an emergency originating upon or threatening any unit, whether or not its Owner is present.

2.4. Delegation of Use. Any Owner may delegate his rights of use and enjoyment, including easements, in the Development to the members of his family, his guests and invitees, to his lessees, tenants and contract purchasers, and to such other persons as may be permitted by this Declaration and the Association Rules, subject, however, to said Declaration and Association Rules. Any rights of enjoyment delegated pursuant hereto are subject to suspension to the same extent that rights of Owners are subject thereto in the manner provided in Section 5 of this Declaration.

2.5. Minor Encroachments. If any portion of the Common Area encroaches upon any of the Units, a valid easement for such encroachment and for the maintenance of same, so long as it remains, shall and does exist, and, pursuant to this Declaration, all Units are made subject to such easements. In the event that any structure containing a Unit is partially or totally destroyed and then rebuilt and minor encroachments result, a valid easement for such minor encroachments, and for the maintenance of same so long as the same shall remain, shall and does exist, and pursuant to this Declaration, all Units and the Common Area are made subject to such easements for minor encroachments.

2.6. Easements Granted by Declarant or by the Association. Declarant or the Association shall have the power to grant and convey to any third party easements and rights of way, in, on, over or under the Common Area for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder overhead or underground 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 Owner, in accepting a deed to a Condominium, expressly consents to such easements and rights of way and authorizes and appoints the Association and Declarant (as long as Declarant owns one or more Condominiums) as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements or rights of way. However, no such easement may be granted if it would permanently interfere with the use, occupancy or enjoyment by any Owner of his Unit, an Owner's rights in the Exclusive Use Common Area appurtenant thereto, and/or any recreational facilities located in the Development, unless approved by the vote or written consent of

one hundred percent (100%) of the Owners and their First Mortgagees, as applicable.

2.7. Easements. There are hereby specifically reserved for the benefit of the Unit Owners, in common and for each Owner severally, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights-of-way as particularly identified in this Declaration.

2.7.1. There is reserved for the benefit of each Condominium as dominant tenement, an easement for utility services over, under and through the Development, Common Area, and each other Unit, jointly as the servient tenement.

2.7.2. The Association shall have an easement appurtenant to the Common Area and all other Units through each Unit for the maintenance and repair of the Common Area, excepting therefrom the Exclusive Use Common Area.

2.7.3. Pacific Bell (or any successor thereto or entity providing similar communications services in lieu thereof) (the "Telephone Company") is hereby authorized to enter any Unit whenever installation, maintenance, or removal of any telephone service requires such entry; provided, however, that reasonable notice of such entry shall be given to the Unit Owner, except in an emergency. The Telephone Company shall have the right to install, move, remove or run lines in or on any portion of the Common Area including the interior and exterior of the building as required to maintain telephone service with the Development, in the Telephone Company's reasonable discretion. This authorization may not be amended or terminated without the written consent of the Telephone Company as long as the Development remains a condominium project.

2.7.4. Pacific Gas and Electric Company (or any successor thereto) (the "Power Company") is hereby authorized to enter any Unit whenever installation, maintenance or removal of gas and/or electric service requires such entry; provided, however, that reasonable notice of such entry shall be given to the Unit Owner, except in an emergency. The Power Company shall have the right to install, move, remove, or run gas and/or electrical lines in or on any portion of the Common Area, including the interior and exterior of the building as required to maintain gas and electric service within the Development, in the Power Company's reasonable discretion. This authorization may not be amended or terminated without the written consent of the Power Company as long as the Development remains a Condominium project.

2.7.5. Viacom Cablevision Company (or any successor thereto or entity providing similar communication services in lieu thereof) (the "Cablevision Company") is hereby authorized to enter any Unit whenever installation, maintenance or removal of any cablevision service requires such entry; provided, however, that reasonable notice of such entry shall be given to the Unit Owner, except in an emergency. The Cablevision Company shall have the right to install, move, remove or run cablevision lines and other service facilities in or on any portion of the Common Area, including the interior and exterior of the building, as

reasonably required to install and maintain cablevision service within the Development, in the Cablevision Company's reasonable discretion.

SECTION 3. USE RESTRICTIONS

3.1. Residential Use. All Units shall be used for residential purposes only by a Single Family. Except as otherwise expressly provided in this Declaration, no part of the Development shall ever be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purpose. Provided, however, that an Owner may use a small part of a Unit for the Owner's own personal office use incidental to the primary use of the Unit as a residence. The foregoing notwithstanding, for a period of three (3) years from the date of recordation of this Amended and Restated Declaration, Units owned by Declarant may be used by Declarant or its designees as models and sales offices for the purpose of selling Condominiums in the Development.

3.2. Leasing. Nothing set forth in this Declaration shall prevent an Owner from leasing or renting his Condominium to a Single Family; provided, however, that any lease or rental agreement shall be in writing and any lessee or renter thereunder shall agree to abide by and be subject to all terms and provisions of this Declaration and the Association Rules, and any lease or rental agreement shall specify that failure to abide by such provisions shall be a default under said lease or rental agreement; and provided further that no Owner shall rent or lease his Unit for transient or hotel purposes. Notwithstanding the foregoing, no unit shall be rented or leased for a period of less than six (6) months.

3.3. Interior Maintenance. Each Owner of a Condominium shall be responsible for maintaining his or her Unit, including the equipment and fixtures therein and the interior walls, ceilings, windows and doors thereof, in a clean, sanitary, workable and attractive condition, reserving to each Owner, however, complete discretion as to the choice of furniture, furnishings, and interior decorating; provided, however, that front and rear windows may not be painted or covered by foil, cardboard, or similar materials. Each Owner shall also be responsible for repair, replacement and cleaning of the windows and glass of his or her Unit, both exterior and interior.

3.4. Use and Maintenance of Exclusive Use Common Area. There shall be no use or occupancy of any Deck, Patio, Parking Space, Storage Area, or any other portion of the Exclusive Use Common Area except by the Owner of the Unit to whom the exclusive right thereto has been granted, or such Owner's family, guests, tenants and/or lessees. There shall be no obstruction of any part of the Exclusive Use Common Area. Nothing shall be stored in the Exclusive Use Common Area, except within the Storage Areas, if any, without the prior written consent of the Association. No storage closet, locker or facility of any kind shall be built, placed, or kept in any portion of the Exclusive Use Common Area without the prior written approval of the Association. Unless otherwise provided in this Declaration, each Owner shall be obligated to clean and maintain such Owner's portions of the Exclusive Use Common Area.

3.5. Offensive Conduct; Nuisances. No noxious or unreasonable activities, including but not limited to, repair of automobiles or other motorized vehicles, shall be carried on, upon or within the Development, nor shall anything be done thereon which may be or become an annoyance or nuisance to the residents of the Development, or which shall in any way interfere with the quiet enjoyment of occupants of Condominiums. Unless otherwise permitted by the Association, no Owner shall serve food or beverages, cook, barbecue or engage in similar activities, except within such Owner's Unit, or within the Deck or Decks appurtenant to such Owner's Unit, if any. Unless permitted by the Association, no Owner shall install recreational, play or athletic equipment or engage in such activities within the Common Area.

3.6. Parking Restrictions. Unless otherwise permitted by the Association, no automobile shall be parked or left on any property subject to this Declaration other than on or within an assigned or appurtenant Garage or other parking area, if any. Each Unit Owner shall have the exclusive use, possession and enjoyment of the Garage granted to them in the deeds to their respective Units. No boat, trailer, camper, truck, or commercial vehicle, except as may be permitted by the Association, shall be parked or left on any part of the Development. Garages and parking spaces shall be used for the parking of automobiles only and shall not be converted to living or recreational activities.

3.7. Signs. No signs of any kind shall be displayed to the public view on or from any Condominium or on or from the Common Area without the approval of the Association. Notwithstanding the foregoing, one sign of not more than sixteen (16) inches by sixteen (16) inches and not to exceed two (2) square feet, advertising a Condominium for sale or for rent, may be placed within each Unit or within the Common Area immediately adjacent thereto by the Owners of such Unit, the location and design thereof to be subject to the approval of the Association; provided, however, that if a local ordinance or regulation allows a for sale or rent sign of larger dimensions, such ordinance or regulation shall control as to such dimensions.

3.8. Antennae, External Fixtures, Etc. No television or radio poles, antennae, satellite dish, flagpoles, clotheslines or other external fixtures other than those originally installed by Declarant or as approved pursuant to Section 18 below, and any replacement thereof, shall be constructed, erected or maintained on or within the Common Area, including any structures thereof. No wiring, insulation, air conditioning or other machinery or equipment other than that originally installed by Declarant, or as approved pursuant to Section 18 below, and any replacements thereof, shall be constructed, erected or maintained on or within the Common Area, including any structures thereof. Each Owner shall have the right to maintain television or radio antennae within completely enclosed portions of his or her Unit.

3.9. Awnings, Etc. No awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of or elsewhere within the Development except such as are installed in accordance with the

original construction of the Development, and any replacement thereof, or as are authorized and approved by the Association.

3.10. Animals. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any Condominium or elsewhere within the Development, except that domestic dogs, cats, fish, and birds within bird cages may be kept as household pets within any Unit, provided they are not kept or raised therein for commercial purposes, or in unreasonable quantities. All dogs must be maintained on a leash while in the Common Area. As used in this Declaration, "unreasonable quantities" shall be deemed to limit the total number of all cats and birds to two (2) per Condominium, and all dogs to one (1), unless exceptions are made by the Association. The Association shall have the right to prohibit maintenance of any animal which constitutes a nuisance to any other Owner.

