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The Michael Andrew Group, Inc.,
a California corporation

c/o Condominium Consultants, Inc.
3268-1/2 Rosecrans Street
San Diego, California 92110
(619) 224-2891

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DECLARATION OF RESTRICTIONS
FOR
OMEGA II
(a Condominium Project)

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THIS DECLARATION OF RESTRICTIONS is made this 4th day of June, 1986 by THE MICHAEL ANDREW GROUP, INC., a California corporation, hereinafter called "Declarant;"

This Declaration is made with reference to the following:

RECITALS

- A. Declarant is the Owner of the real property located in the City of San Diego, County of San Diego, State of California, more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof, hereinafter called the "Condominium Property.
- B. Declarant has or will hereafter file a Condominium Plan with the Office of the County Recorder of San Diego County, California, covering the Condominium Property.
- C. Declarant has or intends to improve the Condominium Property by constructing thereon in a single phase, low-rise development, six (6) Condominium units ranging in size from 814 Square Feet to 1,006 Square Feet (four units at 814 SF, 1 unit at 862 SF and one unit at 1,006 SF) and common areas, consisting of landscaping, walk-ways and driveways. The development of the Condominium Project will be consistent with the overall development plan submitted to and approved by the Veterans Administration. Declarant desires to develop the property as a Common Interest Development under the provisions of the Davis-Stirling Common Interest Development Act providing for separate title to Living Areas (as hereinafter defined), appurtenant to which will be an undivided fractional interest in the Common Area (as hereinafter defined).
- D. The Owners of a Condominium in the Project will receive title to a Living Area plus an appurtenant undivided one-sixth (1/6th) fractional interest as tenant in common in the Common Area. Each Condominium shall have appurtenant to it a membership in the OMEGA II HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation ("Corporation"), organized under the Nonprofit Mutual Benefit Corporation Law (California Corporations Code Sections 7110 et seq.), which will be the management body for the Condominium Project.
- E. Before selling or conveying any interests in the Condominium Project, Declarant desires to subject the Condominium Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant and any and all present and future Owners of the Condominium Property.

NOW, THEREFORE, Declarant hereby certifies and declares and does hereby establish the following general plan for the protection and benefit of all of the Condominium Property and does hereby fix the following protective conditions and restrictions upon each and every ownership interest in the Condominium Property, under which said conditions and restrictions, each ownership interest in the Condominium Property shall be hereinafter held, used, occupied leased, sold, encumbered, conveyed and/or transferred, subject

to the limitations, conditions and restrictions hereinafter set forth, all of which shall inure to the benefit of, be binding upon and pass with the Condominium Property described above, and each and every ownership interest therein, and shall inure to the benefit of, and apply to and bind the respective successors in title or interest of Declarant.

ARTICLE I

DEFINITIONS

- 1.1 **"ARTICLES"** shall mean and refer to the Articles of Incorporation as they may from time to time be amended.
- 1.2 **"BOARD"** shall mean and refer to the Board of Directors of the Corporation.
- 1.3 **"BYLAWS"** shall mean and refer to the Bylaws of the Corporation as they may from time to time be amended.
- 1.4 **"COMMON AREA"** shall mean and refer to the entire Common Interest Development, except the separate interests in space called a Unit (herein defined). The Common Areas shall be owned as tenants-in-common in equal share, one (1) for each Unit.
- 1.5 **"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.
- 1.6 **"CONDOMINIUM"** shall mean and refer to an estate in the Condominium Property, or portions thereof, as defined in California Civil Code Section 1351(f), and shall consist of an undivided interest as tenant-in-common in the real property coupled with a separate interest in space called a Unit, together with an Exclusive Use Common Area conveyed appurtenant thereto.
- 1.7 **"CONDOMINIUM BUILDING"** Condominium Building shall mean a residential structure containing Condominium Units.
- 1.8 **"CONDOMINIUM DOCUMENTS"** Condominium Documents means and includes the Declaration, as it may be amended from time to time, the exhibits, if any, attached thereto, the Articles, the Bylaws, and the rules and regulations for the Members, as established from time to time by the Board and the Condominium Plan.
- 1.9 **"CONDOMINIUM PLAN"** shall mean and refer to the Condominium Plan or Condominium Plans recorded pursuant to California Civil Code Section 1351 covering all or any part of the Condominium Property, including such amendments thereto as may from time to time be recorded.
- 1.10 **"CONDOMINIUM PROPERTY"** shall mean and refer to that certain real property located in San Diego County, California, more particularly described on Exhibit "A" attached hereto.

1.11 "CORPORATION" and/or ASSOCIATION" shall mean and refer to OMEGA II HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation, incorporated under the Non-Profit Mutual Benefit Laws of the State of California, its successors and assigns.

1.12 "DECLARANT" shall mean and refer to THE MICHAEL ANDREW GROUP, INC., a California corporation, its successors and assigns, if such successors or assigns should acquire all of the Condominium Property from Declarant.

1.13 "DECLARATION" shall mean and refer to the Declaration or Declarations of Restrictions recorded with the Office of the County Recorder of San Diego County, California, covering the Condominium Property, including such amendments thereto as may from time to time be recorded.

1.14 "ELIGIBLE INSURER OR GUARANTOR" shall mean and refer to an insurer or governmental guarantor who has provided a written request to the Homeowners Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Corporation. Such notice must contain the unit number or the unit address of the secured Condominium.

1.15 "ELIGIBLE MORTGAGE HOLDER" shall mean and refer to the holder of a first mortgage or deed of trust on a Condominium, who has provided a written request to the Homeowners Association, to be notified of those matters which such holder is entitled to notice of by reason of this Declaration or the Bylaws of the Corporation. Such notice must contain the unit number or the unit address of the secured Condominium.

1.16 "EXCLUSIVE USE COMMON AREA" shall mean and refer to those portions of the Common Area to which an exclusive right to use is granted to an Owner of a separate interest called a Unit and is shown and identified on the Condominium Plan as: "PS" denoting Parking Space exclusive use common areas; "G" denoting garage exclusive use common area; "B" denoting Balcony exclusive use common areas; and "P" denoting Patio exclusive use common areas; all of which are exclusive use common areas.

There are six (6) Parking Spaces and six (6) Garages described on the Condominium Plan. Each Parking Space and Garage is an Exclusive Use Common Area for the exclusive use of the Unit designated and shown in the Condominium Plan and in Exhibit "B" attached hereto and by this reference made a part hereof. The corporation shall maintain all parking spaces and garages.

