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**AMENDED AND RESTATED  
DECLARATION OF RESTRICTIONS**

**FOR**

**VILLAGE WALK**

(A CONDOMINIUM COMMON INTEREST DEVELOPMENT)

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**SUBORDINATION AGREEMENT(S)**

- ATTACHMENT "A" SQUARE FOOTAGE PERCENTAGE FOR EACH SEPARATE INTEREST
- ATTACHMENT "B" SIGN SPECIFICATIONS

**AMENDED AND RESTATED**  
**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS is made this 23<sup>rd</sup> day of April, 2000, by OLSON BEECH-STREET, LLC, a California limited liability company (hereinafter called "Declarant");

This Declaration is made with reference to the following

**RECITALS:**

A. **THE REAL PROPERTY.** Declarant is the owner of that certain real property located in the City of San Diego, County of San Diego, California, more particularly described as follows:

LOT 1 of VILLAGE WALK CONDOMINIUMS, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14075 filed with the County Recorder of San Diego County, California, on November 20, 2000

(the "Project").

B. **AMENDED AND RESTATED DECLARATION.** This Declaration amends, restates and replaces in its entirety that certain Declaration of Restrictions for Village Walk which was recorded March 1, 2001 with the Office of the County Recorder of San Diego County, California, as Document No. 2001-0117489.

C. **CONDOMINIUMS; MIXED USE PROJECT.** The Project will be a condominium Common Interest Development. Declarant intends to establish a condominium project under the provisions of the California CIVIL CODE. Each unit in the Project will be located within space shown as a Separate Interest on a Condominium Plan and each Separate Interest will consist of a separate interest in space within a building. There will be seventy-two (72) Condominiums in the Project. Generally, subject to the rights of Declarant set forth in this Declaration, the Project must be used for Residential Uses. However, as stated in **Article 6** below, some commercial uses are allowed in the first floor of five (5) of the Condominiums; and the first floor of two (2) of the Condominiums must be used for certain Street Level Uses.

D. **COMMON AREA AND ASSOCIATION PROPERTY.** The Common Area will consist of all portions of the Project other than the Separate Interests and the Association Property. No Association Property is presently planned for the Project and it is presently intended that structural portions of the project, any recreational facilities, common access areas and similar areas be within the Common Area. Any recreational facilities built in the Project may be used by all Members of the Association pursuant to this Declaration. Should there be any

Association Property, it shall be conveyed to the Association free of monetary liens, other than non-delinquent general and special taxes and assessments. The Common Area will be owned in undivided interests amongst the Owners.

E. **PHASED MARKETING.** Declarant presently intends that there be four (4) marketing phases for the sale of the Condominiums within the Project.

F. **COMMON PLAN OF RESTRICTIONS; BINDING ON FUTURE OWNERS.** Before selling or conveying any interests Declarant desires to subject the Project to certain covenants and restrictions for the benefit of Declarant and any and all present and future owners of the Project in accordance with a common plan as set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Project shall be held, sold and conveyed subject to the following easements, restrictions and covenants, which are enforceable equitable servitudes as described in California CIVIL CODE Section 1354 and which are for the purpose of establishing a general plan for protecting the value and desirability of, and which shall run with, the Project and be binding on all parties having any right, title or interest in the Project, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

**Section 1.1.** "Architectural Committee" shall mean and refer to the person or persons which may be from time to time be appointed to such position pursuant to the Article below entitled "ARCHITECTURAL CONTROL".

**Section 1.2.** "Articles" shall mean and refer to the Articles of Incorporation of the Association as they may from time to time be amended.

**Section 1.3.** "Association" shall mean and refer to VILLAGE WALK ASSOCIATION, a California Nonprofit Mutual Benefit Corporation, its successors and assigns.

**Section 1.4.** "Association Property" shall mean all real property and easements owned by the Association from time to time for the common use and enjoyment of the Owners. It is not presently anticipated that there will be any Association Property.

**Section 1.5.** "Board" shall mean and refer to the Board of Directors of the Association.

**Section 1.6.** "Bylaws" shall mean and refer to the Bylaws of the Association as they may from time to time be amended.

**Section 1.7.** "CCDC Permit" shall mean the Centre City Development Permit No. 98-1113 as the same may become amended from time to time.

**Section 1.8.** "Common Area" will consist of the remainder of the Project after excluding the Separate Interests and the Association Property (if any) and will include (but not be limited to) structural portions of the building(s) in the Project, private drives, landscaped

areas and recreational areas. Any pipes, wires or other utility installations which serve more than one Separate Interest but which are not owned and maintained by the City or a public utility will also be Common Area (e.g., there may be commonly used private water, storm drain and sewer systems within the Project). Telecommunications Facilities may be owned by a third party and not be part of the Common Area. "Telecommunications Facilities" refers to any and all systems, equipment, improvements, wiring and services for cable television, telecommunications, telephony, intranet, internet, information transfer, video and similar functions. It is intended that the Common Area include all portions of the building(s) in the Project, including, but not limited to, the roof, any chimneys, vents, decks, foundations, overhangs, columns and other appurtenances regardless of whether any such items lie outside the boundary lines shown on the Condominium Plan. In interpreting deeds and plans, the then existing physical boundaries of a building whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

**Section 1.9. "Common Expenses"** means and includes the actual and estimated expenses of operating the Project and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the condominium documents.

**Section 1.10. "Condominium"** shall mean and refer to a fee simple estate in the Project and shall consist of:

- (a) A Separate Interest airspace;
- (b) The exclusive right to use and occupy any Exclusive Use Area which is appurtenant to the Separate Interest;
- (c) An undivided interest as tenant in common to the Common Area;
- (d) An easement over the Common Area (and Association Property, if any), subject to the Association's rules, regulations and procedures.

**Section 1.11. "Condominium Plan"** shall mean and refer to the Condominium Plan or Condominium Plans recorded pursuant to California CIVIL CODE Section 1351(e) covering the Project, including such amendments thereto as may from time to time be recorded.

**Section 1.12. "Declarant"** shall mean and refer to OLSON BEECH STREET, LLC, a California limited liability company. Declarant shall also refer to (a) the assigns of Declarant who are expressly assigned the rights of Declarant and (b) successors of Declarant who become successors by operation of law or by exercise of the remedies under a mortgage, deed of trust or deed in lieu of foreclosure.

**Section 1.13. "Declaration"** shall mean and refer to this enabling Declaration of Restrictions, as it may from time to time be amended.

**Section 1.14. "Eligible Insurer or Guarantor"** shall mean and refer to an insurer or governmental guarantor who has requested notice from the Association of those matters

which such insurer or guarantor is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

**Section 1.15. "Eligible Mortgage Holder"** shall mean and refer to a holder of a first Mortgage on a Condominium who has requested notice from the Association of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Association and who has provided the Association with the address to which such notice is to be sent and the Condominium unit number which is encumbered by a Mortgage in which it has an interest.

**Section 1.16. "Exclusive Use Area"** shall mean and refer to those portions of the Common Area or Association Property to which an exclusive right to use is granted to an Owner as shown and described on the Condominium Plan. Balcony and Parking Space Exclusive Use Areas are currently planned for the Project.

**Section 1.17. "Member"** shall mean and refer to a person entitled to membership in the Association as provided herein.

**Section 1.18. "Mortgage"** shall mean and refer to a mortgage or deed of trust which encumbers a Condominium.

**Section 1.19. "Mortgagee"** shall mean and refer to a beneficiary under a deed of trust which encumbers a Condominium as well as a mortgagee under a Mortgage.

**Section 1.20. "Owner"** shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.21. "Project"** shall mean and refer to:

LOT 1 of VILLAGE WALK CONDOMINIUMS, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 14075 filed with the County Recorder of San Diego County, California, on November 20, 2000.

**Section 1.22. "Residential Uses"** shall mean use of a Condominium for private, single-family dwelling purposes only, and no commercial purposes other than home businesses which are allowed by City zoning ordinances.

**Section 1.23. "Retail Purchaser"** shall mean and refer to anyone other than a successive Declarant who purchases a Condominium from Declarant through authority of a Final Subdivision Public Report issued by the California Department of Real Estate.

**Section 1.24. "Separate Interest"** shall mean and refer to a separate interest in space as defined in California CIVIL CODE Section 1351(f) and as shown and described as such on the Condominium Plan. The following are Common Area and not a part of any Separate Interest: Bearing walls, columns, floors, roofs, foundations, central heating, central

refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located in the Separate Interest. Each Separate Interest shall include any door or window within a perimeter wall, the interior undecorated surfaces of bearing walls and perimeter walls, floors and ceilings, and the outlets of all utility installations in the Separate Interest, including the fire box of any fireplace located in the Separate Interest. In interpreting deeds and plans, the then existing physical boundaries of a Separate Interest, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed and those of the building.

**Section 1.25.** "Shopkeeper uses" shall have the meaning set forth in **Section 6.1** below.

**Section 1.26.** "Street level uses" shall have the same meaning as is defined in Section 103.1902 of the San Diego Municipal Code, as the same may be amended from time to time.

## ARTICLE II

### PROPERTY RIGHTS IN ASSOCIATION PROPERTY AND COMMON AREA

**Section 2.1. Title to the Association Property.** Should there be any Association Property within the Project, Declarant covenants for itself, its successors and assigns, that Declarant will convey to the Association the Association Property free and clear of all encumbrances and liens, except non-delinquent general and special taxes, easements, covenants, conditions and reservations then of record, including those set forth in this Declaration, prior to the conveyance of the first Condominium in the Project to a Retail Purchaser.

**Section 2.2. Owners' Easements of Enjoyment.** Every Owner of a Condominium shall have a right and easement of ingress and egress and of enjoyment in and to the Association Property and Common Area. These rights and an Owner's undivided interest in the Common Area shall be appurtenant to and shall pass with the title of each Condominium, subject to the following provisions:

(a) The right of the Board to make rules and regulations relating to the operation and use of the Association Property and Common Area including the right of the Board to restrict use of the recreational facilities to those in possession of Separate Interests and to control the hours of such use and to determine whether such facilities may be used by guests. The Association shall have no right to restrict reasonable access to a Condominium by the persons who have the right to possession of the Condominium.

(b) The right of the Board to suspend the voting rights of an Owner and right to suspend use of recreational facilities by the Owner and occupants of a Condominium:

(i) During the period of time any Association assessment against the Condominium remains delinquent; and/or

(ii) For a period of not more than thirty (30) days for any infraction of the Board's published rules and regulations after reasonable written notice and an opportunity for a hearing before the Board which satisfies the minimum requirements of California CORPORATIONS CODE Section 7341 as set forth in the Bylaws.

(c) The right of the Board, subject to the limitations stated in the Section below entitled "Approval of First Mortgagees" and subject to the restrictions stated in California CORPORATIONS CODE Section 8724, to transfer less than substantially all of the Association Property. It is specifically intended that the Board have the right to cooperate with Declarant and any Owner in adjusting the boundaries of Exclusive Use Areas or between the Association Property and other portions of the Project.

(d) The sole and exclusive right of the Association, acting through its Board, to operate, maintain and control the Association Property and Common Area except as otherwise stated in this Declaration.

(e) The right of the Board to grant or dedicate to third parties permits, licenses (which may be irrevocable), and easements over the Association Property for utilities, roads and other purposes necessary for the proper operation of the Project; and the right of the Board to convey portions of the Association Property to others in connection with a boundary adjustment requested by an adjacent property owner or public entity.

(f) The right of the Board to grant easements and licenses over the Association Property and the Common Area pursuant to this Declaration.

(g) The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of improving the Association Property and to hypothecate any or all real or personal property owned by the Association.

(h) The right of access, ingress and egress over the Association Property and Common Area and the right of installation and use of utilities on the Association Property and Common Area for the benefit of the Condominiums.

(i) Declarant and its sales agents, employees and independent contractors shall have the right to the non-exclusive use of the Association Property and Common Area for the purpose of maintaining sales offices, parking, signs and flags reasonably necessary to market the Condominiums. Declarant shall have the right, during its marketing of the Project, to control those hours in which Declarant, its agents, contractors and potential buyers to have access to the Project. These rights of Declarant may be exercised only until close of escrow to Retail Purchasers of all 72 Condominiums planned for the Project.

