



*In accordance with California Government Code §12956.1:*

**"If this document contains any restriction based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status."**

Recording Requested By: )  
 )  
 Declarants )  
 )  
 When Recorded Mail To: )  
 )  
 Mr. Randall C. Kinnings )  
 c/o Kolodny & Katkov )  
 Attorneys at Law )  
 2470 Union Street )  
 San Diego, California 92101 )  
 )  
 Attention: Howard I. Katkov, Esq. )  
 )  
 )

The foregoing instrument is a full, true and correct copy  
 of the original recorded on 12-11, 1980  
 File/Page SD-41717, Series \_\_\_\_\_  
 Book \_\_\_\_\_ of Official Records, San Diego County.  
 Title Insurance and Trust Company  
J. Pentecost

) Space Above for Recorder's Use

**DECLARATION OF RESTRICTIONS**

THIS DECLARATION OF RESTRICTIONS, made and executed by ROBERT CHARLES PAPPENFORT, RANDALL C. KINNINGS, and THERESA ANN KINNINGS, herein referred to as "Declarants,":

WITNESSETH THAT:

WHEREAS, Declarants are the owners of the property described as:

Lots 27 and 28 in Block 162 of University Heights, in the City of San Diego, County of San Diego, State of California, according to amended map thereof made by G. A. D'Hemecourt in Book 8, Page 36 et seq of lis pendens, in the Office of County Recorder of San Diego County; and

WHEREAS, Declarants will hereafter file in the Office of the County Recorder of San Diego County, California, a Condominium Plan covering said real property; and

WHEREAS, Declarants are about to sell and convey condominiums and Declarants desire and intend to hereby subject the same, pursuant to California Civil Code Section 1355, to certain limitations, restrictions, conditions and covenants herein set forth.

NOW, THEREFORE, by this Declaration of Restrictions, Declarants hereby certify and declare that they have established, and do hereby establish, the

protective limitations, restrictions, conditions and covenants upon and subject to which each and every condominium shall be conveyed by Declarants and thereafter held, leased, encumbered, sold and/or conveyed by each and every successor in interest of Declarants.

## ARTICLE 1

### Definitions

1.1 Each of the following words and phrases shall, in this instrument, have the respective meaning shown below, unless a contrary meaning shall, by the context, be evident:

1.1.1 "Declaration" shall mean this instrument as recorded and amendments as recorded.

1.1.2 "Plan" shall mean that certain Condominium Plan recorded 12-11, 1986, File/Page No. 80-417170, Official Records of San Diego County, California, being a Condominium Plan as the same is described in California Civil Code Section 1351, and any amendments to said Condominium Plan.

1.1.3 "Project" shall mean the land encompassed by the Plan, including all structures situated thereon.

1.1.4 "Condominium" shall mean an estate in the Project, as defined in California Civil Code Section 783.

1.1.5 "Living Unit" shall mean the elements of a Condominium which are not owned in common with the owners of other Condominiums; each Living Unit, and the boundaries thereof, are described in the Plan.

1.1.6 "Common Area" shall mean Common Area as the same is defined in the Plan.

1.1.7 "Association" shall mean the Pacific Palms Owners' Association, Inc., a California Nonprofit Mutual Benefit Corporation, composed of the Owners described below.

1.1.8 "Articles" shall mean the Articles of Incorporation of the Association and any amendments to said Articles.

1.1.9 "Bylaws" shall mean the Bylaws of the Association and any amendments to said Bylaws.

1.1.10 "Directors" shall mean the Board of Directors of the Association.

1.1.11 "Owner" shall mean the person(s) who hold(s) record fee title, and the contract vendee (buyer) in a contract of sale, to any Condominium.

1.1.12 "Mortgagee" shall mean the mortgagee under any real property mortgage or beneficiary under any deed of trust given for value, which mortgage or deed of trust encumbers any Condominium.

1.1.13 "Exclusive Use" area shall mean that portion of Common Area (if any) to which an exclusive right to use is granted to an owner as shown on the Condominium Plan as Garages , Decks and Open Parking.

1.1.14 "Subdivider" shall mean and refer to the Declarant, at all times herein mentioned in this document.

1.1.15 "Governing Body" shall mean and refer to the Board of Directors of the Association.

1.1.16 "Subdivision" shall mean and refer to the project as defined in Section 1.1.3 of this Article.

1.1.17 "Restricted Use" area shall mean that portion of the Common Area (if any) which is designated on the Plan for the limited purpose(s) listed on the Plan.

## ARTICLE 2

### Use

2.1 Each Living Unit shall be improved, used and occupied only for private single-family dwelling purposes.

2.1.1 Each Owner shall have the exclusive right to (i) paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, doors and fences in or bounding such Owner's Living Unit, provided that the floors of the Living Unit shall at all times be covered by carpeting over a pad having a thickness of at least one-half inch (except that the kitchen, bathroom(s), utility room and/or entry hall of such Living Unit may be covered by floor tile in lieu of such carpeting), and (ii) alter such Owner's Living Unit, provided such alteration shall not affect the Common Area, any other Living Unit or the structural portions of any building, wall or fence.