1.17 "FHA" shall mean and refer to the Federal Housing Administration.

1.18 "FHLBC" shall mean and refer to the Federal Home Loan Mortgage Corporation.

1.19 "FNMA" FNMA shall mean and refer to the Federal National Mortgage Association.

1.20 "FIRST MORTGAGE" shall mean and refer to a First Deed of Trust as well as a First Mortgage.

1.21 "MEMBER" shall mean and refer to a person entitled to membership in the Corporation as provided herein.

1.22 "MORTGAGE" shall mean and refer to a deed of trust as well as a mortgage encumbering a Condominium.

1.23 "MORTGAGEE" shall mean and refer to a beneficiary or a holder of a deed of trust as well as a mortgagee.

1.24 "MORTGAGOR" shall mean and refer to the trustor of a Deed of Trust as well as a mortgagor.

1.25 "OWNER" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of any Condominium, including contract buyers but excluding those having such interest merely as security for the performance of an obligation.

1.26 "PROJECT" shall mean and refer to the Condominium Property, including all Condominiums and all structures and improvements erected or to be erected thereon.

1.27 "UNIT," "CONDOMINIUM UNIT," "LIVING UNIT" and/or "LIVING AREA" shall mean and refer to the separate interests in space in the Condominium Project which are not owned in common with the other Owners of other Condominiums in the Project. Said Units are shown and described on the Condominium Plan as a Living Unit and are identified as L-1 through L-6.

1.28 "VA" shall mean and refer to the Veterans Administration.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS IN CORPORATION

2.1 TYPES OF MEMBERS. Every Owner of a Condominium shall be a Member of the Corporation. 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 the Articles and By-laws and the rules and regulations adopted thereunder from time to time by the Board and officers of the Corporation. Membership in the Corporation shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser. The transfer of title to a Condominium or the sale of a Condominium and transfer of possession thereof to the purchaser shall automatically transfer the membership appurtenant to such Condominium to the transferee.

The Corporation shall have two classes of voting membership:

CLASS A. Class A Members shall be all Owners of a Condominium 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.

CLASS B. Class B Member(s) shall be the Declarant and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall automatically terminate and forever cease to exist and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

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

(b) Two (2) years following the date of original issuance by the California Department of Real Estate of its Final Subdivision Public Report covering the Condominium Property.

2.2 RIGHTS OF CORPORATION. Except as otherwise provided herein, the Corporation acting through the Board and officers shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration, the Articles and the Bylaws.

2.3 RIGHTS OF BOARD. The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Common Area and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying or laundry, control of pets and other activities when, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. Such rules may provide that the Owner of a Condominium whose occupant leaves property on the Common Area in violation of the rules may be assessed after appropriate notice and an opportunity for a hearing before the Board to cover the expense incurred by the Corporation in removing such property and storing or disposing thereof after appropriate notice and an opportunity for a hearing before the Board and a two-thirds (2/3) vote of approval by the Board. The Board may suspend the voting rights and rights to use the recreational facilities located on the Common Area of a member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws which satisfies the minimum requirements of Section 7341 of the California Corporations Code.

2.4 RIGHT TO ENTER. For the purpose of performing the maintenance of the Common Area or for any other purpose reasonably related to the performance by the Board of its responsibilities under this Declaration, the Corporation's agents or employees shall have the right, after reasonable notice to the Owner, to enter any Living Area or upon any portion of the Common Area (including any Exclusive Use Area) at reasonable hours to effect emergency repairs. For other than emergency repairs, the Corporation's agents or employees shall have the right to enter any Living Area or any portion of the Common Area to effect repairs, improvements, replacements or maintenance which the Corporation, after approval by two-thirds (2/3) vote of the Board, reasonably deems necessary. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused shall be repaired by the Corporation. Further, such entry for other than emergency repairs shall be made only after not less than three (3) days' notice has been given to the Owner.

2.5 PERSONAL LIABILITY. In discharging their duties and responsibilities, the Board acts on behalf of and as representative of the Corporation which acts on behalf of and as representative of the Owners, and no Member thereof shall be individually or personally liable or obligated for performance of such duties or responsibilities unless he fails to act in good faith.

2.6 FINANCIAL REPORTS. The Board shall regularly prepare and distribute to all Members of the Corporation: (i) a balance sheet as of the end of the fiscal year; (ii) an operating (income) statement for the fiscal year; (iii) a statement of changes in financial position for the fiscal year; and (iv) for any fiscal year in which the gross income to the Corporation exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy. The provisions of this Section 6 shall be performed in accordance with Section 1365 of the California Civil Code (defined more fully in the Bylaws of the Corporation), as it may be amended from time to time.

2.7 REPORTS TO PROSPECTIVE PURCHASERS; ESTOPPEL CERTIFICATE. In accordance with California Civil Code Section 1368, the Owner of a Condominium shall, as soon as practicable before transfer of title or execution of a real property sales contract therefor, as defined in California Civil Code Section 2985, provide the following to the prospective purchaser:

(a) A copy of the Declaration, Bylaws, Articles of Incorporation and Rules & Regulations, if any;

(b) A copy of the most recent financial reports described in Section 2.6 above;

(c) A certificate signed by an authorized representative of the Corporation as to the amount of any assessments levied upon the Owner's interest in his Condominium which are unpaid on the date of the Statement. The

certificate shall also include information on late charges, interest and costs of collection which, as of the date of the certificate, are or may be made a lien upon the Owner's interest in the Project pursuant to California Civil Code Section 1367. A properly executed certificate of the Corporation as to the status of assessments on a Condominium is binding upon the Corporation as of the date of its issuance.

Upon written request, the Corporation shall, within ten (10) days of the mailing or delivery of the request, provide the Owner of a Condominium with a copy of the requested items specified hereinabove. The Corporation may charge a fee for this service, which shall not exceed the reasonable costs to prepare and reproduce the requested items.

In addition to the requirements hereinabove, an Owner transferring title to his Condominium shall comply with applicable requirements of Section 1133 and 1134 of the California Civil Code.

ARTICLE III

COVENANT FOR MAINTENANCE ASSESSMENT TO CORPORATION

3.1 OBLIGATION OF ASSESSMENT. The Declarant, for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Corporation:

(a) **Regular Assessments**, which shall include an adequate reserve fund for periodic maintenance, repair and replacement of the Common Area; and,

(b) **Special Assessments** which shall be established and collected as hereinafter provided.