(j) Declarant shall also have a non-exclusive easement over the Association Property and Common Area to provide access and utilities thereto for the purpose of constructing, marketing and utilizing portions of the Project owned by Declarant.

The use of the Common Area and the Association Property by Declarant and its agents shall not unreasonably interfere with the use thereof by the Class A Members of the

Association. Declarant shall repair any portion of the Association Property or Common Area which may be damaged by Declarant.

**Section 2.3. Delegation of Use.** Subject to the restrictions stated in this Declaration, any Owner may delegate, in accordance with the Bylaws and the rules and regulations of the Board, the Owner's right of enjoyment to the Association Property and Common Area and facilities to the members of the Owner's family, tenants, guests or contract purchasers who reside in the applicable Separate Interest. Each Owner shall be responsible to the Association for any damage to the Association Property and Common Area caused by such Owner or persons to whom Common Area or Association Property rights have been transferred.

**Section 2.4. Power of Attorney to Correct Errors.** The Association is hereby given a power of attorney to act on behalf of the Owners and their Mortgagees to correct errors in any Condominium Plan by executing on behalf of the affected Owners and Mortgagees an amendment to the Condominium Plan and an instrument to effect any conveyances or partial reconveyances necessary to correct such errors. The power hereby given to the Association is limited as follows:

(a) The power may be exercised only to correct errors in a Condominium Plan as evidenced by a written statement which describes the error(s) and which is signed by the engineer who prepared the Condominium Plan or by Declarant. The power hereby given may not be utilized for any other purpose.

(b) The power may not be exercised on behalf of an Owner or his or her Mortgagee if the size of the Owner's Separate Interest or Exclusive Use Area would be materially reduced by reason of the correction (a reduction in size which would reduce the value of the Separate Interest or Exclusive Use Area would be deemed a material reduction in size).

The power hereby given is coupled with an interest and may not be revoked by an Owner but may be revoked by a Mortgagee. Any such revocation by a Mortgagee shall be by means of its signed statement of revocation recorded with the County Recorder of San Diego County.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS IN ASSOCIATION**

**Section 3.1. Each Owner Is A Member.** Each Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated promptly, fully and faithfully to comply with and conform to this Declaration and the Bylaws and the rules and regulations adopted from time to time by the Board and officers of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of the Condominium to which it is appurtenant, and then only to the purchaser, in the case of a sale, or Mortgagee, in the case of an encumbrance of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of his or her Condominium, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

**Section 3.2. Classes of Voting Membership.** The Association shall have two classes of voting membership:

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

(b) **Class B.** The Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned.

**Section 3.3. Termination of Class B Membership.** The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) The total outstanding votes held by Class A Members equal the total outstanding votes held by the Class B Member; or

(b) Two (2) years following the date of the first conveyance of record by Declarant of a Condominium to a Retail Purchaser.

**Section 3.4. Commencement of Voting Rights.** Voting rights shall be attributable to a Condominium commencing on the date the Association's regular assessments have commenced against the Condominium.

#### **ARTICLE IV**

#### **COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**

**Section 4.1. Covenant for Assessments.** The Declarant, for each Condominium owned, covenants, and each Owner of any Condominium by acceptance of a deed to the Condominium, whether or not so expressed in such deed, is deemed to covenant and agrees to pay to the Association: (a) regular assessments, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Association Property and Common Area, (b) special assessments, and (c) those other assessments provided for in this Article. The regular and special assessments, together with interest, costs, late charges and reasonable attorney's fees, shall, except as stated in the **Sections 4.4 and 4.16**, be a charge and continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, late charges and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them; however, the assessment shall remain a lien on the Condominium.

**Section 4.2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the

Owners in the entire Project and for the improvement and maintenance of the Association Property and Common Area for the common good of the Project, to reimburse the Association for the costs incurred in bringing an Owner into compliance with the Bylaws, this Declaration and the rules and regulations adopted by the Board, and for those other purposes described in this Declaration. For example, and not by way of limitation, the assessments may include sums to pay for social events for the Owners (such as a Fourth of July party) which the Board deems appropriate to conduct or promote. The regular assessments shall be determined at least annually by the Board to meet the expenses of the Association, including the establishment of reserve accounts, based upon the annual budget adopted by the Board pursuant to the Bylaws. A special assessment is an assessment the Board, in its discretion, determines necessary if the Association's available funds are or will become inadequate to meet the estimated expenses of the Association for a fiscal year. The Board may levy the entire special assessment immediately or levy it in installments over a period the Board determines appropriate. In addition, a special assessment against a particular Owner only may be levied by the Board as set forth in **Section 4.4**.

**Section 4.3. Maximum Regular and Special Assessments.** The Board shall levy regular and special assessments sufficient to perform the obligations of the Association as provided in this Declaration and the Bylaws. However, the Board shall not increase the assessments during any fiscal year unless the Board has complied with the requirements of California Civil Code Section 1365(a) or unless the Board has obtained the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and Section 7613 of the California CORPORATIONS CODE at which a quorum was present or participated. For purposes of this Section, "quorum" means more than fifty percent (50%) of the Owners.

Except for assessment increases necessary for emergency situations, the Board may not impose annual increases in regular assessments that are in aggregate more than twenty percent (20%) greater than the regular assessments for the Association's preceding fiscal year nor special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expense of the Association for the fiscal year, without the approval of Owners casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with §7510) of Part 3 of Division 2 of Title 1 of the California CORPORATIONS CODE and §7613 of the California CORPORATIONS Code at which a quorum was present or participated. An emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court;
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety in the Project is discovered;
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget under Section 1365 of the California CIVIL CODE. However, prior to the imposition or collection of an assessment under this Subsection (c), the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense

involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members of the Association with the notice of assessment.

Notwithstanding the above stated limitation against increases in regular assessments:

(i) The Board may increase regular assessments more than twenty percent (20%) if such increase was shown on an Association budget approved by the California Department of Real Estate and if such increase is allowed by California law;

(ii) The Board may levy special assessments pursuant to the Section in the Bylaws entitled "Limitation on Expenditure of Reserve Funds";

(iii) Sums assessed against Owners pursuant to the Section below entitled "Non-Lien Assessments (Compliance)" shall not be considered in calculating the increases in assessments; and

(iv) Sums assessed against Owners pursuant to the Section below entitled "Sub-metering of Water" shall not be considered in calculating the increases in assessments.

The due dates of assessments shall be as the Board establishes them. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

**Section 4.4. Non-Lien Assessments (Compliance).** The Association may also impose a special assessment against any Owner to reimburse the Association for costs incurred in bringing an Owner and the Owner's Condominium into compliance with the provisions of the Declaration, the Bylaws and Association rules and regulations, or as a penalty imposed as a disciplinary measure for failure of an Owner or occupants of the Owner's Condominium to comply with such provisions. Such special assessment may be imposed upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California CORPORATIONS CODE, as set forth in the Bylaws, and the Board shall meet in executive session if requested by the Owner being disciplined and the Owner shall be entitled to attend the executive session. Except to the extent such special assessment is to reimburse the Association for the cost of collecting assessments, the special assessment shall not constitute a lien on the Owner's Condominium and shall be assessed only against the Owner who is or was in non-compliance. The Association shall have lien rights with respect to charges imposed against an Owner which are reasonable late payment fees for delinquent assessments, interest and other charges to reimburse the Association for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

**Section 4.5. Schedule of Monetary Penalties.** If the Association adopts a policy of imposing any monetary penalty, including any fee, on any Owner for violation of this Declaration or the rules of the Association, including any monetary penalty relating to the activities of a guest or invitee of an Owner, the Board shall adopt and distribute to each Owner, by personal delivery or first-class mail, a schedule of the monetary penalties that may

be assessed for those violations, which shall be in accordance with the authorization for Owner discipline set forth in this Declaration and the Bylaws. The Board shall not be required to distribute any additional schedules of monetary penalties unless there are changes from the schedule that was adopted and distributed to the Owners pursuant to this Section.

**Section 4.6. Rate of Regular and Special Assessments.** Regular and special assessments shall be levied upon each Condominium equally, except as stated below.

(a) Regular and special assessments against the Condominiums shall be weighted for the following specific items ("Weighted Budget Items"):

(i) *Insurance premiums for insurance policies obtained by the Association;*

(ii) *Reserves for painting, roofing and resurfacing of flooring materials in the Common Area and Association Property; and*

(iii) *Expenses of utilities which are billed to the Association, are not separately metered or sub-metered but are supplied to all of the Separate Interests.*

(b) The amount of the Weighted Budget Items to be assessed against a particular Separate Interest shall be equal to the total Weighted Budget Items to be assessed times the Square Footage Percentage applicable to the Separate Interest. The Square Footage Percentage of a Separate Interest was determined by the ratio of the approximate square footage of floor area of the Separate Interest to be assessed to the approximate square footage of floor area all the Separate Interests which are subject to assessment. **Attachment "A"** to this Declaration sets forth the Square Footage Percentage for each Separate Interest.

(c) In addition, should the Board determine that the use of any particular Separate Interest(s) or its (their) appurtenant Exclusive Use Area(s) will cause an increase in the premium(s) for any insurance policy which the Association is obligated to obtain pursuant to **Section 6.9** below, the Board shall assess the amount of the increased premium only to those particular Separate Interest(s). Any assessment pursuant to this **Section 4.6 (c)** must be based on a written statement from the insurer, or insurance agent, which provided the insurance, which details: (i) the amount of the premium increase, (ii) which particular uses of which particular Separate Interests (or their appurtenant Exclusive Use Areas) caused the increase and (iii) the allocation of the increase to each of those particular Separate Interests.

(d) This **Section 4.6** does not apply to the sums payable by reason of the Sections of this **Article** entitled "**Non-Lien Assessments (Compliance)**", "**Rate of Special Assessments for Repairs**", or "**Sub-metering of Water**".

**Section 4.7. Rate of Special Assessments for Repairs.** Any special assessment to raise funds for the rebuilding or major repair of a portion of the structural Common Area or Association Property shall be levied against each Condominium in the Project against which the Association's regular assessments have commenced. Such special assessments shall be levied upon the basis of the Square Footage Percentages.

**Section 4.8. Date of Commencement of Regular Assessments.** The regular assessments shall commence as to all Condominiums in the Project on the first day of the month following the conveyance of the first Condominium to a Retail Purchaser.

**Section 4.9. Adjustment of Assessments; Due Dates.** The Board shall fix the amount of the regular assessments against each Condominium at least thirty (30) days in advance of each fiscal year but may change the assessment amount on any subsequent occasion. The amount of regular assessments (other than special assessments) shall be determined at least annually. Unless otherwise determined by the Board, regular assessments shall be due and payable in monthly installments on the first day of each calendar month. No notice of regular assessments shall be required except for notices of changes in assessment amount or changes in due dates. Written notice of changes in the regular assessments or of any special assessment shall be sent by first class mail to every Owner subject thereto not less than thirty (30) nor more than sixty (60) days prior to the change in assessments or the special assessment becoming due.

**Section 4.10. Effect of Non-Payment of Assessments; Remedies of the Association.** Any assessment made in accordance with this Declaration (including lien and non-lien assessments) shall be a debt of the Owner of a Condominium from the time the assessment is due. Any assessment not paid within fifteen (15) days after the due date shall be delinquent. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid in full. The Association shall have the right to impose a late charge on unpaid assessments in an amount not exceeding the greater of Ten Dollars (\$10.00) or ten percent (10%) of each assessment which is fifteen (15) days delinquent. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the County Recorder of the County of San Diego a notice of delinquency as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorney's fees), interest and late charges which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Association to enforce the lien by sale. Such notice shall be signed by an officer of the Association or its authorized agent.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this Section, the amounts delinquent, as set forth in such notice, together with the costs (including attorney's fees), late charges and interest accruing thereon, shall (except as provided in **Sections 4.4 and 4.16**) be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs (including attorney's fees), late charges and interest accruing thereon. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first Mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium, together with all costs (including attorney's fees), late charges and interest which have accrued on such amounts, are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each assessment lien may be foreclosed in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1367 the California CIVIL CODE, and all other applicable statutes, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien.

**Section 4.11. Subordination of the Lien to First Deeds of Trust and First Mortgages.**

The lien of the assessments, interest, costs, attorney's fees and late charges shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. However, the Association may treat as Common Expenses, assessable against all the Condominiums, any unpaid assessments for which lien rights have terminated. No sale or transfer shall relieve such Condominium from lien rights for any assessments thereafter becoming due.