3.11. Trash Disposal. Trash, garbage or other waste shall be kept only in sanitary containers. No Owner of a Condominium shall permit or cause any trash or refuse to be kept on any portion of the Development subject to this Declaration other than in the receptacles customarily used therefor located in places specifically designated for such purpose.

3.12. Outside Drying and Laundering. No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes on Decks or any other areas of the Development.

3.13. Structural Alterations. Except as provided in Section 18 below, no substantial structural alterations to the interior of any Unit shall be made and no plumbing or electrical work within any bearing or common walls, if any, shall be undertaken by any Owner without the prior written consent of the Association.

3.14. Exterior Alterations. Except as provided in Section 18 below, no Owner shall, at his expense or otherwise, make any alterations or modifications to the exterior of the buildings, railings or walls situated within the Development without the prior written consent of the Association and the holder of any Mortgage then of record whose interest may be affected thereby.

3.15. Compliance With Laws, Etc. Nothing shall be done or kept in any Unit or in the Common Area which might increase the rate of, or cause the cancellation of, insurance on the Development, or any portion thereof, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Unit which is in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body. No Owner shall allow furniture, furnishings or other personal belongings of such Owner to remain within any portion of the Common Area except within portions thereof subject to exclusive easements over Exclusive Use Common Area appurtenant to such Owner's Unit, if any, and except as may otherwise be permitted by the Association.

3.16. Indemnification. Each Owner shall be liable to the remaining Owners for any damage to the Common Area which may be sustained by reason of the negligence of said Owner, members of the Owner's family, the Owner's contract purchasers, lessees,

renters, guests or invitees, to the extent that any such damage is not covered by insurance. Each Owner does further, by acceptance of his or her deed, agree for himself or herself and for the members of his or her family, his or her contract purchasers, lessees, renters, guests or invitees, to indemnify each and every other Owner, and to hold them harmless from, and to defend them against, any claim of any person or persons for personal injury or property damage occurring within the Unit of the particular Owner or within any exclusive easements over the Exclusive Use Common Area appurtenant thereto, if any, unless said injury or damage occurred by reason of the negligence of any other Owner or person temporarily visiting in said Unit or appurtenant easement.

3.17. Future Construction. Nothing in this Section 3 or elsewhere in this Declaration shall limit the right of Declarant, its successors and assigns, to complete construction of improvements to the Common Area and to Units owned by Declarant or to alter the foregoing or to construct such additional improvements as Declarant deems advisable prior to completion and sale of the entire Development. The rights of Declarant hereunder and elsewhere in this Declaration may be assigned by Declarant to any successor to all or any part of Declarant's interest in the Development, by an express assignment incorporated in a recorded document transferring such interest to such successor or to a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed in lieu of foreclosure.

3.18. Owner's Obligation for Taxes. To the extent allowed by local law, all Units, including their pro rata interest in the Common Area by deed or as a member of the Association, and the membership of an Owner in the Association, shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to First Mortgages under local law shall relate only to the individual Units and not to the Development as a whole. Each Owner shall be obligated to pay any taxes or assessments assessed by the County Assessor against his or her Condominium and against his or her personal property.

3.19. Enforcement. The failure of any Owner to comply with the provisions of this Section 3, or with any other provision of this Declaration, shall give rise to a cause of action in the Association and in any aggrieved Owner for the recovery of damages, or for injunctive relief, or both.

SECTION 4. THE ASSOCIATION

4.1. Formation. The Association, as heretofore formed, is a nonprofit mutual benefit corporation formed under the laws of the State of California, and upon the close of the first Condominium sale to an Owner, shall be and become charged with the duties and vested with the powers set forth in the Articles, Bylaws and this Declaration, including, but not limited to, control and maintenance of the Common Area and any Common Area facilities.

4.2 Action Through Designated Officers. Except as to actions requiring the vote or approval of Owners as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association, including the exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may

elect or appoint, or such persons or entities with delegated authority under the provisions of Section 5.1.3 herein.

SECTION 5. POWERS AND DUTIES OF THE ASSOCIATION

5.1. Powers. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Law of California, subject only to such limitations on the exercise of its powers as set forth in the Articles, Bylaws, and this Amended and Restated Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association, including without limitation, the following:

5.1.1. Assessments. The Association shall have the power to establish, fix and levy assessments against the Owners of Condominiums and to enforce payment of such assessments all in accordance with the provisions of Sections 10 and 11 of this Declaration.

5.1.2. Right to Impose Sanctions. In addition to any other enforcement rights described in this Declaration and the Bylaws, or authorized by law, and subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by this Declaration, the Bylaws or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws the Association Rules, or other documents or instruments adopted by the Owners and/or the Board from time to time for the governance of the Association:

5.1.2.1. Suspend voting rights in the Association;

5.1.2.2. Suspend use privileges for the Common Area;

5.1.2.3. Commence a legal action for damages, injunctive relief, or both; and

5.1.2.4. Impose monetary penalties, including late charges and interest, pursuant to Sections 10 and 11 herein.

The determination of whether to impose any of the foregoing sanctions shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees. The Association may take more than one of the foregoing enforcement actions against any one violation or threatened violation, provided that a suspension of use privileges shall not exceed thirty (30) days (unless the suspension is for delinquent assessments). The Association, in its sole discretion, may resolve or settle any dispute,

including any legal action, under such terms and conditions as it considers appropriate.

The Association may not cause a forfeiture or abridgement of an Owner's right to the full use and enjoyment of his or her Condominium except by judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under power of sale for failure of the Owner to pay assessments duly levied by the Association.

The enforcement of monetary penalties is subject to the restrictions described in Section 10.4.4 herein.

If an Owner fails to cure a default within sixty (60) days after written notice to that Owner, the Association shall give the notice required in Section 17.10 to the Mortgagee of record.

5.1.3. Delegation of Powers. The Association shall have the authority to delegate its powers, duties and responsibilities to committees, officers or employees, including a professional managing agent (sometimes hereinafter referred to as the "Manager"). Any agreement for professional management of the Development shall be terminable with or without cause and without payment of a termination fee on thirty (30) days' written notice and the term of any such agreement shall not exceed one (1) year although such agreement may be renewed from year to year by the Association. The foregoing notwithstanding, the Association may not delegate to the Manager the following powers: (i) to levy fines, hold hearings, or impose discipline; or (ii) to make capital expenditures.

5.1.4. Association Rules. The Association shall have the power to adopt, amend, and repeal such rules and regulations as it deems reasonable (previously defined in this Declaration as the "Association Rules"). The Association Rules shall govern the use of the Common Area by an Owner, the family members of an Owner, or by any guest, invitee, tenant, lessee, or contract purchaser, or their respective family members, guests or invitees; provided, however, that the Association Rules shall not be inconsistent with or materially alter any provisions of this Declaration. A copy of the Association Rules, as the same may from time to time be adopted, amended or repealed, shall be delivered to each of the Owners and all occupants of the Development. In the event of any conflict between any such Association Rules and any provisions of this Declaration, the provisions of this Declaration shall control to the extent of such inconsistency.

5.2. Duties of the Association. In addition to the duties described in the Articles or Bylaws, the Association shall have the following duties:

5.2.1. The Association shall manage and maintain in good condition and repair the Common Area, including the exclusive Use Common Area, the facilities, improvements, landscaping, any private driveways and private streets, and other personal or real property acquired by or subject to the control of the Association (excluding the interior of Exclusive Use Storage Areas appurtenant to specific units,

if any). The individual unit owner shall be responsible for routine cleaning and minor nonstructural maintenance of Exclusive Use Common Areas appurtenant to each Owner's respective unit.

5.2.2. The Association is responsible for the repair and maintenance of the common area occasioned by the presence of wood-destroying pests or organisms. The Association shall be entitled to recover the costs thereof as a special assessment, if necessary. The costs of temporary relocation, if required, during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the owner of the separate interest affected.

5.2.2.1. The Association may cause the temporary, summary removal of any occupant of a unit for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms.

5.2.2.2. The Association shall give notice of the need to temporarily vacate a unit to the occupants and to the owners, not less than 15 days nor more than 30 days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment, and that the occupants will be responsible for their own accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either:

- (a) Personal delivery of a copy of the notice to the occupants, and sending a copy of the notice to the owners, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association; or
- (b) By sending a copy of the notice to the occupants at the unit address and a copy of that notice to the owners, if different than the occupants, by first-class mail, postage prepaid, at the most current address shown on the books of the Association.

5.2.2.3 For purposes of this section, "occupant" means an owner, resident, guest, invitee, tenant, lessee, sublessee, or other person in possession of the separate interest.

5.2.3 Notwithstanding any of the provisions of this Declaration to the contrary, the owner of a unit is entitled to reasonable access to the common areas for the purpose of maintaining the internal and external telephone wiring made part of the exclusive use common areas of a separate unit pursuant to Section 1.15 herein. The access shall be subject to the consent of the Association, whose approval shall not be unreasonably withheld, and which may include the Association's approval of telephone wiring upon the

exterior of the common areas, and other conditions as the Association determines reasonable.

5.2.4. Taxes and Assessments. Pay all real and personal property taxes and assessments and all other taxes levied against the Common Area or personal property owned by the Association, or against the Association, if any. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they must be paid, or a bond posted insuring payment, prior to the sale or disposition of any property to satisfy the payment of any such contested taxes and assessments.

5.2.5. Water and Other Utilities. Acquire, provide and/or pay for water, gas and electricity for Condominiums, to the extent that such utilities are not separately metered, and acquire, provide and/or pay for water, sewer, garbage disposal, refuse and rubbish collection, electricity, telephone, and gas and other necessary utility services for the Common Area. The term of any contract to supply any of the listed services and utilities may not exceed one (1) year or, if the supplier is a regulated public utility, the shortest term for which the supplier will contract at the applicable regulated rate.