All assessments, together with interest, costs, late charges and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a 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 attorneys' 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.

3.2 PURPOSE OF ASSESSMENTS. The assessments levied by the Corporation shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project and for the improvement and maintenance of the Common Area for the common good of the Project.

3.3 MAXIMUM REGULAR ASSESSMENT. Until January 1st of the year immediately following conveyance of the first Condominium to an Owner, the

maximum regular annual assessment shall be ~~TEN-HUNDRED-FORTY-ONE~~ and 48/100 Dollars (\$1,041.48) per Condominium.

3.4 SPECIAL ASSESSMENTS. If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Corporation for a given fiscal year is or will become inadequate to meet expenses for any reasons, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs, replacement of or new capital improvements on the Common Area, the Board shall determine the approximate amount necessary to defray such expenses and, except as provided in Section 3.5 hereinbelow, said amount shall become a special assessment. The Board may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Condominium.

3.5 LIMITATIONS ON ASSESSMENTS.

(a) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the Board of Directors of the Corporation may not impose, except as provided herein, a regular assessment that is more than ten percent (10%) greater than the regular assessment for the Corporation's preceding fiscal year or impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Corporation for that fiscal year without the approval of owners casting a majority of the votes at a meeting or election of the Corporation conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Divisions 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code, as set forth in the Bylaws. These provisions, however, shall not limit assessment increases for the following purposes:

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

(ii) Addressing emergency situations.

(b) Any increase above fifteen percent (15%) for the categories noted in (i) and (ii) above shall require approval by vote or written consent of (i) a majority of the Members of each Class A and Class B during the time the two-class voting structure is in effect; or (ii) a majority of the members of the Corporation including at least fifty-one percent (51%) of Corporation members other than Declarant after conversion to a single Class A voting membership

3.6 MONETARY PENALTIES. The Board may levy monetary penalties against individual Owners to reimburse the Corporation for costs and expenses incurred in enforcing compliance by such Owner of his Condominium with the provisions of the Declaration, the Articles of Incorporation and Bylaws of

the Corporation, and the rules and regulations adopted by the Board or as a means of reimbursing the Corporation for costs incurred by the Corporation in the repair of damage to common areas and facilities for which the Owner was allegedly responsible. Provided, however, that (i) any such penalty may not be characterized nor treated as an assessment which may become a lien against the Owner's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code; and, (ii) no such monetary penalty shall be effective until the Board gives such Owner the opportunity of a hearing before the Board as set forth in the Bylaws, which satisfies the minimum requirements of Section 7341 of the California Corporations Code.

3.7 LATE PENALTIES. The provisions of the preceding Section 6 do not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Corporation for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments as described in Sections 9 and 10 of this Article.

3.8 NOTICE AND QUORUM FOR ACTION AUTHORIZED. Any action authorized under Sections 3 or 4 above shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Members not less than ten (10) days nor more than ninety (90) days in advance of the meeting. A quorum for such meeting shall be fifty-one percent (51%) of each class of Members of the Corporation. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of each class of Members, Members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officer(s) of the Corporation not later than thirty (30) days from the date of such meeting.

3.9 RATE OF ASSESSMENTS. Both regular assessments and special assessments (other than special assessments imposed by reason of non-compliance with the Articles, Bylaws, this Declaration, particularly as provided in Article IX, Section 1(e) herein, or the rules and regulations adopted by the Board) shall be levied at a uniform rate for all Condominiums and may be collected on a monthly basis, or otherwise, as determined by the Board. If for any reason whatsoever one or more Condominiums is not required to pay assessments, each of the remaining Condominiums shall bear assessments in the same proportion that each unit now bears to the others.

Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall bear interest from the date and at the rate provided for in the Bylaws, pursuant to Section 1366 of the California Civil Code.

3.10 COMMENCEMENT OF ASSESSMENTS; DUE DATES. The regular assessments provided for herein shall commence as to all Condominiums covered by this Declaration on the first day of the month following the conveyance of the first Condominium to an Owner. The first regular assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall determine and fix the amount of the regular assessment against each Condominium at least thirty (30) days in advance of each regular assessment period. Written notice of the regular assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

3.11 LATE CHARGES; INTEREST ON ASSESSMENTS. Any assessment not paid within fifteen (15) days after the due date shall be delinquent and shall be subject to a reasonable late charge not exceeding ten percent (10%) of the delinquent assessment or ten dollars (\$10.00), whichever is greater, and shall bear interest in all sums including the delinquent assessment, reasonable costs for collection and late charges at an annual percentage rate not exceeding ten percent (10%) commencing thirty (30) days after the assessment becomes due.

3.12 EFFECT OF NON-PAYMENT OF ASSESSMENTS. Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Corporation affecting any Condominium have become delinquent, the Board may file for recording in the Office of the San Diego County Recorder a Notice of Delinquent Assessment as to such Condominium, which Notice shall state all amounts which have become delinquent with respect to such Condominium and the costs (including attorneys' fees), late charges and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, and a description of the Condominium with the name of the record or reputed record Owner of such Condominium, and the name and address of the trustee authorized by the Corporation to enforce the lien, if by nonjudicial foreclosure as provided in Section 3.13 below. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Corporation. 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 attorneys' fees), late charges and interest accruing thereon, shall be and become a lien upon the Condominium described therein, which lien shall also secure all costs (including attorney's fees), late charges and interest accruing thereof. 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 for (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 attorneys' 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.

3.13 FORECLOSURE PROCEEDINGS. Each assessment lien may be foreclosed as and 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 of the California Civil Code, and to that end, a power of sale is hereby conferred upon the trustee designated in the Notice of Delinquent Assessment, or a trustee substituted pursuant to California Civil Code Section 2934a. The Corporation, 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 attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

3.14 SUBORDINATION OF THE LIEN TO FIRST DEEDS OF TRUST AND FIRST MORTGAGES. The lien of the assessments provided for herein 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 foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which become due prior to sale or transfer. No sale or transfer 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.

3.15 CAPITALIZATION OF CORPORATION. Upon acquisition of record title to a Condominium from Declarant, such Owner shall contribute to the capital of the Corporation an amount equal to one-sixth (1/6) the amount of the then regular annual assessment for the Condominium as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Corporation. Within six (6) months after the close of the first sales escrow of a Condominium by Declarant, as Seller, Declarant shall deposit into an escrow an amount equal to one-sixth (1/6) of the then regular assessment for any and all Condominiums not yet sold. Escrow shall remit these funds to the Corporation. Upon the close of escrow of any Condominium for which the capital contribution was prepaid by Declarant, escrow shall remit to the Declarant the capital contribution collected from the Owner.