**Section 4.12. Estoppel Certificate.** The Association shall furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

**Section 4.13. Non-Use of Association Property or Common Area.** No Owner shall be exempt from personal liability for assessments levied by the Association, nor shall any Condominium be released from the liens and charges of assessments because of the non-use of the Association Property or Common Area nor because of abandonment of the Condominium.

**Section 4.14. Taxation of Association.** In the event that any taxes are assessed against the Common Area, Association Property or the personal property of the Association, rather than against the individual Condominiums, the taxes shall be added to the regular assessments and, if necessary, a special assessment may be levied against the Condominiums in an amount equal to the taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**Section 4.15. Payment of Assessments By Declarant.** Except as specifically stated otherwise in this Article, Declarant shall pay all assessments levied by the Association against

any Condominium owned by Declarant at the same time, in the same manner and in the same amount as any other Owner.

**Section 4.16. Sub-metering of Water.** It is currently intended the domestic water will be supplied to the Separate Interests through master water meter(s) installed within the Project and that water and sewer services will be billed to the Association based on readings from the master meter(s). However, each Owner will be obligated to reimburse the Association in the amounts reasonably billed by the Association, or its contracting company, for the cost of the water and sewer services supplied to the Owner's Separate Interest or Exclusive Use Area based on the reading from the sub-meter(s) which monitors water consumption from the Owner's Separate Interest and Exclusive Use Area(s). In billing each Owner, the Association or its contractor shall utilize water consumption information from the sub-meters and the billing information which is provided by the supplier of water and sewer services. Should the supplier of such services charge penalties for excessive water consumption or should the supplier otherwise charge different rates for different levels of consumption, the Association may in any reasonable manner utilize such information in its allocation and determination of reimbursement amounts pursuant to this Section.

The Association shall have the right to enter into an agreement with a private water metering service to (a) read the sub-meters, (b) prepare and send the bills and (c) collect sums billed to each Owner on behalf of the Association. Alternatively, the Association may itself do any such billing activities for its reimbursement of amounts applicable to each Condominium. In no event shall the charge for reimbursement for water or sewer services be considered to be a part of the regular assessments. The reimbursement amounts so billed (whether billed by the Association or a private water metering service) shall be the personal obligation of the persons who owned the Condominium during the period of time the water being billed for was supplied to the Condominium. The charges for water or sewer services shall not constitute a lien on the Owner's Condominium. No Owner shall interfere with the reading of such sub-meters nor in any manner change or disconnect such sub-meters. The Association is hereby granted an easement for it or its agents and contractors to read, repair, realign or replace such sub-meters, wherever located.

**Section 4.17. Uncompleted Facilities.** The Board may (but shall have no obligation to) exclude from Association regular assessments those portions of budgeted assessments which are for the purpose of defraying expenses and reserves directly attributable to the existence of improvements to be maintained by the Association but which are not complete at the time of the assessment. Any such exemption from assessments shall be in effect only until completion of the improvements, which may be evidenced by recordation of a notice of completion for the same.

**Section 4.18. Capital Contributions.** Upon acquisition of record title to a Separate Interest from Declarant, the Retail Buyer of each Separate Interest within Project shall contribute One Hundred Dollars (\$100.00) to the capital of the Association. This capital contribution requirement shall apply only to the Separate interests conveyed by Declarant to Retail Buyers and not to any resale of a Separate Interest. It is intended that the capital contributions made pursuant to this Section shall be deposited by the Retail Buyer into the purchase and sale escrow and disbursed from the escrow to the Association upon close of the escrow. The payments required under this Section are in addition to and not in lieu of regular and special assessments of the Association.

ARTICLE VPOWERS AND DUTIES OF ASSOCIATION

The Association shall have those powers and duties set forth in its Bylaws.

ARTICLE VIUSE OF CONDOMINIUMS

**Section 6.1.** Uses. The Condominiums shall be improved, used and occupied for the following uses only:

(a) Street Level Uses Only. The first floor of Separate Interests 201 and 220 must be used only for one or more Street Level Uses:

(i) Any of the following retail shops: A grocery store, flower shop, stationary store, an art store, gift shop or hobby shop.

(ii) A restaurant or other food service shop provided that no food is prepared on site which would require external venting.

(iii) A theater.

(iv) Performing arts.

(v) Personal and convenience services such as a concierge.

(vi) Bank services.

(vii) Travel agency services.

(viii) Airline ticket services.

(ix) Child care services.

(x) A library.

(xi) A museum.

(xii) An art gallery.

(xiii) Declarant shall be allowed the uses described in **Section 6.25** below.

(xiv) Any other use which is approved by the Architectural Committee and which is allowed by the CCDC Permit and City zoning ordinances.

(b) Shopkeeper Units. The first floor of Separate Interests 202 through 206 (the "Shopkeeper Units") may be used for any of the following purposes:

(i) Residential Use.

(ii) Any use allowed by **Section 6.1 (a)** above.

(iii) Those additional uses which may be approved by the Architectural Committee.

(c) Residential Use. Except for those Declarant uses allowed by this Declaration, all other **Separate Interests**, and the upper floor(s) of the Shopkeeper Units and **Separate Interests 201 and 220** must be used for Residential Use only.

(d) Disallowed Uses. Notwithstanding the provisions of **Sections 6.1 (a), 6.1 (b) or 6.1 (c)** above, the following uses shall be disallowed:

(i) A use which regularly or periodically generates vibrations which are felt in any other **Separate Interest**. Construction or repair of improvements at Declarant's or the Association's request shall not require such approval;

(ii) A massage parlor;

(iii) A tattoo parlor;

(iv) An establishment which sells alcohol or illicit drug paraphernalia (a "head shop");

(v) An adult bookstore;

(vi) A dry cleaning establishment or other use which utilizes caustic chemicals on site (other than chemicals used in copy machines);

(vii) Any use which is not allowed by applicable laws or ordinances (such as the City zoning ordinance) or which would be contrary to the CCDC Permit or any other applicable governmental permit; or

(viii) A pet shop.

(e) Declarant Uses. Declarant may use any of the Condominiums owned by Declarant as model homes, design centers, construction offices and sales offices until (a) all the Condominiums in the Project are sold and conveyed by Declarant to Retail Purchasers, or (b) ten (10) years after the first close of escrow of a Condominium in the Project to a Retail Purchaser, whichever shall first occur.

**Section 6.2. Lease of Condominium.** Each Owner shall have the right to lease the Owner's Condominium provided that such lease is in writing. Each tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board, and a tenant's failure to do so shall be deemed a default under the lease. No Owner shall lease a Condominium for transient or hotel purposes and no Condominium shall be leased for a term less than twenty-six (26) days. Should the Board so request an Owner to do so, the Owner shall forward an executed copy of a lease to the Owner's Condominium

to the Board together with the telephone number and street address of the residence of the Owner. Other than as provided in this Section, there shall be no restriction on the right of any Owner to lease a Condominium. Nothing herein stated shall prevent an Owner from deleting confidential information from the copy of a lease which the Owner provides to the Association.

**Section 6.3. Use Not to Impair Insurance.** No Condominium shall be occupied, improved or used for any purpose or in any manner which shall cause such Condominium or any Condominium to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any such policy or policies representing such insurance to be cancelled or suspended, or the company issuing the same to refuse renewal thereof.

**Section 6.4. Animals.** No animals of any kind shall be raised, bred or kept on the Project except that a reasonable number of dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose, nor in violation of any other provision of this Declaration. A "reasonable number" as used in this Section shall ordinarily include no more than an aggregate of two (2) dogs and cats per household; provided, however, a reasonable number in any instance may be more or less depending on whether the pets constitute a nuisance to other Owners. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be kept within a Separate Interest or Balcony or on a leash being held by an individual capable of controlling the animal. Each Owner shall be liable to each and all remaining Owners, their families, guests, tenants and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept upon the Project by the Owner or by members of his or her family, his or her tenants or his or her guests; and it shall be the duty and responsibility of each Owner to immediately clean up any waste from his or her animals.

**Section 6.5. Nuisance.** No Condominium shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other such areas or annoy them by unreasonable noise or otherwise, nor shall any nuisance be committed or permitted to occur in any portion of the Project. Ordinary and usual techniques of construction of Improvements permitted hereunder shall not be deemed a nuisance. Any violation of the Section above entitled "Animals" or ordinances or regulations of the City of San Diego is hereby declared to be a nuisance.

**Section 6.6. Sign Control - Residential.** This Section applies to Condominiums for which only residential uses are allowed. An Owner of a Condominium for which only residential use is allowed by this Declaration, may place one (1) sign of reasonable and customary dimensions in the window of the Owner's Separate Interest to advertise the Condominium for sale or rent. No other signs may be placed anywhere in the Project without the prior written permission of the Architectural Committee.

**Section 6.7. Sign Control - Commercial.** This Section applies to Condominiums for which commercial use is allowed. An Owner of a Condominium for which commercial use is allowed by this Declaration, may place reasonable signs on or in the window of the portion of Owner's Separate Interest which is being used commercially and to the exterior of the building adjoining that portion of the Separate Interest. **Attachment "B"** to this Declaration describes the type, size, appearance and location of signs which are deemed reasonable. Any other exterior sign must be approved by Declarant or the Architectural Committee. The sign may be used to advertise the business conducted in the Separate

Interest, the name of the business, the street address and for similar purposes. The Architectural Committee shall have the right to approve any replacement sign unless the same is substantially of the same type, size and design of the sign described on **Attachment "B"** or previously approved by Declarant or the Architectural Committee.

**Section 6.8. Sign Control - In General.** Except as provided above and except for Declarant's rights set forth in this Declaration, no other signs may be placed anywhere in the Project without the prior written permission of the Architectural Committee. All signs must conform with applicable City of San Diego ordinances. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain in any Condominium owned or leased by it, on the Association Property and Common Area prior to the sale by Declarant of all the Condominiums, such signs, poles, flags, banners and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums.

**Section 6.9. Outside Antennae.** There shall be no outside television or radio antennae, masts, satellite dishes, transmitter tower or facility, poles or flag poles (other than poles or flag poles installed and maintained by Declarant in connection with its sales program for the period set forth in **Section 6.1** above) constructed, installed or maintained in the Project for any purpose whatsoever without approval of the Architectural Committee. However, in considering whether to approve an antenna or to impose requirements on such approval, the Architectural Committee shall not violate any applicable law or regulation, including, but not limited to any applicable regulations of the Federal Communications Commission.

**Section 6.10. No Owner Modification to Association Property or Common Area.** Except as otherwise specifically provided in this Declaration, no Owner shall have the right to alter, paint, decorate, remodel, landscape or adorn any part of the Association Property or Common Area without the written consent of the Board.

**Section 6.11. No Offensive Activity.** No noxious or offensive activity shall be carried on in the Project, nor shall anything be done in the Project which may be or become an annoyance or nuisance to the others within the Project. However, the following activities shall be permitted (i) commercial uses which are consistent with the restrictions set forth in this Declaration and (ii) construction or repair of improvements made at the Board's instruction or at Declarant's instruction. Nothing shall be done in any Condominium or elsewhere in the Project which will impair the structural integrity of any building. Except as otherwise provided in this Declaration, nothing shall be altered or constructed in or removed from the Association Property or Common Area, except upon the written consent of the Board. No Owner shall allow any trash container to be within view of neighboring Condominiums, streets, Association Property and Common Area. All rubbish, trash or garbage shall be regularly removed from each Condominium and shall not be allowed to accumulate in the Project. No fences, hedges or walls shall be erected or maintained in the Project except such as are installed in accordance with the initial construction by Declarant or as provided by the Architectural Committee. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes in an Exclusive Use Area or other portion of the Association Property or on the Common Area except in areas (if any) which may be approved by the Board.

**Section 6.12. Car Maintenance.** No car maintenance (other than emergency work) shall be permitted in the Project except with prior written approval of the Board.