5.2.6. Insurance. Obtain from reputable insurance companies, and maintain in effect, the insurance described in Section 12 below.

5.2.7. Contracting for Goods and Services. Enter into such contracts for services and materials as may be necessary to perform its duties, including contracts with Declarant, subject to the provisions of Sections 5.1.3 and 6.1.4 herein.

5.2.8. Enforcement of Restrictions and Rules. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration, the Articles, Bylaws and/or the Association Rules.

5.3. Personal Liability. No Owner or any officer of the Association, or the Manager, if any, or Declarant, or any agent of Declarant, shall be personally liable to any Owner, or to any other person or entity whatsoever, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity, provided that such person or entity has, upon the basis of such information as may be possessed by him or her or it, acted in good faith without willful or intentional misconduct.

5.4 Preparation and Distribution of Financial Statements, Reports, and Copies of Governing Instruments. The Association shall prepare and distribute the following financial statements, reports, and copies of the governing instruments as indicated:

5.4.1. Balance Sheet; Operating Statement. A balance sheet rendered as of an accounting date that is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a Condominium (the "accounting date"), and an operating statement for the

period from the date of the first closing to such accounting date. The operating statement shall include a schedule of assessments received and/or receivable identified by the Condominium number and name of the Owner assessed. Copies of the balance sheet and operating statement shall be distributed to each Owner and to any Mortgagee that has requested a copy within sixty (60) days after such accounting date.

5.4.2. Pro Forma Budget. A pro forma operating budget for each fiscal year consisting of:

- (i) estimated revenue and expenses on an accrual basis;
- (ii) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5 of the Civil Code, which shall be printed in bold type and include all of the following:
 - A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
 - B) As of the end of the fiscal year for which the study is prepared:
 - (1) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain major components.
 - (2) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.
 - C) The percentage that the amount determined for the purposes of clause (2) of subparagraph (B) is of the amount determined for purposes of clause (1) of subparagraph (B).
- (iii) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.
- (iv) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the Association is obligated to maintain:
- (v) The budget shall be prepared consistently with the prior fiscal year's pro forma operating budget, and shall include adequate reserves for contingencies and for maintenance, repairs, and

replacement of the Common Area improvements and other improvements or personal property owned or maintained by the Association, which reserves shall be sufficient to satisfy the requirements of any institutional Mortgagee.

- (vi) Prior to any increase in assessments, a copy of the pro forma operating budget shall be distributed to each Owner and to any Mortgagee that has requested a copy not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the fiscal year for which the budget applies.
- (vii) Instead of distributing the pro forma operating budget, the Board may elect to distribute a summary of the budget to all of its members with a written notice that the budget is available at the business office of the Association or at another suitable location within the boundaries of the development and that copies will be provided on request at the expense of the Association. The notice must be in at least 10-point bold type and must appear on the front page of the summary of the budget. Any member who requests a copy of the budget shall be provided a copy by the Association by first class United States mail at the Association's expense within five days of the date the association receives the request.
- (viii) Any Owner or Mortgagee may submit written comments on the pro forma operating budget to the Association.

5.4.3. Annual Report. An annual report consisting of a balance sheet rendered as of the last day of the fiscal year, an operating statement for the fiscal year, and a statement of changes in financial position for the fiscal year. A copy of the annual report shall be distributed to each Owner, and to any Mortgagee that has requested a copy, within one hundred twenty (120) days after the close of the fiscal year. In any fiscal year in which the gross income of the Association exceeds \$75,000, the Board shall distribute with the Annual Report a copy of the review of the annual report prepared by a licensee of the California State Board of Accountancy in accordance with generally accepted accounting principles. The Association, at its expense, shall mail a copy of the Report to each Member requesting the same. If the annual report is not reviewed by an independent accountant, the report shall be accompanied by the certificate of an authorized officer of the Association that the report was prepared from the books and records of the Association without independent audit or review.

5.4.4. Statement of Enforcement Policies. A statement of the Association's policies and practices in enforcing its remedies against Owners for delinquent regular or special assessments, including the recording and foreclosing of liens against a delinquent Owner's Condominium. A copy of this statement shall be distributed to each Owner, and to

any Mortgagee that has requested a copy, within sixty (60) days prior to the beginning of each fiscal year.

5.4.5. Copies of Governing Instruments, Etc. Copies of this Declaration, the Articles, Bylaws, Association Rules, and any other documents or instruments which may be adopted by the Owners from time to time in connection with the governance of the Association, and the statement regarding unpaid assessments described in Section 10.7 below, shall be provided to any Owner within ten (10) days of the mailing or delivery of a written request therefor. The Association may impose a fee to provide these materials, which fee may not exceed the Association's reasonable costs in preparing and reproducing the materials.

5.5. Operating and Reserve Accounts. The Board of Directors shall do all of the following on at least a quarterly basis.

5.5.1. Review a current reconciliation of the Association's operating accounts;

5.5.2. Review a current reconciliation of the Association's reserve accounts;

5.5.3. Review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts;

5.5.4. Review an income and expense statement for the Association's operating and reserve accounts.

5.6. Signatures Required. Withdrawal of Funds. The signatures of at least two persons, who shall be members of the Association's Board of Directors or, one officer who is not a member of the Board of Directors and a member of the Board of Directors, shall be required for the withdrawal of moneys from the Association's reserve accounts. As used in this section, "reserve accounts" means moneys that the Association's Board of Directors has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

SECTION 6. LIMITATIONS ON AUTHORITY OF BOARD OF ASSOCIATION

6.1 Limitations. Except with the vote or written assent of the Owners holding 51 percent of the voting rights of each class of Owners, if two classes exist, or, if only one class exists, 51 percent of the voting rights of all owners and 51 percent of the voting rights of all owners other than Declarant, the board shall not take any of the following actions:

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

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

6.1.3 Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse a member for expenses incurred in carrying on the business of the Association; or

6.1.4. Enter into a contract with a third person to furnish goods or services for the Common Area or the Association for a term longer than one year, with the following exceptions:

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

6.1.4.2 A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission, provided the term does not exceed the shortest term for which the supplier will contract at the regulated rate;

6.1.4.3 Prepaid casualty or liability insurance policies not to exceed three years' duration provided the policy permits for short rate cancellation by the insured; and

6.1.4.4 Lease agreements for laundry room fixtures and equipment not to exceed five years duration provided the Declarant does not have direct or indirect ownership interest of ten percent or more in any lessor under such agreements.

6.1.4.5 Agreements for cable television services and equipment or satellite dish television services and equipment not exceeding five years in duration provided the supplier is not an entity in which the declarant has a direct or indirect ownership interest of ten percent or more; and

6.1.4.6 Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services not exceeding five years' duration, provided that the supplier or suppliers are not entities in which the subdivider has a direct or indirect ownership interest of ten percent or more.

SECTION 7. INSPECTION OF ASSOCIATION BOOKS AND RECORDS.

7.1 Inspection by Owner. Any Owner, or that Owner's duly appointed representative, shall have access to the Association's membership register, books of account, and minutes from any meeting of the Owners, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his or her interest as an Owner. Access shall be at any reasonable time at the office of the Association or such other place within the Project as the Board prescribes. The Board shall establish rules regarding the notice the Owner must give to the custodian of the records to obtain access, the hours and days of the week when the records may be inspected and

copied, and the charges imposed by the Association for copying records requested by the Owner.

7.2 Inspection by Officer. Any member of the Board may at any reasonable time inspect, copy, or make extracts of any books, records, and documents of the Association and inspect the physical properties owned or controlled by the Association.

SECTION 8. MEMBERSHIP QUALIFICATIONS AND RIGHTS

8.1. Membership.

8.1.1. Qualifications. Each Owner, including Declarant, shall be a Member of the Association. Each owner is entitled to one vote for each subdivision interest owned. Ownership of a Condominium or interest therein shall be the sole qualification for an entitlement to membership in the Association, provided that no Owner shall hold more than one membership even if such Owner owns an interest in more than one condominium. Each Owner shall remain a Member of the Association until such time as his or her ownership or ownership interest in all Condominiums in the Development ceases for any reason, at which time his or her membership in the Association shall automatically cease. A Member shall not include (i) persons or entities who hold an interest in a Condominium merely as security for performance of an obligation, (ii) contract purchasers not qualifying as Owners under Section 1.18 above, or (iii) trustees under any instrument securing performance of an obligation.

8.1.2. Members' Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, Bylaws and Association Rules, as the same may from time to time be amended.

8.1.3. Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more Condominiums shall be appurtenant to each such Condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon a transfer of title to each such Condominium or interest therein and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium or interest therein shall operate automatically to transfer the membership rights in the Association appurtenant thereto to the new Owner thereof.

SECTION 9. VOTING

9.1 Majority Approval Required. Except as otherwise provided in this Declaration, the Articles, or the Bylaws, and subject to the provisions of Section 9.2 herein, all matters requiring the approval of Owners shall be deemed approved if Owners holding a majority of the total voting power of all Owners assent to them by written consent or if approved at any duly called regular or special meeting at which a quorum is present, either in person or by proxy, by Owners holding a majority of the total voting power of all Owners present, either in person or by proxy.

9.1.1 Form of Ballot or Proxy. Any form of ballot or written proxy distributed to the members shall specify a choice between approval and disapproval of each matter or group of matters to be acted on, and shall further provide that when the member specifies a choice of approval or disapproval, the vote shall be cast in accordance with that member's choice. All proxy forms distributed to members must identify the person who is authorized to exercise the proxy and the length of time it will be valid.