3.16 TAXATION OF CORPORATION. In the event that any taxes are assessed against the Common Area or the personal property of the Corporation, rather than against the individual Condominiums, said taxes shall be added to the annual assessments, and, if necessary, a special assessment may be levied against the Condominium in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

3.17 PERSONAL LIABILITY OF OWNER. No Owner may exempt himself from personal liability for assessments levied by the Corporation, nor release the Condominium owned by him from the liens and charges hereof by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Condominium.

ARTICLE IV

USE OF UNITS AND COMMON AREA
AS DESCRIBED IN CONDOMINIUM PLAN

4.1 USE OF UNITS. Each Unit shall be improved, used and occupied for private, single-family dwelling purposes only, and no portion thereof, nor the Common Area, shall be used for any commercial purpose whatsoever; provided, however, Declarant may use any of the Units and Exclusive Use Areas owned or leased by Declarant as model homes and sales offices during that period of time commencing when the Condominiums are first sold or offered for sale to the public, and ending when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners thereof, or three (3) years from the date of sale of the first Condominium in the Project, whichever shall first occur.

4.2 LEASE OF UNITS. Each Owner shall have the right to lease his Unit together, provided that such lease is in writing and provides that the tenant shall be bound by and obligated to the provisions of this Declaration, the Bylaws and the rules and regulations of the Board and the failure to comply with the provisions of these documents shall be a default under the lease. No Owner shall lease his Condominium for transient or hotel purposes. Any lease which is either for a period of less than thirty (30) days or pursuant to which the Lessor provides any services normally associated with a hotel, shall be deemed to be for transient or hotel purposes.

4.3 INSURABILITY. No Living Unit, Exclusive Use Area or improvements situated therein shall be occupied or used for any purpose or in any manner which shall cause such improvements 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.

4.4 PETS. Except as otherwise provided in the zoning ordinances of the City of San Diego, or the County of San Diego, an Owner may keep and maintain in his Unit domesticated pets such as dogs, cats or other usual and ordinary household pets, not to exceed two (2) in number with an aggregate weight of twenty-five (25) pounds provided that they are not kept, maintained or bred for any commercial purposes. Notwithstanding the foregoing, no pets may be kept on the Condominium Property which result in an annoyance or are obnoxious to other Unit Owners or occupants. No pets shall be allowed in the Common Area except as may be permitted by rules of the Board. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling it. Declarant or any Owner may cause any unleashed dog found within the Common Area to be removed by Declarant (or any Owner) to a pound or animal shelter under the jurisdiction of the City of San Diego, or the County of San Diego by calling the appropriate authorities, whereupon the Owner may, upon payment of all expenses connected therewith, repossess the dog. No dog whose barking disturbs other Owners or occupants shall be

permitted to remain on the Condominium Property. Owners shall prevent their pets from soiling all portions of the Common Area where other persons customarily walk and shall promptly clean up any mess left by their pets.

4.5 INTERFERENCE WITH OTHER OCCUPANTS. No Living Unit or Exclusive Use Common Area 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 Unit nor on the Common Area.

4.6 SIGNS. No signs other than one (1) sign of customary and reasonable dimensions advertising a Condominium for sale or lease shall be erected or displayed in any Unit so that it is visible from without such area without the prior written permission of the Board, and all signs must conform with applicable governmental ordinances. Anything contained in this Declaration to the contrary notwithstanding, Declarant shall have the right to install and maintain during the sales period set forth in Section 1 above, such signs, poles and advertisements as it deems appropriate in connection with its sales program for the sale to the public of Condominiums, provided such signs do not unusually interfere with the right of use and quiet enjoyment of the Condominium Owners.

4.7 ANTENNAE, FLAG POLES, ETC. There shall be no outside television or radio antennae, masts, poles or flag poles constructed, installed or maintained on the Condominium Property for any purpose whatsoever without the prior written consent of the Board.

4.8 REMODELING THE COMMON AREA. Except as otherwise specifically provided herein, nothing herein contained shall give the Owner the right to paint, decorate, remodel, landscape or adorn any part or parcel of the Common Area without the written consent of the Board.

4.9 OFFENSIVE ACTIVITIES AND CONDITIONS. No noxious or offensive activity shall be carried on in any Living Area, or on the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners other than construction or repair of improvements made at the Board's instruction, or at Declarant's instruction. Nothing shall be done in any Living Area, or in, on, or to the Common Area which will impair the structural integrity of any building located therein. Except as otherwise provided herein, nothing shall be altered or constructed in or removed from the Common Area except upon the written consent of the Board or an architectural committee appointed by the Board. All equipment, garbage cans, wood piles or storage piles shall be kept screened and concealed from view of neighboring Living Areas, streets and Common Area. No fences, hedges or walls shall be erected or maintained upon the Condominium Property except such as are installed in accordance with the initial construction of the buildings located on the Condominium Property or as provided by the Board. No exterior clothes lines shall be erected or maintained, and there shall be no outside drying or laundering of clothes on the Common Area, except in areas which may be approved by the Board.

4.10 CAR MAINTENANCE AND POWER EQUIPMENT. No power equipment, hobby shops or car maintenance (other than emergency work) shall be permitted on the Condominium Property, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

4.11 USE OF COMMON AREA. Except as otherwise provided herein, the Common Area shall be improved and used only for the following purposes:

(a) affording vehicular passage, parking, and pedestrian movement within the Condominium Property, including access to the Living Areas;

(b) recreational use by the Owners and occupants of Living Areas in the Condominium Property and their guests, subject to rules established by the Board;

(c) beautification of the Common Area and providing privacy to the residents of the Condominium Property 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 and for such fees as may from time to time be determined by the Board;

(e) as Exclusive Use Common Areas to be used in the manner hereinafter described. Nothing herein contained shall be deemed to allow persons other than the Owner of a Unit to which an Exclusive Use Area is appurtenant (or his tenants and licensees) to enjoy the use thereof.