**Section 6.13. Use of Association Property and Common Area.** Except as otherwise provided in this Declaration, the Association Property and Common Area shall be improved and used only for the following purposes:

- (a) Affording vehicular passage and pedestrian movement within the Project, including access to the Condominiums;
- (b) Recreational use by the Owners and occupants of Condominiums and their guests, subject to rules established by the Board;
- (c) Beautification of the Project and providing privacy to the occupants of the Separate Interests through landscaping and such other means as the Board shall deem appropriate;
- (d) Parking of automotive passenger vehicles in areas provided therefor as may be designated and approved by the Board by such persons, upon such terms and conditions as may from time to time be determined by the Board; the rules and regulations of the Board may be enforced by the Board, which shall have the right and power to remove vehicles from the Project at the cost of the vehicle owner and to levy monetary penalties as provided in this Declaration;
- (e) As Exclusive Use Areas to be used in the manner described in this Declaration.
- (f) By Declarant for marketing and construction activities; and
- (g) Those additional purposes which may be allowed by the Board.

No Owner shall use or interfere with use of the Common Area or Association Property in any manner which shall result in cancellation of insurance or making insurance unavailable.

**Section 6.14. Owners Liable for Damage.** Each Owner shall be legally liable to the Association for all damages to the Project, including but not limited to, the buildings, recreational facilities and landscaping caused by such Owner, such Owner's guests (or other licensees) or any occupant of such Owner's Separate Interest as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of this Declaration, the Bylaws and rules and regulations of the Board by such Owner's licensees and occupants of such Owner's Condominium.

**Section 6.15. Decorating by Owner.** Except as otherwise provided in this Declaration, each Owner shall have the right, at the Owner's sole cost and expense, to maintain, repair, paint, paper, panel, plaster, tile and finish the interior surfaces of the ceilings, floors, window frames, door frames, trim and perimeter walls of the Owner's Separate Interest, and the surfaces of the bearing walls and partitions located within the Separate Interest. Such Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his or her Separate Interest; however, without Architectural Committee approval, hard floor surfaces shall not be installed in areas in which the installation

of the hard surface floor covering would increase the level of noise heard in any other Separate Interest, unless such hard surfaces replace hard surfaces previously installed by or approved by Declarant. Windows shall be covered only by drapes, curtains, shutters and shades, and shall not be painted or covered by aluminum foil, paper or similar materials. Each Owner shall have the obligation to keep in good repair all items mentioned in this Section.

**Section 6.16. Window Coverings.** Unless Declarant has done so, each Owner shall, within one hundred twenty (120) days after close of escrow for his or her Condominium, install window coverings on all windows of his or her Separate Interest which are visible from any public or private street. The exterior appearance of such window coverings must be consistent with the requirements set forth in this Article.

**Section 6.17. No Impairment of Structures.** No Owner shall make any change to his or her Condominium which would adversely affect the structural integrity of the building.

**Section 6.18. Exclusive Use Areas.** Each Exclusive Use Area shall be appurtenant to the Separate Interest it serves. Conveyance of a Separate Interest will automatically convey all appurtenant Exclusive Use Areas. No Owner shall make any improvements to an Exclusive Use Area unless such improvements have been approved or pre-approved by the Architectural Committee.

**Section 6.19. Use of Exclusive Use Areas.** Each Owner shall be entitled to use any Exclusive Use Area appurtenant to the Owner's Separate Interest for usual and ordinary purposes for which such area was designed.

(a) Each Owner shall be entitled to use the Balcony Exclusive Use Area, if any, which is appurtenant to the Owner's Separate Interest for balcony purposes.

(b) Should landscaping be placed on a Balcony, the Owner must take adequate steps to capture water from such plants and to prevent any damage to the Project or unsightly conditions. The Board shall have the right to restrict pots or other items from being placed on top of any fence or railing, or to allow the potted plants to grow on the exterior of a Balcony railing, fence or wall or portions of the building. Each Owner shall be responsible to pay for the repairs of any damage which may be caused by the placing of landscaping (including potted plants) in his or her Exclusive Use Area. No Owner shall make any improvements to his or her Balcony or other Exclusive Use Area unless and until the Architectural Committee has approved plans of such improvements showing such detail as the Architectural Committee or its consultant deems appropriate. The Architectural Committee shall have the right to restrict or prohibit any items from being placed on a Balcony which are within view of other Owner(s) and which the Architectural Committee deems to be unattractive.

(c) Each Owner assumes all risks which may result from improvements he or she makes to his or her Exclusive Use Area or Separate Interest and each Owner indemnifies and holds harmless the Association, the Architectural Committee, Declarant and each other Owner from any claim, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of such improvements.

(d) No Owner shall interfere with the surface or any subsurface drainage of his or her Exclusive Use Area as established by Declarant nor shall any Owner install any improvements which would make it impractical to repair or replace any drainage facilities installed by Declarant. All improvements installed by an Owner in his or her Balcony shall provide for proper and adequate drainage.

(e) Each Owner shall have the right to use his or her Parking Space Exclusive Use Area for parking of automotive vehicle(s) (including cars, passenger vans and trucks). No Owner shall convert a Parking Space to any use which prevents its use for vehicular parking.

(f) The Board or Architectural Committee shall have the right to restrict those activities and improvements which it believes would have adverse structural, drainage or maintenance impacts or adverse visual or noise impacts on other Owners.

(g) The Board and the Architectural Committee shall have the right to allow Owners to exclusively use portions of the Association Property or Common Area above or below the vertical limits of any Exclusive Use Area.

**Section 6.20. Handicap Parking Spaces.** The Project will contain handicap parking spaces (which may be designated on the **Condominium Plan**), easements for the exclusive use of which shall be granted by Declarant to the Owners of particular Separate Interests. It is the intention of Declarant to grant Parking Space Exclusive Use Areas, including all of the handicap and regular Parking Spaces, at the time title to the Separate Interests is conveyed to the original purchasers.

The Owner of a Parking Space Exclusive Use Area which was designed as a handicap parking space and who is not, himself or herself, handicapped shall assign to the Owner or occupant of another Separate Interest in the Project who is or becomes handicapped for an extended and continuous period (regardless whether the handicapped Owner is a new Owner) the exclusive right to use such handicap Parking Space; provided such handicapped person makes available to such Owner the exclusive use of the Parking Space Exclusive Use Area the handicapped person would otherwise be entitled to use, as set forth in the deed for such other Separate Interest. Such rights to use the handicap Parking Space shall terminate when such person ceases to be handicapped. Evidence of handicap status shall be by distinguishing license plate or placard issued by the California Department of Motor Vehicles.

The Association shall have the authority and be responsible for coordinating the exchange of Parking Spaces pursuant to this Section and shall adopt rules and regulations with respect thereto, including the procedure to be followed should an Owner or occupant be handicapped and wish to use a handicap Parking Space, notice to be given to the Association and Owner, and review of the required evidence of handicap. The Association shall maintain appropriate records of such exchanges, including a copy of the evidence provided.

**Section 6.21. Right of Access.** Each Owner shall have the right of reasonable access for egress and ingress to and from such Owner's Separate Interest (including, but not limited to the garage portion) and Exclusive Use Areas.

**Section 6.22. Outdoor Lighting.** All private outdoor lights shall be designed and adjusted to reflect downward and avoid any impacts on adjacent homes or property.

**Section 6.23. City and CCDC Requirements.** The Association and each Owner shall at all times comply with the City of San Diego and CCDC Permit requirements.

**Section 6.24. Trash Drop Off Locations.** Certain portions of the Common Area or Association Property may be designated as trash drop off locations by the Board. The Board may adopt rules and regulations regarding the trash drop off and pick-up policies and each Owner shall comply with such regulations and policies.

**Section 6.25. Right To Combine Units.** One or more Separate Interests may be combined to comprise a single unit provided the Owner wishing to do so gives written notice to the Association and the Association reasonably determines that the combination of Separate Interests will not diminish the structural integrity of the Project. The combination of Separate Interests shall not result in any reduction of regular assessments or voting rights which would have otherwise applied to the units so combined. The area from which a Common Area wall or portion of a Common Area wall is removed by reason of the combining of Separate Interests shall be deemed a part of the combined Separate Interest after such removal.

**Section 6.26. Construction and Sales Activities.** The development, construction, marketing and sales activities of Declarant are exempt from the covenants, restrictions and limitations set forth in this Declaration. None of the covenants, restrictions and limitations set forth in this Article or elsewhere in this Declaration shall be applied to the development, construction, marketing or sales activities of Declarant or construed in such a manner as to prevent or limit development, construction, marketing or sales activities by such Declarant.

## **ARTICLE VII**

### **RESPONSIBILITIES OF MAINTENANCE**

**Section 7.1. Maintenance by Owners.** Each Owner of a Condominium shall be responsible for the maintenance and repair of:

(a) The Owner shall be responsible to maintain and repair the windows and the interior surfaces of doors enclosing the Separate Interest, including the metal frames, tracks and exterior screens of glass doors and windows; provided, however:

(i) The Association may require that it contract for the replacement of windows, in which event the Owner will reimburse the Association for its costs so incurred;

(ii) The Association may require that it contract for the cleaning of the exterior of some or all windows. Should the Association provide for the cleaning of the exterior of all windows, the costs thereof shall be deemed a Common Expense. Should the Association provide for the cleaning of the exterior only certain windows, the costs thereof shall be assessed only against the Owners of Separate Interests whose windows were or are to be cleaned by the Association.

(b) The Owner shall be responsible to maintain and repair the interior of the Separate Interest and all appliances whether "built-in" or freestanding within the Separate Interest.

(c) The Owner shall be responsible to maintain and repair the plumbing, electrical, cable television, water heating systems, heating systems and air conditioning systems (if any), any porch entry lighting fixtures, and other systems servicing the Owner's Condominium and located either within or without the outside perimeter of the exterior walls, floors and ceilings thereof, so long as those systems are used exclusively by such Owner and not in common. Declarant hereby reserves an easement to allow such systems to be located within the Association Property and Common Area in those locations where installed by Declarant. No Owner may permanently remove any porch entry lighting fixtures servicing his or her Separate Interest.

(d) Notwithstanding the immediately preceding **Subsection (c)**, the Board shall have the right to require that only a contractor or other person approved by the Board enter the roof or other portions of the Common Area.

(e) The Owner shall be responsible to maintain and repair the interior surfaces of any Balcony which the Owner has the exclusive right to use.

(f) The Owner of a Balcony shall be responsible to maintain the interior surface of any solid Balcony railing.

(g) The Owner of a Balcony shall be responsible to keep any drainage systems for the Balcony in good working condition at all times.

(h) The Owner shall be responsible to maintain and repair any improvements the Owner makes to his or her Exclusive Use Area.

(i) The Owner shall be responsible to do all routine maintenance (for example, sweeping and cleaning) of any Exclusive Use Area appurtenant to the Condominium, other than the Parking Spaces (however, the Owner shall be responsible to reimburse the Association for the costs of extraordinary maintenance to a Parking Space; *i.e.*, the costs to remove oil stains).

(j) This Section (j) pertains to the following Separate Interests which have entryways within non-exclusive portions of the Common Area and with direct access to streets: 201 through 206 and 213 through 220 ("Street Access Units"). Each Owner of a Street Access Unit will be responsible to do all routine maintenance (for example, sweeping and cleaning) of the walkway from the sidewalk to the Owner's Separate Interest.

**Section 7.2. Failure to Maintain.** In the event an Owner defaults in his or her maintenance or repair obligations, the Board may give written notice of such default, stating with particularity the work of maintenance or repair the Board finds to be required and requesting the same be completed in a reasonable period of time as specified in the notice. In the event the Owner fails to complete such maintenance or repair within the period

specified in the notice, the Board may cause such work to be completed and assess the Owner the cost thereof.

**Section 7.3. Maintenance by Association.** The Association shall maintain the Association Property and Common Area, except for those items of maintenance which the Owner is required to perform pursuant to this Declaration. For example, the Association shall be responsible for eventual re-surfacing of a Balcony unless an Owner has changed the surface of his or her Balcony (any such change shall require Architectural Committee approval) and the Association shall be responsible to paint and maintain both the exterior and interior surfaces of any open railings such as iron or tubular steel railings and the exterior surfaces and structures of solid walls or fences adjoining a Balcony.

**Section 7.4. Reimbursement For Excessive Costs.** Each Owner shall reimburse the Association for those costs incurred which result from the Condominium occupants' excessive or neglectful use of the Exclusive Use Area or other portions of the Project.

**Section 7.5. Wood-Destroying Pests.** The Association shall be responsible for the repair and maintenance of the Association Property and Common Area occasioned by the presence of wood-destroying pests or organisms; provided, however, it shall be the responsibility of each Owner to maintain and repair any improvements which may have been added by such Owner to the Owner's and/or Exclusive Use Area. The Association may cause the temporary, summary removal of any occupant of the Project for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance by the Association shall be borne by the affected Owners and not the Association.

The Association shall give notice of the need to temporarily vacate a residence to the occupants and to the Owner, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of 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 Owner, 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 residence address and a copy of the notice to the Owner, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association.

## **ARTICLE VIII**

### **SEPARATION OF INTERESTS AND PARTITION PROHIBITED**

**Section 8.1. No Separation of Interests.** No Owner may sell, assign, lease or convey any portion of his or her Condominium separate or apart from the entire Condominium. Any conveyance, encumbrance, judicial sale or other transfer (voluntary or involuntary) of any

portion of his or her Condominium separate or apart from the entire Condominium shall be void.

**Section 8.2. No Partition.** There shall be no termination of the Project and the Common Area of the Project shall remain undivided with no judicial partition thereof except:

(a) With the approval, after substantial destruction or condemnation of the Project occurs, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(b) With the approval, for reasons other than substantial destruction or condemnation of the Project, of at least sixty-seven percent (67%) of the total voting power of the Association and approval by Eligible Mortgage Holders who represent at least sixty-seven percent (67%) of the Condominiums that are subject to Mortgages held by Eligible Mortgage Holders; or

(c) As allowed by California law, including California CIVIL CODE Section 1359, as the same may be amended from time to time.

An Eligible Mortgage Holder who receives a written request to give such approvals who does not deliver or mail the requesting party a negative response within thirty (30) days shall be deemed to have given such approval provided such written request was delivered by certified mail or registered mail with "return receipt" requested.

Nothing in this Section shall be deemed to prohibit partition of a cotenancy in a Condominium.

**Section 8.3. Power of Attorney.** The Association is hereby granted an irrevocable power of attorney to sell the Project for the benefit of all the Owners thereof when partition of the Owners' interests in the Project may be had pursuant to this Article. The power of attorney herein granted may be exercised upon the vote or written consent of Owners who own at least fifty percent (50%) of the Condominiums in the Project. Such power of attorney may be exercised by any two (2) Members of the Board who are hereby authorized to record a certificate of exercise in the Office of the County Recorder of the County of San Diego, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith.

## ARTICLE IX

### DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA OR ASSOCIATION PROPERTY

#### Section 9.1. Damage or Destruction.

(a) If any portion of the Common Area or Association Property is damaged or destroyed by fire or other casualty, then the improvements shall be rebuilt or repaired substantially the same as the improvements existed prior to the fire or other casualty,

subject to local building codes and other applicable governmental regulations, unless either of the following occurs:

(i) The cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all the improvements, the available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstructions, and three-fourths (3/4ths) of the total voting power of the Association residing in Members and their Eligible Mortgagees (based upon one vote for each first Mortgage held by an Eligible Mortgagee) vote against such repair and reconstruction; or

(ii) Available insurance proceeds are not sufficient to substantially repair or reconstruct the improvements within a reasonable time as determined by the Board, a special assessment fails to receive the requisite approval (if such approval is required) as provided herein, and the Board is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

(b) The following procedures shall be employed for disposition of insurance proceeds and guidance in reconstruction:

(i) Minor Casualty. If the cost to repair or reconstruct does not exceed the sum of Thirty Thousand Dollars (\$30,000), the Board shall thereupon contract to repair and rebuild the damaged portions of the Project, in accordance with the conditions existing immediately prior to damage (modified at the discretion of the Board to comply with building codes and construction standards in effect at the time of the rebuilding) and the funds held in the insurance trust fund shall be used for that purpose. If the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding, the Owners of the Separate Interests affected shall pay for the portion of the insufficiency attributed to their Separate Interest by the Board and the Board shall levy a special assessment on all Condominiums to make up any deficiency attributed to the Common Area and Association Property. The special assessment shall be subject to the provisions of this Declaration governing membership approval of special assessments and shall be levied pursuant to the Section entitled "**Rate of Special Assessments For Repairs**" of the Article above entitled "**COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**" for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

(ii) Major Casualty. If the cost to repair or reconstruct does exceed the sum of Thirty Thousand Dollars (\$30,000), then:

(A) All insurance proceeds and funds borrowed by the Association, if any, shall be paid to a bank, trust company or other entity designated by the Board (the "insurance trustee") to be held for the

benefit of the Owners and their Mortgagees, as their respective interests may appear. The funds shall be disbursed according to standard construction loan procedures. The Board, on behalf of the Association and of the Owners, hereby is authorized to enter into an insurance trust agreement with such insurance trustee, consistent with this Declaration, relating to its powers, duties and compensation.

(B) The Board shall obtain firm bids from two (2) or more responsible contractors to rebuild the Project in accordance with the conditions existing immediately prior to damage and destruction (modified at the direction of the Board to comply with building codes and construction standards in effect at the time of the rebuilding). The Board may also obtain an estimate from the insurance carrier of the scope of work included within the amount of the insurance coverage. To be considered, any contractor's bid shall include the premium payable for performance, labor and material payment bonds from a reputable bonding company.

(C) The Board shall, as soon as reasonably possible after receipt of such contractors' bids or insurance estimate, call a special meeting of the Owners to consider such bids or insurance estimate. Failure to call such a meeting, or to repair such casualty damage within twelve (12) months from the date such damage occurred shall be deemed, for all purposes, a decision not to rebuild the damaged or destroyed improvements.

(D) At such meeting, the Owners may elect to reject all such bids or estimates and thus not to rebuild. A vote in excess of seventy-five percent (75%) of each class of Association Members shall be required to reject all bids or estimates; provided, however, that a vote in excess, of fifty percent (50%) shall be sufficient to reject any bid or estimate requiring more than Fifteen Thousand Dollars (\$15,000) over and above insurance proceeds for such reconstruction, repair or rebuilding. Failure of the Owners to reject all bids and estimates shall authorize the Board to accept the unrejected bid it considers most favorable; provided, however, that if acceptance of any such bid would require the levy of a special assessment, such acceptance shall only be granted following membership approval of such special assessment, as required by this Declaration. If such membership approval is not obtained, the bid shall be deemed to have been rejected.

(E) If the Owners vote to not repair or rebuild the Project, then each Owner (and the Owner's Mortgagee(s) as their respective interests shall then appear) shall be entitled to receive that portion of insurance proceeds equal to the proportion of the decrease in fair market value of the Owner's Condominium as compared to the aggregate decrease in fair market values of all the Condominiums in the Project caused by such damage or destruction. The decreases in fair market value shall be determined by two MAI (Member Appraisal Institute of the American Institute of Real Estate Appraisers) appraisers selected by the Board

and hired by and at the expense of the Association. If the two appraisers are unable to agree on a third, then the third shall be appointed by the presiding Judge of the Superior Court of the State of California for the County. The decreases in the market value of the respective Condominiums shall then be the average of the three values submitted by each of the appraisers.

(F) If a bid or estimate is accepted, the Board shall levy a special assessment to make up any deficiency between the total insurance proceeds or insurance work and the cost for such repairs or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of Mortgages, shall be paid to the insurance trustee to be used for such rebuilding. The special assessment shall be levied pursuant to the Section above entitled "**Rate of Special Assessments For Repairs**" of the Article above entitled "**COVENANT FOR MAINTENANCE ASSESSMENTS TO ASSOCIATION**" for purposes of raising funds for the rebuilding or repair and to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding.

(c) Notwithstanding any provision in this Section to the contrary, if the insurance carrier offers the full amount required to repair and restore all of the damage, then the Board shall contract to repair and rebuild the damaged portions of the Project in the manner provided above for a minor casualty.

(d) Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances.

**Section 9.2. Condemnation.** If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, then all the Owners of the Project, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award for such taking in the same proportion as insurance proceeds would be distributed pursuant to **Subsection 9 (b) (ii) (E)** above; provided, however, that should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth above in this Article for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided above in this Article for determining whether to rebuild or repair following damage or destruction.

**Section 9.3. Insurance.**

(a) The Association shall obtain and continue in effect at least the following insurance:

(i) A master fire insurance policy with glass coverage and extended coverage endorsement for one hundred percent (100%) of the current replacement cost of all of the Common Area and Association Property

improvements within the Project, excluding land, foundations, excavations and other items that are usually excluded from insurance coverage. The master fire policy shall also cover standard improvements installed in the Separate Interests used for residential purposes *i.e.*, those appliances, cabinets, mirrors, utility fixtures and other improvements located within the Separate Interests provided by Declarant to the initial Owners of Condominiums, but excluding upgrades to any of the foregoing and further excluding items not supplied by Declarant to initial purchasers; ***neither appliances nor improvements in portions of Separate Interests used for any commercial use (other than home business allowed as a permitted residential use) shall be covered by the master policy, other than doors and interior walls.*** The maximum deductible amount shall be the lesser of \$10,000 or one percent (1%) of the policy face amount. The form and content of such policy must satisfy the requirements of the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") and shall contain the following endorsements:

(A) An Inflation Guard Endorsement, when it can be obtained.

(B) A construction code endorsement, if there is a construction code provision that would require changes to undamaged portions of the building(s) even when only part of a building is destroyed by an insured hazard (typical endorsements include Demolition Cost Endorsements, Contingent Liability From Operation of Building Laws Endorsement and Increased Cost of Construction Endorsement).

(C) A Special Condominium Endorsement which states the policy shall provide that any insurance trust agreement will be recognized; the right of subrogation against Owners will be waived; the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association; and the policy will be primary, even if an Owner has other insurance that covers the same loss.

(ii) A comprehensive general liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant, and the Owners against liability incident to ownership or use of the Association Property and Common Area. The limits of such insurance shall not be less than \$3 Million covering all claims for death, personal injury and property damage arising out of a single occurrence or such other minimum amount which meets the requirements of CIVIL CODE § 1365.9. The form and content of the comprehensive general liability policy must satisfy the requirements of FNMA and FHLMC.

(iii) A policy insuring the Association's officers and directors against liability for their negligent acts or omissions while acting in their capacity as officers and directors. The limits of such insurance shall be not less than \$1 Million for all claims arising out of a single occurrence or such other minimum amount which meets the requirements of Civil Code § 1365.7.

(iv) Section 1365.7 of the California CIVIL CODE provides for a partial limitation on the liability of volunteer officers and directors of the Association who reside in a Separate Interest, provided that certain requirements, as set forth in the Code section, are satisfied. The requirements include that general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions be carried by the Association in specified amounts. The Association shall maintain general liability insurance and insurance covering individual liability of officers and directors for negligent acts or omissions in amounts which satisfy the requirements of the Code to limit the liability of volunteer officers and directors of the Association.

(v) A fidelity bond covering members of the Board, officers and employees of the Association and employees of any manager or managing agent, whether or not such persons are compensated for their services, naming the Association as obligee and written in an amount equal to at least three (3) months' aggregate regular assessments (including reserves) by the Association against all Condominiums then subject to assessment.

(vi) Workers' compensation insurance covering any employees of the Association.

(vii) A policy covering all loss to personal property owned by the Association insured with coverage in the maximum insurable fair market value of such personalty as determined annually by an insurance carrier selected by the Association. Insurance proceeds for improvements in the Association Property and personal property owned by the Association shall be payable to the Association.

(b) Insurance premiums for the master policy and other insurance obtained by the Association (other than the cost of indorsements which cover only particular Owners) shall be a Common Expense to be included in the regular assessments levied by the Association. Each Owner shall be responsible to pay any deductible amount for any loss to his Condominium. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within the Owner's Condominium. However, no Owner shall insure a Condominium in any manner which would cause any diminution in insurance proceeds from the master policy. Should any Owner violate this provision the Owner shall be responsible to the Association for any such diminution.

(c) All insurance policies shall provide that they shall not be cancelable by the insurer without first giving at least ten (10) days' prior notice in writing to the Association and the servicer of each first Mortgage which requests such notice, and shall contain a waiver of subrogation by the insurers against the Association, Board and Owners.

(d) The Association shall maintain such insurance coverage as may be required by FNMA or FHLMC so long as either FNMA or FHLMC, respectively, holds a Mortgage on or owns any Condominium.

(e) Nothing herein stated shall prevent the Association from obtaining additional amounts of insurance or from adding to the items covered by a master policy.

**Section 9.4. Mortgagee Approval.** Any restoration or repair of the Project after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

## ARTICLE X

### DAMAGE, DESTRUCTION AND CONDEMNATION OF SEPARATE INTERESTS

**Section 10.1. Damage or Destruction.** In the event of damage or destruction to any Separate Interest or Exclusive Use Area improvements which the Owner is obligated to maintain, the Owner shall reconstruct the same as soon as reasonably practicable (unless the Association is not required to repair surrounding damaged Association Property or Common Area pursuant to the other provisions of this Declaration). The Owner shall be entitled to the benefit from an equitable distribution of the master policy of casualty insurance referred to in **Article IX** above to the extent the distribution covers the damage or destruction of elements of the Condominium which are the obligation of the Owner to repair as provided in this Section.

**Section 10.2. Condemnation.** In the event of any taking of a Separate Interest or Exclusive Use Area, the Owner of the Condominium (and such Owner's Mortgagees as their interests may appear) shall be entitled to receive the award for such taking and after acceptance thereof the Owner and the Owner's Mortgagee shall be divested of all further interest in the Project and membership in the Association if such Owner shall vacate the Condominium as a result of such taking of the Separate Interest. In such event the Owner shall grant the Owner's remaining interest in the Common Area appurtenant to the Separate Interest so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

**Section 10.3. Mortgagee Approval.** Any restoration or repair of the Project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with original plans and specifications, unless other action is approved by Eligible Mortgage Holders of first Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders' Mortgages.

## ARTICLE XI

### CONDEMNATION OF ASSOCIATION PROPERTY

In the event the Association Property or any portion thereof shall be taken for public purposes of condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of

eminent domain, then the award or consideration for such taking or transfer shall be paid to and belong to the Association.

## ARTICLE XII

### ASSOCIATION'S RIGHT OF ENTRY

For the purpose of performing the maintenance of the Association Property and Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Association's agents or employees shall have the right to enter any Separate Interest, Exclusive Use Area or upon any portion of the Association Property and Common Area to effect repairs, improvements, replacements or maintenance as necessary; provided, however, except in case of an emergency, there shall be no entry into a Separate Interest or Exclusive Use Area without (a) a court order allowing such entry or (b) the Owner's consent, which consent shall not unreasonably be withheld and shall be presumed if the Owner makes no objection to such entry within three (3) days after the Board delivers notice of its intent to enter. When there is an entrance into any Separate Interest or Exclusive Use Area such entrance shall be made with as little inconvenience to the Owner as possible and any damage caused shall be repaired by the Association.

## ARTICLE XIII

### ADDITIONAL EXCLUSIVE EASEMENTS AND LICENSES

The Board shall have the right to grant the following additional easements and licenses:

**Section 13.1. Common Area Licenses.** The Board shall have the right to grant irrevocable licenses for Owners to exclusively use portions of the Common Area adjoining the Owners' Exclusive Use Area, provided that the granting of such licenses would not materially and adversely affect any Owner's use of the Common Area.

**Section 13.2. Association Property.** The Board shall have the right to grant easements for Owners to exclusively use portions of the Association Property adjoining the Owners' Exclusive Use Area, provided that the granting of such easements would not materially and adversely affect any Owner's use of the Association Property.

## ARTICLE XIV

### ARCHITECTURAL CONTROL

**Section 14.1. Architectural Committee.** Except as specifically stated in the Declaration to the contrary, no Owner shall make any improvements or exterior changes to any improvements to any portion of a Condominium which would be within view outside of the Separate Interest (e.g., in an Exclusive Use Area) or which result in any structural change to any building or would otherwise be within the jurisdiction of the Architectural Committee pursuant to this Declaration until the plans and specifications therefor showing the nature, design, kind, shape, height, width, color, materials and location have been submitted to and approved in writing by the Architectural Committee. The Architectural Committee shall consist of less than one (1) person nor more than five (5) persons. All members of the Architectural Committee may be appointed and replaced by Declarant until one (1) year following issuance

by the California Department of Real Estate of the original Final Subdivision Public Report for the Project. Thereafter, a majority of the members of the Architectural Committee may be appointed and replaced by Declarant and a minority of the members of the Architectural Committee may be appointed or replaced by the Board until ninety percent (90%) of the Condominiums planned for the Project have been conveyed of record to Retail Purchasers or until five (5) years following issuance by the California Department of Real Estate of the original Final Subdivision Public Report for the Project, whichever shall first occur. Thereafter, all members of the Architectural Committee may be appointed or replaced by the Board. Architectural Committee members need not be Members of the Association. Persons submitting proposals or plans and specifications to the Architectural Committee (each person is referred to as the "Applicant") must obtain a dated, written receipt for such plans and specifications and furnish the Architectural Committee with the address to which communications from the Architectural Committee to the Applicant are to be directed.

**Section 14.2. Architectural Committee Approval.** The Architectural Committee shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alteration, addition or other construction activity contemplated thereby in the locations indicated will not be detrimental to the Project or the appearance of the Project and surrounding real property as a whole, and that the appearance of any structure or other improvement will be in harmony with the surrounding structures and improvements. However, the Architectural Committee shall have the right from time to time to categorically exempt certain types of improvements from review by the Architectural Committee. The Architectural Committee will not have jurisdiction to require removal of any improvements which were exempt from Architectural Committee approval when installed. However, the Architectural Committee does have jurisdiction to approve or disapprove any changes to such improvements.

**Section 14.3. Other Approvals.** In addition to Architectural Committee approval, improvements to a Condominium may require a building permit or other approval from the City of San Diego or Centre City Development Corporation.

**Section 14.4. Approved Conditions.** The Architectural Committee may condition its approval of proposals or plans and specifications on such changes thereto as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The Architectural Committee may adopt, amend or supplement the architectural guidelines (i) concerning design and materials standards, rules and guidelines for construction activities; (ii) setting forth procedures for the submission of plans for approval; (iii) requiring a reasonable fee ("Review Fee") payable to the Association for any costs involved to accompany each application for approval; and (iv) specifying additional factors which it will take into consideration in reviewing submissions. The Architectural Committee may require such detail in plans and specifications submitted for its review as it deems proper. Until receipt by the Architectural Committee of all plans, specifications or other materials deemed necessary by the Architectural Committee, the Architectural Committee may postpone review of any plans submitted for approval.

**Section 14.5. Notification.** Decisions of the Architectural Committee and the reasons for decisions shall be transmitted by the Architectural Committee to the Applicant at the address set forth in the application for approval within forty-five (45) days after receipt by the Architectural Committee of all materials required by the Architectural Committee. Any

application submitted pursuant to this Article shall be deemed approved, unless the Architectural Committee's written disapproval or a request for additional information or materials is transmitted to the Applicant within forty-five (45) days after the date of receipt by the Architectural Committee of all required materials.

**Section 14.6. Waiver.** The approval of the Architectural Committee of any proposals or plans and specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

**Section 14.7. No Liability.** Neither the Architectural Committee, nor any members of the Architectural Committee, nor their duly authorized representatives, shall be liable to any Applicant or Condominium Owner for any loss, damage or injury arising out of or in any way connected with the performance of the Architectural Committee's duties, unless due to the willful misconduct of the Architectural Committee.

**Section 14.8. Variances.** The Architectural Committee may authorize variances from compliance with any of the architectural provisions of this Article. Such variances must be in writing, and must be signed and acknowledged by at least a majority of the members of the Architectural Committee. The granting of a variance shall not operate to waive any of the terms and provisions of this Article for any purpose except as to the particular property and particular provision covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all laws and regulations of any governmental authority affecting the use of his Condominium, including, but not limited to, zoning and building requirements of any governmental agency or entity having jurisdiction over the Condominium.

**Section 14.9. Architectural Committee Guidelines.** The Architectural Committee may adopt rules for the conduct of its affairs and design guidelines. The architectural guidelines of the Architectural Committee may provide for the pre-approval of certain specified types or categories of improvements. The Architectural Committee may from time to time adopt, supplement or amend architectural guidelines to establish, expand, limit or otherwise modify the categories and criteria for any pre-approved improvements.

**Section 14.10. Declarant Exemption: Declarant Rights.** This Article shall not apply to, and the Architectural Committee shall have no authority or responsibility to review or approve any, improvements made by Declarant on any Condominium, the Association Property or to the Common Area. Furthermore, nothing in this Declaration shall be understood or construed to apply to Declarant's construction or marketing activities, nor to require Declarant to seek or obtain Architectural Committee approval of any improvement constructed or placed by Declarant on any portion of the Project, provided Declarant does not unreasonably interfere with the use of the Association Property or the Common Area by any Owner, and Declarant does not unreasonably interfere with the use by an Owner of his Condominium.

**ARTICLE XV****ENFORCEMENT**

**Section 15.1. Enforcement.** The Association, Declarant, and/or any Owner shall have the right to enforce against one another, by any proceeding at law or in equity, all restrictions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. The CCDC and City shall have the right, but not the obligation, to enforce the provisions of this Declaration in the same manner as any Owner.

**Section 15.2. No Waiver.** Failure by the Association, Declarant, the City or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

**ARTICLE XVI****MEDIATION AND JUDICIAL REFERENCE**

**Section 16.1. Definitions.** The following words will have the following meanings for purposes of this Article:

(a) **"Construction Defect Dispute"** shall mean and refer to any dispute between an Owner or the Association and Declarant which dispute relates to the use or condition of the Project or any improvements to the Project. Construction Defect Disputes include, but are not limited to, disputes regarding boundaries, surveys, soils conditions, grading, design, specifications, construction, installation of improvements or disputes which allege breach of implied or express warranties as to the condition of the Project.

(b) **"Claimant"** refers the Association or any past or present Owner who intends to make a claim for Construction Defect against Declarant.

**Section 16.2. Dispute Notification and Resolution Procedure.** Any Construction Defect Dispute shall be subject to the following provisions:

(a) **Notice.** Any Claimant with a claim against Declarant shall notify Declarant in writing of the claim, which writing shall describe the nature of the claim and the proposed remedy (the **"Claim Notice"**).

(b) **Right to Inspect and Right to Corrective Action.** Within a reasonable period after receipt of the Claim Notice, which period shall not exceed sixty (60) days, Declarant and the Claimant shall meet at a mutually-acceptable place within the Project to discuss the claim. At such meeting or at such other mutually-agreeable time, Declarant and its representatives shall have full access to the property that is subject to the claim for the purposes of inspecting the same. The parties shall negotiate in good faith in an attempt to resolve the claim. If Declarant elects to take any corrective action, Declarant and its representatives and agents shall be provided full access to the property subject to the claim to take and complete corrective action.

(c) **Civil Code Sections 1368.4 and 1375.** Nothing contained herein shall be deemed a waiver or limitation of the provisions of California CIVIL CODE Section 1368.4. If the claim is subject to the provisions of CIVIL CODE Section 1375 as it may be amended from time to time, compliance with the procedures of CIVIL CODE Sections 1375 (b), (d) and (e) shall satisfy the requirements of **Sections 16.2 (a) and 16.2 (b)** above.

(d) **Mediation.** If the parties cannot resolve the claim pursuant to the procedures described in subsection (b) above, (including, if applicable, CIVIL CODE Section 1375 procedures) the matter shall be submitted to mediation pursuant to the mediation procedures adopted by the American Arbitration Association or any successor thereto or to any other entity offering mediation services that is acceptable to the parties. No person shall serve as a mediator in any dispute in which the person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting any appointment, the prospective mediator shall disclose any circumstances likely to create a presumption of bias or to prevent a prompt commencement of the mediation process.

(i) Within ten (10) days of the selection of the mediator, each party shall submit a brief memorandum setting forth its position with regard to the issues that need to be resolved. The mediator shall have the right to schedule a pre-mediation conference and all parties shall attend unless otherwise agreed. The mediation shall be commenced within ten (10) days following the submittal of the memoranda and shall be concluded within fifteen (15) days from the commencement of the mediation unless the parties mutually agree to extend the mediation period. The mediation shall be held in the county in which the Project are located or such other place as is mutually acceptable to the parties.

(ii) The mediator has discretion to conduct the mediation in the manner in which the mediator believes is most appropriate for reaching a settlement of the dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided the parties agree and assume the expenses of obtaining such advice. The mediator does not have the authority to impose a settlement on the parties.

(iii) Prior to the commencement of the mediation session, the mediator and all parties to the mediation shall execute an agreement pursuant to California EVIDENCE CODE Section 1152.5(e) or successor statute in order to exclude the use of any testimony or evidence produced at the mediation in any subsequent dispute resolution forum, including, but not limited to, court proceedings, reference proceedings or arbitration hearings. Pursuant to California EVIDENCE CODE Section 1152.5(a), the agreement shall specifically state that evidence of anything said or of any admission made in the course of the mediation is not admissible evidence, and disclosure of any such evidence shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given. Unless the document provides otherwise, no document prepared for the purpose of, or in the course of, or pursuant to, the mediation, or copy thereof, is admissible in evidence; and disclosure of any

such document shall not be compelled in any civil action in which, pursuant to law, testimony can be compelled to be given.

(iv) Persons other than the parties, the representatives and the mediator may attend mediation sessions only with the permission of the parties and the consent of the mediator. Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by the mediator while serving in such capacity shall be confidential. There shall be no stenographic record of the mediation process.

(v) The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witnesses, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise. Each Owner and the Association covenants that each shall forbear from commencing any litigation against Declarant without first complying with the procedures described in this Section.

**Section 16.3. Judicial Reference of Certain Disputes.** Any Construction Defect Dispute against Declarant shall be submitted to general judicial reference pursuant to California CODE OF CIVIL PROCEDURE Sections 638(l) and 641-645 or any successor statutes thereto, and all parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding.

**Section 16.4. Provisions Applicable To Judicial Reference.** The following provisions apply to any such judicial reference:

(a) The parties waive their right to a jury trial.

(b) The fee, if any, required to initiate the judicial reference proceedings shall be funded by Declarant; however, the costs and fees of such proceeding shall ultimately be borne as determined by the referee. Each party shall bear his or her own attorney's fees as his or her sole costs and expense.

(c) The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. Within ten (10) days of receipt by any party of a written request to resolve any dispute between them pursuant to this Section, the parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues. If the parties are unable to agree upon a referee within such ten (10) day period, then any party may thereafter seek to have a referee appointed under the California Code of Civil Procedure Section 638 and 640. If the referee is appointed by the Court the referee shall be a retired judge from JAMS/ENDISPUTE, INC., the American Arbitration Association or similar mediation/arbitration entity. In appointing the referee, the referee may be challenged for any of the grounds listed in Section 641 of the California Code of Civil Procedure. The following rules and procedures shall apply in all cases unless the parties agree otherwise:

- (i) The proceedings shall be heard in San Diego County;
  - (ii) The referee may require one or more pre-hearing conferences;
  - (iii) The parties shall be entitled to conduct all discovery as otherwise provided in the California CODE OF CIVIL PROCEDURE, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;
  - (iv) A stenographic record of each hearing and the trial shall be made;
  - (v) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and
  - (vi) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.
- (d) The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the clerk of the Court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee will stand as the decision of the Court and any decision of the referee may be excepted to and reviewed in like manner as if made by the Court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

**Section 16.5. Judicial Reference In Purchase Agreements.** The limitation of this Article to the mediation or judicial reference of only certain controversies, claims or disputes shall not be deemed to supersede any written agreement (e.g., purchase agreement) between Declarant and an Owner which may provide for the mediation or judicial reference of additional controversies, claims or disputes.

## **ARTICLE XVII**

### **ADDITIONAL PROVISIONS**

**Section 17.1. Severability.** Should any provision in this Declaration be void or become invalid or unenforceable in law or equity by judgment or court order, the remaining provisions hereof shall be and remain in full force and effect.

**Section 17.2. Amendments Prior to Escrow Closings.** Prior to the date escrow closes for any sale of a Condominium to a Retail Purchaser, this Declaration may be unilaterally amended by Declarant.

**Section 17.3. Amendments After Escrow Closings.** The following provisions shall apply after the close of the first escrow for a sale of a Condominium to a Retail Purchaser. During the period of time prior to conversion of the Class B membership to Class A membership, this Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that at least sixty-seven percent (67%) of the voting

power of each class of Members of the Association have approved the amendment. After conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by the President or Secretary of the Association certifying that the following have approved the amendment: (a) at least sixty-seven percent (67%) of the total voting power of the Association, and (b) at least sixty-seven percent (67%) of the voting power of Members of the Association other than Declarant. The percentage of voting power necessary to amend a specific clause or provision of this Declaration shall not be less than any percentage of affirmative votes prescribed for action to be taken under that clause. An amendment shall become effective upon the recording thereof by the Office of the County Recorder of the County of San Diego, California.

**Section 17.4. Mortgagee Approval of Amendment.** Anything contained herein to the contrary notwithstanding, no amendment material to a Mortgagee may be made to this Declaration without the prior written consent of Eligible Mortgage Holders whose Mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Project which are subject to Eligible Mortgage Holder Mortgages. For purposes hereof, any amendments to provisions of this Declaration governing any of the following subjects, shall normally be deemed "material to a Mortgagee":

- (a) Voting rights.
- (b) Assessment liens and the priority of assessment liens and the right of Eligible Mortgage Holders to approve increases in regular assessments of in aggregate more than twenty-five percent (25%) during any fiscal year from the regular assessments assessed during the previous fiscal year.
- (c) The right of Eligible Mortgage Holders to approve reductions in reserves for maintenance, repair and replacement of the Association Property and the Common Area.
- (d) Responsibility for maintenance and repairs.
- (e) Reallocation of interests in the Common Area or Association Property (including Exclusive Use Area) or rights to its use.
- (f) Redefinition of boundaries.
- (g) Convertibility of Separate Interests into Common Area or Association Property and vice versa.
- (h) Hazard or fidelity insurance requirements.
- (i) Imposition of any restrictions on the leasing of Condominiums.
- (j) Imposition of any right of first refusal or similar restriction on the right of a Condominium Owner to sell, transfer or otherwise convey the Owner's Condominium.
- (k) Restoration or repair of the Project (after a hazard or partial condemnation) in a manner other than specified herein.

(l) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs.

(m) Any provision which, by its terms, is specifically for the benefit of the first Mortgagees, or specifically confers rights on first Mortgagees.

An Eligible Mortgage Holder who receives a written request to approve amendments (including additions) who does not deliver or mail to the requesting party a negative response within thirty (30) days, shall be deemed to have approved such request provided that such written request was delivered by certified mail or registered mail, with "return receipt" requested.

**Section 17.5. Extension of Declaration.** Each and all of these covenants, conditions and restrictions shall terminate sixty (60) years following the recordation of this Declaration of Restrictions with the Office of the County Recorder of the County of San Diego, after which date they shall automatically be extended for successive periods of ten (10) years unless all the Owners have executed and recorded at any time within six (6) months prior to said sixty (60) year period, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for a conveyance of real property, a writing in which it is agreed that said restrictions shall terminate at the end of said sixty (60) year period or at the end of any such ten (10) year period.

**Section 17.6. Enforcement Litigation.** Except as provided in **Article XVI** above, in the event the Association, Declarant or any Owner shall commence litigation to enforce any of the covenants or restrictions contained in this Declaration, the prevailing party in such litigation shall be entitled to costs of suit and such attorney's fees as the Court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

**Section 17.7. Encroachment Easements.** Easements are hereby reserved in favor of the Owner of each Condominium and the Association over all adjoining Condominiums, the Association Property and Common Area for the purpose of accommodating any minor encroachments due to engineering errors, errors in original construction, repair, settlement or shifting of any building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if the encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure in the Project is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Condominiums, Association Property or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

**Section 17.8. Special Responsibilities of Association.** In the event that the improvements to be installed by Declarant to the Association Property or Common Area have not been completed prior to the issuance by the California Department of Real Estate of a Final Subdivision Public Report covering the Project and in the further event that the Association is the obligee under a bond to secure performance by the Declarant to complete such improvements, then if such improvements have not been completed and a Notice of Completion filed within sixty (60) days after the completion date specified in the Planned Construction

Statement appended to the bond, the Board shall consider and vote upon the question of whether or not to bring action to enforce the obligations under the bond. If the Association has given an extension in writing for the completion of any such improvement then the Board shall consider and vote on said question if such improvements have not been completed and a Notice of Completion filed within thirty (30) days after the expiration of the extension period. In the event that the Board determines not to take action to enforce the obligations secured by the bond, or does not vote on the question as above provided, then, in either such event, upon petition signed by Members representing not less than five percent (5%) of the total voting power of the Association, the Board shall call a special meeting of the Members of the Association to consider the question of overriding the decision of the Board or of requiring the Board to take action on the question of enforcing the obligations secured by the bond. Said meeting of Members shall be held not less than thirty-five (35) days nor more than forty-five (45) days following receipt of the petition. At said meeting a vote of a majority of the voting power of the Members of the Association, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association, and the Board shall thereafter implement the decision by initiating and pursuing appropriate action in the name of the Association.

**Section 17.9. Limitation of Restrictions on Declarant.** Declarant is undertaking the work of construction of residential Condominium dwellings and incidental improvements within the Project. The completion of that work, and the sale, rental and other disposal of said Condominium dwellings is essential to the establishment and welfare of the Project as a residential community. In order that Declarant's work may be completed and the Project may be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

- (a) Prevent Declarant, its contractors or subcontractors from doing in the Project whatever is reasonably necessary or advisable in connection with the completion of such work; or
- (b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part of the Project such structures as may be reasonable and necessary for the conduct of its business of completing such work and establishing the Project as a residential community and disposing of the same in parcels by sale, lease or otherwise; or
- (c) Prevent Declarant from conducting on any part of the Project its business of completing such work, and of establishing a plan of Condominium ownership and of disposing of Condominiums in the Project by sale, lease or otherwise; or
- (d) Prevent Declarant from maintaining such signs within the Project as may be necessary for the sale, lease or disposition of Condominiums; provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of such Owner's Condominium.

The rights of Declarant provided in Subparagraphs (a) through (d) above may be exercised during the period of time commencing when the Condominiums are first sold or offered for sale to the public and ending (a) when all Separate Interest Condominiums have closed escrow, or (b) ten (10) years following the date of conveyance of the first Condominium in the Project to a Retail Purchaser, whichever shall first occur.

**Section 17.10. Owners' Compliance.** Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages, or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Bylaws, shall be deemed to be binding on all Owners of Condominiums, their successors and assigns.

**Section 17.11. Payments of Taxes or Premiums by First Mortgagees.** First Mortgagees may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Association Property, unless such taxes or charges are separately assessed against the Owners, in which case, the rights of first Mortgagees shall be governed by the provisions of their deeds of trust. First Mortgagees may, jointly or severally, also pay overdue premiums on casualty insurance policies, or secure a new casualty insurance coverage on the lapse of a policy for the Association Property, and first Mortgagees making such payments shall be owed immediate reimbursement thereof from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of any first Mortgagee who requests the same to be executed by the Association.

**Section 17.12. Mortgagee Curing Defaults.** A Mortgagee who acquires title by judicial foreclosure, deed in lieu of foreclosure or trustee's sale shall not be obligated to cure any breach of the provisions of this Declaration which is non-curable or of a type which is not practical or feasible to cure. The determination of the Board made in good faith as to whether a breach is non-curable or not feasible to cure shall be final and binding on all Mortgagees.

**Section 17.13. Approval of First Mortgagees.** Unless at least sixty-seven percent (67%) of the first Mortgagees (based on one vote for each first Mortgage owned) have given their prior written approval, the Association shall not be entitled to:

- (a) By act or omission seek to abandon or terminate the Project.
- (b) Change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Area.
- (c) Partition or subdivide any Condominium.
- (d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Association Property. The granting of easements for public utilities or for other public purposes and other easements allowed by this Declaration shall not be deemed a transfer within the meaning of this Subsection nor shall non-material boundary adjustments be deemed a transfer within the meaning of this Subsection.
- (e) Restoration of the project (after hazard damage or partial condemnation) in such a manner other than specified in this Declaration. Any restoration or repair of the Association Property or Common Area after partial condemnation or damage due to an insurable event, shall be performed substantially in accordance with this Declaration and

original plans and specifications unless other action is approved by Eligible Mortgage Holders, Insurers or Guarantors which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors. When Owners are considering termination of the legal status of the project for reasons other than substantial destruction or condemnation of the project, Eligible Mortgage Holders, Insurers or Guarantors which have at least sixty-seven percent (67%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors must agree.

(f) Use hazard insurance proceeds or proceeds from other third parties for losses to or claimed defects in any portion of the Association Property or Common Area for other than the repair, replacement or reconstruction of such Association Property or Common Area.

(g) When professional management has been previously required by any Eligible Mortgage Holder, Insurer or Guarantor, whether such entity became an Eligible Mortgage Holder, Insurer or Guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of at least sixty-seven percent (67%) of the voting power of the Association and the approval of Eligible Holders, Insurers or Guarantors of Mortgages on Condominiums which have at least fifty-one percent (51%) of the votes of Condominiums subject to Eligible Mortgage Holders, Insurers or Guarantors. This paragraph (g) applies only if the Project contains 50 or more Separate Interests.

**Section 17.14. Notice to Eligible Mortgagees.** Upon written request to the Association identifying the name and address of the Eligible Mortgage Holder, Insurer or Guarantor and the Condominium number or address, any Eligible Mortgage Holder, Insurer or Guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Condominium on which there is a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor.

(b) Any delinquency in the payment of assessments or other default by an Owner subject to a Mortgage held, insured or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor which remains uncured for a period of sixty (60) days.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, Insurers or Guarantors as specified above.

**Section 17.15. Documents to be Available to Mortgagees.** The Association shall make available to Owners and Mortgagees, and holders, insurers or guarantors of any Mortgage, current copies of this Declaration, the Bylaws, other rules concerning the Project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances. If the Project consists of fifty (50) or more Condominiums, the Association must provide an audited statement for the preceding fiscal year if an Eligible Mortgage Holder

or Eligible Mortgage Insurer or Guarantor of a first Mortgage submits a written request for it. If the Project consists of less than fifty (50) Condominiums and no audited statement is available, the Eligible Mortgage Holder or Eligible Mortgage Insurer or Guarantor may have an audited statement prepared at its expense. Any such financial statement so requested shall be furnished within a reasonable time following such request.

**Section 17.16. Mortgage Protection.** A breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat or render invalid the lien, charges or encumbrance of any first Mortgage made for value which may then exist on any Condominium; provided, however, that in the event of a foreclosure of any such first Mortgage, or if the holder of the note secured by such first Mortgage acquires title to a Condominium in any manner whatsoever in satisfaction of the indebtedness, then the purchaser at the foreclosure sale shall, upon acquiring title, become subject to each and all of the covenants, conditions and restrictions contained herein, but free from the effects of any breach occurring prior thereto.

**Section 17.17. Conflicts.** In the event of any conflict between any of the provisions of this Article and any of the other provisions of this Declaration, the provisions of this Article shall control.

**Section 17.18. Provisions of Civil Code Section 1360.** Section 1360 of the California CIVIL CODE provides as follows:

"(a) Subject to the provisions of the governing documents and other applicable provisions of law, if the boundaries of a Separate Interest are contained within a building, the owner of a Separate Interest may do the following:

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

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

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

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

(C) Modifications external to the dwelling shall not prevent reasonable passage by other occupants of Separate Interests and shall be removed by the owner when the unit is no

longer occupied by persons requiring those modifications who are blind, visually handicapped, deaf or physically disabled.

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

(b) Any change in the exterior appearance of a Separate Interest shall be in accordance with the governing documents and applicable provisions of law."

**Section 17.19. Documents to be Provided to Prospective Purchasers.**

(a) **By Owners.** Each Owner shall, as soon as practicable before transfer of title to his or her Condominium or execution of a real property sales contract therefor (as defined in CIVIL CODE Section 2985), provide the following to the prospective purchaser those items which Civil Code Section 1368 requires be provided to the prospective purchaser. As of the date of this Declaration, Civil Code Section 1368 requires the following items be provided:

(i) A copy of this Declaration, the Association's Articles and Bylaws, and the Condominium Plan;

(ii) The statement required by CIVIL CODE Section 1368(2), if applicable (*i.e.*, if an age restriction becomes applicable);

(iii) A copy of the Association's most recent financial statement distributed pursuant to CIVIL CODE Section 1365;

(iv) A true statement, in writing, from an authorized representative of the Association, as to the respective amounts levied upon the Owner's Condominium which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the Owner's Condominium pursuant to CIVIL CODE Section 1367.

(v) A copy of the preliminary list of defects provided to each Owner pursuant to Civil Code Section 1375 if such that Section requires the list to be provided.

(vi) Any change in the Association's current regular and special assessments and fees which have been approved by the Board but have not become due and payable as of the date of the disclosure required by this Section.

(b) **By the Association.** Upon written request to the Association it shall, within ten (10) days of mailing or delivery of the request, provide an Owner with a copy

of the requested Association items specified in (i), (ii), (iii) and (iv) above. The Association may charge a fee for this service which may not exceed the cost to prepare and reproduce the requested items.

**Section 17.20. Easement to Inspect and Test.** Declarant reserves easements to enter any portion of the Project, including the interior of any residence and Exclusive Use Area to inspect those areas and to conduct destructive testing referred to in California CIVIL CODE Section 1375(d). However, Declarant shall notify the Association, with respect to Association Property which is to be inspected and the Owner of the Exclusive Use Area or Separate Interest to be inspected of at least three (3) alternative dates and times when such inspection can take place (the earliest of which shall not be less than ten (10) days after the notification is given) and Declarant shall give the Association and Owner, respectively, the opportunity to specify which date and time is acceptable to the Association and Owner. Should the Association or Owner not respond affirmatively with respect to one of the dates and times within five (5) days, then Declarant may decide which of the dates and times the inspection and testing shall take place and so notify the Association or Owner, respectively. Alternatively, Declarant may seek a judicial order allowing such inspection and testing to take place. Declarant shall be entitled to its reasonably incurred attorney's fees and be deemed the "Prevailing Party" should such a court order be sought and obtained. Declarant shall be obligated to fully repair any damage caused by any such destructive testing.

**Section 17.21. No Amendment Without Declarant's Consent.** No amendment may be made to Sections 2.2 (c), 2.2 (i), 2.2 (j), 6.1 (e), 6.26, 11.4, 14.10, 16.1 through 16.8, 17.9, 17.20 and this Section 17.21 which amendment would diminish the rights of Declarant without the written consent of Declarant.

**Section 17.22. No Amendment Without Commercial Owners' Consent.** No amendment may be made which would increase the rate of assessments against or impose greater use restrictions against Condominiums which may be used for Shopkeeper or Street Level Uses are allowed without the prior written consent of the Owners of at least two-thirds of the Condominiums which may be used for Shopkeeper or Street Level Uses. "Rate of Assessments" does not refer to amounts of assessments.

**Section 17.23. Encroachments Into Public Rights of Way.** The following areas of the Project encroach within the public rights of way which adjoin the Project: Planters, Balconies, entryway fences adjoining public streets and access ways adjoining public streets. These areas are shown on the Condominium Plan as Encroachment Areas "A" and "B", with Encroachment Areas "A" being encroaching improvements which are part of the non-exclusive areas of the Common Area and Encroachment Areas "B" being encroaching Exclusive Use Area improvements. The Association shall be responsible to maintain these improvements. The City of San Diego has approved plans which show these encroachment improvements, but the City has also reserved the right to require the encroaching improvements to be removed at a later date. Declarant believes it is not likely the City would require the encroaching improvements to be removed. However, Owners should consider obtaining endorsements to the title insurance policies they receive which provide title insurance to cover costs (or portions of the costs) should the City request the encroaching improvements to be removed.

**IN WITNESS WHEREOF**, the undersigned, being Declarant herein, has executed this instrument the day and year first hereinabove written.

OLSON BEECH-STREET, LLC, a California limited liability company

By: OLSON URBAN HOUSING, LLC, a Delaware limited liability company, Its: Managing Member

By: THE OLSON COMPANY, a California corporation

By: Jeffrey C. Fosbury  
Title Vice President

By: John W. Nelson  
Title V.P.

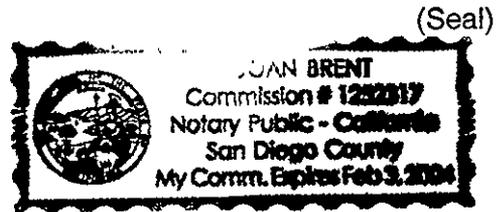
STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN DIEGO )

On April 23, 2001, before me, Joan Brent, Notary Public,  
personally appeared John W. Norman

\_\_\_\_\_, personally known  
to me (or proved to me on the basis of satisfactory evidence) to be the person(e) whose  
name(s) (s) are subscribed to the within instrument and acknowledged to me that (e) she/they  
executed the same in (h)is/~~her~~/their authorized capacity~~(ies)~~, and that by (h)is/~~her~~/their  
signature~~(s)~~ on the instrument, the person~~(s)~~, or the entity upon behalf of which the person~~(s)~~  
acted, executed the instrument.

WITNESS my hand and official seal.

Signature Joan Brent



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of

San Diego

} ss.

On April 23, 2001

Date

before me, Joan Brent, Notary Public

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

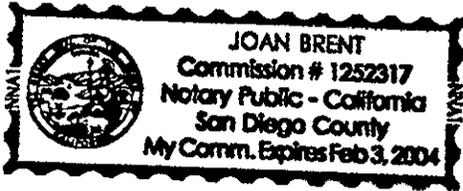
personally appeared

Jeffrey C. Fosburg

Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Joan Brent  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**

Top of thumb here



VILLAGE WALK  
PERCENTAGE SQUARE FOOTAGE OF EACH SEPARATE INTEREST

UNIT NUMBERS	PERCENTAGE
201	2.155%
202	1.950%
203	1.929%
204	1.929%
205	1.950%
206	1.956%
207	1.463%
208	1.454%
209	1.330%
210	1.284%
211	1.284%
212	1.323%
213	1.346%
214	1.629%
215	1.216%
216	1.219%
217	1.219%
218	1.219%
219	1.235%
220	2.332%
301	1.510%
302	1.333%
303	1.354%
304	1.341%
305	1.331%
306	1.349%
307	1.314%
308	1.341%
401	1.520%
402	1.383%
403	1.397%
404	1.510%
405	1.359%
406	1.356%
407	1.510%
408	1.683%
409	1.380%

Attachment "A"  
Page 1 of 2

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VILLAGE WALK  
PERCENTAGE SQUARE FOOTAGE OF EACH SEPARATE INTEREST

UNIT NUMBERS	PERCENTAGE
410	1.390%
411	1.553%
501	1.074%
502	1.126%
503	1.096%
504	1.120%
505	1.116%
506	1.463%
507	1.454%
508	1.359%
509	1.356%
510	1.510%
511	1.406%
512	1.393%
513	1.393%
514	1.385%
515	0.939%
516	1.381%
517	1.390%
518	0.957%
519	1.090%
601	1.178%
602	1.169%
603	1.189%
604	1.982%
605	1.152%
606	1.145%
607	1.145%
608	1.145%
609	0.925%
610	1.377%
611	1.666%
612	1.198%
613	1.189%
614	1.191%

Attachment "A"  
Page 2 of 2

Attachment "B"

Sign Specifications

1. TO BE PROVIDED BY BUILDING:
  - A. DETACHABLE SIGN BACK (16 GA GALVANIZED PERFORATED SHEET METAL TO STEEL FRAME)
  - B. TWO SIGN LIGHTS (HOMERUN TO RETAIL SPACE)
  - C. J-BOX (HOMERUN TO RETAIL SPACE) FOR OPTIONAL INTERNALLY ILLUMINATED LETTERS
2. 1 OPTIONAL LOGO ALLOWED - OVERHANG TO BACKING AS SHOWN
3. INTERNALLY ILLUMINATED SIGNS ALLOWED
4. MATERIALS MUST BE DURABLE, PERMANENT, AND AND MUST BE COMPATIBLE WITH GALVANIZED BACKING (i.e., CORROSION)
5. SHOPKEEPER OWNER TO OBTAIN REQUIRED SIGN PERMITS
6. DESIGN FOR SIGN MUST BE SUBMITTED TO VILLAGE WALK ARCHITECTURAL DESIGN REVIEW COMMITTEE FOR APPROVAL PRIOR TO SUBMITTAL FOR PERMITTING