2.1.2 No waterbeds or water furniture shall be permitted or maintained in a Living Unit, except in the master bedroom of a Living Unit.

2.2 No Living Unit shall be occupied or used for any purpose or in any manner which shall cause any structure in the Project 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 policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

2.3 No Living Unit shall be used in such manner as to interfere with the enjoyment of occupants of other Living Units or to annoy them by unreasonable noises or otherwise; nor shall any nuisance, or illegal activity, be committed or permitted to occur in any Living Unit. No seriously noxious or offensive activity shall be carried on in the Common Area, nor shall anything be done therein which is a serious annoyance or nuisance to the Owners.

2.4 No pet(s) or other animal(s) may be raised or kept anywhere in or on the Project except as permitted by regulations adopted by the Directors. Notwithstanding the foregoing, each Owner may raise or keep (i) not more than one domesticated dog, cat or other commonly accepted household pet, provided such

animal does not exceed 20 pounds in weight at mature growth, and (ii) caged birds or fish in a household aquarium, in any number; provided, however, that such pets and other animals, including birds and fish, must be kept for noncommercial purposes. In the event the Directors, after proper notice and a hearing as set forth in Article 6, Section 2.1.13 of the Bylaws, determine that any such pets or other animals create an unreasonable annoyance or nuisance to the Owners, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. No pets or other animals, including birds or fish, shall be permitted in the Common Area except as specifically permitted by regulations adopted by the Directors.

2.5 The Common Area, except buildings, shall be improved and used only for (i) vehicular parking, (ii) vehicular and pedestrian movement within the Project, including access to the Living Units, (iii) recreational use by the Owners and occupants of Living Units and their guests, subject to regulations adopted by the Directors, and (iv) beautification of the Project and providing privacy to the residents thereof through landscaping and such other means as the Directors shall deem appropriate.

2.6 Nothing shall be done in any Living Unit or in, on or to the Common Area which would impair the structural integrity of any building or which would structurally change any building except as is otherwise provided herein. No drilling or mining operations of any kind shall be permitted upon or in any Living Unit or the Common Area. All equipment, garbage cans and other containers shall be kept screened and concealed from view from neighboring Living Units, streets and the Common Area. All rubbish, trash and garbage shall be regularly removed from each Living Unit and shall not be allowed to accumulate thereon or on the adjacent Common Area. No wearing apparel, garments, linens, towels, laundry or the like shall be kept or maintained on a terrace, patio or balcony, if any, of a Living Unit,

nor shall equipment be kept or maintained thereon or therein. No Owner shall cause its terrace, patio or balcony, if any, to be enclosed without the prior written consent of the Directors. The Directors shall have the right and power to adopt reasonable rules and regulations relating to the type(s) and kind(s) of fixtures, personal property or other objects which may be kept or maintained upon a terrace, patio or balcony of a Living Unit (and/or the manner in which any of the same may be kept or maintained on a terrace, patio or balcony if permitted to be kept or maintained thereon by such rules and regulations).

2.7 No activity shall be carried on in the Common Area which shall be contrary to the regulations of the Directors relating to use of or activity in the Common Area.

2.8 No Owner of a Living Unit shall make any alteration or improvement to the Common Area or remove any planting, structure, furnishing or other object therefrom, except with the written consent of the Directors.

2.9 The Owner of each Living Unit shall reimburse the Association for all damages to the Common Area or to any improvements thereon or thereto (including but not limited to, buildings, recreational facilities and landscaping) or to any wall or fence adjacent to the Common Area caused by such Owner, its guests or any occupant of such Owner's Living Unit.

2.10 The Owner of a Living Unit damaged or destroyed by fire or other calamity shall, unless partition shall be undertaken pursuant to the Article entitled "Partition and Severance," cause the interior of such Living Unit to be repaired or restored at the expense of the Owner. This obligation shall not extend to the installation of furniture and the like, but is for the purpose of preventing unsightliness with respect to such damaged Living Unit and any resultant health or safety problems to other Owners within the Project and the community. Nothing herein shall be construed, in any manner whatsoever, to alter or modify the

obligation of the Association to repair or restore under the Article entitled "Destruction; Insurance."

2.11 Anything in the preceding paragraphs of this Article to the contrary notwithstanding, Declarants (and any successor in interest of Declarants) may use any Living Units owned by them, not exceeding at any one time three in number, for the purpose of maintaining sales models for the sale of Condominium Units within the Project by Declarants. Such use shall be made of said Living Units only during reasonable hours and such use shall not terminate until the last unit in the Project is conveyed.

2.12 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 Living 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 City of San Diego ordinances. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board. This provision does not restrict Declarants from facilitating the use of signs anywhere on the Project for the purpose of selling the Units.