No part of the Common Area shall be obstructed so as to interfere with its use for the purposes hereinabove permitted, nor shall any part of the Common Area be used for storage purposes (except as incidental to one of such permitted uses, or for storage of maintenance equipment used exclusively to maintain the Common Area or in storage areas designated by the Board), nor in any manner which shall increase the rate of which insurance against loss by fire, or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or bodily injury, or property damage liability insurance covering the Common Area and improvements situated thereon may be obtained, or cause such premises to be uninsurable against such risks or any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

4.12 EXCLUSIVE USE OF NONEXCLUSIVE USE AREAS. The Board shall have the right to allow one or more Owners to exclusively use portions of the otherwise nonexclusive Common Area, provided that such portions of the Common Area are nominal in area and adjacent to the Owner's Exclusive Use Common

Area(s) or Living Unit, and, provided further, that such use does not unreasonably interfere with any other Owner's use or enjoyment of the Project.

4.13 LIABILITY FOR DAMAGE TO COMMON AREA. Each Owner shall be legally liable to the Corporation for all damages to the Common Area or to any improvements thereof or thereto, including but not limited to the buildings, facilities and landscaping caused by such Owner, his licensee(s) or any occupant of such Owner's Living Area, as such liability may be determined under California law. Each Owner shall be responsible for compliance with the provisions of the Declaration, Articles, Bylaws and rules of the Board by his guests, lessees and all occupants of his Unit, and shall, after written notice and an appointment for a hearing, pay the fines and penalties assessed pursuant hereto, the Bylaws or Board rules for any violation by his guests, lessees and occupants of his Living Area.

4.14 INTERIOR OF UNITS; MODIFICATIONS; HANDICAPPED ACCESS. Subject to the provisions of this Declaration, applicable provisions of law and Civil Code Section 1360, each Owner shall have the right, at his sole cost and expense:

(a) To make any improvement or alteration within the boundaries of his Living Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Common Area;

(b) To maintain, repair, repaint, paper, panel, plaster, tile and finish the interior surfaces of the ceiling, floors, window frames, trim, door frames and perimeter walls of the Unit and the surfaces of the bearing walls and partitions located within the Unit and to substitute new finished surfaces in place of those existing on said ceiling, floors, walls, and doors of said Unit;

(c) To modify his Living Unit 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 Living Unit for the purposes of this section if the unit is on the ground floor or already accessible by an existing ramp or elevator. The right granted herein is subject to the following conditions:

(1) The modifications shall be consistent with applicable building code requirements;

(2) The modifications shall be consistent with the intent of otherwise applicable provisions of this Declaration pertaining to safety or aesthetics;

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

(4) Any Owner who wishes to modify his Living Unit pursuant to this Section 4.14 (c), shall comply with the provisions of Section 4.17 hereafter regarding the review and approval by the Board or its designated committee of such modifications, which approval shall not be unreasonably withheld.

4.15 EXCLUSIVE USE COMMON AREAS. Each Exclusive Use Common Area shall be (i) appurtenant to the Unit with which the Exclusive Use Common Area is conveyed, and (ii) used only for the purposes set forth in this Declaration. The right to so use an Exclusive Use Common Area shall be exercisable only by the Owner(s) of the Condominium appurtenant thereto and/or said Owner's tenants and licensee(s). Conveyance of a Condominium shall effect conveyance of Exclusive Use Common Areas appurtenant thereto and transfer all rights thereto to the vested Owner of the Condominium. Any licensee(s) there- to shall be terminated upon such conveyance. No Exclusive Use Common Area or any rights thereto (other than said revocable licenses) shall be transferred or conveyed apart from conveyance of the Condominium to which it is appur- tenant. Each Exclusive Use Common Area shall be deemed to be Common Area for all those purposes set forth in this Declaration which are not inconsistent with this Article IV or Article V.

Except as provided in this Section 15 and in Section 4.14 above, noth- ing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Common Area or any other part of the Common Area without the prior written consent of the Board.

Except as provided in this Section 15 and in Section 4.14 above, nothing contained herein shall give any Owner the right to paint, decorate, remodel or alter said Exclusive Use Area or any other part of the Common Area without the prior written consent of the Board.

4.16 PARKING. Each Owner shall have the right to park and store, as the space permits, one (1) standard automotive vehicle in a parking space and/or garage, if any, which he has the exclusive right to use. Should storage cabinets exist in an area to which he has the exclusive right to use, said Owner shall have the right to store nonhazardous items in such storage cabinets.

4.17 TRAILERS AND TEMPORARY STRUCTURES. No boat, truck, trailer, camper, recreational vehicle or tent shall be used as a living area while located on the development. However, trailers or temporary structures for use incidental to the initial construction of the development or the initial construction of property owned by Declarant or Declarant's designees and situ- ated in the vicinity of the development may be maintained within the develop- ment, but shall be promptly removed on completion of all initial construction and all initial sales.

4.18 ARCHITECTURAL COMMITTEE. Anything contained in this Declara- tion to the contrary notwithstanding, no building, fence, wall or other

structure or improvement shall be commenced, erected, placed or altered upon the Common Area until the location and the complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design, color and location to surrounding structures and topography by the Board or by an Architectural Committee composed of three (3) or more, but not to exceed five (5) representatives.

The Declarant may appoint all of the original representatives of the Architectural Committee and all replacements until the first anniversary of the issuance of the original public report covering the Condominium Property. Thereafter, the Declarant may appoint a majority of the representatives of the Committee until such time that 90% of all the Units in the overall development have been sold or until the fifth anniversary of the original issuance of the final public report covering the Condominium Property, whichever first occurs. After one year from the date of issuance of the original public report for the Condominium Property, the Board shall have the power to appoint one representative to the Committee until such time that 90% of all of the Units in the overall development have been sold or until the fifth anniversary of the original issuance of the final public report covering the Condominium Property, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the Committee. Representatives appointed to the Committee by the Board shall be from the membership of the Corporation; members appointed by the Declarant need not be members of the Corporation.

In the event that the Board or the Architectural Committee fails to approve or disapprove of the location, plans, specifications or other request made of it within sixty (60) days after the submission thereof to it, then such approval will not be required, provided that any structure or improvement so to be erected or altered conforms to all other conditions and restrictions herein contained and is in harmony with similar structures erected within the Condominium Property. However, the grade, level or drainage characteristics of the property shall not be altered under any circumstances without the prior written consent of the Board or the Architectural Committee. The provisions of this Section 18 shall not apply to the initial construction by the Declarant of dwellings or other improvements on the Condominium Property, and neither the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove thereof.