9.2 Two-Class System: Weighted Votes. The Association shall have two classes of voting membership as follows:

9.2.1 Class A: Class A owners are all Owners, with the exception of Declarant. Each Class A Owner shall be entitled to one vote for each condominium in which he or she owns an interest. If more than one Owner owns an interest in the Condominium, only one vote may be cast with respect to that Condominium.

9.2.2 Class B: The Class B Owner shall be the Declarant who shall be entitled to not more than three votes for each Condominium owned in any phase of the Project. Class B membership shall cease and be irreversibly converted to Class A membership on the occurrence of one of the following events, whichever occurs earliest:

9.2.2.1 When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

9.2.2.2 On a prescribed date not later than the second anniversary of the first conveyance of a subdivision interest in the development.

9.2.3 Votes of Each Class Required. As long as two classes of voting memberships exist, any action by the Association that requires approval by the Owners shall require the approval by the designated percentage of voting power in each class.

9.2.4 Voting Rights Vested. Voting rights shall vest either at the time assessments are levied against the Owner's Condominium or as provided in a subsidization plan approved by the California Department of Real Estate.

9.2.5 Voting For Board Members. Voting for the members of the board shall be by secret written ballot, and the Members shall be entitled cumulative voting rights as provided in Section 9.4 herein. Furthermore, so long as there are two outstanding classes of membership, or so long as the Declarant holds a majority of voting power of the Association, not less than 20% of the incumbent Board Members shall be elected solely by the votes of Owners other than Declarant.

9.3 Joint Ownership Votes. The vote that is attributed to each Condominium may not be cast on a fractional basis. If the Condominium has more than one Owner and the Owners are unable to agree as to how the vote should be cast, the vote shall be forfeited on the matter in question. If one Owner casts the vote attributed to a Condominium, the vote shall conclusively bind all

the Owners of that Condominium in any matter in which only one vote could be cast for that Condominium. The votes cast by other joint Owners shall not be counted and shall be considered void.

9.4 Cumulative Voting. The election of members to the Board may be by cumulative voting as described herein, provided an Owner has placed a candidate's name in nomination prior to the voting and given notice at the meeting prior to the voting of the Owner's intention to cumulate votes. If any Owner has given such notice, then all Owners shall have the right to cumulate their votes for candidates in nomination. Under cumulative voting, each Owner, either in person or by proxy, may give a single candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes the Owner is entitled to exercise under this Declaration, or the Owner may distributed these cumulated votes among any two or more candidates as the Owner desires. The candidates receiving the highest number of votes up to the number of Board members to be elected shall be elected. Unless the entire Board is removed by a vote of the Owners, an individual director may not be removed prior to the expiration of his or her term if the votes against removal would have been sufficient to elect that director if cast cumulatively at an election at which the same total number of votes were cast and all directors authorized at the time of the most recent election of that director were being elected. These cumulative voting provisions do not apply to the election of special directors by Owners other than Declarant under the provisions set forth in the Bylaws.

9.5. Proxies. At all meetings of Members, each Member may be present in person or by proxy. Proxies, in order to be accepted as valid at any meeting, shall have been granted in writing in the form specified in Section 9.1.1, and shall be valid until the time of expiration set forth therein, insofar as the same does not exceed a maximum time provided by law. All proxies automatically cease when the ownership or interests (that entitled a Member to membership in the Association) cease, or upon the death or judicial declaration of incapacity of the Owner giving such proxy.

SECTION 10. ASSESSMENTS

10.1. Agreement to Pay. Declarant, for each Condominium owned by it in the Development, which is expressly made subject to assessment as set forth in this Declaration, hereby covenants and agrees, and each purchaser of a Condominium by his or her acceptance of a deed therefor, whether or not it is so expressed in such deed, is deemed to covenant and agree, for each Condominium owned, to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as hereinafter provided.

10.2. Personal Obligations. Each assessment or installment thereof, together with any late charge, interest thereon, collection costs and reasonable attorneys fees, shall also be the personal obligation of the person or entity who was an Owner at the time such assessment, or installment thereof, became due and payable. In the event more than one person or entity was the Owner of a Condominium, the personal obligation to pay such assessment, or installment thereof, respecting such Condominium shall be both joint and several. The personal obligation for delinquent assessments, or delinquent installments thereof, and

such other sums, shall not pass to an Owner's successors in interest unless expressly assumed by them. No Owner of a Condominium may exempt himself or herself from payment of assessments, or installments thereof, by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment of, or by abandonment of, the Condominium.

10.3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Members of the Association, to improve, replace, repair, operate and maintain the Common Area, to perform the duties of the Association as set forth in this Declaration, and to further any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Development.

10.4. Assessments.

10.4.1 Assessments Required. The Association shall levy regular and special assessments in an amount sufficient to perform the duties and obligations of the Association as specified in this Declaration and in Civil Code Section 1366, et. seq.

10.4.2 Regular Assessments. Not more than 90 days nor less than 60 days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of establishing the regular annual assessment for the forthcoming fiscal year. At such meeting the board shall review the preliminary pro forma operating budget prepared in accordance with the provisions of Section 5.4.2, any written comments received from members and mortgagees, and such other related information that has been made available to the Board. After making any adjustments that the Board considers appropriate, the Board, subject to the restrictions described in this provision and without the requirement for a vote of the Owners, shall establish the regular assessment for the forthcoming fiscal year.

10.4.3. Special Assessments. Subject to the restrictions described in Section 10.4.5, if the Association determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is, or will become, inadequate to meet expenses for any reason (including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the Common Area), the Association shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Owners, it shall become a special assessment, however, in no event shall the amount of such special assessment exceed the amount necessary to carry out the purpose for which it is levied. The Association may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium. Unless exempt from federal or state income taxation, including without limitation an exemption under Internal Revenue Code §528 and Revenue and Taxation Code

§23701t, the Board shall take such steps as may be reasonably necessary to prevent the special assessment from being included in the Association's income for federal and state income tax purposes, including, if necessary, depositing the funds in a segregated account, not commingling the funds with any other funds of the Association, and using the funds solely for the purpose for which they were levied.

10.4.4 Restriction on Monetary Penalties. After compliance with the due process requirements in the Bylaws, the Board may impose a monetary penalty and levy a special assessment against a particular Condominium to reimburse the Association for costs incurred in repairing damage to the Common Area, or any improvements or personal property located thereon, for which the Owner was allegedly responsible, or in bringing the Owner or the Owner's Condominium into compliance with this Declaration, the Articles, or Bylaws, provided, however, this special assessment may not become a lien against the Owner's Condominium that is enforceable by a power of sale under Civil Code §§ 2924, 2924b, and 2924c. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

10.4.5. Limitations on Increases in Assessments.

The Board may not (1) impose a regular assessment for any fiscal year more than 20 percent above the regular assessment for the Association's preceding fiscal year, or (2) impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the Association for that fiscal year without the approval of a majority of the votes at a meeting of the members of the Association at which a quorum is present. For purposes of this section, a quorum means more than 50 percent of the Owners of the Association, and the meeting must be conducted in accordance with Corp C §§ 7510-7527, 7613 and Civil Code §1366(b) as amended by Stats 1987, ch 596. The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. An emergency situation is any of the following:

10.4.5.1 An extraordinary expense required by an order of court.

10.4.5.2 An extraordinary expense necessary to repair or maintain the project or any part of it that the Association is responsible to maintain when a threat to personal safety or the property is discovered; or

10.4.5.3 An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget required under California CC §1365, provided that before the imposition or collection of any

assessment under this subparagraph the board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the members with the notice of assessment.

10.4.6 Allocation of Assessments. The regular and special assessments levied by the Board shall be allocated among the Units in the manner set forth in Exhibit C attached hereto, provided, however, that a special assessment levied to meet the costs for rebuilding or major repair of the structural Common Area of the project shall be allocated among each Unit according to the percentage interest in the Common Area as set forth in the table attached hereto in Exhibit D. Special assessments levied against a particular Condominium to reimburse the Association for costs incurred in bringing the Owner of the Condominium into compliance with this Declaration, the Articles, Bylaws, or Association Rules shall not be subject to these allocation provisions, but such special assessment instead shall be levied against the Owner of the particular Condominium that is the subject of the special assessment.

10.5. Assessment Period. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year. However, the initial regular assessment period shall commence on the first day of the calendar month following the date on which the sale of the first Condominium to a purchaser is recorded and shall terminate on December 31 of the year in which the initial sale is recorded. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the Board adopts some other basis for collection. The Board shall not change the pro-rata interest or obligation of any Condominium for purposes of levying assessments unless all Owners and all Mortgagees have given their prior written consent.

10.6. Notice and Assessment Installment Due Dates. A single ten (10) day prior written notice of each annual regular assessment and each special assessment shall be given to the Owner of every Condominium subject to assessment in which notice the due dates for the payments of installments shall be specified. As provided herein, the due dates for the payment of installments shall be the first day of each month unless some other due date is established by the Board. Any assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within fifteen (15) days after its due date. There shall be a late charge on each delinquent assessment payment equal to ten percent (10%) of the delinquent payment or ten dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent payment, but it shall not eliminate or supersede any charges imposed on prior delinquent payments. Interest shall accrue on any delinquent payment at the rate of twelve percent (12%) per annum commencing thirty (30) days after the assessment becomes due.

10.7. Estoppel Certificate. Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board

shall provide the requesting Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or the Owner's Condominium is in violation of any of the provisions of this Declaration, the Articles, Bylaws, the Association Rules, and/or any other documents or instruments which may be adopted by the Owners from time to time in connection with the governance of the Association; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (iii) the amount of any assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest, or costs of collection that as of the date of the statement are or may be made a lien against the Owner's Condominium as provided by this Declaration, the Articles, Bylaws, and Association Rules.