### ARTICLE 3

#### Ownership of the Common Area

#### and of Beneficial Interest in Common Personality

3.1 The Common Area is and shall be owned by the Owners as tenants in common in equal fractional undivided interests as shown in Declarants' deed to each Owner. Any transfer or conveyance (by operation of law or otherwise) of a Living Unit shall be presumed to transfer or convey the entire Condominium, including but not limited to, the interest of the Owner of such Living Unit in and to the Common Area.



3.2 No Owner shall possess any property right or interest in or to any personal property owned by the Association.

#### ARTICLE 4

##### Partition and Severance

4.1 Except as set forth in the following paragraphs, the Common Area shall remain undivided, and there shall be no judicial partition thereof. Nothing herein shall be deemed to prevent partition of a co-tenancy in a Condominium, except as provided in Section 1354 of the Civil Code.

4.2 An action may be brought by any Owner for partition of the Project by sale of the entire Project, as if the Owners of all of the Condominiums in the Project were tenants in common in the entire Project in the same proportion as their interests in the Common Area; provided, however, that partition shall be made only upon the showing of any of those conditions as specified in Section 1354 of the Civil Code; provided, however, further, that at least 75% of all first Mortgagees (based upon one vote for each first mortgage owned) consent in writing to any such partition.

4.3 No Owner(s) shall voluntarily or involuntarily sever, one from the other(s), any of the component interests which comprise his, her or their Condominium. The restriction set forth in this paragraph shall not extend beyond the period in which the right to partition is suspended.

4.4 Except as set forth in this Article, neither the Owners nor the Association shall be entitled, by act or omission, to seek to abandon or terminate the condominium character of the Project.

#### - ARTICLE 5

##### The Association

5.1 The Association is, effective upon the recordation hereof, the "management body" to provide for the management, control, maintenance, architectural

control and preservation of the Common Area, all as more specifically set forth in this Declaration, the Articles, the Bylaws and the regulations from time to time adopted by the Directors.

5.2 Each Owner shall be and become a Member of the Association contemporaneously with his acquisition of a Condominium (whether such acquisition occurs by (i) conveyance of a Condominium by Declarants, (ii) voluntary transfer, assignment or conveyance of a Condominium or (iii) foreclosure [by trustee's power of sale or by judicial process] of a deed of trust or other lien on, or other involuntary transfer of, a Condominium) without necessity of documentation or other action, of any kind, by any person. The Directors may require that any person acquiring a Condominium shall notify the Association in writing of such acquisition so as to facilitate accurate record keeping of the membership. Where two or more persons hold, as joint tenants or otherwise, a Condominium, they shall constitute a single Member.

5.3 A Board of Directors, consisting of three (3) persons elected at the first meeting of the Association shall possess and be vested with the rights, powers and duties set forth in this Declaration, the Articles and the Bylaws including, but not limited to, the right to initiate and execute disciplinary proceedings against members of the Association for violations of provisions of this Declaration, the Articles and the Bylaws, in accordance with the procedures set forth in said governing instruments.

## ARTICLE 6

### Assessments

6.1.1 Pursuant to California Civil Code Sections 1355(e)(1) and 1356, the Directors have and shall have the right and power to make from time to time reasonable assessments upon the Owners to meet anticipated authorized expenditures (including the establishment of an adequate reserve fund for replacement of

facilities and improvements in and to the Common Area) of the Association, and to change from time to time the amount, installments and/or frequency of payment of assessments, but the Board cannot make any such changes as long as the Declarant(s) may elect a majority of the Board Members.

6.1.2 No increase or decrease in the amount of such reasonable assessments for anticipated authorized expenditures of the Association in any one fiscal year of the Association which exceeds 20% of the regular assessment for the immediately preceding fiscal year may be made without the vote or written consent of the majority of the voting power of the Association residing in Members other than the subdivider.

6.1.3 Each Owner shall be assessed separately for a share of such anticipated authorized expenditures, which share shall be a fraction of the total of such anticipated authorized expenditures equal to such Owner's fractional undivided interest in the Project.

6.1.4 Separate written notices of the making of such assessment (including in such notice the amount thereof and the frequency of payment) shall be deposited into the United States Mail, postage prepaid, addressed respectively to each Condominium, at least sixty days prior to the beginning of a fiscal year; such assessment shall be a debt of the Owner thereof at the time such assessment is made.

6.1.5 Amounts, or installments, of assessments shall bear interest at the rate of ten percent per annum from and after the due date thereof established by the Directors.

6.1.6 The amount of any such assessment together with said interest, in the event enforcement is commenced, shall be and become a lien upon any Condominium, the Owner of which is addressed, when the Directors cause to be recorded with the County Recorder of San Diego County, California, a notice of

assessment, which shall state the amount of such assessment and the aforesaid interest, a description of the Condominium upon which such assessment shall constitute a lien and the name of the record Owner thereof. Any costs and reasonable attorneys' fees awarded by a court of law, as a result of action taken to enforce an assessment, shall be recorded and added to the existing assessment.