ARTICLE V

RESPONSIBILITIES OF MAINTENANCE

5.1 OWNER RESPONSIBILITY OF INTERIOR OF UNIT. Each Owner of a Condominium shall be responsible for the maintenance and repair of the glass doors and windows enclosing his Unit, including the metal frames and tracks of glass doors and windows, the interior of his Unit and all appliances whether "built-in" or "free-standing" within the Unit and the interior surfaces of the Unit, and shall also be responsible for the maintenance and repair of

the plumbing, electrical and heating systems servicing his Unit and located within the outside perimeter of the exterior walls, floors and ceilings thereof, including television cable equipment and connections, and all appliances and equipment located within or without said Unit, so long as those systems are used exclusively by such Owner and not in common.

5.2 BALCONIES AND PATIOS. Each Owner shall also be responsible for the maintenance and repair of the patios and balconies which he has the exclusive right to use, including the interior surfaces of any fence or railing (but not the exterior surfaces), and shall make such repairs as the Board deems necessary to preserve the attractive appearance and protect the value thereof.

5.3 CORPORATION MAINTENANCE OF COMMON AREA. The Corporation shall maintain and repair all open and covered parking; provided, however, should such maintenance or repair result from the act or neglect of an Owner, his guests or licensees, the Owner shall reimburse the Corporation for such maintenance or repair. Each Owner hereby grants easements to other Owners to enter into each Condominium and to have utility companies enter into Condominiums to repair the plumbing, heating and electrical systems located thereon, subject to the following limitations. Entry into a Living Area for other than emergency repairs shall be made only after three (3) days' notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party.

5.4 ENTIRETY OF UNIT. No Owner may sell, assign, lease or convey his interest in the Common Area separate and apart from his Unit nor any portion of his Unit apart from the entire Unit.

ARTICLE VI

PARTITION PROHIBITED

Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that such partition is consistent with the requirements of California Civil Code Section 1359.

ARTICLE VII

POWER OF ATTORNEY

The Corporation is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when partition of the Owners' interests in said Condominium Property may be had pursuant to Article VI above. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate

two-thirds (2/3) of the interest in the Common Area 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, San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided however, that said power of attorney shall not apply to the Administrator of Veterans Affairs, an Officer of the United States of America.

ARTICLE VIII

RIGHTS OF MORTGAGEES

8.1 ACTION REQUIRING MORTGAGEE APPROVAL. Provided that the mortgagee informs the Corporation in writing of its appropriate address and requests in writing to be notified, neither the Corporation nor any Owner shall do any of the following, unless sixty-seven percent (67%) of the first Mortgagees of Mortgages encumbering Condominiums (based upon one (1) vote for each Mortgagee) have given their prior written approval, neither the Owners nor the Corporation shall:

(a) Seek, by act or omission, to abandon the Condominium Project or to terminate the Condominium Plan or this Declaration, or change, waive or abandon any scheme of regulation or enforcement thereof, pertaining to the architectural design or the exterior appearance or maintenance of Units or the Common Area;

(b) Change the pro rata interest or obligations' of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of the Common Area appurtenant to each Unit;

(c) Partition or subdivide any Condominium;

(d) Seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Common Area shall not be deemed a transfer within the meaning of these provisions;

(e) Use hazard insurance proceeds for losses to any portion of the Condominium Property for other than the repairs, replacement or reconstruction of the Condominium Property, except as may be provided by statute or upon substantial loss to the Units or Common Area, respectively; or

(f) Maintain fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurance value thereof, based on current replacement cost.

8.2 NOTIFICATION TO MORTGAGEE. Upon written request to the Corporation, identifying the name and address of the holder, insurer or guarantor

and the Condominium number or address, any Eligible Mortgage Holder or Eligible Insurer 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 first Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer.

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a Condominium subject to a first Mortgage held or insured, 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 Corporation.

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders as required in the Bylaws or in this Declaration.

8.3 PRIORITY OF INSURANCE PROCEEDS DISTRIBUTION. Notwithstanding any other provision herein contained to the contrary, no provision of this Declaration or any other condominium constituent documents shall give a condominium unit Owner, or any other party, priority over any rights of the first mortgagee or beneficiary of the condominium unit pursuant to its mortgage or deed of trust in the case of a distribution to such unit Owner of insurance proceeds or condemnation awards for losses to or a taking of condominium units and/or common elements.

8.4 NO RIGHT OF FIRST REFUSAL. This Declaration shall not be amended to provide for any right of first refusal or other similar restriction in the Association or others to purchase a Condominium without the prior written approval of at least two-thirds (2/3) of all First Mortgagees of Condominiums within the Project. Should an amendment nevertheless be made with regard to the right of refusal, such restriction shall not apply to any first mortgagee.

8.5 MORTGAGEES FURNISHING INFORMATION. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any loan encumbering a Condominium.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION OF COMMON AREA

9.1 FIRE OR CASUALTY. If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

(a) If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Corporation for the fiscal year during which

the repairs or rebuilding is necessitated, the Board shall thereupon contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.

(b) If the cost of repairs or rebuilding exceeds the amount of available insurance proceeds by more than five (5%) percent of the budgeted gross expenses of the Corporation for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in Common Area agree to the repair or restoration of the Project, then the Board shall contract as provided in (a) above.

(c) If said Owners do not so agree to the repair or rebuilding of the Common Area, then each Owner (and his 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 his Condominium as compared to the aggregate decrease in fair market values of all the Condominiums caused by such damage or destruction. For purposes hereof fair market value shall be determined by an independent appraiser, selected by the Board and hired by and at the expense of the Corporation. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

(d) Anything in the immediately preceding Paragraph the contrary notwithstanding, the Board shall contract for such repair or rebuilding of Common Area which consists of building(s) containing Units (or portions thereof and/or improvements thereto) if fifty percent (50%) or more of the Owners owning Units in said building(s) agree to the repair or restoration of said buildings.

(e) If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium upon the basis of the ratio of the square footage of the floor area of the Unit of the Condominium to be assessed to the total square footage of the aggregate floor area of the Units in all Condominiums to be assessed to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessments and all insurance proceeds, whether or not subject to liens of Mortgagees, shall be paid to the account of the Corporation to be used for such rebuilding.

9.2 EMINENT DOMAIN. If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award is not apportioned among the Owners by court judgement or by agreement between the condemning authority and each of the affected Owners in the subdivision, then the Owners of the Common Area, and their Mortgagees as their respective interests then appear, shall be entitled to receive a distribution from the award from such taking in proportion as insurance proceeds would be distributed pursuant to subsection (c) of Section 1 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 Corporation for that purposes in the same manner and subject to the same terms, conditions and limitations as are set forth above in Section 1 of this Article IX 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 Section 1 of this Article IX for determining whether to rebuild or repair following damage or destruction.

9.3 MASTER INSURANCE POLICY. The Corporation shall obtain and continue in effect the following insurance:

(a) A master policy of insurance with glass coverage and extended coverage endorsement for the full insurable value of all of the improvements within the project. "Improvements" means and refers to the Common Area together with those appliances and improvements located within the Living Units provided by Declarant to the initial Owners of Condominiums and does not include items not provided by Declarant. The form and content of such policy must be satisfactory to all institutional first trust deed lenders and shall meet the maximum standards of the various institutional first trust deed lenders whose loan(s) encumber any of the Condominiums.

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Corporation, any manager, the Declarant and the Owners against liability incident to ownership or use of the Common Area. The limits of such insurance shall not be less than \$1,000,000 covering all claims for death, personal injury and property damage arising out of a single occurrence.

(c) Such insurance covering officers and employees of the Corporation and employees of any manager or managing agent, whether or not any such persons are compensated for their services, against dishonest acts on their part, or in lieu thereof, a fidelity bond, naming the Corporation as obligee, written in an amount equal to at least the estimated maximum of funds, including reserves in the custody of the Homeowners' Association or the management agent at any given time during the term of the fidelity bond. However, the bond should not be less than a sum equal to three (3) months aggregate assessments on all Condominium Units plus reserve funds.

(d) Worker's compensation insurance covering any employees of the Corporation.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Corporation. Each Owner shall be responsible to pay any deductible amount for any loss to his Condominiums. Each Owner may separately insure the improvements not covered by the master fire insurance policy and personal property within his Condominium. No Owner shall insure his Condominium in any manner which would cause the diminution in insurance proceeds from the master policy. Should any Owner violate this provision, he shall be responsible to the Corporation for any such diminution.

ARTICLE X

DAMAGE AND DESTRUCTION OF LIVING AREAS

10.1 RECONSTRUCTION OF A UNIT. In the event of damage or destruction to any Living Area, the Owner thereof shall reconstruct the same as soon as reasonably practicable and substantially in accord with the original plans and specifications therefor; provided, however, that any such Owner may, with the written consent of the Board, reconstruct or repair the same pursuant to new or changed plans and specifications. In the event the Board fails to approve or disapprove such changed plans and specifications within sixty (60) days of the receipt thereof, they shall be deemed to have been approved.

10.2 TAKING OF A UNIT. In the event of any taking of a Living Area, the Owner (and his Mortgagees as their interest may appear) of the Unit shall be entitled to receive the award for such taking and after acceptance thereof he and his Mortgagee shall be divested of all further interest in the Condominium Property if such Owner shall vacate his Living Area as a result of such taking. In such event said Owner shall grant his remaining interest in the Common Area 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.

ARTICLE XI

ENFORCEMENT

11.1 RIGHT TO ENFORCE. The Corporation, Declarant or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration. Each Owner of a Condominium shall have a right of action against the Corporation for failure to comply with the provisions of the Declaration, the Bylaws, or with the decisions of the Corporation which are made pursuant to authority granted the Corporation under the Declaration or Bylaws.

11.2 FAILURE TO ENFORCE. Failure by the Corporation, Declarant or any Owner to enforce any provisions of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XII

GENERAL PROVISIONS

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

12.2 AMENDMENTS. Except as may be in accordance with the provisions of California Civil Code Section 1355 and 1356, during the period of time prior to conversion of the Class B membership in the Corporation to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of seventy-five percent (75%) of the total voting power of each class of members of the Corporation. After conversion of the Class B membership in the Corporation to Class A membership, this Declaration may be amended at any time and from time to time by the vote or written assent of (i) seventy-five percent (75%) of the total voting power of the Corporation, and (ii) seventy-five percent (75%) of the voting power of the members of the Corporation other than Declarant. Any such amendment shall become effective upon the recording with the Office of the County Recorder of San Diego County, California of a Certificate of Amendment signed and acknowledged by the President or Vice President of the Corporation and the Secretary or Assistant Secretary of the Corporation certifying that such votes or written consent have been obtained. For the purposes of recording such instrument, the President or Vice-President and Secretary or Assistant Secretary of the Corporation are hereby granted an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying and executing and recording said amendment with the Office of the County Recorder of San Diego County, California. No material amendment may be made to this Declaration without the prior written consent of no greater than seventy-five percent (75%) of the Eligible Mortgage Holders whose mortgages encumber fifty-one percent (51%) or more of the Condominiums within the Condominium Property which are subject to Eligible Mortgage Holder Mortgages.

Notwithstanding anything to the contrary herein, "material amendment" shall mean amendments to provisions of the documents governing the following subjects:

- (a) The percentage interest of the unit Owners in the common elements of the project.
- (b) The fundamental purpose for which the project was created (such as a change from residential use to a different use).
- (c) Voting.
- (d) Assessments, assessment liens and subordination thereof.
- (e) The reserve for repair and replacement of common elements.
- (f) Property maintenance obligations.
- (g) Casualty and liability insurance.
- (h) Reconstruction in the event of damage or destruction.

- (i) Rights to use the common elements.
- (j) A decision by the homeowners association to establish self management when professional management had been required previously by an eligible mortgage holder.
- (k) Boundaries of any unit.
- (l) Leasing of units.
- (m) Any provision, which by its terms, is specifically for the benefit of first mortgagees, or specifically confers rights on first mortgagees.

12.3 EXTENSION OF DECLARATION. Each and all of these covenants, conditions and restrictions shall terminate on December 31, 2030, after which date they shall automatically be extended for successive periods of ten (10) years, unless the Owners have executed and recorded at any time within six (6) months prior to December 31, 2030, or within six (6) months prior to the end of any such ten (10) year period, in the manner required for the conveyance of real property, a writing in which it is agreed that said restrictions shall terminate on December 31, 2030, or at the end of any such ten (10) year period.

12.4 ANNEXATION. Upon approval in writing of the Corporation, pursuant to two-thirds (2/3) of a majority of the voting power of its Members, excluding the voting power of the Declarant, the Owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Corporation, may file of record a Declaration of Annexation, which shall extend the scheme of this Declaration to such property. After conversion of the Class B membership in the Corporation to Class A membership, the action herein requiring membership approval shall require the vote or written consent of (i) two-thirds (2/3) of the voting power of Members of the Corporation, and (ii) two-thirds (2/3) or more of the voting power of Members or the Corporation other than Declarant.