SECTION 11. COLLECTION OF ASSESSMENTS; LIENS

11.1. Right to Enforce. The Association has the right to collect and enforce assessments. In addition to the enforcement powers described elsewhere in this Declaration, and subject to the restriction on the enforcement of monetary penalties described in Section 10.4.4 herein, the Association may enforce delinquent assessments, including delinquent installments, by suing the Owner directly on the debt established by the assessment, or by establishing a lien against the Owner's Condominium as provided in Section 11.2 below and foreclosing the lien through either judicial proceedings or nonjudicial proceedings under a power of sale as provided in Section 11.3 below. The Association may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Condominium for the delinquent assessment. In any action instituted by the Association to collect delinquent assessments, accompanying late charges, or interest, the prevailing party shall be entitled to recover costs and reasonable attorneys fees.

11.2. Creation of Lien. A delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys fees) and penalties as may be authorized under this Declaration, shall become a lien on the Condominium against which the assessment was levied, upon the recordation of a notice of delinquent assessment in the office of the County Recorder. The notice shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Condominium, the name of the Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association, or by any authorized employee or agent of the Association authorized to do so by the Board. Unless the Association considers the immediate recording of the notice to be in its best interests, the notice shall not be recorded until fifteen (15) calendar days after the Association has delivered a written notice of default and demand for payment. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

11.3. Foreclosure Under Assessment Lien. The Board may enforce any assessment lien established under Section 11.2 above by filing an action for judicial foreclosure, or, if the notice of delinquent assessment contained the name and address of the trustee authorized by the Association to enforce the lien by nonjudicial foreclosure, by recording a notice of default in the form described in Civil Code Section 2924c(b)(1) to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h that apply to nonjudicial foreclosures of mortgages or deeds of trust. The sale shall be conducted by the trustee named in the notice of delinquent assessment or by a trustee substituted in accordance with the provisions of Civil Code Section 2934a. The Association may bid on the Condominium at the sale, and may hold, lease, mortgage, and convey the acquired Condominium. If the default is cured before the sale, or before completion of a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien, and upon receipt of a written request by the Owner, a notice of rescission of the declaration of default and demand for sale.

11.4. Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive the benefit of any homestead or exemption laws of the State of California in effect at the time any assessment, or installment thereof, becomes delinquent or any lien is imposed pursuant to the terms hereof.

SECTION 12. INSURANCE

12.1. Liability Insurance. The Association shall obtain and maintain in force comprehensive public liability insurance insuring the Association, the Manager (if any), the Declarant, and the Owners of the Condominiums, and their respective family members, guests and invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area and including, if obtainable, a cross liability endorsement insuring each insured against liability to each other insured. The limits of such insurance shall be not less than \$2,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location, and use. The Board shall review the liability policy limits on an annual basis with regard to the Association's liability exposures to ensure that adequate liability coverage is maintained.

12.2. Fire and Extended Coverage Insurance. The Association shall obtain and maintain in force a master or blanket policy of fire insurance for the full insurable value of all of the improvements within the Development. Such policy and any endorsements thereon shall be in the form and content, and for such term and in such company as may be satisfactory to a majority of Mortgagees; and, if more than one Mortgagee has a loan of record against the Development, or any part thereof, such policy and endorsements shall meet the maximum standards of the various Mortgagees represented in the Development. Such policy shall contain extended coverage and replacement cost

endorsements, if available, and may also contain vandalism and malicious mischief coverage, special form endorsement, stipulated amount clause, and a determinable cash adjustment clause, or a similar clause to permit cash settlement covering full value of the improvements in the event of partial destruction and decision not to rebuild. Such policy shall be in such amounts as shall be determined from time to time by the Association, shall name as insured the Association, the Owners, and Declarant (so long as Declarant is the owner of any of the Condominiums), and all Mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described in Section 12.4 below.

12.3. Other Insurance. The Association may, and if required by any Mortgagee shall, purchase and maintain in force demolition insurance in adequate amounts to cover demolition in the event of total or partial destruction and a decision not to rebuild. The Association shall also purchase and maintain Worker's Compensation insurance to the extent that the same is required by law for all employees of the Development, if any. The Association shall purchase such insurance on personal property owned by the Association, and such other insurance, as it deems necessary and appropriate.

12.4. Trustee. All insurance proceeds payable under Sections 12.2 and 12.3 above, and subject to the rights of Mortgagees under Section 17.7 below, shall be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank, or branch thereof, located in the City which has agreed in writing to accept such trust. In the event repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for herein.

12.5. Owners' Insurance. Except as provided in this Section 12.5, no Owner may separately insure his Condominium or any part thereof against loss by fire or other casualty covered by any insurance carrier pursuant to Section 12.2 above. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to the provisions of this Section 12 resulting from the existence of such other insurance, will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any such diminution. The foregoing notwithstanding, an Owner may insure his personal property against loss. In addition, any improvements made by an Owner to the real property within his Condominium may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as tenant's improvements. All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners, the Association, and Declarant.

12.6. Adjustment of Losses. The Association is hereby appointed attorney-in-fact by each Owner to negotiate and agree upon the value and extent of any loss under the policy or policies carried pursuant to this Section 12. The Association is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

12.7. Distribution to Mortgagees. With respect to insurance coverage under Section 12.2 above, in the event that rebuilding is not authorized pursuant to Section 13 hereof, any Mortgagee may apply insurance proceeds payable thereunder to such Mortgagee's mortgagor against the obligation secured by the Mortgage of such Mortgagee.

12.8. Director and Officer Liability Insurance. To the extent insurance is available, the Association shall purchase and maintain insurance in an amount up to Five Hundred Thousand Dollars (\$500,000) on behalf of any Director, Officer, or Member of a Committee of the Association (collectively the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, regardless of whether the Association would have the power to indemnify the agent against such liability under applicable law.

12.9. Owner's Liability Insurance. An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Condominium that he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any institutional first Mortgagee.

SECTION 13. DESTRUCTION OF IMPROVEMENTS

13.1. Destruction: Proceeds 85% of Reconstruction Costs. In the event of a total or partial destruction of the improvements in the Development, and if the available proceeds of the insurance carried pursuant to Section 12 are sufficient to cover not less than eighty-five (85%) of the costs of repair and reconstruction thereof, the same shall be promptly rebuilt unless, within ninety (90) days from the date of such destruction, Owners then holding seventy-five percent (75%) of the total voting power of the Association present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two (2) reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction is to take place, the Association shall be required to execute, acknowledge and record in the Office of the County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

13.2. Destruction: Proceeds Less Than 85% of Reconstruction Costs. If the proceeds of such insurance are less than eighty-five percent (85%) of the costs of repair and reconstruction, such repair and reconstruction may nevertheless take place if, within ninety (90) days from the date of said destruction, Members then holding at least a majority of the voting power of the Association present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction shall take place. If repair and reconstruction are to take place, the Association shall be required to execute, acknowledge and record in the Office of the County Recorder, not later than one hundred twenty (120) days

from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

13.3. Procedures Respecting Rebuilding. If the Members determine to rebuild pursuant to Sections 13.1 or 13.2 above, the Owner or Owners of each Condominium shall be obligated to contribute such funds as shall be necessary to pay their proportionate share (based on their percentage ownership of the Common Area as set forth on the Condominium Plan) of the cost of reconstruction over and above the available insurance proceeds. In the event of the failure or refusal of any Owner to pay such proportionate share, the Board may levy a special assessment against the Condominium of such Owner which may be enforced under the lien provisions contained in Section 11 hereof or in any other manner provided in this Declaration.

13.4. Rebuilding Contract. If the Owners determine to rebuild, the Association or its authorized representative shall obtain bids from at least two reputable contractors and shall award the repair and reconstruction work to the lowest responsible bidder. The Association shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and the insurance proceeds held by the trustee shall be disbursed to the contractor according to the terms of such contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.

13.5. Rebuilding Not Authorized. If the Owners determine not to rebuild, then, subject to the rights of Mortgagees as set forth in Section 17 hereof, any insurance proceeds then available for such rebuilding shall be distributed to each Owner of each Condominium proportionately in accordance with the relative fair market value of each Condominium. The Association shall select an independent appraiser who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraisers organization, and who shall determine such relative values in accordance with the standards of such organizations as of a date immediately prior to such destruction. The costs of such appraisal shall be paid from the insurance proceeds. The Association shall have the duty, within one hundred twenty (120) days of such destruction, to execute, acknowledge and record in the Office of the County Recorder a certificate declaring the intention of the Owners not to rebuild.

13.6 Minor Repair and Reconstruction. The Association shall have the duty to repair and reconstruct improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all instances of partial destruction where the estimated cost of repair and reconstruction does not exceed Fifty Thousand Dollars (\$50,000) in the case of Common Area improvements. The Association can levy a special assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in Section 13.3 (but without the consent or approval of Owners, despite any contrary provisions in this Declaration).

13.7 Revival of Right to Partition. On recordation of a certificate as described in Section 13.5, the right of any owner to partition through legal action as described in Section 15

shall revive immediately. In addition, each owner, by accepting a deed to a condominium, grants to the Association an irrevocable power of attorney to sell the entire Project for the benefit of the Owners, to terminate the Declaration, and to dissolve the Association. The net proceeds following sale of the Project and dissolution of the Association shall be distributed to the Owners in the same manner that insurance proceeds are distributed under the above Section 13.5.

13.8 Arbitration. In the event of a dispute among the Owners or Mortgagees with respect to the provisions of this Section 13, any Owner may cause the same to be referred to arbitration in accordance with the then prevailing rules of the American Arbitration Association. In the event of arbitration, notice thereof shall be given to all Owners and their respective Mortgagees as promptly thereafter as possible, giving all Owners and Mortgagees an opportunity to appear in such arbitration proceedings. The decision of such arbitrator in the matter shall be final and conclusive upon all parties. The arbitrator may include in his decision an award for costs and/or attorneys fees against any one or more parties to the arbitration. The awards or decision may be confirmed and enforced by any court of competent jurisdiction.