6.1.7 Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Directors shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. Unless sooner satisfied and released or the enforcement thereof initiated as herein provided, such lien shall expire and be of no further force or effect one year from the date of recordation of said notice of assessment; provided, however, that said one-year period may be extended by the Directors for not more than one additional year by recording a written extension thereof.

6.1.8 Such lien may be enforced by sale of the Condominium by the Directors or other person authorized by the Directors to conduct the same, after failure of the Owner to pay such an assessment in accordance with its terms; such sale to be conducted in accordance with its terms; such sale to be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924b and 2924 c, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

6.1.9 The Directors on behalf of the Association shall have the right to (i) bid at any foreclosure sale of a Condominium, (ii) a credit, in any such bidding, in the amount of the aggregate of the unpaid assessment(s), said interest and said charges and (iii) hold, lease, mortgage and convey said Condominium in the name "The Board of Directors of Pacific Palms Owners' Association, Inc., under 'Declaration of Restrictions' recorded \_\_\_\_\_, Official Records

of San Diego County, California" (said recording reference being the recording data of this instrument).

6.1.10 Anything herein to the contrary notwithstanding, and except as provided in Paragraphs 6.1.11 and 6.1.12, the Directors may levy and collect special assessment(s) for capital improvements or other purposes in the same manner as regular assessments are levied and collected as described in Paragraph 6.1.1. Such special assessment(s) shall become a lien upon a Condominium in the same manner as regular assessments become a lien. Provided, however, no such special assessment costing in the aggregate in excess of five percent of the budgeted gross expenses of the Association for the then current fiscal year of the Association may be levied without the vote or written consent of a majority of the voting power of the Association residing in Members other than the subdivider.

6.1.11 A special assessment against Owners to raise funds for the rebuilding or major repair of the structural common area housing units of the Project shall be levied upon the basis of the ratio of the square footage of the floor area of the unit to be assessed to the total square footage of floor area of all units to be assessed.

6.1.12 The provisions contained in this Declaration with respect to special assessments do not apply in the case where the special assessment against a member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the member and his interest into compliance with provisions of this Declaration, the Bylaws of the Association, or the Articles of the Association.

6.2 Until such time as the Directors shall change the same pursuant to Paragraph 6.1.1, such assessments shall be due and payable monthly on the first day of each calendar month, commencing the first day of the calendar month next-following the close of the first escrow for the sale by Declarants of a Condominium. Declarants, to the extent that each owns any units, and all individual

purchaser owners shall be absolutely liable for the monthly installments of assessment constituting a lien on any Condominium and accruing prior to the conveyance thereof by Declarants.

6.3 Anything in Paragraph 6.1 to the contrary notwithstanding, if any tax is assessed upon the entire Project, or upon the Common Area only, a share thereof shall be included in the assessment upon each Owner which share shall be a fraction of such tax equal to such Owner's fractional undivided interest in the Common Area.

6.4 The Association shall comply with the requirements of the Consumer Credit Protection Act (Public Law 90-321, 80 Stat. 164 et seq.), also known as the "Federal Truth-In-Lending Act," to the extent the same may be applicable.

#### ARTICLE 7

##### Destruction; Insurance

7.1 The Directors shall keep, under one Association master policy, (i) all buildings and improvements in the Project and (ii) all personalty owned by the Association insured against loss by perils under a multi-peril policy(ies) of hazard insurance for the interest of all Owners. The amount of coverage of such insurance shall be not less than 100 percent of the insurable value (based on replacement cost) of said buildings and improvements and fair market value of personalty as determined annually by an insurance carrier selected by the Directors. The name of the insured under each policy of such insurance shall be substantially "Pacific Palms Owners' Association, Inc., for use and benefit of individual owners," followed if desired by either the Association or the insurance carrier(s) by the designation of the Owners. Authority to adjust losses covered by the Association's policy shall be vested in the Directors, and insurance proceeds shall be payable directly to the Association or to Mortgagees as their interests appear.

7.2 In the event of any loss, damage or destruction of any of the buildings or improvements in the Project, the Directors shall cause the same to be replaced, repaired or rebuilt. In the event the cost of such replacement, repair or rebuilding exceeds the hazard insurance proceeds received therefor, each Owner shall be assessed separately for a share of such deficiency, which share shall be levied upon the basis of the ratio of the square footage of the floor area of the unit to be assessed to the total square footage of floor area of all units to be assessed. In the event of partial or total destruction of the structural Common Area of the Project, and an election by the Owners not to rebuild, the insurance proceeds received on account of the destruction of the Common Area shall be distributed by the Directors among Owners of units and their respective mortgagees proportionately according to the respective fair market values of the units at the time of the destruction, as determined by an independent appraisal conducted by a licensed appraiser engaged and compensated by the Directors.