12.5 LITIGATION. In the event the Corporation, Declarant, or any Owner shall commence litigation to enforce any of the covenants, conditions or restrictions herein contained, 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 who is entitled to recover his costs of suit, whether or not the suit proceeds to final judgement. A party not entitled to recover his costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover his costs or attorney's fees.

12.6 ENCROACHMENT EASEMENTS. The Owner of each Condominium is hereby granted an easement over all adjoining Units and the Common Area for the purpose of accommodating any minor encroachments due to engineering

errors, errors in original construction, 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 of shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In the event any portion of a structure on the Condominium Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Units or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

12.7 NON-INTERFERENCE TO DECLARANT CONSTRUCTION EFFORT. Declarant is undertaking the work of construction of residential Condominium dwellings, a Common Area and incidental improvements upon the Condominium Property. The completion of that work and the sale, rental and other disposal of said Condominium dwellings is essential to the establishment and welfare of said Condominium Property as a residential community. In order that said work may be completed and said Condominium Property 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 on the Condominium Property whatever is reasonably necessary or advisable in connection with the completion of said work; or

(b) Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Condominium Property such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Condominium Property 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 Condominium Property its business of completing said work, and of establishing a plan of Condominium ownership and of disposing of said Condominium Property in Condominium dwellings by sale, lease or otherwise; or

(d) Prevent Declarant from maintaining such sign or signs on any of the Condominium Property as may be necessary for the sale, lease or disposition thereof provided, however, that the maintenance of any such sign shall not unreasonably interfere with the use by any Owner of his Unit or the Common Area.

The rights of Declarant provided in said paragraphs (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 when all the Condominiums in the Project are sold and conveyed by Declarant to separate Owners or three (3) years following the date of conveyance of the first condominium in the Project, whichever shall first occur.

Declarant, in exercising his rights under this Section 7 will not unreasonably interfere with the use of the Common Area by any Purchaser.

So long as Declarant, its successors and assigns owns one or more of the Condominiums established and described herein, Declarant, its successors and assigns shall be subject to the provisions of this Declaration.

12.8 OWNER'S COMPLIANCE. Each Owner, tenant or occupant of a Condominium shall comply with the provisions of this Declaration, the Bylaws, decisions and resolutions of the Corporation 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 Corporation 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.

12.9 LIENS NOT VALID. No breach of any provisions of these covenants, conditions and restrictions shall invalidate the lien of any First Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon Owner whose title is derived through foreclosure sale, Trustee's Sale or otherwise.

12.10 PERFORMANCE BOND BY DECLARANT. In the event that the improvements to be installed by Declarant to the Common Area have not been completed prior to the sale of the first Condominium and in the further event that the Corporation 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 Corporation 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 (5%) percent of the total voting power of the Corporation, the Board shall call a special meeting of the Members 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, excluding the vote of Declarant, to take action to enforce the obligations under the bond shall be deemed to be the decision of the Corporation, and the Board shall thereafter

implement the decision by initiating and pursuing appropriate action in the name of the Corporation.

12.11 APPROVAL BY FHA AND VA. So long as there is a Class B membership, the following shall require the prior approval of FHA and VA: Annexation of additional properties, mergers and consolidations and special assessments. A draft of any any amendment to this Declaration should be submitted to the VA for its approval prior to its approval by the membership of the Corporation.

IN WITNESS WHEREOF, the undersigned, being Declarant herein, has executed this instrument this 4th day of June 19 86.

DECLARANT:

THE MICHAEL ANDREW GROUP, INC.,
a California corporation

By: X R. M. Scharringhausen
Robert M. Scharringhausen

(attach notary acknowledgment)

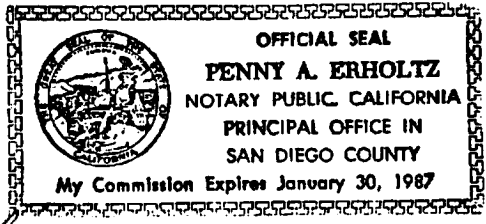
STATE OF CALIFORNIA San Diego) ss.
COUNTY OF _____

On June 4, 1986 before me, the undersigned, a Notary Public in and for said State, personally appeared Robert M. Scharringhausen and _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as _____ President and _____ Secretary, on behalf of _____

The Michael Andrew Group, Inc.
the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Penny A. Erholtz



(This area for official notarial seal)

3002 (6/82) (Corporation) First American Life Insurance Company

EXHIBIT "A"

LEGAL DESCRIPTION:

Lots 37 and 38 in Block 68 of PARK VILLAS, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 438, filed in the Office of the County Recorder of San Diego County October 14, 1887.

EXHIBIT "B"

UNIT AIRSPACE	PARKING SPACE	GARAGE	BALCONY	PATIO
L-1	PS-1	G-1	B-1	
L-2	PS-2	G-2		P-2a, P-2b
L-3	PS-3	G-3		P-3a, P-3b
L-4	PS-4	G-4	B-4	
L-5	PS-5	G-5	B-5	
L-6	PS-6	G-6	B-6	

SUBORDINATION AGREEMENT

Torrey Pines Bank, a California Corporation
being the beneficiary under that certain Deed of Trust, dated March 19, 1986
and recorded April 4, 1986 as File/Page
No. 86-136345 of Official Records in the Office of the County
Recorder of San Diego County, California, hereby declares that the lien and
charge of said Deed of Trust is and shall be subordinate to the Declaration
of Restrictions to which this Subordination Agreement is attached.

DATE: June 5, 1986

By: Richard Torres A.V.P.

By: Walter Strangman A.V.P.

TO 1948 CA (8-74) Attached to Subordination Agreement/Declaration
(Agent of Corporation) of Restriction-Omega II (Pg.32), 6-5-86



STATE OF CALIFORNIA
COUNTY OF San Diego } SS.

On June 5, 1986, before me, the undersigned, a Notary Public
in and for said state, personally appeared Richard Torres and Walter J. Strangman,
known to me to be the agent of the corporation that executed the within instrument, known to me to be the person
who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such
corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

WITNESS my hand and official seal.

Signature Karen E. Reeder
Karen E. Reeder



(This area for official notarial seal)

STAPLE HERE