13.9 Negligently or Willfully Caused Damage. Any Owner or other person negligently or willfully causing damage to the Development shall be liable to the Association therefor.

SECTION 14. CONDEMNATION

14.1 Sale by Unanimous Consent. In the event that any action for condemnation of all or a portion of the Development is proposed or threatened by any governmental agency having the right of eminent domain, then, upon the unanimous written consent of the Owners and all institutional Mortgagees, the Development, or such portion thereof, may be sold and conveyed to the condemning authority by the Association, for a price deemed fair and equitable by the Association. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Development, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award.

14.2 Total Sale or Taking. If there is a total sale or taking of the Development, meaning a sale or taking (i) that renders more than fifty percent (50%) of the Units uninhabitable (such determination to be made by the Association in the case of a sale and by the court in the case of a taking), or (ii) that renders the Development as a whole uneconomic as determined by the vote or written consent of all of those Owners and their respective institutional Mortgagees whose Units will remain habitable after the taking, the right of any Owner to partition through legal action as described in Section 15 shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking, together with the proceeds of any sale pursuant to a partition action, after payment of all expenses relating to the sale, taking, or partition action, shall be paid to all Owners and to their respective Mortgagees proportionally in accordance with the respective fair market value of each Condominium in the Development. The fair market value of the Condominiums shall be

determined in the condemnation action, if such is instituted, or by appraisal pursuant to Section 14.4 below.

14.3. Partial Sale or Taking. In the event of a partial sale or taking of the development, meaning a sale or taking that is not a total taking as described in Section 14.2 above, the proceeds from the sale or taking shall be paid or applied in the following order of priority, and any judgment of condemnation shall include the following provisions as part of its terms:

14.3.1. To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the court to be paid from the amount awarded; then

14.3.2. To Owners and their respective Mortgagees, as their interests may appear, of Condominiums in the Development whose Condominiums have been sold or taken, an amount up to the fair market value of such Units as determined by the court in the condemnation proceeding or by an appraiser selected by the Association who meets the qualifications described in Section 14.4 below, less such Owner's share of expenses paid pursuant to the preceding Section 14.3 (which share shall be in proportion to each Owner's undivided interest in the Common Area). After such payment, the recipient shall no longer be deemed an Owner, and the Association or individuals authorized by the Association, acting as attorney-in-fact of all Owners, shall amend the Condominium Plan, the Map (if necessary), and this Declaration to eliminate from the Development the Condominiums so sold or taken and to adjust the undivided ownership interest of the remaining Owners in the Common Area based upon the ratio that each remaining Owner's undivided interest bears to all the remaining Owners' undivided interests in the Common Area; then

14.3.3. To any remaining Owner and to such Owner's Mortgagees, as their interests may appear, whose Condominium has been diminished in value as a result of the sale or taking disproportionately to any diminution in value of all Condominiums, as determined pursuant to Section 14.4 below, but as of a date immediately after any announcement of condemnation, an amount up to the amount of such disproportionate diminution in value; then

14.3.4. To all remaining Owners and to their respective Mortgagees, as their interest may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the court in the condemnation proceeding or by an appraiser pursuant to Section 14.4 below.

14.4. Fair Market Value as Appraisal Standard. Wherever in this Section 14 reference is made to a determination of the value or fair market value of one or more Condominiums, it shall mean the relative fair market value of each such Condominium as of a date immediately prior to the announcement of condemnation, as determined by an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser

organization, and who shall apply its or such other organization's standards in determining the fair market value of each Condominium. The costs of such appraisals shall be paid from the sale proceeds.

SECTION 15. PARTITION

15.1. Suspension. The right of partition is hereby suspended pursuant to Section 1359 of the California Civil Code as to the Development. The Development may be partitioned and sold as a whole pursuant to the provisions of said Section 1359 upon a showing of the occurrence of any one of the events therein provided. Additionally, partition may be had upon a showing that the conditions for such partition as set forth in this Declaration have been met. Nothing contained herein shall prevent the partition or division of interest between joint or common Owners of one (1) Condominium. For purposes of distribution of proceeds or property in the event of a partition, and to the extent permitted by law, such proceeds or property shall be distributed to and among the respective Owners and their Mortgagees of each Condominium as their interests may appear, proportionately in accordance with the fair market value of each Condominium at the time of partition as determined by an independent appraisal conducted by a qualified real estate appraiser, such appraisal to be at the expense of the Association.

15.2. Power of Attorney. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of each such Owner to sell the entire Development, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Development may be had under Section 1359 of the California Civil Code and under the circumstances authorizing partition under this Declaration. The power of attorney shall: (i) be binding upon all Owners, whether they expressly assume the obligations under this Declaration or not; (ii) be exercisable by a majority of the Board, subject to obtaining the prior approval by vote or written consent of the Owners and seventy-five percent (75%) of a majority of all institutional First Mortgagees; and (iii) be exercisable only after recordation in the office of the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

SECTION 16. NON-SEVERABILITY OF COMPONENT INTERESTS IN A CONDOMINIUM

16.1. Prohibition Against Severance. An Owner shall not be entitled to sever the Owner's Unit in any Condominium from the appurtenant membership in the Association, nor shall an Owner be entitled to sever an Owner's Unit and the Owner's membership from the Owner's undivided interest in the Common Area, for any purpose whatsoever. None of the component interests can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be null and void and of no effect. Similarly, no Owner can sever any exclusive easement or exclusive rights in the Exclusive Use Common Area appurtenant to a Unit from a

Condominium, and any attempt to so do shall be null and void and of no effect. This suspension of the right of severability will not extend beyond the period set forth in Section 15 respecting the suspension of partition. It is intended hereby to restrict severability pursuant to California Civil Code Section 1358(d).

16.2. Conveyances. After the initial sales of the Condominiums, any conveyance of a Unit, or of the component interest in the Common Area, by the Owner of any Condominium,, shall be presumed to convey the entire Condominium. However, nothing contained in this Section 16 shall preclude the Owner of any Condominium from creating a co-tenancy or joint tenancy in the ownership of the Condominium with any other person or entity.

SECTION 17. PROTECTION OF MORTGAGEES

17.1. Mortgage Permitted. Any Owner may encumber his Condominium with a Mortgage.

17.2. Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage encumbering all or a portion of the Development, or any Condominium therein, made in good faith and for value, and no such lien shall in any way defeat, invalidate or impair the obligation or priority of such Mortgage unless the Mortgagee thereunder shall expressly subordinate its interest, in writing, to such lien.

17.3. Foreclosure. If any Condominium is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. Upon foreclosure of the Mortgage, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure purchaser taking title to the Condominium free of the lien for assessments or installments thereof that have accrued up to the time of the foreclosure sale. Upon taking title to the Condominium, the foreclosure purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Association that became due and payable on or after the foreclosure purchaser acquired title to the Condominium. The subsequently levied assessments or other charges may include previously unpaid assessments, provided all Owners, including such foreclosure purchaser and the successors and assigns thereof are required to pay their proportionate share thereof as provided herein.

17.4. Control of Amendments. In addition to the requirements of Section 19 below, and unless a greater majority is expressly required elsewhere in this Declaration, or by law, the prior written consent (or deemed consent as provided below in this clause) of at least fifty-one percent (51%) of First Mortgagees (based upon one vote for each First Mortgage owned) shall be required to add or amend any material provisions of this Declaration, the Articles, Bylaws, Condominium Plan, or the Map, which establish, provide for, govern, or regulate any of the following:

17.4.1. Voting;

17.4.2. Assessment, collection of assessments, assessments liens, or subordination of such liens;

17.4.3. Reserves for maintenance, repair and replacement of the Common Area or improvements located thereon and therein;

17.4.4. Casualty and liability insurance or fidelity bonds;

17.4.5. Rights to use the Common Area;

17.4.6. Responsibility for maintenance and repair of Condominiums, the Common Area, and the improvements located thereon and therein;

17.4.7. Expansion or contraction of the Development or the addition, annexation, or withdrawal of real property to or from the Development;

17.4.8. Boundaries of any Condominium;

17.4.9. The interests or rights of the Association or Owners in and to the Common Area;

17.4.10. The convertibility of Condominiums into Common Area or of Common Area into Condominiums;

17.4.11. The leasing of Condominiums;

17.4.12. Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium; or

17.4.13. Any provisions that are for the express benefit of First Mortgagees or insurers or governmental guarantors of First Mortgages.

For purposes of this provision, an addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any First Mortgagee who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) days after such receipt shall be deemed to have consented to such request.

17.5. Restriction on Certain Changes. In addition to the requirements of Section 17.4 above and of Section 19 below, unless fifty-one percent (51%) of the First Mortgagees of Condominiums (based upon one vote for each First Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled:

17.5.1. By act or omission to seek to abandon or terminate the Condominium Development, except for abandonment provided by statute in case of substantial loss to the Units and Common Area;

17.5.2. To change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner, or to change the pro rata interest

or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Owner in the Common Area;

17.5.3. To partition or subdivide any Unit;

17.5.4. To use hazard insurance proceeds for losses to Units or to the Common Area improvements in the Development or to any other Association property, for other than the repair, replacement or reconstruction of such improvements or property, except as provided by statute in case of substantial loss to the Units or Common Area of the Development;

17.5.5. By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed a transfer within the meaning of this clause;

17.5.6. By act or omission to change, waive or abandon the provisions of this Declaration, or the enforcement of any of them, pertaining to the architectural design or control of the exterior appearance of structures in the Development, the maintenance of the Common Area, walks, fences, and driveways, or the upkeep of lawns and other landscaping in the Development, as applicable;

17.5.7. To fail to maintain fire and extended coverage insurance on insurable Association property, including any Common Area improvements, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon current replacement cost).