7.3 Copies of all such insurance proceeds (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be reducible or cancellable by the insurer, without first giving ten days' prior notice in writing to the Association and all first Mortgagees, (ii) contain a waiver of subrogation by the insurer(s) against the Association, Directors and Owners and (iii) contain or have attached a standard mortgagee clause or endorsement (customarily used by private institutional lenders in the County of San Diego, California) in favor of all first Mortgagees, together with such other endorsement(s) as such first Mortgagees may require to fully protect their interests.

7.4 The Association shall give notice in writing to (i) all first Mortgagees in the event of any loss or "appropriation" affecting the Common Area which exceeds

\$10,000 and (ii) all affected first Mortgagees in the event of any damage to a Unit which exceeds \$1,000.

7.5 Said multi-peril policy(ies) of hazard insurance shall be issued by an insurance carrier which (i) has a financial rating by Best's Insurance Reports of Class VI or better and (ii) is authorized to transact business within the State of California.

7.6 The Directors shall procure and keep in force during the term hereof insurance in the name of the Association against dishonest acts on the part of Directors, volunteers and other persons responsible for handling funds belonging to or administered by the Association; such insurance or, in lieu thereof, fidelity bond, shall be written in an amount not less than one and one-half times the Association's estimated annual operating expenses and reserves.

7.7 The Directors shall procure and keep in force during the term hereof insurance in the name of the Association and the Owners against any liability to the public resulting from any occurrence in or about the Common Area with bodily injury limit not less than \$1,000,000 for each occurrence and property damage limit not less than \$1,000,000 for each occurrence. The policy(ies) of such insurance shall contain a waiver of subrogation by the insurer(s) against the Association, Directors and Owners.

7.8 No Owner shall purchase a policy of insurance which duplicates, in any respect, insurance coverage already existing under the Association master policy. Any Owner who does procure insurance duplicating, in whole or in part, coverage existing under the Association policy, thereby breaching this provision, shall be liable to the Association for any loss or damage caused to the Association by such duplication.

7.9 Nothing contained in this Article shall be construed to supersede any provision of the Article entitled "Partition and Severance."



## ARTICLE 8

### Condemnation

8.1 In the event of any conflict between the provisions of this Article and those of any other Article of this Declaration, the provisions of this Article shall govern and control.

8.2 In this Article, the following words and phrases shall have, respectively, the following meanings:

8.2.1 "Appropriation" means any taking of or damage to any part of the Project (or any interest therein) by reason of any exercise of the power of eminent domain (whether by condemnation proceedings, inverse condemnation or otherwise) or by reason of any transfer of any part of the Project (or any interest therein) made in avoidance of such an exercise.

8.2.2 "Condemnor" means any governmental entity or person possessing the right and power of eminent domain which exercises said right and power, or threatens so to do, with respect to any part of the Project (or any interest therein).

8.2.3 "Award" means compensation paid by a condemnor for an appropriation, including but not limited to monetary and other consideration paid in avoidance of the exercise of said right and power of eminent domain.

8.3 Each and every Director is hereby appointed the attorney-in-fact for every Owner to (i) negotiate with any condemnor for settlement of an award for any appropriation, (ii) defend any action brought for an appropriation, and to engage and compensate counsel and expert witnesses therefor or to aid said director in the exercise of any of its powers under this Article, (iii) receive in the name of the Association any award and to retain the same, pending its disbursement, in a noninterest-bearing bank account in the name of the Association and (iv) disburse the same as soon as may be practicable, pursuant to this Article.

8.4 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 and their respective Mortgagee(s) as their respective interests then appear by court judgment or agreement between the condemnor and each of the affected Owners, then the affected Owners and their Mortgagees as their respective interests then appear shall be entitled to receive in proportion a distribution from the award for such taking according to the relative fair market value of the Condominium units affected by the condemnation as determined by a licensed independent appraiser retained and compensated by the Association in accordance with the procedures for disbursement set out above.

8.4.1 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 in Article 7 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 in Article 7 for determining whether to rebuild or repair following damage or destruction.

8.5 In the event of a taking of a Living Unit, the Owner (and his Mortgagee(s) as their interest may appear) of the Living Unit shall be entitled to receive the award for such taking and after acceptance thereof the Owner and his Mortgagee(s) shall be divested of any further interests in the Condominium Property if such Owner vacates his Living Unit as the result of such taking.

8.5.1 In such event said Owner shall grant his remaining interests in the Common Area appurtenant to the Living Unit 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.

8.6 The Directors shall within ten (10) days of formal notice by the condemnor of threatened appropriation send written notice by certified return mail to all Owners and their Mortgagee(s), of the threatened action.

## ARTICLE 9

### Accounting

9.1 The Directors shall maintain books of account of all its receipts and expenditures and shall cause such books to be examined as of the close of each fiscal year and a report to be made thereon to the Association. The Directors shall deliver a copy of such report to the Owner of each Condominium within 120 days after the end of such year. Each Owner and each first Mortgagee shall be entitled at reasonable times to inspect the books and records of the Association, and to have such books and records examined at said Owner's or first Mortgagee's expense by an attorney or accountant representing such Owner or first Mortgagee, and may make excerpts or copies of such books and records or portions thereof, and each such Owner or first Mortgagee, at his own expense, shall have the right to have such books and records independently audited by a public accountant. All of the above shall be done in compliance and according to the procedures set forth in Article 9 of the Bylaws.

9.2 The procedure and guidelines for the accounting of the Association shall be set forth in Article 9 of the Bylaws.

## ARTICLE 10

### Scope; Enforcement

10.1 The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of value of the Project and all Condominiums, and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are imposed on each Condominium for the benefit of every other Condominium and the present and

future Owners thereof. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be.

10.2 Each and every of the limitations, restrictions, conditions and covenants herein shall cease, terminate and be extinguished, without necessity of further documentation of any kind, fifty years from the date of recording of this Declaration.

10.3 Breach, other than breach by failure to pay assessment(s), of any of said limitations, restrictions, conditions or covenants (or the continuation thereof) may be enjoined, abated or remedied by appropriate legal proceedings by (i) the Association, (ii) any Owner, its heirs, devisees, executors, administrators, successors and assigns, or (iii) any Mortgagee, all of whom are herein collectively referred to as "enforcing person(s)." Damages at law for any such breach are hereby declared to be inadequate.

10.4 The result of or condition caused by any violation of any of said limitations, restrictions, conditions or covenants, other than the payment of assessment(s), is and shall be a nuisance, and every remedy in law or equity now or hereafter available against a public or private nuisance may be exercised by an enforcing person.

10.5 Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted (excepting the enforcement for failure to pay assessment(s) as set forth in the Article entitled "Assessments") unless a hearing in conformity with Article 6, Section 2.1.13 of the Bylaws has been held and until a written notice of such breach setting forth the facts of such breach and the legal description of the Condominium affected thereby has been (i) filed for record in the Office of the Recorder of San Diego County, California, and (ii) delivered by certified mail to the Owner of such Condominium prior to such recording, and such

breach has not been remedied within thirty days after the recording of such notice. Any action instituted hereunder shall be commenced within one hundred twenty (120) days, but not prior to thirty-one (31) days, after the recording of such notice.

10.6 The failure of any enforcing person to enforce any of said limitations, restrictions, conditions or covenants shall not constitute a waiver of the right to enforce the same thereafter. No liability shall be imposed on or incurred by any enforcing person as a result of such failure.

10.7 In the event any enforcing person shall commence litigation to enforce any of said limitations, restrictions, conditions, or covenants, such enforcing person, if he prevails in such litigation, shall be entitled to have judgment against and recover from any defendant (other than nominal) in such litigation such attorneys' fees as the Court may adjudge reasonable and proper.

## ARTICLE 11

### Rights of Mortgagees

11.1 Any Owner may voluntarily or involuntarily encumber his Condominium with or by a real property mortgage, deed of trust or other instrument of hypothecation.

11.2 A breach of any of the foregoing limitations, restrictions, conditions or covenants (except as provided in this Article with respect to a breach by failure to pay any assessment) shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to a Condominium; provided, however, such limitations, restrictions, conditions and covenants shall be binding upon and effective against any person whose title to said Condominium is acquired by foreclosure, trustee's sale or otherwise.

11.3 Except as provided in Paragraphs 11.3.1, 11.3.2, and 11.3.3, each and every lien created by or pursuant to this Declaration, including but not limited to, the assessment liens described in the Article entitled "Assessments" is and shall be

subordinate, inferior and subject to the lien and charge of any (i) real property first mortgage or first deed of trust of record prior to the date of said assessment lien encumbering any Condominium and given for value and (ii) any blanket construction (including acquisition) mortgage(s) or deed(s) of trust encumbering all or any part of the Project which mortgage(s) or deed(s) of trust may have been expressly subordinated to this Declaration.

11.3.1 All liens for regular and special assessments against an Owner shall be subordinate to the lien of first mortgage or first deed of trust against the Project interests of the Owner.

11.3.2 In the event of a subordination of a lien for assessments to a first mortgage or first trust deed, the transfer of an interest in the Project as the result of the exercise of a power of sale or a judicial foreclosure involving a default under the first mortgage or first trust deed shall extinguish the lien of assessments which were due and payable prior to the transfer of the Project interest.

11.3.3 No transfer of the Project interest as the result of a foreclosure or exercise of a power of sale shall relieve the new Owner, whether it be the beneficiary of the first mortgage or first trust deed or another person, from liability for any assessments thereafter becoming due or from the lien thereof.

11.3.4 Any person who acquires title to any Condominium at a foreclosure sale of a first mortgage or first deed of trust by purchasing the same at a foreclosure or trustee's sale, shall take title to such Condominium free of any claims by or on behalf of the Association for unpaid assessments accruing prior to the time such purchaser takes title to such Condominium, and any assessment lien then encumbering any such Condominium shall be subordinate, inferior and subject to said purchaser's title to such Condominium.

11.3.5 In the event any Mortgagee (i) shall acquire title to any Condominium by judicial foreclosure, exercise of power of sale contained in any

real property mortgage or deed of trust, and (ii) shall thereafter sell and convey such Condominium, any real property mortgage or deed of trust received by such lender as security for all or a portion of the purchase price of such Condominium shall be incontrovertibly deemed "given for value." Notwithstanding the provisions of Paragraph 11.3 above, any lien created by or pursuant to this Declaration, which arises from the failure to pay assessment(s) accruing during the period of such Mortgagee's holding of title to said Condominium, shall be a lien superior to the lien of said real property mortgage or deed of trust received to secure a portion of said purchase price.

11.4 In the event of any breach or default hereunder by any Owner, and in the further event such breach or default is not cured within 60 days after its occurrence, the Board shall, if any first Mortgagee of such Owner shall have so requested of the Association, immediately notify, in writing, such first Mortgagee of said default; provided, however, failure to give such notice shall in no way affect any right or remedy of any enforcing person under the Article entitled "Scope; Enforcement."

11.5 Each first Mortgagee shall be entitled, upon request, to (i) receive notice of any and all meetings of the Association and (ii) designate a representative to attend such meetings on its behalf.

11.6 In the event there shall be any express or implied conflict between any provision of this Article 11 and any other provisions of this Declaration, the provisions of this Article 11 shall govern and prevail.

11.7 Unless at least seventy-five (75%) percent of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the sponsor, developer, or builder) of the individual condominium units have given their prior written approval, the condominium homeowners association shall not be entitled to:

11.7.1 by act or omission seek to abandon or terminate the condominium project;

11.7.2 change the pro rata interest or obligations of any individual condominium unit for the purpose of determining the pro rata share of ownership of each condominium unit in the common elements;

11.7.3 partition or subdivide any condominium unit;

11.7.4 by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause.);

11.7.5 use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such condominium property, except as provided by statute in case of substantial loss to the units and/or common elements of the condominium project.

11.8 If the Project will be subject to a blanket encumbrance, the ownership and possessory rights of each Owner will not be adversely affected by foreclosure or acceleration of the blanket encumbrance by or on behalf of the beneficiary unless the affected Owner is delinquent in payments allocated by the Association to debt service on the blanket encumbrance.

## ARTICLE 12

### Declarants' Security for Their Obligations

12.1 If the Association is the obligee under a bond (the "Bond") obtained pursuant to Business and Professions Code Section 11018.5(a)(2)(A) to secure completion of improvements in and to the Common Area, the following provisions



shall govern any action brought by the Association to enforce the obligations under the Bond:

12.1.1 The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within 60 days after the completion date specified for that improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension in writing for the completion of any common-area improvement, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within 30 days after the expiration of the extension.

12.1.2 If the Directors fail to consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond or should the Directors decide not to initiate action to enforce said obligations, a special meeting of Members shall be held to consider and vote on such action if Members having at least 5% of the total voting power of the Association sign and submit to the Directors a petition demanding such meeting. Such meeting shall be held not less than 35 days nor more than 45 days after receipt by the Directors of said petition. At such special meeting, all Members other than Subdivider shall be entitled to vote.

12.1.3 If, at such special meeting, Members having a majority of the voting power of the Association, excluding the vote of the Declarants, vote in favor of taking action to enforce the Bond, the decision shall be deemed to be that of the Association, and the Directors shall immediately initiate and thereafter pursue appropriate action in the name of the Association to enforce the obligations under the Bond. If the Directors refuse to pursue such action, then any Member(s) may initiate and pursue appropriate action in the name of the Association to

enforce the obligations under the Bond. Funds for pursuing such action shall be obtained by means of a special assessment of the Owners pursuant to Paragraph 6.1.1; such funds shall be kept in a separate account at a bank designated by the Association and used only for initiation and prosecution of said action.

12.2 If Declarants post a surety bond or deposit funds (pursuant to Section 2792.9, Article 12, Chapter 6, Title 10, California Administrative Code) for the benefit of the Association, to assure the fulfillment by Declarants of their obligations to pay assessments, the exoneration or release of such bond or funds being subject to the conditions set forth in said Section 2792.9, and a dispute arises between Declarants and the Association with respect to the question of satisfaction of such conditions for exoneration or release, then, in such event, such dispute shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. The fee payable to the American Arbitration Association to initiate such arbitration shall be remitted by Declarants; however, the costs of such arbitration shall ultimately be borne as determined by the Arbitrator(s) under the aforesaid Rules.

## ARTICLE 13

### Amendment

13.1 This instrument may be amended only as follows:

13.1.1 At any time and from time to time by the vote or written assent of members representing both:

- (i) 66 2/3% of the total voting power of the Association, and
- (ii) at least 51% of the votes of members other than the subdivider.

The percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. Any such amendment shall become effective

upon the recording thereof with the Office of the County Recorder of San Diego County, California.

13.2 Each such amendment to this instrument shall become effective only upon being filed for record as hereinabove provided and shall, from and after its effective date, be as effective as this instrument as to all (i) the Common Area, (ii) the Living Units, (iii) the Condominiums, (iv) the Project and (v) the Owners (as of the effective date) and their successors in interest.

#### ARTICLE 14

##### General Provisions

14.1 Notices required by the Declaration, or desired, to be given shall be conclusively deemed served (i) if personally served, at the time of such service, and (ii) 48 hours after deposit thereof in the United States Mail, postage prepaid, addressed to the person(s) to whom such notice is to be given at the last known address of such person(s).

14.2 In the event any limitation, condition, restriction, covenant or provision contained in this Declaration is to be held invalid, void or unenforceable by any Court of competent jurisdiction, the remaining portions of this Declaration shall, nevertheless, be and remain in full force and effect.

14.3 Every right, privilege, duty and obligation in or upon the Association shall be exercised by, and shall be a burden upon any California corporation incorporated (i) for a purpose exercising or discharging, as the case may be, said rights, privileges, duties and obligations, and (ii) by, or with the written consent of, the Owners of a majority of the Condominiums. No provision of the Articles of Incorporation or Bylaws of said corporation, and no action of said corporation, in violation or contravention of any provision of this Declaration shall be valid, subsisting or of any effect whatsoever.

14.4 This Declaration and every provision hereof shall be construed to facilitate the operation of the Project.

14.5 In the event any person or entity 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 attorneys' fees as the court may adjudge reasonable and proper. The "prevailing party" shall be the party in whose favor a final judgment is entered.

14.6 The Owner of each Condominium is hereby declared to have an easement over all adjoining Living Units and the Common Area for the purposes of accommodating any encroachments due to engineering errors, errors in original construction, settlement or shifting of any building or any other cause. There shall be valid 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 a valid 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 Living Units or Common Area shall be valid easements for the maintenance of said encroachments so long as they shall exist.

14.6.1 A nonexclusive easement for ingress, egress and support throughout the Common Area is and shall be appurtenant to each Living Unit, and the Common Area is and shall be subject to such easement.

14.7 If any Condominium Owner or other occupant of the Condominium owned by him shall fail to observe any of the provisions of this Declaration, or any of the rules or regulations adopted by the Board of Directors, the Board of Directors shall give written notice of such fact to the Condominium Owner in

accordance with Article 6, Paragraph 2.1.13 of the Bylaws of the Association. At the hearing specified in the Bylaws, the Board of Directors shall accept such evidence and take such testimony as may be reasonable under the circumstances, reach a decision with respect thereto, and, if the Board concludes that the alleged violation did in fact occur, the Board may take any disciplinary action permitted by this Declaration or the Bylaws of the Association.

14.8 The Association may not cause a forfeiture or abridgement of an owner's rights to the full use and enjoyment of his individually-owned subdivision interest on account of a failure by the owner to comply with provisions of the governing instruments or of duly-enacted rules of operation for common areas and facilities except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments levied by the Association.

14.9 The Board of Directors may impose monetary penalties, temporary suspensions of an owner's rights as a member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the procedure specified in Article 6, Paragraph 2.1.13 of the Bylaws of the Association is complied with before a decision to impose discipline is reached.

14.10 The Pacific Telephone and Telegraph Company, its successors and assigns shall have the right to construct and maintain (place, operate, inspect, repair, replace and remove) such communication facilities as it may from time to time require (including access) in or upon any portion of the common area, including the interior and exterior of the buildings as necessary to maintain communication service within the project. This provision may not be amended or terminated without the consent of The Pacific Telephone and Telegraph Company.

14.11 Any agreement for professional management of the condominium project, or any other contract providing for services of the developer, sponsor, or builder, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee or ninety (90) days or less written notice.

14.12 Each Owner of a Condominium shall be responsible for the maintenance and repair of the glass doors and windows enclosing his Living Unit, the interior of his Living Unit and all appliances whether "built-in" or freestanding within the Living Unit, the interior surfaces of the Living Unit, and shall also be responsible for the maintenance and repair of the plumbing, electrical and heating systems servicing his Living Unit and located within the outside perimeter of the exterior bearing walls thereof, including television cable equipment and connections and all appliances and equipment located in said Living Unit. Each Owner shall also be responsible for the maintenance and repair of the Patios and Balconies which he has the exclusive right to use, and shall make such repairs as the Board deems necessary to preserve the attractive appearance and protect the value thereof.

IN WITNESS WHEREOF, this Declaration has been executed as of the date and year first hereinabove set forth.

Shirley Ann Larkin  
[Signature]  
[Signature]