17.6. Right to Examine Books and Records. Institutional First Mortgagees shall have the right to examine the books and records of the Association and the right to require the submission of financial data concerning the Association or the Development, including annual audit reports, budgets, reports, and operating statements as furnished to the Owners.

17.7. Distribution of Insurance and Condemnation Proceeds. No Owner, or any other party, shall have priority over any right of institutional First Mortgagees of Condominiums pursuant to their Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Area. Any provision to the contrary herein or in other documents relating to the Development is to such extent null, void, and of no effect.

17.8. Status of Amenities. All amenities (such as parking, recreation, and service areas) and Common Area shall be available for use by Owners and all such amenities, with respect to which regular or special assessments for maintenance or other uses may be levied, shall constitute Common Area. All such amenities shall be owned (i) in fee by the Owners in undivided interests, or (ii) by the Association free of encumbrances except for any easements granted for public utilities or for other public

purposes consistent with the intended use of such property by the Owners or by the Association.

17.9. Effect of Breach Hereof. No breach of any of the provisions of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

17.10. Default Notice Requirement. If any Owner is in default under any provision of this Declaration or any other document or instrument pertaining to the governance of the Association and the Development, and the default is not cured within sixty (60) days after written notice to that Owner, the Association shall give to the Mortgagees of record of such Owner written notice of such default and of the fact that the sixty (60) day period has expired.

17.11. Payments by Mortgagees. Mortgagees of Condominiums may, jointly or severally, pay taxes or other charges which are in default and which may or have become charged against any Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association, and, upon making such payments, such Mortgagees shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and upon request of any Mortgagee the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.

17.12. Mortgagee Need Not Cure Breach. Any Mortgagee who acquires title to a Condominium by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is not curable or of a type that is not practical or feasible to cure.

17.13. Status of Loan to Facilitate Resale. Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of Mortgages under this Declaration.

17.14. Appearance at Meetings. Because of its financial interest in the Development, any Mortgagee may appear (but cannot vote) at meetings of the Association to draw attention to violations of this Declaration which have not been corrected or made the subject of remedial proceedings or assessments.

17.15. Right to Furnish Information. Any Mortgagee shall have the right to furnish information to the Association concerning the status of any Mortgage.

17.16. Right of First Refusal Inapplicable to Mortgagees. No right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right

of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm, or entity) shall not impair the rights of a First Mortgagee (i) to foreclose or take title to a Condominium pursuant to the remedies provided in the Mortgage, or (ii) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage, or (iii) to sell or lease a Condominium acquired by the Mortgagee.

17.17. Limitation on Term of Management Contract. Any agreement between the Association and the Declarant pursuant to which the Declarant agrees to provide services, and any agreement for professional management by a manager shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days written notice, and shall have a maximum contract term of one (1) year, provided that the Association may renew any such contract on a year-to-year basis. If the Development is professionally managed, the Association shall not terminate professional management and assume self-management without the consent of at least fifty-one percent (51%) of the Owners, and of fifty-one percent (51%) of First Mortgagees.

17.18. Conformity with Mortgagee Requirements. It is the intent of Declarant that this Declaration and any and all other documents and instruments pertaining to the governance of the Association, and the Development in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize a Mortgage of a Condominium in the Development by FHLBC, FNMA, the Federal Housing Association ("FHA"), and the Veterans Administration ("VA"). The Association and each Owner shall take any action and/or adopt any resolutions required by Declarant or any Mortgagee to conform this Declaration and/or the Development to the requirements of any of these entities or agencies.

17.19. Controlling Provisions. In the event of any conflict between any of the provisions of this Section 17 and any other provisions of this Declaration, the provisions of this Section 17 shall control.

SECTION 18. ARCHITECTURAL CONTROL

18.1 Provision for Architectural Approvals. Except as to construction of improvements by Declarant in any phase of the Project, no building, fence, wall, or other structure shall be commenced, erected, or maintained on the Property; nor shall any exterior addition or change or alteration in any such structures of the Property, including, e.g., solar or heating systems; pools, spas, ponds, fountains; landscaping, stonework, or concrete work; related mechanical, plumbing, or electrical facilities; awnings, patio covers, and antennae, be made until the plans and specifications showing the nature, kind, shape, materials, and location of the same have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee provided in Section 18.2. Whenever in this Declaration the prior consent or approval of the Association is required as a condition to any action by an Owner affecting any alterations, changes, additions, or modifications, the Association through the Board may delegate to the Architectural Committee the right and duty to grant or withhold such consent or

approval. In the event the Architectural Committee or its designated representatives fails to approve or disapprove such design and location within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this provision will be deemed to have been complied with in full.

18.2 Appointment of Architectural Committee. The Declarant shall appoint all of the original members of the Architectural Committee, consisting of not less than three (3) nor more than five (5) persons who need not be members of the Association, and any replacements for them. The number of members initially appointed shall constitute the number of authorized members of the Committee until increased or decreased by the vote or written consent of the holders of at least fifty-one percent (51%) of the voting rights of each class of members of the Association. The initial appointees (and any replacements) shall hold office until the first anniversary of the original issuance of a Renewed and Amended Final Subdivision Public Report by the California Commissioner of Real Estate. Thereafter, Declarant may appoint a majority of the members of the Architectural Committee, and any replacements for them, until ninety percent (90%) of the Condominiums have been sold and deeds to them recorded in favor of Owners or until the fifth anniversary of the original issuance of a Renewed and Amended Final Subdivision Public Report. After one (1) year from the date of the original issuance of a Renewed and Amended Final Subdivision Public Report, the Board shall have the power to appoint one (1) member of the Architectural Committee, whose power shall continue until ninety percent (90%) of the Condominiums have been sold and deeds to them recorded in favor of Owners or until the fifth anniversary of the original issuance of a Renewed and Amended Final Subdivision Public Report. Thereafter the Board shall have the power to appoint all of the members of the Architectural Committee. Members appointed to the Architectural Committee by the Board shall be members of the Association.

18.3 Waiver. The approval by the Architectural Committee (the "Committee") of any plans, drawings, or specifications for any work done or proposed, or in connection with any other matter requiring the approval of the Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval as to any similar plan, drawing, specification or matter whenever subsequently or additionally submitted for approval.

18.4 Liability. Neither the Association nor any Member thereof, including any member of the Architectural Committee, shall be liable to any Owner or to any other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development or manner of development of any property within the Development, provided, however, that such member has, with the actual knowledge possessed by him or her, acted in good faith.

SECTION 19. AMENDMENT

19.1. Amendment Prior to Close of First Sale. Prior to the closing of the first sale of a Condominium in the Development to

a purchaser other than Declarant, this Declaration and any amendment to it may be amended in any respect or revoked by the execution by Declarant and any Mortgagee of record of an instrument amending or revoking this Declaration, which instrument shall make appropriate reference to this Declaration and any amendment thereto, and which instrument shall be acknowledged and recorded in the Office of the County Recorder.

19.2. Amendment After Close of First Sale. After the closing of the first sale of a Condominium to a purchaser other than Declarant, this Declaration can be amended or revoked only by seventy-five percent (75%) of the voting rights of each class of Owner, or if a single class of Owner is then in effect, by the vote or written assent if not less than (i) seventy-five percent (75%) of all the votes and (ii) fifty-one percent (51%) of the votes excluding Declarant. However, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of the Owners in order to take affirmative or negative action under such provision, the same percentage of such class or classes of Owners shall be required to amend or revoke such provision. In addition, if the consent or approval of the City and County or any other governmental authority, any Mortgagee, or any other person, firm, agency or entity is required under this Declaration or applicable law with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless and until such consent or approval is obtained. Any such amendment or revocation shall be evidenced by an instrument referencing this Declaration and any prior amendments thereto, which instrument shall be executed and acknowledged by the Secretary or a duly authorized officer or other representative of the Association, and recorded in the Office of the County Recorder.

19.3. Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid as to anyone relying thereon in good faith.

SECTION 20. GENERAL PROVISIONS

20.1. Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.

20.2. Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provisions hereof shall not invalidate any other provisions hereof.

20.3. Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.

20.4. Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be enjoined by any Owner, the Manager, or the Association.

20.5. No Discrimination. No Owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his Condominium on the basis of race, marital status, physical disability, sexual orientation, sex, color or creed.

20.6. Access to Books. Any Owner may, at any reasonable time, upon reasonable notice, and at his own expense, cause an audit or inspection to be made of the books and financial records of the Association.

20.7. Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan of condominium ownership for the Development.

20.8. Notification of Sale of Condominium. Concurrently with the consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee and their Mortgagee(s) and transferor, the street address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing addresses, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association shall be deemed to be duly made and given to the transferee if duly and timely made given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed received forty-eight (48) hours after mailing if mailed to the transferee, or to his transferor if the Association has received no notice of transfer as provided above, by certified mail, return receipt requested, at the mailing address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram or upon personal delivery to any occupant of a Condominium over the age of twelve (12) years.

20.9. Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

20.10. Exhibits. Any and all exhibits attached hereto shall be deemed to be made a part hereof and incorporated by reference herein.

20.11. Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Condominium.

20.12. Successors and Assigns. This Declaration shall run with the land and shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of Declarant, and the heirs, personal representatives, grantees, lessees, successors and assigns of the Owners. The rights of Declarant hereunder may be assigned by Declarant to any successor to all or any part of Declarant's interest as Developer in the

Development, by an express assignment incorporated in a recorded document transferring such interest to such successor.

20.13. Unsegregated Real Estate Taxes. Until such time as real estate taxes have been segregated by the County Assessor, such taxes shall be paid by the respective Owners of Condominiums proportionately in accordance with their respective percentage ownership of the Common Area as set forth on the Condominium Plan. If, and to the extent, such taxes are not paid by any Owner and are allowed to become delinquent, such taxes shall be collected from the delinquent Owner by the Association.

20.14. Term of Declaration. This Declaration shall continue in full force and effect until the Development is partitioned as authorized in Section 15 or until this Declaration is revoked pursuant to Section 13 hereof.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the 4th day of April, 1994.

DECLARANT:

Rosario F. Occhipinti
ROSARIO F. OCCHIPINTI

Isola M. Occhipinti
ISOLA M. OCCHIPINTI

Concetto J. Occhipinti
CONCETTO J. OCCHIPINTI, Trustee
of the Occhipinti Trust of 1991.

Satsuki Occhipinti
SATSUKI OCCHIPINTI

Stephen N. Saribalis
STEPHEN N. SARIBALIS

Nicholas S. Saribalis
NICHOLAS S. SARIBALIS

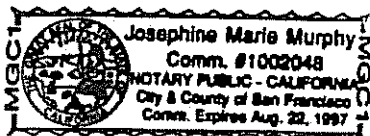
Trustees of
the Stephen N. Saribalis and
Joanna P. Saribalis 1987 Trust

F593084

STATE OF CALIFORNIA)
) ss.
COUNTY OF)
SAN FRANCISCO

On April 4, 1994, before me, Josephine Marie Murphy, personally
(date) (name and title)
appeared Rosario F. Occhipinti and Isola M. Occhipinti, personally known to
me - OR proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signatures(s) on the
instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.

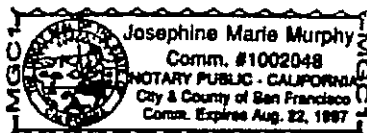


Josephine Marie Murphy
Signature of Notary

STATE OF CALIFORNIA)
) ss.
COUNTY OF)
SAN FRANCISCO

On April 4, 1994, before me, Josephine Marie Murphy, personally
(date) (name and title)
appeared Concetto J. Occhipinti and Satsuki Occhipinti, personally known to
me - OR proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signatures(s) on the
instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.



Josephine Marie Murphy
Signature of Notary

STATE OF CALIFORNIA)
) ss.
COUNTY OF)
SAN FRANCISCO

On April 4, 1994, before me, Josephine Marie Murphy, personally
(date) (name and title)
appeared Stephen N. Saribaldis and Nicholas S. Saribaldis, personally known to
me - OR proved to me on the basis of satisfactory evidence to be the
person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signatures(s) on the
instrument the person(s), or the entity upon behalf of which the person(s)
acted, executed the instrument.

WITNESS my hand and official seal.



Josephine Marie Murphy
Signature of Notary

EXHIBIT A

PROJECT DESCRIPTION

F593084

370 MONTEREY BOULEVARD CONDOMINIUM ASSOCIATION

Units 1 through 20 and all that certain real property situated in the City and County of San Francisco, State of California, as shown on that certain Condominium plan map entitled 370 Monterey Boulevard, a Condominium Project, recorded November 23, 1981, in Condominium Map Book 18, page 105, Official Records,

EXHIBIT B

GRANT DEED

Recording Requested by
When recorded mail to:

F593084

James T. Johnson, Esq.
600 Montgomery Street, #3200
San Francisco, California 94111

Above Space for Recorder's Use Only

GRANT DEED

370 MONTEREY BOULEVARD CONDOMINIUM ASSOCIATION

ROSARIO F. OCCHIPINTI, ISOLA OCCHIPINTI, CONCETTO J. OCCHIPINTI, TRUSTEE OF THE OCCHIPINTI TRUST, SATSUKI OCCHIPINTI, STEPHEN SARIBALIS and NICHOLAS S. SARIBALIS as Trustees under the Stephen N. Saribalis and Joanna P. Saribalis 1987 Trust (hereinafter called "Grantor"), grant to _____ (hereinafter called "Grantee") that certain real property located in the City and County of San Francisco, State of California, more particularly described as follows:

PARCEL 1:

Unit _____ as shown on that certain Condominium Plan and Parcel Map of the 370 Monterey Boulevard Condominium Project, hereinafter referred to as "the Map," filed in the Office of the Recorder of the City and County of San Francisco, State of California on November 23, 1981 in Book 18 of Condominium Maps at pages 105-110, inclusive.

Excepting and reserving, however, the following:

1. Any portion of the Common Area lying within said Unit;
2. Easements through said Unit, appurtenant to the Common Area and all other Units, for support and repair of the Common Area and all other Units; and
3. Easements, appurtenant to the Common Area, for encroachment upon the air space of the Unit by those portions of the Common Area located within the Unit.

PARCEL 2:

Together with the following appurtenant easements:

1. Exclusive easements for the use of the exclusive use common areas designated as P-_____, S-_____, D-_____ and Patio _____, on the Map hereinabove referred to in _____

Exhibit "B"

Page 1

Parcel 1 with respect to parking, storage, deck and patio areas in conjunction with said Unit ____.

2. Nonexclusive easements for ingress and egress and support of said Parcel 1 through the Common Area and for repair of said Parcel 1 through all other Units and through the Common Area.

Excepting and reserving, however, the nonexclusive easements described herein as Parcel 4.

PARCEL 3:

An undivided _____ % interest as tenant-in-common in and to the Common Area, as shown on the Map.

Excepting and reserving, however, the following:

1. Nonexclusive easements appurtenant to all Units for ingress and egress, support and repair.

PARCEL 4:

Together with the following easements appurtenant to the Common Area:

1. Nonexclusive easements through each Unit for support and repair of the Common Area; and

2. Nonexclusive easements for encroachments upon the air space of all of the Units by and for the portions of the Common Area lying within the Units.

II.

Each of the foregoing grants is subject to the lien of real property taxes and assessments not delinquent, the Restrictions referred to in III 3. below, all covenants, conditions, easements, restrictions and liens of record. The property herein granted is a condominium, as defined in Section 1351(f) of the California Civil Code and the Project as hereinafter defined is subject to the provisions of the Davis-Stirling Common Interest Development Act, Title 6, Part 4, Division Second, of said Code.

III.

Terms Used in this Deed are defined as follows:

1. "Unit" means a numbered parcel as shown on the Map. The boundary lines of each Unit are the interior unfinished surfaces (exclusive of paint, paper, wax, tile, enamel or other finishing) of its perimeter walls, bearing walls, floors, fireplaces, ceilings, windows and window frames, doors and door

frames and trim and includes both the portions of the subdivided building so described and air space so encompassed.

2. "Common Area" means all that portion of the common area shown on the Map, lying within the property described on said Parcel Map, more particularly heretofore referred to.

3. "Restrictions" or "Declaration" means that certain Amended and Restated Declaration of Covenants, Conditions and Restrictions executed by Grantors on _____, 1993, and recorded in the Office of the Recorder of the City and County of San Francisco, State of California, on Reel _____, Image _____, and following. Said Restrictions or Declaration supercede and replace the original Restrictions or Declaration executed by Grantors on June 8, 1983 and recorded in the Office of The Recorder of the City and County of San Francisco, State of California, in Book D535, at Page 898 and following, which have concurrently been revoked.

4. "Project" means all of the real property within the subdivision as shown on the Map, together with all improvements thereto and thereon.

IV

This Deed is made and accepted subject to all the provisions contained in those certain documents defined herein as "Restrictions" or "Declaration", all of which is incorporated herein by reference with the same effect as though fully set forth herein.

IN WITNESS WHEREOF, the undersigned have executed the within deed this _____ 4th _____ day of _____ April _____, 1994.

Rosario P. Occhipinti
ROSARIO P. OCCHIPINTI

Isola M. Occhipinti
ISOLA M. OCCHIPINTI

Concetto J. Occhipinti
CONCETTO J. OCCHIPINTI, Trustee
of the Occhipinti Trust of 1991.

Satsuki Occhipinti
SATSUKI OCCHIPINTI

Stephen N. Saribalis
STEPHEN N. SARIBALIS

Nicholas S. Saribalis
NICHOLAS S. SARIBALIS

Trustees of
the Stephen N. Saribalis and
Joanna P. Saribalis 1987 Trust

F593084

EXHIBIT C

370 MONTEREY BOULEVARD CONDOMINIUM ASSOCIATION

Allocation of Maintenance Fund Assessments

All budget costs shall be divided equally among the condominium units except the expenses for insurance, paint reserves, roof reserves, domestic water, water heater reserves and gas, which shall be distributed among the units in proportion to their sizes in accordance with the percentages set forth in Exhibit D of these Covenants, Conditions and Restrictions.

F593084

EXHIBIT "D"

170 MONTEREY BOULEVARD CONDOMINIUM ASSOCIATION

INTEREST IN COMMON AREA

Each Unit shall have the following undivided fee simple interest, as a tenant in common, in and to the Common Area:

<u>UNIT NO.</u>	<u>PERCENTAGE OF OWNERSHIP OF COMMON AREA</u>
101	4.85%
102	4.32%
103	6.34%
104	4.32%
105	3.62%
201	4.85%
202	4.32%
203	6.34%
204	4.32%
205	3.62%
206	6.54%
207	4.63%
208	4.82%
209	4.82%
210	4.86%
311	4.86%
312	4.82%
313	4.82%
314	4.63%
315	8.30%

With regard to Parking Space P-10, as designated on Sheet 4 of the Subdivision Map and Condominium Plan as recorded herein, said Parking Space is more particularly delineated below:

