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*CERTIFICATION OF RESTATED AND AMENDED DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS*

R428 6/94

Recording Requested by and When Recorded Return to:  
KULIK, GOTTESMAN & MOUTON, LLP  
1880 Century Park East, Suite 1150  
Los Angeles CA 90067

**CERTIFICATION OF RESTATED  
AND AMENDED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR THE SANTA MONICA BAY TOWERS  
HOMEOWNERS ASSOCIATION**

This Certification of the Restated and Amended Declaration of Covenants, Conditions and Restrictions ("Amended CC&R's") for the Santa Monica Bay Towers Homeowners Association ("Association") is made as of February 20, 1997, with reference to the following facts:

1. The Association's original Declaration of Covenants, Conditions and Restrictions ("CC&R's") were recorded on July 31, 1974, in Book M4750, pages 200-228, inclusive, in the Official Records of the Los Angeles County Recorder with regard to Lot 1 of Tract No. 32023, in the City of Santa Monica, as per map recorded in Book 846, Pages 11-12 inclusive of Miscellaneous Maps, Los Angeles County, California;
2. The members of the Association, as reflected in Exhibit A hereto, now desire to adopt the Amended CC&R's in the form which is attached hereto as Exhibit B;
3. The President and Secretary of the Association, by their signatures below, hereby certify that a majority of the voting power of the Association has given their written approval of the Amendment;
4. The Superior Court of the State of California for the County of Los Angeles, in response to a petition filed by the Association pursuant to Section 1356 of the California Civil Code, has entered its final order in Action No. SS 007 706 reducing the amount of the affirmative votes needed to amend the CC&R's from 75% to a majority, for the purpose of the Association approving the specific Amended CC&R's attached hereto as Exhibit B;
5. A certified copy of the order referenced in paragraph 4 above is attached hereto as Exhibit C; and
- F. As a result, the Amended CC&R's are operative as of February 20, 1997.

IN WITNESS WHEREOF, the undersigned have executed this Certificate as of the date first written above.

SANTA MONICA BAY TOWERS  
HOMEOWNERS ASSOCIATION

By: [Signature]  
President

**97 459100**

By: [Signature]  
Secretary

STATE OF CALIFORNIA )  
 )  
COUNTY OF Los Angeles )

On March 14, 1997, before me, Karla D Young Notary, personally appeared Nora Smyth's H. Reed Metzger, personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

( S E A L )

*Karla D Young*



STATE OF CALIFORNIA )  
 )  
COUNTY OF )

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

Witness my hand and official seal.

( S E A L )

\_\_\_\_\_

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4

R )	101	IVES RALPH & VIOLA * * * * *	395-4677
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA 90403	
	102	CLARK DONNA * * * * *	451-2651
		101 CALIFORNIA AVE	
		SANTA MONICA, CA. 90403	
R )	103	HARRIS ETHEL * * * * *	472-8000
		155 HOMEWOOD DR.	
		LOS ANGELES, CA. 90049	
	104	<del>MANAGER</del> SANTA MONICA Bay Tower HOMEOWNER ASSOCIATION	
R )	105	KEEPER GUY & ANGELA * * * * *	454-4918
		3718 SEAHORN AVE.	
		MALIBU, CA. 90265	
	106	CASTLE MICHAEL * * * * *	395-7030
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	
R )	107	BLACKWELL JOHN * * * * *	
		22 CHESTER RD	
		CHIGWELL, ESSEX	
		UNITED KINGDOM, 1G768J	

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EXHIBIT A

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5

201	ALIBERTI MR. ORLANDO * * * * *	393-8638
	101 CALIFORNIA AVE.	
	SANTA MONICA, CA. 90403	
202	FIRESTONE MILTON & RUTH * * * * *	395-1787
	101 CALIFORNIA AVE.	
	SANTA MONICA, CA. 90403	
203	MS. ANN WEISMAN * * * * *	458-6825
	101 CALIFORNIA AVE.	
	SANTA MONICA, CALIF. 90403	
204	FILIPEK JAN & CHRISTINA * * * * *	394-8825
	101 CALIFORNIA AVE.	
	SANTA MONICA, CA. 90403	
205	SIPOS THOMAS * * * * *	458-6046
	101 CALIFORNIA AVE.	
	SANTA MONICA, CA. 90403	
206	ROBERTS WILLIAM * * * * *	818 - 981 - 1373
	7450 EAST EASTERN AVE. # 1019	
	LAS VEGAS, NEVADA 89123 * * * * * 702 - 897 - 8845	
R ) 207	SHINE KENNETH & CAROLYN * * *	202 - 244-1730
	4339 WESTOVER PLACE N.W.	
	WASHINGTON, DC 20016	

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4

301	MR. & MRS. POLIN / <i>BENJAMIN &amp; GIFT</i> * * * * * 394-6547
	101 CALIFORNIA AVE.
	SANTA MONICA, CALIF. 90403
302	LAVI ED * * * * * 576-0900
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
( R ) 303	MAMMARELLA WILLIAM * * * * * 393-5006
	534 18 ST.
	SANTA MONICA, CA. 90402
304	LEEPER CHARLES DR. * * * * * 394-8941
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
305	PAPPYIANIS ZOE DR. * * * * * 394-1199
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
306	GENTILE DR. <del>MARION</del> LANCE * * * * * 393-0307
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
307	COSGROVE JEAN * * * * * 393-7695
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403

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7

( R )	401	HADDAD CANDIDA * * * * *	714 - 533-4971
		2208 OSHKOSH CIR.	
		ANAHEIM, CA. 92806	
	402	HAGHANI DAVID * * * * *	452-3333
		c/o CADILLAC GLASS 1855 LINCOLN BL.	
		SANTA MONICA, CA. 90404	
	403	COHEN MATILDA * * * * *	
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	
( R )	404	FEINFIELD FLORENCE	818- 789-8980
		4301 NOELINE AVE.	
		ENCINO, CA. 91436	
( R )	405	JORDAN DON	
		P.O. BOX 1921	
		LAKE ARROWHEAD, CA. 92352	
	406	SAVERINE DON & MARIE * * * * *	394-5258
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA 90403	
	407	SUGAMUTA SETSUKO * * * * *	587-0765
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	

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8

( R )

501	MacMURRAY KATE * * * * * 395-4156
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
502	GORDON ROBERT * * * * * 277-7171
	1801 CENTURY PARK EAST # 1920
	LOS ANGELES, CA. 90067
503	BAKER COLLEEN * * * * * 394-7701
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
504	SIDERMAN MR. JOSE MRS. LEA * * * * * 394-7692
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
505	MOSCOWITZ ROBERT * * * * * 394-4631
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
506	WICKMAN LESLEY * * * * * 395-1001
	101 CALIFORNIA AVE.
	SANTA MONICA, CALIF. 90403
507	GUI TERREZ DR. OLGA * * * * * 395-1485
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403

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9

( R )	601	WEBER, MR. EUGEN MRS. JACQUELINE * * * * 476-3426
		11579 SUNSET BLVD.
		LOS ANGELES, CA. 90049
	602	SMYTH NORA * * * * * 213-933-8401
		4929 WILSHIRE BLVD. # 988
		LOS ANGELES, CA. 90010
	603	FISCHER HELENA * * * * * 395-6870
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
( R )	604	MONCHO, RICHARD A. M.D. * * * * * 1-818-289-6262
		1027 E. MAIN STREET
		ALHAMBRA, CALIF. 91801
( R )	605	LUND, MIREYA V. DR. * * * * * 454-7481
		1321 PALISADES DR.
		PACIFIC PALISADES, CA. 90272
( R )	606	LESKLY DONNA * * * * * 476-2976
		12830 HANOVER DR.
		LOS ANGELES, CA. 90049
	607	STADIEM WILLIAM * * * * * 394-5706
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403

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10

( R )	701	TOM BLAKESLEE *****
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
	702	WARD KAY ***** 394-5611
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
	703	HAROLD JAY ***** 451-3172
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
	704	CHALEK CHERYL ***** 395-2078
		CARMEN CHALEK 4314 MARINA CITY DR # 330
		MARINA DEL REY, CALIF. 90292-5814
	705	GRUDKO JACK ***** 395-4110
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
	706	HOY CHRISTINA ***** 393-8151
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
( R )	707	THOMSON LYDIA *****
		500 CAGNEY LANE PH. # 2
		NEWPORT BEACH, CALIF. 92663

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11

	801	BRUNST STEPHEN * * * * * 395-6076
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
	802	SIDERMAN CARLOS * * * * * 395-8700
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
( R )	803	NIPPON/KODO CO. * * * * * 320-8881
		2771 PLAZA DEL AMO # 803
		TORRANCE, CA. 90503
	804	BLUMENBERG, MR. CHARLES & MRS. ELEANOR * * 393-8626
		101 CALIFORNIA AVE.
		SANTA MONICA, CA. 90403
( R )	805	BURDOFF ART * * * * * 458-4000
		201 WILSHIRE BLVD. # 101
		SANTA MONICA, CALIF. 90401
( R )	806	HADDAD CANDIDA * * * * * (714) 533-4971
		2208 OSHKOSH CIR.
		ANAHEIM, CA. 92806
	807	ZIMAN MARY * * * * * 587-3316
		DR. RINO BULGARELLI 80 SOMERSET RD.
		OAKLAND, CALIF. 94611-3306

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12

	901	DONOHOO, MR. FIDELIS MRS. JEANETTE * * * * *	395-1516
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	
( R )	902	HUDAVERDI ANTHONY * * * * *	395-5071
		ON SITE IN UNIT # 1407	
	903	PERLMAN JASON * * * * *	458-3333
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	
( R )	904	CRATER NANCY * * * * *	455-3178
		21705 ENTEADO	
		TOPANGA, CA. 90290	
	905	FOX SUSAN * * * * *	394-6441
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	
	906	MS. PASQUINA MATTEUCCI * * * * *	
		101 CALIFORNIA AVE.	
		SANTA MONICA, CALIF. 90403	
	907	CLAREFIELD MITCH * * * * *	456-0377
		22202 CARBON MESA ROAD	
		MALIBU, CA. 90265	

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13

	1001	*****	
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	
	1002	METZGER DR. / <del>ANN</del> REED *****	394-2425
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	
( R )	1003	COLLEARY, MR. ROBERT MRS. BRIDGET **	
		275 SANTA ROSA LANE	
		MONTECITO, CA. 93108	
	1004	BARCOHEN, MR. MANOUCHEHR *****	394-7125
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	
( R )	1005	MR <del>ANN</del> MITCH CLAREFIELD *****	456-0377
		22202 CARBON MESA ROAD	
		MALIBU, CA. 90265	
( R )	1006	MAURICE SAFIZADEH *****	471-2527
		15527 AQUA VERDE DR.	
		LOS ANGELES, CA. 90077	
	1007	DR. TSAO, WENDELL *****	393-8720
		101 CALIFORNIA AVE.	
		SANTA MONICA, CA. 90403	

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14

1101	HAUTZER DIETER * * * * * 319-2425
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
1102	WEINBERG, MRS. PERLA * * * * * 451-1089
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90404
1103	CONROY DR. MARY * * * * * 395-2142
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
1104	KHANI MR. EDD * * * * * 393-5437
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
1105	HARDISON MAUREEN * * * * * 393-4832
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
1106	MR. LINETT, STEPHEN * * * * * 395-5514
	101 CALIFORNIA AVE.
	SANTA MONICA, CALIF. 90403
( V ) 1107	RUBIN MARY / COLLICOT SHARLEEN * * * 458-6616
	201 OCEAN AVE. # 708-B
	SANTA MONICA, CA. 90402

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1201	WILLIAMS JACK * * * * * 395-5452
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
1202	KOPLIN BRENDA * * * * * 451-4183
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
1203	LIEBO SHERMAN * * * * * 395-2180
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403
( R ) 1204	SMYTH NORA * * * * * 213-933-8401
	4929 WILSHIRE BLVD. # 988
	LOS ANGELES, CA. 90049
( R ) 1205	HOBBS DOUG * * * * * 310-456-7141 * 919-787-1525
	167 PASQUOTANK DR. COUNTRY CLUB HILLS
	RALEIGH, NC. 27609 FAX-919 787-5478
( R ) 1206	WALLACE DAVID * * * * * 619-324-2333
	899 ISLAND DR. # 608
	RANCHO MIRAGE, CA. 92770
1207	VEGA BEN (JUDGE) * * * * * 395-5449
	101 CALIFORNIA AVE.
	SANTA MONICA, CA. 90403

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16

( V )	1401	<del>GETSUYO</del> ASO, ANDERSON ***** UNIT IS VAC. *****
		101 CALIFORNIA AVE. SANTA MONICA, CA. 90403
( R )	1402	ORIENTE DR. VINCENT ***** 829-0351 240 S. BURLINGAME DR. 458-0550 LOS ANGELES, CA. 90049
	1403	KOMORI TAKASHI ***** 393-4782 101 CALIFORNIA AVE. SANTA MONICA, CA. 90403
	1404	MOSCOWITZ MR. MORRIS & MADELINE ** 394-1526 101 CALIFORNIA AVE. SANTA MONICA, CA. 90403
( R )	1405	BLAIS JUDGE SIMONE ***** 822-5247 4335 MARINA CITY DRIVE 1146 ETS MARINA DEL REY, CA. 90292
( V )	1406	DR. HALAKA, SAMIR ***** 393-8856 101 CALIFORNIA AVE. SANTA MONICA, CALIF. 90403
	1407	HUDAVERDI MR. TONY ***** 395-5071 101 CALIFORNIA AVE. SANTA MONICA, CA. 90403
	PENTH	DR. PETER DILORIO 394-0719

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KULIK, GOTTESMAN & MOUTON  
1880 Century Park East  
Suite 1150  
Los Angeles, California 90067  
(310) 557-9200

Attn: Glen L. Kulik, Esq.

**RESTATED DECLARATION OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS**

for

**SANTA MONICA BAY TOWERS  
A Condominium Project**

Lot 1, of Tract No. 32023, in the City of Santa Monica, County of Los Angeles, State of California, as per map recorded in Book 846, Pages 11-12 inclusive of Miscellaneous Maps in the Office of the County Recorder of Los Angeles.

**97 459100**

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**EXHIBIT B**

18

TABLE OF CONTENTS

	Page
ARTICLE ONE	3
DEFINITIONS	3
1.01 "Approval" or "Consent."	3
1.02 "Articles of Incorporation."	3
1.03 "Assessment."	3
1.04 "Association."	3
1.05 "Board."	4
1.06 "Building."	4
1.07 "Bylaws."	4
1.08 "Capital Assessment."	4
1.09 "Common Area."	4
1.10 "Common Assessment."	5
1.11 "Common Expenses."	5
1.12 "Common Funds."	5
1.13 "Condominium."	5
1.14 "Condominium Documents."	6
1.15 "Condominium Plan."	6
1.16 "Declaration."	6
1.17 "Exclusive Use Common Area."	6
1.18 "Improvements."	6
1.19 "Manager."	6
1.20 "Member."	6
1.21 "Mortgage."	7
1.22 "Mortgagee"; "Mortgagor."	7
1.23 "Owner."	7
1.24 "Parking Areas."	7
1.25 "Patio."	7
1.26 "Person."	7
1.27 "Personal Property" or "Personal Property of the Association."	7
1.28 "Project."	8
1.29 "Quorum."	8
1.30 "Special Assessment."	8
1.31 "Undivided Interest."	8
1.32 "Unit."	8
1.33 "Unit Fair Market Percentage Interest."	9
ARTICLE TWO	9
CONDOMINIUM OWNERSHIP AND INTEREST IN PROPERTY	9
2.01 Condominium Ownership.	9

2.02 Division. . . . . 9

2.03 Ownership Limitations . . . . . 9

ARTICLE THREE . . . . . 10

    RIGHTS IN COMMON AREA . . . . . 10

        3.01 Interest in Common Area . . . . . 10

        3.02 Easement for Ingress, Egress and Support . . . . . 10

        3.03 Easement of Enjoyment . . . . . 10

        3.04 Rights of City of Santa Monica . . . . . 11

        3.05 Delegation of Use . . . . . 11

        3.06 Waiver of Use . . . . . 11

        3.07 Encroachment . . . . . 12

        3.08 Utility Rights . . . . . 12

        3.09 Right to Combine Units . . . . . 13

        3.11 Penthouse Patio . . . . . 16

ARTICLE FOUR . . . . . 16

    USE RESTRICTIONS . . . . . 16

        4.01 Residential . . . . . 16

        4.02 Interior of Units . . . . . 16

        4.03 Patios . . . . . 17

        4.04 Insurance . . . . . 17

        4.05 Approval of Work By Association . . . . . 18

        4.06 Alteration and Decoration of Common Area . . . . . 18

        4.07 Signs; Sale of Units . . . . . 19

        4.08 Occupancy Restriction . . . . . 19

        4.09 Electrical Wiring and Equipment . . . . . 20

        4.10 Nuisance . . . . . 20

        4.11 Power Tools, Welding Equipment and Carpentry Shops . . . . . 21

        4.12 Pets . . . . . 21

        4.13 Vehicles . . . . . 22

        4.14 Exterior Fires; Barbecues . . . . . 22

        4.15 Common Area Obstructions . . . . . 22

        4.16 Laundry . . . . . 22

        4.17 Commercial Operations . . . . . 23

        4.18 Trash; Refuse . . . . . 23

        4.19 Roof . . . . . 23

        4.20 Leasing of Unit . . . . . 23

        4.21 Drilling; Mining Operations . . . . . 24

        4.22 Taxes . . . . . 24

        4.23 Rules and Regulations . . . . . 24

        4.24 Consent or Approval is Revocable . . . . . 24

        4.25 Monetary Fee To Compel Compliance . . . . . 24

4.26 Owner Liability . . . . . 25

4.27 Transfer of Occupancy Fee . . . . . 26

4.28 Construction Fee . . . . . 26

4.29 Use of Association's Employees . . . . . 26

4.30 Jacuzzi Tubs . . . . . 27

4.31 Grandfathering Provision for Preexisting Conditions . . . . . 27

ARTICLE FIVE . . . . . 27

    FORMATION OF ASSOCIATION; MEMBERSHIP RIGHTS AND

    ELECTION OF DIRECTORS . . . . . 27

    5.01 Existence . . . . . 27

    5.02 Membership . . . . . 27

    5.03 Membership Appurtenant to Units . . . . . 28

    5.04 Transfer . . . . . 28

    5.05 Voting Rights . . . . . 28

    5.06 Joint Owner Disputes . . . . . 29

    5.07 Board of Directors . . . . . 29

    5.08 Meetings . . . . . 29

ARTICLE SIX . . . . . 30

    MANAGEMENT DUTIES AND POWERS OF ASSOCIATION . . . . . 30

    6.01 Management of the Project . . . . . 30

    6.02 Powers and Duties Generally . . . . . 30

    6.03 Powers and Duties . . . . . 31

    6.04 Additional Authority . . . . . 36

    6.05 Delegation of Powers . . . . . 37

    6.06 Right of Entry . . . . . 37

    6.07 Financial Records and Accounts; Inspection . . . . . 38

    6.08 Limitation of Liability . . . . . 39

    6.09 Indemnification . . . . . 39

    6.10 Board May Cause Repairs to Units . . . . . 39

    6.11 Personal Property of Association . . . . . 40

    6.12 Nonprofit Character of Association . . . . . 40

    6.13 Association Power to Discipline Members for Breach

        of Declaration . . . . . 41

ARTICLE SEVEN . . . . . 41

    ASSESSMENTS . . . . . 41

    7.01 Purpose of Assessments . . . . . 41

    7.02 Common Assessment . . . . . 41

    7.03 Capital Assessment . . . . . 42

    7.04 Special Assessment . . . . . 43

    7.05 Liability for Assessments . . . . . 44

7.06 Assessment Roll . . . . . 44

7.07 Deposits; Bank Account . . . . . 45

7.08 Commingling . . . . . 45

7.09 Reserves . . . . . 45

7.10 Emergency Assessments . . . . . 45

ARTICLE EIGHT . . . . . 46

    ASSESSMENT LIENS; ENFORCEMENT . . . . . 46

        8.01 Creation of Lien and Personal Obligation . . . . . 46

        8.02 Enforcement of Lien . . . . . 47

        8.03 Assignment of Rents . . . . . 48

        8.04 Additional Remedies . . . . . 49

        8.05 Rights of Board; Waiver by Owners . . . . . 49

        8.06 Waiver of Homestead Exemption . . . . . 49

ARTICLE NINE . . . . . 49

    PROTECTION OF LENDERS; RIGHTS OF MORTGAGEE . . . . . 49

        9.01 Subordination to Lien of Lender . . . . . 49

        9.02 Amendments . . . . . 50

        9.03 Change in Governing Documents . . . . . 50

        9.04 Notice of Default By Trustor . . . . . 50

        9.05 Possession By Beneficiary . . . . . 50

        9.06 Status of Ownership by Lender . . . . . 50

        9.07 No Action Which Affects Lender . . . . . 50

        9.08 Examination of Records . . . . . 51

ARTICLE TEN . . . . . 51

    INSURANCE . . . . . 51

        10.01 Authority to Purchase . . . . . 51

        10.02 Casualty . . . . . 51

        10.03 Public Liability and Property Damage . . . . . 53

        10.04 Worker's Compensation . . . . . 53

        10.05 Owner Insurance . . . . . 54

        10.06 Additional Insurance and Bonds . . . . . 54

        10.07 Choice of Contractor . . . . . 54

        10.08 Choice of Insurance Company . . . . . 54

        10.09 Expense of Collecting Insurance Proceeds . . . . . 54

        10.10 Act Increasing Insurance Premiums . . . . . 55

ARTICLE ELEVEN . . . . . 56

    DAMAGE OR DESTRUCTION OF PHYSICAL IMPROVEMENTS . . . . . 56

        11.01 Bids and Determination of Available Insurance Proceeds . . . . . 56

        11.02 Sufficient Insurance Proceeds . . . . . 56

22

11.03 Insurance Proceeds Partially Sufficient . . . . . 56

11.04 Insurance Proceeds Less Than Eighty-Five Percent (85%)  
of the Cost to Restore . . . . . 57

11.05 Duties of Board During Reconstruction . . . . . 57

11.06 Certificate of Intention . . . . . 58

11.07 Revision of Condominium Documents; Reorganization . . . . . 58

11.08 Interior Damage . . . . . 58

ARTICLE TWELVE . . . . . 59

    CONDEMNATION . . . . . 59

        12.01 Common Area Awards . . . . . 59

        12.02 Unit Awards . . . . . 60

        12.03 Revision of Condominium Documents; Reorganization . . . . . 60

ARTICLE THIRTEEN . . . . . 61

    SUSPENSION OF RIGHT OF PARTITION . . . . . 61

ARTICLE FOURTEEN . . . . . 61

    PROHIBITION AGAINST SEVERANCE OF  
    COMPONENT INTERESTS IN CONDOMINIUMS . . . . . 61

ARTICLE FIFTEEN . . . . . 62

    OBLIGATION OF OWNERS . . . . . 62

        15.01 Maintenance and Repair of Units and Patios . . . . . 62

        15.02 Improvement of Units and Patios . . . . . 62

        15.03 Mechanic's Liens . . . . . 62

        15.04 Personal Injury or Property Damage Sustained Within a Unit . . . . . 63

        15.05 Association Not Responsible for Loss . . . . . 63

        15.06 Notice of Danger . . . . . 64

        15.07 Notification of Sale of Condominium . . . . . 64

        15.08 Compliance with Declaration . . . . . 64

ARTICLE SIXTEEN . . . . . 65

    TAXES AND GOVERNMENTAL ASSESSMENTS . . . . . 65

        16.01 Taxes Separately Assessed . . . . . 65

        16.02 Unallocated Taxes . . . . . 65

ARTICLE SEVENTEEN . . . . . 65

    TERM OF DECLARATION . . . . . 65

97 459100

ARTICLE EIGHTEEN . . . . . 66

    AMENDMENTS . . . . . 66

        18.01 Amendment . . . . . 66

        18.02 Amendment in Derogation of Obligation to Maintain  
            Common Area . . . . . 66

        18.03 Power of Court To Approve An Amendment . . . . . 66

ARTICLE NINETEEN . . . . . 68

    BREACH OR DEFAULT BY CONDOMINIUM OWNERS . . . . . 68

        19.01 Submission of Disputes to Arbitration . . . . . 68

        19.02 Cumulative Remedies . . . . . 69

        19.03 Failure Not a Waiver . . . . . 70

        19.04 Suspension of Voting Rights . . . . . 70

        19.05 Costs and Attorneys' Fees . . . . . 70

ARTICLE TWENTY . . . . . 70

    NOTICES . . . . . 70

ARTICLE TWENTY-ONE . . . . . 71

    MISCELLANEOUS . . . . . 71

        21.01 Article, Section and Paragraph Headings . . . . . 71

        21.02 Interpretation . . . . . 71

        21.03 No Dedication Implied . . . . . 71

        21.04 Successors and Assigns . . . . . 72

        21.05 Documents on File . . . . . 72

24

**RESTATED DECLARATION OF COVENANTS, CONDITIONS**

**AND RESTRICTIONS**

for

**SANTA MONICA BAY TOWERS**  
**A Condominium Project**

THIS DECLARATION is made as of February 20, 1997 by the SANTA MONICA BAY TOWERS HOMEOWNERS ASSOCIATION ("Association") and all members of the Association.

**PREAMBLE:**

A. The Association is comprised of all persons ("Members") who own Condominiums at that certain real property development located in the City and County of Los Angeles, State of California, and more particularly described as follows:

All of Lot 1 of Tract No. 32023 as shown on the Map, recorded in Book 846 at Pages 11-12 of Miscellaneous Maps, together with those adjacent parcels of land, in the Office of the Los Angeles County Recorder (the "Property").

B. The Property was developed (the "Improvements") by Environmental Housing, Inc., a California corporation, in accordance with a Condominium Plan recorded in the Office of the County Recorder of Los Angeles County, State of California (the "Condominium Plan"). The Property and the Improvements together with all of the appurtenances and facilities thereof are collectively referred to as the "Project."

C. The Association intends by this Restated Declaration to revoke that previous Declaration of Covenants, Conditions and Restrictions recorded July 31, 1974 in the Office of the County Recorder of Los Angeles, as well as any subsequent amendments thereto, and to establish a plan for the individual ownership by persons, corporations, partnerships, associations and other firms, subject to certain protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights-of-way, liens, charges and equitable servitudes as set forth in this Declaration (the "Covenants"), of real property consisting of the area or space contained within a Unit located on the Property and the co-ownership by the individual and separate owners thereof, as tenants-in-common, of the other portions of the Project.

25

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

E. The Association was incorporated under the laws of the State of California as a mutual benefit non-profit corporation for the purpose of preserving the values and amenities of the Project and of collecting and disbursing assessments, as hereinafter provided.

NOW, THEREFORE, the Association hereby declares that the Project shall be held, conveyed, divided, encumbered, hypothecated, leased, rented, used, occupied and improved only upon and subject to the following covenants, all of which are hereby declared, established, expressed, and agreed as follows:

- (i) to be for furtherance of a plan for the subdivision and sale of Condominiums in the Project as defined by law and as hereafter may be appropriate;
- (ii) to be for the benefit, enhancement and protection of the desirability, value and attractiveness of the Project and each Unit located therein;
- (iii) to be for the benefit of the Property and Owners of Condominiums in the Project;
- (iv) to run with the land and be binding upon all parties having or acquiring any right, title or interest in the Project or any portion thereof whether as sole owners, joint owners, lessees, tenants, occupants or otherwise;
- (v) to inure to the benefit of every portion of the Project and any interest therein; and
- (vi) to inure to the benefit of and be binding upon each successor in interest of the Association, each Owner, lessee and occupant of any portion of the Project.

Any conveyance, transfer, sale, assignment, lease or sublease of a Condominium in the Project will be and hereby is deemed to incorporate by reference the provisions of this Declaration and the Covenants herein contained, as well as any amendments to this instrument, if any, as shall be made from time to time. The provisions of this Declaration shall be enforceable by the Association or any Owner, or their respective successors in interest, the Board of Directors or any person, firm, corporation or other association duly authorized by the Association or its Board of Directors to enforce all or any one or more of the provisions thereof.

**ARTICLE ONE**

**DEFINITIONS**

As used herein, the following terms shall have the following definitions:

**1.01 "Approval" or "Consent."**

"Approval" or "Consent" shall mean securing the prior written approval or consent as required herein before doing, making or suffering that for which such approval or consent is required.

**1.02 "Articles of Incorporation."**

"Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as the same may from time to time be amended.

**1.03 "Assessment."**

"Assessment" shall mean and refer to any assessment, whether a Common Assessment, Capital Assessment or Special Assessment, levied, charged or assessed against an Owner and/or his Condominium in accordance with the provisions of this Declaration and shall become a debt of such Owner and deemed to have been "made" within the meaning of Sections 1366 and 1367 of the California Civil Code when such assessment is entered upon the assessment roll of the Association as provided in Section 7.06 of this Declaration and notice thereof has been mailed to the Owner of the Condominium so assessed.

**1.04 "Association."**

"Association" shall mean the Santa Monica Bay Towers Homeowners Association, Inc., a California nonprofit mutual benefit corporation, its successors or assigns, whether by way of merger, consolidation, transfer or otherwise. The Association shall include, when the

context requires, its Board of Directors, officers, and duly authorized representatives and agents as the same, or any of them, may from time to time be constituted.

**1.05 "Board."**

"Board" shall mean and refer to the Board of Directors of the Association as the same may from time to time be constituted.

**1.06 "Building."**

"Building" shall mean and refer to any building or structure which is part of the Improvements on the Property.

**1.07 "Bylaws."**

"Bylaws" shall mean and refer to the duly adopted Bylaws of the Association, as the same may from time to time be amended.

**1.08 "Capital Assessment."**

"Capital Assessment" shall mean and refer to an extraordinary Assessment levied by the Association against an Owner and his Condominium in any fiscal year, and applicable to that fiscal year only unless otherwise designated, for the purpose of defraying, in whole or in part, the cost of any new construction, or any repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto.

**1.09 "Common Area."**

"Common Area" shall mean and refer to the entire Common Interest Development, except the separate interests shown and identified on the Condominium Plan. Without limiting the foregoing, the Common Area shall be as defined in Section 1351(b) of the Civil Code and shall include, but not be limited to, the Property, all bearing walls, columns, vertical supports, floors, (as distinguished from the surfaces thereof located within any Unit), all roofs, foundations, beams, balcony railings, planter walls, elevator equipment and shafts, central heating, central refrigeration equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires, and other utility installations, wherever located (except outlets located within a Unit including but not limited to appliances, electrical wiring, heat exchangers, thermostats, and telephone wires), and shall also include all equipment and mechanical devices making up any system or systems installed for security or for announcing those who would gain access to a Unit, even when located within the airspace of a Unit as shown on the Condominium Plan, and all lobbies, stairs and stairways all basements, sub-basements, surface and parking facilities and ramps, yards, gardens, planters, fountains,

swimming pools and all other recreational or community facilities, mail rooms and facilities, driveway areas, all space, if any, devoted to the use of the Manager and his staff, or other persons connected with the operation of the Project, all compressors and control equipment serving the Common Area and/or more than one Unit as distinguished from those compressors and control equipment serving individual Units, and all other parts, apparatus and installations existing in any Building necessary or convenient to the existence, maintenance or safety of the Project as a whole. Common areas will include all heat exchangers, pipes and conduits, whether or not they are accessible from within a Unit.

**1.10 "Common Assessment."**

"Common Assessment" shall mean and refer to an Assessment duly made and levied by the Association against an Owner and his Condominium to pay for the Common Expenses.

**1.11 "Common Expenses."**

"Common Expenses" shall mean and refer to the costs, expenses and charges in connection with maintaining, managing, insuring, operating, repairing and replacing the Common Area as the same may be estimated from time to time by the Board of Directors of the Association, including, but not limited to, any amounts reasonably necessary for reserves for anticipated long-term maintenance, repair and replacement of capital improvements upon the Common Area (the cost of which would not ordinarily be incurred on an annual basis), contingencies and the service obligations of the Association. Common Expenses, however, shall not include the cost of any new construction, or unanticipated repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto.

**1.12 "Common Funds."**

"Common Funds" shall mean and refer to all funds collected or received by the Association, including, but not limited to, the proceeds from insurance carried or obtained by the Association which are payable to or received by the Association as trustee for the benefit of the Owners or otherwise, awards, proceeds from litigation settlements, and condemnation awards.

**1.13 "Condominium."**

"Condominium" shall mean and refer to a condominium as defined in Sections 783 and 1351(f) of the California Civil Code, located within the Project and shall be an estate in real property consisting of (i) a separate fee estate in the air space and interior surfaces within a Unit, as more particularly described in the Condominium Plan, and (ii) an Undivided Interest in the Common Area. Additionally, each Owner of a Condominium shall receive a membership in the Association.

1.14 **"Condominium Documents."**

"Condominium Documents" shall mean and refer, unless the context otherwise requires, only to this Declaration, the Articles of Incorporation, the Bylaws, the Condominium Plan and such other written documents, reports, maps, schedules and exhibits as are required by law to be recorded, filed or issued in connection with the subdivision, creation and regulation of the Project as a condominium project.

1.15 **"Condominium Plan."**

"Condominium Plan" shall mean and refer to the Condominium Plan recorded in 1974 for the Santa Monica Bay Towers by the developer of the Project

1.16 **"Declaration."**

"Declaration" shall mean and refer to this Declaration as the same may be amended, changed or modified from time to time.

1.17 **"Exclusive Use Common Area."**

"Exclusive Use Common Areas" shall mean and refer to those portions of the Common Area which are designated by the Declaration or by the Condominium Plan for the exclusive use of one or more, but fewer than all, of the Owners of the separate interests in accordance with Civil Code Section 1351(i). Such Exclusive Use Common Areas include, but are not necessarily limited to, (a) the entire patio outside the Penthouse Unit; (b) the balconies attached and adjacent to all Units; and (c) internal and external telephone wiring designed to serve a single Unit, but located outside the boundaries of that Unit.

1.18 **"Improvements."**

"Improvements" shall mean and refer to all buildings, structures, and other physical components now or hereafter constructed on the Property.

1.19 **"Manager."**

"Manager" shall mean and refer to any Person appointed or employed by the Association or its Board of Directors to oversee the operation, maintenance and management the Project.

1.20 **"Member."**

"Member" shall mean and refer to an Owner who by reason of his record ownership of a Condominium holds a membership in the Association.

1.21 "Mortgage."

"Mortgage" shall mean and refer to any mortgage or deed of trust or other security device encumbering all or any portion of the Project or any Condominium located therein.

1.22 "Mortgagee"; "Mortgagor."

"Mortgagee" shall mean and include mortgagees, trustees, beneficiaries and holders of deeds of trusts, and the holders of any indebtedness secured by mortgages. "Mortgagor" shall mean and include mortgagors and trustors under deeds of trust.

1.23 "Owner."

"Owner" shall mean and refer to any person, firm, contract buyer, corporation or other association in which title to a Condominium is vested, as shown by the Official Records of the Office of the County Recorder of Los Angeles, State of California, but excluding those having such an interest in a Condominium merely as security for the performance of an obligation.

1.24 "Parking Areas."

"Parking Areas" shall mean and refer to the subterranean parking structure and the motor court in front of the building which has been reserved for guest parking or other parking uses as established from time to time by the Board of Directors.

1.25 "Patio."

"Patio" shall mean and refer to a patio or balcony which is attached to the dwelling area of a Unit and accessible only through the Unit of which it is a part.

1.26 "Person."

"Person" shall mean and refer to a natural person, corporation, partnership, association or firm and shall include (except where the context otherwise requires) an Owner, the Association, each member of its Board, each of its officers, the Manager, and each member of his staff, and any Mortgagee.

1.27 "Personal Property" or "Personal Property of the Association."

"Personal Property" or "Personal Property of the Association" may be used interchangeably herein and shall mean and refer to all tangible and intangible personal property now owned or which shall hereafter be acquired, owned, held or controlled by the Association for the use, benefit and enjoyment of the Owners as a whole, and any replacements,

substitutions or additions thereto. No Owner shall have any Undivided Interest in the Personal Property of the Association and the transfer of a Condominium to an Owner shall not transfer to him any proprietary interest therein.

**1.28 "Project."**

"Project" shall mean and refer to the Property and the Improvements together with all of the appurtenances and facilities thereof.

**1.29 "Quorum."**

"Quorum" is the amount of participation that allows legally constituted business of the Association to occur. A Quorum herein shall consist of the numerical majority of the existing Units of the project.

**1.30 "Special Assessment."**

"Special Assessment" shall mean and refer to an Assessment against a particular Owner and his Condominium duly made and levied by the Association as provided in Article Seven hereof.

**1.31 "Undivided Interest."**

"Undivided Interest" shall mean and refer to that Undivided Interest set forth in the Percentage of Common Area Interest Schedule attached hereto as Exhibit "B" and made a part hereof, which represents each Owner's Undivided Interest in and to the Common Area.

**1.32 "Unit."**

"Unit" shall mean and refer to the element of a Condominium which is not owned in common with other Owners of other Condominiums. There are a maximum of ninety-one (91) separate Units and the boundaries of each Unit shall be the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, where they exist, or horizontal and vertical planes at the limits of the dimensions and elevations shown on the Condominium Plan. Each Unit shall include the surfaces so described, the portions of the buildings and improvements lying within said boundaries (except as noted in the Condominium Plan) and the airspace so encompassed; provided, however, that a Unit shall not include any equipment or mechanical devices which are part of any system or systems installed for security or for announcing those who would gain access to a Unit, even when located within the airspace of a Unit as shown on the Condominium Plan. A Unit will include the thermostat(s), its relays, and the transformers necessary for its operation. In interpreting deeds and plans, the existing physical boundaries of a Unit, or of a Unit reconstructed in substantial accordance with the Condominium Plan, shall be conclusively presumed to be its boundaries, rather than the metes

and bounds, or other description, expressed in the deed or Condominium Plan, regardless of settling or lateral movement of a Building and regardless of minor variance between boundaries shown on the Condominium Plan or in the deed and those of a Building.

**1.33 "Unit Fair Market Percentage Interest."**

"Unit Fair Market Percentage Interest" shall mean and refer to that percentage interest for each Unit calculated pursuant to the procedures as set forth in Article Twelve of this Declaration.

**ARTICLE TWO**

**CONDOMINIUM OWNERSHIP AND INTEREST IN PROPERTY**

**2.01 Condominium Ownership.**

The Condominium Plan for Santa Monica Bay Towers Homeowners Association provided for the individual ownership by Persons of real property estates consisting of the area or space contained in each of the Units contained within a Building constructed on the Property in accordance with the Condominium Plan, and the co-ownership by the individual Owners thereof, as tenants-in-common, of all remaining portions of the Property.

**2.02 Division.**

In order to establish a plan of condominium ownership for the Property, by the Condominium Plan, the Property was divided into separate feehold estates, each said estate consisting of the following as more particularly described in the Condominium Plan:

- (a) Ninety-one (91) separately designated and legally described Units; and
- (b) An Undivided Interest in the remaining portions of the Property defined and referred to as the Common Area.

**2.03 Ownership Limitations.**

Each Owner of a Unit shall not be deemed to own the undecorated and/or unfinished interior surfaces of the perimeter walls, doors, floors and ceilings surrounding his Unit, nor shall said Owner be deemed to own pipes, wires, conduits or other public utility lines running through said respective Unit, which are utilized for, or serve more than one Unit, except, along with the other parts of the Common Area, as tenant-in-common with the other Owners. An Owner, however, shall be deemed to own the walls and partitions which are contained in the Owner's respective Unit, and also shall be deemed to own the interior decorated and/or

finished surfaces of the perimeter walls, floors and ceilings, including without limitation plaster, paint, wallpaper, or paneling. Notwithstanding the foregoing an Owner shall not be deemed to own any equipment or mechanical devices which are part of any system or systems installed by or on behalf of the Association for security or for announcing those who would gain access to a Unit, even when located within the airspace of a Unit as shown on the Condominium Plan.

**ARTICLE THREE**

**RIGHTS IN COMMON AREA**

**3.01 Interest in Common Area.**

The Owner of each Unit shall own, as a tenant-in-common with all other Owners of Units, an Undivided Interest in the Common Area.

**3.02 Easement for Ingress, Egress and Support.**

In accordance with Section 1361 of the California Civil Code, each Owner shall enjoy and each shall have, a nonexclusive easement, appurtenant to and for the benefit of his Unit, for ingress, egress and support over, across and through the Common Area and every portion of any Unit within the Project required for the structural support of any Building within which the Unit is located.

**3.03 Easement of Enjoyment.**

Every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and for the benefit of his Unit, subject to the following:

- (a) The right of the Board of Directors to limit the number of or exclude social guests, employees, servants, or invitees of an Owner or an Owner's tenant from using the Common Area or any portion thereof.
- (b) The right of the Board of Directors to establish uniform rules and regulations pertaining to the use of the Common Area and the recreational facilities thereof.
- (c) The right of the Board of Directors to suspend the voting rights of an Owner of a Condominium, or suspend his common area privileges, for any infraction of the Rules and Regulations of the Association committed by any Owner or his family, tenants, social guests, servants, employees or invitees; provided

that any such suspension of voting rights shall be made only after notice and hearing duly given and held by the Board.

- (d) The right of the Board of Directors to assess, in accordance with Sections 4.25 and 4.26 hereof, a monetary penalty for violation of the provisions of this Declaration, the By-Laws, or the Rules and Regulations set forth by the Board of Directors.
- (e) The right of the Board of Directors to restrict access to portions of the Project not required for ingress or egress to a Unit.
- (f) The Owners shall not have an easement in or to the Exclusive Use Common Area.

**3.04 Rights of City of Santa Monica.**

The City of Santa Monica, California, or any authorized agent thereof, shall have the right of entry onto and upon the Common Area of the Project for the purpose of performing maintenance in the Common Area in the event that the Association shall default in its obligation to maintain the Common Area as herein provided; and the City of Santa Monica, California shall be reimbursed by the Association for any and all costs incurred thereby.

**3.05 Delegation of Use.**

Subject to the provisions of this Declaration, each Owner of a Condominium may delegate his right of enjoyment to the Common Area to the members of his family or his tenants, social guests, servants, employees or invitees; provided, however, that no servant or employee of an Owner shall have the right to use the recreational and community facilities and unassigned parking included within the Common Area without first obtaining the prior written consent of the Board of Directors. If such rights are delegated to a tenant pursuant to a lease, the Owner may not exercise them until he re-takes possession of the Unit.

**3.06 Waiver of Use.**

No Owner of a Condominium may exempt himself from liability for Assessments duly made and levied by the Association, nor release the Condominium owned by him from the liens and charges thereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his Condominium.

**3.07 Encroachment.**

If any part of the Common Area encroaches or shall hereafter encroach upon a Unit, a valid easement exists for the encroachment and for the maintenance of same, so long as said encroachment shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area, or upon another Unit, a valid easement exists for the encroachment and for maintenance of same, so long as the encroachment shall and does exist. Each Owner shall use reasonable efforts to avoid and mitigate any encroachment either upon the Common Area or any other Unit. In the event a Building is partially or totally destroyed, and then rebuilt, the Owners of Units agree that minor encroachments of parts of the Common Area on Units or of parts of Units on the Common Area or on other Units due to construction shall be permitted and that valid easements for said encroachments and the maintenance thereof shall exist. Such encroachments shall not be considered to be encumbrances either on the Units or the Common Area.

**3.08 Utility Rights.**

The rights and duties of the Owners with respect to lines for sanitary sewer, storm drains, water, electricity, gas, telephone, television cables, and air conditioning, shall be governed by the following:

- (a) Wherever sanitary sewer house connections and lines, facilities and/or water house connections and lines, or electricity, gas, telephone lines, air conditioning lines, or television cables are installed within the Property, which connections, or any portion thereof, lie in or upon portions of the Property owned by others than the Owner of a Unit served by said connections, the Owner of any Unit served by said connection and the Association shall have the right, and is hereby granted an easement which may be exercised for such Owner by the Association, to enter upon such portions of the Property or to have the utility companies enter thereupon to repair, replace and generally maintain said connection as and when the same may be necessary as set forth below.
- (b) Wherever sanitary sewer connections and lines, facilities and/or water connections and lines or electricity, gas and telephone lines, air conditioning lines, or television cables are installed within the Property, which connections serve more than one Unit, the Owner of each Unit served by said connection shall be entitled to the full use and enjoyment of such portions of said connection as services his Unit.
- (c) In the event any portion of said connection or lines is damaged or destroyed through the negligent act or acts or failure to act, or willful misconduct of one Owner or any of his employees, servants, agents, invitees, tenants, guests or

members of his family so as to deprive other Owners of the full use and enjoyment of said connection or line, then such connection or line shall be repaired and restored at the expense of the Owner. If the Owner does not pay, the Association may bear the cost, but the expense thereof shall be assessed against the Unit Owner who commits, or whose employees, servants, agents, invitees, tenants, guests or family members commit, such act or acts, as a Special Assessment in accordance with Article Seven hereof.

- (d) In the event any portion of such connection or line is damaged or destroyed by some cause other than the negligence or willful misconduct of one of the Owners, his employees, servants, agents, guests, tenants, invitees or members of his family (including ordinary wear and tear and deterioration from lapse of time) then in such event such connection or line shall be repaired and restored by the Board, the cost of such repair and restoration to be part of the Common Expenses.
- (e) The exercise of any right or easement provided in this Section shall be subject to the conditions precedent that such exercise shall be reasonable and in good faith, and all damage to a Unit or to the Common Area resulting therefrom shall be repaired at the sole cost and expense of the person exercising such easement.

**3.09 Right to Combine Units.**

An Owner shall have the right to combine one or more adjoining units subject to the following provisions:

- (a) Prior Consent of Association. No Owner may combine adjoining units until he has received the written approval of the Board of Directors, which approval shall not be unreasonably withheld. In evaluating its consent to a combination of units, the Board of Directors shall first receive and separately approve the following:
  - (1) Architectural plans of the proposed combination of the units which have received all applicable governmental approvals;
  - (2) A certificate stating that any portion of the common area to be affected by the proposed combination is not required for the structural support of any other unit or any part of the condominium project. Said certificate shall be given by a structural engineer licensed in the State of California and approved by the Board of Directors;

- (3) A certified bid stating the cost of the proposed combination and the time for its completion. Said bid shall be made by a contractor licensed in the State of California and approved by the Board of Directors;
- (4) A bond or bonds assuring the prompt completion of the proposed combination in a workmanlike manner free of mechanic's liens which names the Association as an obligee thereunder. The Association may also require such other security as is necessary to guarantee the foregoing;
- (5) All building and other governmental permits required for the construction of the proposed combination;
- (6) A certificate stating, in detail, the effect of the proposed combination on any common area plumbing and wiring. Said certificate shall be made by electrical and plumbing contractors licensed in the State of California and approved by the Board of Directors;
- (7) A certificate reflecting that the contractor selected to perform the work has liability insurance and workers' compensation coverage in appropriate amounts;
- (8) The agreement of the Owner to indemnify, defend, and hold the Association harmless as a result of the work to be performed; and
- (9) Any other documentation which the Board of Directors may reasonably require.

Once the Board's written approval has been given that approval may be rescinded if the work is not done strictly in accordance with the documentation which had previously been submitted or the Board concludes that the structural integrity of the building has been damaged. In such event the Unit shall, at the Owner's sole expense, be made to conform or be restored to its prior condition.

- (b) Prohibition Against Combination. Any proposed combination of the units which in any way would result in the removal of any structural support for any unit or units or any other portion of the Project is strictly prohibited. Vertical combinations are also prohibited. No combination shall impair the existence and integrity of the Common Area.
- (c) Effect of Combination. The effect of a completed combination shall have the following consequences upon its owner:

- (1) Undivided Interest in Common Area. The Undivided Interest in the Common Area allotted to the combined units shall be equal to the sum of the Undivided Interests in the common area of each of the combined units.
- (2) Assessments. With respect to the assessments required of each unit's owner, more particularly set forth in Article Seven, the assessments due and owing on the combined units shall be equal to the sum of the assessments levied against each of the respective units so combined.
- (3) Voting Rights. The owner of the combined unit shall have the number of votes equal to the number of votes of the units that were combined. For example, if three prior units were combined into one, the owner of the new unit would retain three votes as a member of the Association.
- (4) Prior Easements. Any easements existing in, over, across, or through the common area, which, subsequent to the combination of the units, is located within the new perimeter area of the combined units shall cease to exist, and shall be deemed conveyed to the owner of the combined units.
- (5) Right to Sever Units. No Owner shall have the right to sever or divide any one Unit into two or more Units; provided, however, that by following the same procedures set forth in this Article Three, once two or more Units have been combined the Owner may seek approval hereunder to sever the Units and thereby restore them to their prior condition.

**3.10 Parking Areas.**

Each Owner shall have for his exclusive use one space to which he has been assigned by the Association as of the date this Declaration is recorded; provided, however, two spaces shall be assigned to the Penthouse for its exclusive use. No Owner may sell his parking space(s) or lease them except as provided below. Each Owner may trade his parking space with, or rent space on a month-to-month basis from, another Owner. Unassigned parking spaces shall remain part of the Common Area. It shall be the duty of the Owner to maintain his parking space in a clean and sanitary condition. There shall be no storage of any item (except bicycles) in the parking space(s) except in permanently constructed storage cabinets erected with prior Board approval.

**3.11 Penthouse Patio.**

The entire roof area of the Project excluding the roof on top of the penthouse itself (hereinafter "Penthouse Patio") shall serve as a Patio for the exclusive use of the Penthouse Owner. No one other than the Owner of the Penthouse Unit shall be permitted to use the Penthouse Patio for any purpose; provided, however, the Association and its authorized representatives shall have access to the Penthouse Patio at all times for the purpose of inspecting, maintaining and repairing the building or any mechanical equipment located thereon which services the building. The Owner is prohibited from placing, installing or removing, permanently or temporarily, any material affixed to the Patio floor.

The Owner is also prohibited from adding planters or relocating existing planters without the approval of the Association Board of Directors subject to approval of Board-appointed experts. The exclusive use by the Owner shall not change the characterization of the roof as common area. The Owner has the obligation of informing the Board of Directors of any damage to the roof.

**ARTICLE FOUR**

**USE RESTRICTIONS**

**4.01 Residential.**

No Owner shall occupy or use his Unit, or permit the same or any portion thereof to be occupied or used for any purpose other than a private single-family residence for such Owner and his family, or his tenants, social guests, servants, employees and invitees; provided, however, that an Owner may use his Unit for business purposes but only if (i) the business does not involve any advertisement which includes the address or phone number of the Unit or the Project, (ii) does not involve any clients or customers coming to the Unit or the Project, (iii) does not involve regular deliveries or pick-ups of mail or packages of any kind to the Unit or Project which in the Board's sole discretion are in excess of a level normal for residential occupancy, and (iv) is consistent with all zoning laws and other governmental regulations. The Owner engaging in any business within his Unit shall indemnify, defend, and hold harmless the Association and its representatives from any liability arising from such business.

**4.02 Interior of Units.**

Subject to the provisions of Sections 4.03, 4.05, 15.01, and 15.02, each Owner shall maintain in clean and sanitary condition and in good repair the interior of his Unit, and each Owner shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise furnish and decorate the interior surfaces of the walls, partitions, ceilings, floors, windows and doors

within his Unit and the furniture and furnishings included therein; provided, however, that in the event an Owner shall do anything with respect to his Unit that might have the effect of increasing the level of noise or sounds that can be heard outside of his Unit during normal use and occupancy, including but not limited to the replacement of carpeting with tile, parquet or other hard floor covering, he shall be required to obtain prior written approval from the Association and to take all such measures at his expense to guaranty that the final product achieves a sound rating (impact and airborne sounds) of at least 52 dB. At the conclusion of the work the Owner will produce at his expense a sound test from a licensed acoustical engineer acceptable to the Association to prove that this rating has been met and shall promptly remove such flooring or other item at his expense if this 52 dB standard is not met. Each Owner shall keep clean and in good condition the interior and exterior of the windows of his Unit, and shall not replace the glass in such windows except with glass of a similar color, quality, size, and configuration to that which is supplied with the Unit. This Declaration further adopts the definitions found in California Civil Code Section 1351, and incorporates the same by reference thereto.

**4.03 Patios.**

When a Patio is attached to a Unit the Owner shall not have the right, without the prior written approval of the Association, to paint, alter (including, without limitation, the installation of any floor covering), remodel or enclose any such patio or balcony and then only in a manner which does not change the uniform appearance of the Project. The Association may impose reasonable conditions in giving any such approval. No approval of floor coverings shall be given until the Patio has been subject to and passed water flow and slope tests at the Owner's expense. The Owner shall indemnify, defend, and hold harmless the Association, its members, directors, officers, and employees with respect to any injury or damage caused by any alteration to or the condition of his patio. Each Owner of a Unit which has a Patio attached to it shall have the right to furnish it with outdoor furniture in keeping with the architecture of the Project and reasonable family use, and shall keep such area in a clean and sanitary condition. In no event shall unsightly objects (including but not limited to laundry, mops and bicycles) be placed or stored on a patio or balcony where they may be seen by other Owners or by the public in general. The Owner is prohibited from maintaining, storing or hanging any hazardous substance or article, including suspended planters.

**4.04 Insurance.**

Nothing shall be done or kept in or on any Unit or any Common Area or any portion thereof which will increase the rate of insurance in or on any other Unit or the Common Area or any portion thereof. No Owner shall permit anything to be done or kept in his Unit or in any Common Area which would result in uninsurability or in the cancellation, suspension, modification or reduction of insurance in, on or covering any other Unit, Common Area or item of Personal Property within the Project. If, by reason of the occupancy or use of any Unit or any Common Area by any Owner, the rate of insurance on all or any portion of the

Project shall be increased, such Owner shall become personally liable to the Association for any increase in insurance premiums caused thereby and the cost thereof shall be assessed to such Owner and his Condominium as a Special Assessment in accordance with the provisions of Article Seven hereof.

**4.05 Approval of Work By Association.**

Nothing shall be done in, on or to any Unit or any Common Area which will impair the structural integrity or the mechanical systems of the Building or any portion thereof. In the event that any Owner wants to make any alterations to the interior of his Unit which will or may (or which the Board believes could) impair or alter the structural integrity or mechanical systems (including but not limited to roof, HVAC, plumbing, or electrical systems), or lessen the support of any portions of the Common Areas, then the Owner shall before commencing the work deliver to the Board of Directors the following:

- (a) A copy of the Plans and Specifications of such alterations;
- (b) A certificate stating that any portion of the Common Area to be affected by the proposed alterations is not required for the structural support of any other Unit or any part of the Project. Said certificate shall be given by a structural engineer licensed in the State of California and approved by the Board of Directors;
- (c) Copies of all building and other governmental permits required for the construction of the alterations; and
- (d) If appropriate, a certificate stating in detail, the effect of the proposed alterations on any common area plumbing and wiring. Said certificate shall be made by electrical and plumbing contractors licensed in the State of California and approved by the Board of Directors.

**4.06 Alteration and Decoration of Common Area.**

No Owner shall, whether at his own expense or otherwise, do, make or suffer any alteration, addition or modification to any portion of the Common Area, nor shall he install, attach, paste, hinge, screw, nail, build or construct any lighting, decoration or other article or thing thereto, without the Approval of the Board, provided that approval of the Board shall not be required for the installation within a Unit of any decorative items such as fixtures, shelving and art work.

42

**4.07 Signs; Sale of Units.**

Except as otherwise required by law, no sign, notice, nameplate, card or advertisement of any kind shall be displayed to the public view on or from any Unit (including, without limitation, on any window) or in or on any Common Area except as specifically provided by the Board of Directors in the Rules and Regulations. The Board shall also provide appropriately marked facilities for the receipt of mail and packages and shall maintain a complete and current register of the names of each Owner and his respective Unit.

Whenever a Unit is for sale, the Owner and/or his broker may hold an open house or broker's caravan but only by strictly complying with the procedures imposed by the Board in the Rules and Regulations. The Owner shall indemnify, defend, and hold harmless the Association and its representatives from any liability arising from the open house or broker's caravan.

**4.08 Occupancy Restriction.**

It is the intent of the Association to establish reasonable occupancy limitations on Units in the Project for the benefit and welfare of all Owners. The maximum number of persons including, without limitation, Owners members of an Owner's family, lessees, tenants, occupants, residents or other users who may "permanently reside" in any Unit in the Project at any point in time is two (2) persons per full or three-quarters bathroom located in each Unit or, two (2) persons per bedroom located in each unit, whichever is greater. For the purposes of this Section, the term bathroom shall not include bathrooms or powder rooms without a shower or bath tub. Each Owner, tenant or other person "permanently residing" (as defined below) in any Unit shall disclose to the Board of Directors, on occupancy statement forms ("Occupancy Statements") provided by the Board for this purpose, the precise number of persons "permanently residing" in a Unit as of the date of such Occupancy Statement. It shall be the obligation of any Owner, tenant or other Permanent Resident (as defined below) to notify the Board of any change in the occupancy status of a Unit within ten (10) days of such change by completing a new Occupancy Statement. In addition, the Board may request Owners to provide updated Occupancy Statements at reasonable periodic intervals, but not more than four (4) times per year.

For purposes of this Section 4.08 "permanently reside" shall mean the use, residency or occupancy of any Unit by any Owner, member of an Owner's family, lessee, tenant, occupant, resident user or other person thereof for more than thirty (30) consecutive days or more than sixty (60) aggregate days, whether or not consecutive, in any one calendar year. For purposes of this Section 4.08, "Permanent Resident" shall mean any person who permanently resides in the Unit.

This Section 4.08 shall not prohibit Owners, or other Permanent Residents, tenants or other occupants from having temporary guests occupy or reside in any Unit provided that the

43

occupancy of such temporary guest does not in any way violate the provisions of this Section 4.08. If at any time any temporary guest becomes a "Permanent Resident" of any Unit and is thereby in violation of this Section 4.08, the Board shall have the right to enforce such violation.

Notwithstanding the foregoing, in its discretion, the Board of Directors may elect not to apply the provisions of this section to any Unit which would otherwise be in violation of this occupancy restriction at the time this Article 4.08 first becomes operative, under such conditions as may be deemed by the Board to be appropriate.

**4.09 Electrical Wiring and Equipment.**

No Owner shall install, attach or hang or cause to be installed, attached or hung any equipment or wiring for electrical installation, television, stereo speakers, or radio transmitting or receiving antenna, machines or air-conditioning units or other like equipment or wiring in or on any portion of the Common Area or that protrudes from any Patio or through any Common Area wall, floor, ceiling, window or door, except as approved by the Board of Directors. No speakers or similar equipment may be mounted or imbedded in any wall.

All radio, television, or other electrical equipment or appliances of any kind or nature or wiring therefor installed or used in a Unit shall fully comply with all rules, regulations and requirements of all state and local public authorities having jurisdiction over same, and the Owner alone shall be liable for any damage or injury caused by any such radio, television or other electrical equipment or appliance installed or used in his Unit.

**4.10 Nuisance.**

No noxious, offensive or illegal activity shall be carried on, nor shall anything be done or placed in or on any Unit or in or on any portion of the Common Area which is or may become a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other Owners in the use and enjoyment of their Units or of the Common Area or in the use and enjoyment of their property. Without limiting the foregoing, no horns, whistles, bells or other sound devices, except security devices approved for use by the Board which are used exclusively to protect persons or property located in or on the Project, shall be placed in or used in or upon any portion of the Project.

Each Owner shall promptly and fully comply with any and all applicable laws, rules, ordinances, statutes, regulations and requirements of any governmental agency or authority with respect to the occupancy and use of his Condominium.

4.11 **Power Tools, Welding Equipment and Carpentry Shops.**

Whenever an Owner seeks to alter or remodel his Unit and such alteration or remodel requires prior approval by the Association, no power tools, welding equipment, or carpentry shops shall be maintained or used without the written approval of the Board. The Board shall specify days and times during which such equipment may be used which shall be limited to weekdays. Notwithstanding the foregoing, power tools and welding equipment may be used by any owner if not used for a project which requires Board approval. In such event the tools and equipment may be used only between the hours of 8:30 a.m. and 5:00 p.m. on weekdays and 11:00 a.m. to 4:00 p.m. on weekends and holidays. In no event shall power tools, welding equipment or carpentry shops be used or maintained for any commercial purpose.

4.12 **Pets.**

No livestock, reptiles, insects, poultry or other animals of any kind shall be raised, bred or kept anywhere on the Project, except usual domestic dogs, cats, fish, birds and other household pets may be kept within any Unit, provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities or sizes. As used in this Declaration, "unreasonable quantities" shall mean no more than two (2) dogs, two (2) cats, or one of each. The Board shall have the right to limit the size of pets in the Rules and Regulations and may prohibit maintenance of any animal which in its opinion constitutes a nuisance to any other Owner. No Owner shall be permitted to keep Pit Bulls, Doberman Pinschers, trained guard dogs, or other dangerous animals, and no Owner shall be permitted to keep any animal if the occupants of two (2) or more neighboring Units complain of excessive noise from such animal. Animals belonging to Owners, occupants or their licensees, tenants or invitees within the Project must be either kept within an enclosure or on a leash being held by a person capable of controlling the animal. Animals shall not be kept on the patio or balcony of any Unit or any portion of the Common Area. Furthermore, any Owner shall be absolutely liable to each and all remaining Owners, their Family, guests, tenants and invitees, for any unreasonable noise or any damage to person or property caused by any animals brought or kept upon the Project by an Owner or by members of his Family, his tenants or his guests; each owner of an animal brought or kept on the Premises shall indemnify, defend and hold harmless the Association for any damage to person or property caused by such animal; and it shall be the duty and responsibility of each such Owner to clean up after such animals in all areas of the Project.

Notwithstanding the foregoing, in its discretion, the Board of Directors may choose not to apply the provisions of this Section to any animal kept on the Project at the time this Article 4.12 first becomes operative, under such conditions as may be deemed by the Board to be appropriate.

**4.13 Vehicles.**

No automobile, truck, trailer, camper, boat, aircraft or any other similar vehicle shall be permitted to be stored or remain on any portion of the Common Area other than completely within an Owner's assigned parking space(s), except that guest parking, if any, limited to automobiles may be permitted to exist in those areas designated as "guest parking" by the Board, for a period of time not in excess of twenty-four (24) hours. No Owner, nor any member of his family, nor his tenants, guests, invitees, agents, licensees, servants or employees shall park or cause to be parked any vehicle in such a manner as to impede or prevent ready access to any entrance or exit of a Building, or any of the Parking Areas as designated in the Condominium Plan by another vehicle. No Owner shall permit any member of his family, or his guests, tenants, agents, licensees, servants or employees to use any of the Parking Areas, the exclusive use of which has been assigned to another Owner. No electric cars or other similar vehicles are permitted to be recharged within the Project without prior Board approval. No Owner shall construct, repair, service, wash or maintain any motor vehicle within any portion of the Project, except for emergency repairs thereto to the extent necessary for the movement thereof to a proper repair facility. For any violation of these restrictions, the offending vehicle may be towed at the direction of the Association at the Owner's expense. Each Owner shall indemnify, defend, and hold harmless the Association and all of its agents and representatives from any injury or damage caused by such offending vehicle.

**4.14 Exterior Fires; Barbecues.**

There shall be no exterior fires of any type, i.e., barbecues, on any Patio, Balcony, or Common Area.

**4.15 Common Area Obstructions.**

The Common Area shall be used only for the purposes intended and no bicycles, scooters, baby carriages or similar vehicles, toys or other vehicles belonging to any Owner, any member of his family, tenants, guests, agents, invitees, or employees will be kept or hung therein except in approved storage areas designated by the Board.

**4.16 Laundry.**

No exterior clothesline shall be erected or maintained in, on or connecting any Common Area, Patio, or Parking or Storage Areas. Patio railings may not be used as a clothesline. No washers or dryers are permitted within any Unit except the Penthouse Unit. The Penthouse shall be responsible for the repair, maintenance and replacement of its washer and dryer.

**4.17 Commercial Operations.**

The Building, the grounds and all Improvements thereon shall be used for residential purposes only and to conduct the legitimate operations of the Association as specifically described in this Declaration and the Bylaws and in Section 4.01 herein.

**4.18 Trash: Refuse.**

No unconcealed trash or rubbish container or similar items visible from public or private streets, other Units, balconies and/or patios, or recreational areas shall be kept or maintained within the Project. Except for that area specifically designated by the Board of Directors, if any, no trash or refuse cans, ice, milk bottles or other articles shall be placed in the Common Area halls, lobbies or staircases, nor shall any cloth, curtains, rugs or mops, dust, dirt or other articles or substance be hung, shaken, swept or thrown from, on or into any Common Area hallway, staircase, door, window, balcony and/or patio. However, nothing contained in this Section 4.19 shall prohibit the placing of normal deliveries of articles such as packages, newspapers, bottled water, and dairy products in the Common Area halls in front of a Unit's door; provided, however, that an Owner shall not permit such items to accumulate in the Common Area halls in a manner which in the Board's opinion constitutes a nuisance.

**4.19 Roof.**

Except as otherwise provided in this Declaration, Owners, the members of their families and their tenants, social guests, employees, servants, agents and invitees shall not at any time or for any reason whatsoever enter upon or attempt to enter upon the roof of the Building without the prior written approval of the Board.

**4.20 Leasing of Unit.**

No Owner shall be permitted to lease his Unit for an initial term of less than four (4) months. This restriction does not apply to the Association or a commercial lender in possession of a Unit following a default on a mortgage or other lien, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure. All such leases shall be in writing and contain the following terms: (i) the property leased includes the entire unit; (ii) the lessee agrees to comply with all provisions in this Declaration, the Bylaws, and the Rules and Regulations for the Association and any failure to do so constitutes a default under the lease; and (iii) there shall be no right of assignment or sublease. In the event of any such default under the lease, in the event the Owner does not commence unlawful detainer proceedings against the Tenant within twenty (20) days after receiving a written demand from the Association, the Owner shall be deemed to have assigned to the Association the Owner's rights under the lease so that the Association may file an unlawful detainer action in its own name as real party in interest. Leases shall be non-transient for residential purposes only, and in no event, shall include use of the unit as a hotel or boarding house, or for a primary

business purpose by the occupant. Each Owner who leases his unit agrees to indemnify, defend, and hold harmless the Association, the Board of Directors, all other Owners, and all management personnel, from any liability arising from the acts and omissions of his lessee.

**4.21 Drilling: Mining Operations.**

The use of any portion of the surface of the Property for drilling operations, mining or quarrying of any kind, including, but not limited to, oil well drilling, oil development or mining operations of any kind, is hereby and shall be prohibited.

**4.22 Taxes.**

Each Owner of a Condominium shall pay any real and personal property taxes or charges assessed against his Condominium.

**4.23 Rules and Regulations.**

Each Owner of a Condominium, the members of his family and his tenants, social guests, employees, servants and invitees shall abide by the uniform Rules and Regulations pertaining to the Project and the use of the Common Area adopted by the Board, as the same may from time to time be amended. Such rules and regulations shall be binding upon each and every Owner and the members of his family and his tenants, social guests, employees, servants and invitees and said rules shall have the same force and effect as if they were set forth in this Declaration.

**4.24 Consent or Approval is Revocable.**

Any consent, approval or authorization, once given as permitted by this Declaration by the Association, its Board of Directors, or their duly authorized representatives, shall be revocable (i) if the approval or consent was based on a misrepresentation, or (ii) it is determined that the action taken by the Owner, notwithstanding the approval or consent, has caused injury or damage to, or otherwise is contrary to the health and welfare of, the Association or its members.

**4.25 Monetary Fee To Compel Compliance.**

Recognizing the need for a reasonable means of encouraging and insisting upon compliance with the provisions of this Article Four without resorting to suits for injunctive relief, the Board of Directors of the Association is hereby authorized to assess any Owner found to be in violation of any provision of this Article Four, after notice and hearing duly given and held by the Board, a sum not to exceed (i) Three Hundred Dollars (\$300.00) per day for any one violation, or (ii) Ten Thousand Dollars (\$10,000.00) in any one year. Any assessment made pursuant to this Section shall become an Assessment as defined in Section

48  
1.03 of this Declaration, against such Owner and his Condominium. Any assessment made pursuant to this Section shall be subject to Section 6.13 of this Declaration.

Notice of any assessment made pursuant to this Section shall be given in the following manner:

- (a) Notice shall be sent by prepaid, first-class, or registered mail to the most recent address of the Owner as shown on the Association's records, setting forth the violation and the proposed monetary penalty. Such notice shall be sent at least fifteen (15) days before the proposed effective date of the penalty.
- (b) The Owner being penalized shall be given an opportunity to be heard, either orally or in writing, at a hearing to be held not fewer than five (5) days before the effective date of the proposed penalty. The hearing will be held by the Board of Directors of the Association. The notice to the Owner of the proposed penalty shall state the date, time and place of the hearing, and the amount of the proposed penalty.
- (c) Following the hearing, the Board of Directors of the Association shall decide whether or not the Owner should in fact be penalized, and the amount of the penalty. Any decision of the Board of Directors affecting an individual and any penalty assessed may be subject to review by the American Arbitration Association as specified in Article Nineteen. The standards of review shall be whether or not the Board exceeded its discretion in making its decision or assessing its penalty as provided in this Declaration and the Rules and Regulations.

In the event that any Owner fails to pay any amount assessed against him pursuant to this Section, then the Board of Directors of the Association, on behalf of the Association, shall have the authority to seek judicial enforcement of the assessment in any court of competent jurisdiction. The Owner being so assessed shall also be liable for all costs of collection, including, but not limited to, attorneys' fees, if any, court costs and/or costs of arbitration.

#### **4.26 Owner Liability.**

Each Owner shall be liable to the Association for any damage to the Common Area or any improvements, landscaping or equipment thereon which may be sustained by the negligence or willful misconduct of said Owner or members of his family, or his tenants, social guests, employees, servants, agents, or invitees, and shall be assessed by the Board for the repair or replacement thereof. In the event of any damages or destruction to any portion of the Common Area caused by any negligent or malicious act or omission of any Owner, or by any member of his family or his guests, tenants, servants, employees, agents or invitees, then the Board shall immediately cause the same to be repaired or replaced, and all costs and

expenses incurred in connection therewith (to the extent not covered or reduced by insurance proceeds paid to or received by the Association) shall be assessed and charged solely to and against said Owner subject to Section 6.13. Said assessment shall be made by written notification from the Board of the Association to the Owner pursuant to the notice and hearing provisions of Sections 4.26(a)-(c) of this Declaration and shall be payable in full to the Association within thirty (30) days following such notice, unless the Board, after conducting a hearing, if any, determines that said assessment is not warranted. Any assessment made pursuant to this Section shall become an assessment against such Owner and his Condominium as Assessment is defined in Section 1.03 of this Declaration. In the event that any Owner fails to pay for damages assessed to him as a result of damage to the Common Area or any improvements, landscaping or equipment thereon sustained by the negligence or willful misconduct of said Owner or members of his family, or his tenants, lessees, social guests, employees, servants, agents, or invitees then the Board of Directors of the Association, on behalf of the Association, shall have the right to pursue its available legal rights and remedies in order to satisfy said obligation. In the event that the Board resorts to legal proceedings in order to satisfy said Owner's obligations provided for in this Section, then the prevailing party shall be entitled to recover all reasonable costs and attorneys' fees in connection therewith.

**4.27 Transfer of Occupancy Fee.**

To defray the expense incurred by the Association in facilitating moves into and out of the Project by Owners and their tenants, and the cost of wear and tear to the Common Areas, the Board may impose and collect a Special Assessment from any Owner upon each transfer of occupancy of his Unit. The amount of the Special Assessment shall not exceed the sum of Five Hundred Dollars (\$500.00) for each such transfer. Each Owner shall indemnify, defend, and hold harmless the Association, and all officers, directors, and employees, from any injury or damage caused by or during the transfer of occupancy.

**4.28 Construction Fee.**

To defray the expense incurred by the Association in facilitating the work of architects and contractors hired by Owners for the remodeling of any Unit, and the cost of wear and tear to the common areas as the result of remodeling within any Unit, the Owner shall pay a Special Assessment in the sum to be set by the Board of Directors not to exceed Five Hundred Dollars (\$500.00), as a condition to obtaining approval for any work for which Board approval is required.

**4.29 Use of Association's Employees.**

No Owner shall hire or engage any of the Association's employees to perform work for that Owner within the employee's normal workday. It shall be understood and agreed that the Association is not responsible for the acts of its employees during their off hours. Each

Owner engaging the employee during his off hours shall indemnify, defend, and hold harmless the Association from all acts and omissions of the employee in such circumstances.

**4.30 Jacuzzi Tubs.**

No Jacuzzi bathtub may be installed in any Unit.

**4.31. Grandfathering Provision for Preexisting Conditions.**

All conditions within any Unit which existed prior to recordation of this Declaration which would violate the provisions hereof are grandfathered and excepted from compliance herewith, but only if, on or before the sixtieth (60th) day following recordation of the Declaration, the Owner has delivered a signed writing to the Association in which he (i) identifies the specific preexisting condition in his Unit which violates this Declaration, (ii) agrees to indemnify, defend, and hold harmless the Association and its representatives from any liability arising from such preexisting condition, (iii) agrees that upon the sale of his Unit the condition shall either be abated or removed at his cost, and (iv) agrees that if there is a written complaint from another Owner about the condition, and the Board determines in its subjective opinion that the condition unduly interferes with the quiet enjoyment or safety of another Owner, the condition will be removed or abated forthwith at the offending Owner's cost. Nothing contained in the paragraph shall be deemed or construed to be approval or acceptance by the Association of any condition (preexisting or otherwise) which (a) presents a health or safety threat to the Building or to any resident, (b) constitutes a violation of any governmental law, rule, or regulation, or (c) would be a violation of any prior restriction or rule of the Association.

**ARTICLE FIVE**

**FORMATION OF ASSOCIATION; MEMBERSHIP RIGHTS AND**

**ELECTION OF DIRECTORS**

**5.01 Existence.**

Santa Monica Bay Towers Homeowners Association, acting alone or through its Board, Officers, Manager, or any duly authorized agent or representative, shall constitute the "management body" within the meaning of Section 1363 of the California Civil Code.

**5.02 Membership.**

Each Person shall automatically, upon becoming an Owner of a Condominium, become a Member of the Association and shall remain a Member thereof until he shall cease to

be an Owner. The foregoing is not intended to include persons or entities who hold such an interest in a Condominium merely as security for the performance of an obligation.

**5.03 Membership Appurtenant to Units.**

The membership of each Owner in the Association is for the benefit of, and appurtenant to, the Condominium to which it relates, and consequently, membership may not be separated from the ownership of such Condominium.

**5.04 Transfer.**

An Owner shall not transfer, pledge or alienate in any way his membership in the Association, except upon the transfer of the fee interest in the Condominium to which it is appurtenant, and then only to the transferee of such fee interest. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event an Owner should fail or refuse to transfer the membership registered in his name to the purchaser of the Condominium to which it is appurtenant, the Association shall have the right to record the transfer upon the books of the Association, and thereupon the membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

**5.05 Voting Rights.**

On all matters submitted for a vote the Owner(s) of each Unit shall be entitled to one Vote per Unit. Where there is more than one (1) record Owner of a Condominium ("Co-Owners"), any or all of such co-Owners shall be Members and may attend any meeting of the Association, but only one (1) of such Co-Owners shall be entitled to exercise the vote to which the Condominium is entitled. Such Co-Owners shall from time to time designate in writing one person to exercise the vote. Fractional votes shall not be allowed. Where no voting Co-Owner is designated or if such designation has been revoked, the vote for such Condominium shall be exercised as the majority of the Co-Owners of the Unit mutually agree. Unless the Board receives a written objection in advance from a Co-Owner, it shall be conclusively presumed that the corresponding voting Co-Owner is acting with the consent of his or her Co-Owners. No vote shall be cast for any Condominium where the majority of the Co-Owners present in person or by proxy and representing such Condominium cannot agree to said vote or other action. The non-voting Co-Owner or Co-Owners shall be jointly and severally responsible for all of the obligations imposed upon the jointly owned Condominium and shall be entitled to all other benefits of ownership. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established herein, or in the Bylaws of the Association, shall be deemed to be binding on all Owners, their successors and assigns. All voting rights shall be subject to the restrictions and limitations provided in this Declaration and in the Articles of Incorporation and Bylaws of the Association.

5.06 **Joint Owner Disputes.**

In the event that more than one person owns a Condominium and they are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Condominium, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Condominium. In the event more than one vote is cast for a particular Condominium, none of said votes shall be counted and all of said votes shall be deemed invalid except that such vote(s) may be used for the purpose of achieving a quorum.

5.07 **Board of Directors.**

The Association shall have at least one meeting of its members each year for the purpose of electing, in accordance with the Bylaws, a Board of Directors replacing the previous Board of Directors. No Board member may serve for more than all or a portion of two consecutive one-year terms. No person may be elected to the Board, or once elected, no person may continue to serve, under any of the following conditions:

- (a) He is delinquent by more than thirty (30) days in the payment of any assessment;
- (b) He is engaged as an opponent in litigation with the Association;
- (c) He misses more than three (3) Board meetings in any twelve (12) month period; or
- (d) The current Board decides, in good faith, that the person has a conflict of interest because of a pending dispute with the Association which is reasonably likely to result in litigation within the next year.

5.08 **Meetings.**

- (a) **Place of Meetings.** Meetings of the Association shall be held at a suitable location at the Project, unless the Board of Directors determines that a larger meeting room is required than exists at the Project in which case the meeting room selected by the Board of Directors shall be as close as reasonably possible to the Project.
- (b) **Time of Meetings.** The Association shall hold annual and special meetings at such times as shall be designated by the Bylaws, and shall conduct at such meetings such business as shall be provided for in the Bylaws.

- (c) **Notice of Meetings.** Annual and special meetings of the Association shall be called, noticed and held as provided in the Bylaws.
- (d) **Board Meetings.** Meetings of the Board of Directors shall be held at least once per month as provided by the Bylaws and shall be held at the Building. Any member of the Association may attend such meetings except when the Board adjourns to executive session to consider litigation, matters that relate to the formation of contracts with third parties, or personnel matters. The minutes of any Board meeting other than an executive session shall be available to members within thirty (30) days of the meeting and shall be distributed to any member upon request.

**ARTICLE SIX**

**MANAGEMENT DUTIES AND POWERS OF ASSOCIATION**

**6.01 Management of the Project.**

The management and control of Santa Monica Bay Towers shall be the responsibility of the Association, acting alone or through its Board of Directors, its Officers or other duly authorized representatives or agents, in accordance with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and such rules and regulations as may be adopted by the Board, and amendments, changes, modifications thereto as may come into effect from time to time. The Board may appoint committees to assist in the management of the Association, including but not limited to an Architectural Committee, a Finance Committee, a Safety Committee, and a Nominations Committee. At least one Board member shall serve on each such committee. The committees shall act in an advisory capacity and the final decision in each case shall be with the Board.

**6.02 Powers and Duties Generally.**

In addition to the powers of assessment, collection and enforcement set forth in Articles Seven and Eight hereof, the Association may exercise any and all rights and powers enumerated in this Declaration together with any and all rights and powers which are necessary or proper to maintain and keep the Project in first-class condition and in a good state of repair, to enforce any of the provisions of this Declaration, the Articles of Incorporation, the Bylaws or the rules and regulations duly adopted by the Board of Directors of the Association, or to carry out and perform its powers and responsibilities, including but not limited to the right to grant permits, licenses and easements over the Common Areas for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Project. Notwithstanding the foregoing, in no event shall the Board of Directors of the Association perform any of the following acts without the vote or written consent of the

majority of a quorum of the Association: (a) incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of \$5,000, or (b) pay compensation to persons based on their standing as a member, officer, or director. Any vote or written consent shall require at least twenty (20) days written notice.

**6.03 Powers and Duties.**

The Association, through its officers, directors and management, shall provide, perform, cause to be performed, maintain, acquire, contract and/or pay for out of Common Funds all or any of the following:

- (a) **Utilities.** Water, sewer, electrical and gas and other necessary utility services for the Common Area if (but only if) not separately metered or charged to individual Owners.
- (b) **Insurance.** Such policies of casualty, liability and other insurance covering such persons, property and risks as are more particularly set forth in Article Ten hereof.
- (c) **Management Services.** The services of a Manager and/or management company, together with the services of such other Persons as the Board shall from time to time determine to be necessary or proper to the daily management, operation and maintenance of the Project. No contract for such services shall be made and entered into which binds the Association for a period in excess of one (1) year, without the vote or written consent of a majority of a quorum of the members of the Association. Any such contract shall provide that it is terminable for cause immediately, or without cause on sixty (60) days' notice. The following exceptions may exceed one (1) year without a vote: (i) a management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration, (ii) a contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate, (iii) prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policies permit for short rate cancellation by the insured, (iv) lease agreements for fixtures and equipment not to exceed five years duration provided that the lessor under said agreement is not an entity in which the managing agent has a direct or indirect interest, (v) agreements for satellite or cable television services and equipment not to exceed five (5) years duration provided that the supplier is not an entity in which the managing agent has a direct or indirect ownership or interest, and (vi) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and

services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the managing agent has a direct or indirect ownership interest the Association shall not enter a contract with any third party in which the manager or any other employee, or any Board member, has a direct or indirect economic or ownership interest.

- (d) Materials. All supplies and materials necessary or proper to the daily management, operation and maintenance of the Project; provided, however, that no contract for such supplies and materials shall be made and entered into which binds the Association for a period in excess of one (1) year, except with the prior approval of the Owners of a majority of a quorum of the members of the Association. Any such contract shall be terminable immediately for cause or on thirty (30) days' notice without cause.
- (e) Operations. The designation, provision, control and maintenance of those portions, if any, of the Common Area used exclusively by such Persons as are employed by the Association to provide for the daily operation and maintenance of the Project.
- (f) Repairs; Maintenance; Reconstruction. Subject to the provisions hereof, arrangements for cleaning, painting, maintenance, repairs, reconstruction and replacement of and to all or any portion of the Project or the personal property which is required to be cleaned, painted, maintained, repaired, reconstructed or replaced by the Association.
- (g) Gardening and Landscaping. The services of a gardener to maintain, renew, and replace all or any portion of the landscaping, gardens and green areas within the Common Area, together with all tools, supplies, plants and equipment reasonably necessary for such purpose.
- (h) Trash; Rubbish Collection. The services of a trash, rubbish and garbage collection company or agency, whether public or private, for the purpose of promptly, regularly and efficiently collecting from designated areas within the Project and removing from the Project all trash, rubbish, garbage and refuse.
- (i) Wood-Destroying Pests or Organisms. The repair and maintenance of the Common Area occasioned by the presence of wood-destroying pests or organisms. The costs of temporary relocation during the repair and maintenance of the areas within the responsibility of the Association shall be borne by the Association. The Association may cause the temporary, summary removal of any occupant of the Project for such period and at all such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms. The Association shall give notice of the

56

need to temporarily vacate a Unit to the occupants therein and to the Owners not less than fifteen (15) days nor more than thirty (30) days prior to the date of the temporary relocation. The notice shall state the reason for the temporary relocation, the date and time of the beginning of treatment, the anticipated date and time of termination of treatment and that the Association will be responsible for the Owners' accommodations during the temporary relocation. Notice by the Association shall be deemed complete upon either: (A) personal delivery of a copy of the Notice to the occupants, and sending a copy of the Notice to the Owners, if different than the occupants, by first-class mail, postage prepaid at the most current address shown on the books of the Association; or (B) by sending a copy of the Notice to the occupants at the Unit address and a copy of the Notice to the Owners, if different than the occupants, by first-class mail, postage prepaid, at the most current address shown on the books of the Association. Each Owner shall be responsible to assure that the occupants of such Owner's Unit will in fact vacate as prescribed by such Notice delivered as provided herein. In the event any Owner shall fail to cause such vacation by the occupants of the Owner's Unit, the Association shall have the right to assess the cost or expense to the Association and to other Owners arising from the non-removal of occupants against the Owner and his Condominium as a Special Assessment in accordance with Section 7.04 hereof. For purposes of this section, "occupant" means an owner, resident, guest, invitee, tenant, lessee, sublessee or other person in possession of all or any portion of a Unit.

(j) Budgets and Financial Statements: Review of Accounts.

The following information shall be regularly prepared and distributed by the Board of Directors to all Owners of the Association regardless of the number of Owners or the amount of assets of the Association:

- (1) A budget for each fiscal year consisting of at least the following information shall be distributed not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the calendar year to which the budget applies:
  - (A) Estimated revenue and expenses of the Association, prepared on an accrual basis.
  - (B) The amount of the total cash reserves of the Association currently available for additions or major repair of Common Area facilities and for contingencies.

- (C) An itemized estimate of the current replacement costs of the estimated remaining life of, and the methods of funding to defray the costs of repair, replacement or additions to, major components of the Common Areas and facilities for which the Association is responsible to maintain.
  - (D) A general statement setting forth the procedures used by the Association in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and facilities for which the Association is responsible to maintain.
- (2) A balance sheet and operating statement as of a date set by the Board of Directors, which shall include a schedule of assessments received and receivables identified by the number of the Unit and the name of the entity assessed.
  - (3) A report consisting of the following shall be distributed to each Owner within the Project within one hundred twenty (120) days after the close of the calendar year:
    - (A) A balance sheet, as of the end of the fiscal year.
    - (B) An operating (income) statement for the fiscal year.
    - (C) A statement of changes in financial position for the fiscal year.
    - (D) 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.
  - (4) In lieu of the distribution of the financial statements required by this paragraph (j), the Board of Directors may elect to distribute a summary of the financial statements to all its members with a written notice that the financial statements are available at the business office of the Association or at another suitable location within the Project and that copies will be provided upon request and at the expense of the Association. If any member requests copies of the financial statements to be mailed to the member, the Association shall provide the copies to the member by first-class United States mail at the expense of the Association. The written notice that is distributed to each of the Association members shall be in at least 10-point bold type on the front page of the summary of the statements.

(5) In addition to financial statements, described hereinabove, the Board of Directors shall also annually distribute within forty-five (45) days prior to the beginning of the Association's fiscal year a Statement of the Association's policies and practices in enforcing its remedies against Owners for defaults in the payment of Regular and Special Assessments (including the recording and foreclosing of liens against Owners Units).

(k) Review of Accounts. The Board of Directors shall do the following not less frequently than quarterly:

- (1) Cause a current reconciliation of the Association's operating accounts to be made and review the same.
- (2) Cause a current reconciliation of the Association's reserve accounts to be made and review the same.
- (3) Review the current year's actual reserve revenues and expenses compared to the current year's budget.
- (4) Review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts.
- (5) Review an income and expense statement for the Association's operating and reserve accounts.

(l) Legal and Accounting. Legal and accounting services and fees for the Association, the Board, Officers, the Manager and his staff, provided that said services and fees are incurred solely in connection with (i) the management, operation and maintenance of the Project, (ii) the performance or enforcement (including the collection of Assessments) of the provisions of this Declaration, the Articles of Incorporation, or the Bylaws, (iii) protests or litigation to contest local real estate taxes levied against a majority of the Condominiums, or (iv) litigation in which the Association is a party.

(m) Taxes and Assessments. Taxes and/or assessments of whatever type duly assessed against all or any portion of the Project or the Personal Property of the Association whether or not a lien upon said property or any portion thereof which taxes and/or assessments are not separately assessed to individual Owners.

(n) Borrowing of Money. To borrow and repay monies for the purpose of maintaining and improving the Common Area, and to encumber property of the Association as security for the repayment of such borrowed money;

provided, however, that the Board may not borrow an amount exceeding ten percent (10%) of the Association's annual budget without approval of a majority of the voting power of the Association.

- (o) Commercial Concessions. Negotiate contracts and grant commercial concessions over portions of the Common Area, provided, however, that any such contract or grant having a term of more than one (1) year shall require the vote or written approval of a majority of the voting power of the Association. Notwithstanding the foregoing, in the event there is any conflict between the provisions contained herein and in Section 6.03(c) of this Declaration, then the provisions set forth in said Section 6.03(c) shall prevail.
- (p) Hold Title and Make Conveyances. To acquire, hold title to, lease, vote and convey, with or without consideration, real and personal property and interests therein, including but not limited to easements.
- (q) Foreclosures. To foreclose upon any Unit for non-payment of assessments, to take title to the Unit, to assume or otherwise pay off any encumbrances subject to the provisions of paragraph (m) above.
- (r) Miscellaneous Services. Such other services for the use, enjoyment and protection of the Project and the residents thereof as the Board of Directors may determine from time to time are reasonable, proper or desirable, including, but not limited to, garage parking, doormen, and security guards and security facilities.
- (s) Withdrawal From Reserves. Withdrawal of funds from the Association's reserve account shall require the signatures of two members of the Board of Directors.

**6.04 Additional Authority.**

The Association, acting through its Board, Officers or other duly authorized representatives or agents shall have authority to:

- (a) Establish and publish uniform rules and regulations as may be deemed by them to be reasonable in connection with the use, occupancy and maintenance of the Project, and to alter, amend or modify such rules and regulations from time to time. A copy of such rules and regulations shall be:
  - (i) Distributed to each Owner; and
  - (ii) Available in the manager's office.

60

Such rules and regulations shall be binding upon each and every Owner and the members of his family and his tenants, social guests, employees, servants, and invitees, and shall have the same force and effect as if they were set forth in this Declaration.

- (b) Make available ("available" as used in this paragraph shall at least be as available for inspection upon request during normal business hours) to any prospective purchaser of a Condominium Unit, his counsel, lenders, or agents, any Owner of a Condominium Unit, any first Mortgagee, and the Holders, Insurers and Guarantors of a first Mortgage on any Condominium Unit, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules governing the Condominium and/or Project and all other books, records and financial statements of the Association.
- (c) Permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development and operation of the Project.
- (d) The Board of Directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established.
- (e) At least once every three (3) years the Board of Directors shall cause a study of the reserve account to be performed. When the result of the reserve account is known the Board should devise within a reasonable period of time a plan to raise or maintain the reserves in accordance with the recommendation of the study.

**6.05 Delegation of Powers.**

The Association or the Board may delegate any of its duties, powers or functions to any qualified person to act as Manager; provided, the Manager shall act at the direction and under the supervision of the Board. Said Manager may be authorized to file any notice and take any legal action on behalf of the Owners which filing or taking of such action is within the authority of the Association or the Board. Neither the Association, nor the members of its Board, nor its Officers shall be liable for any omission or improper exercise by the Manager or his staff of any such duty, power or function so delegated.

**6.06 Right of Entry.**

Any one or more qualified persons designated by the Board of Directors shall have the right and authority to enter upon and within any Unit, in the presence of the Owner thereof

61

where reasonably possible, for the purpose of (i) making emergency repairs therein, (ii) performing necessary maintenance or repairs to portions of the Common Area, (iii) abating any nuisance, or any dangerous, unauthorized, prohibited activity being conducted or maintained in such Unit, (iv) protecting the property rights and welfare of the other Owners (v) ascertaining whether the provisions of this Declaration have been or are being complied with, or (vi) enforcing by peaceful means any of the provisions of this Declaration and the Association's Rules. Such right of entry shall be exercised in such a manner as to avoid any unreasonable or unnecessary interference with the possession, privacy, use and/or enjoyment of the Owner or occupant of such Unit and shall be preceded by at least twenty-four (24) hours prior written notice to the Owner or occupant thereof wherever the circumstances permit, provided, however, that such entrance into any Unit shall be permitted without any prior notice whatsoever in the event of an emergency. Such notice shall provide in writing the reason(s) for the request to enter; and the entry shall be limited to the purpose expressed. When required, any such notice shall be left on or under the door of the Unit unless the Owner has specified in writing a different location for notice to be sent. If there is no response to the first notice then a second twenty-four (24) hour notice shall be given specifying the date and time of the planned entry. If there is still no response, or if the resident refuses to cooperate, the Association's representative may enter without permission. In such event, if force is reasonably necessary to gain entrance, the Association and its representatives shall not be liable for any property damage caused. In the event of an emergency, where there is an immediate threat to the life, health, safety or property of another Owner, the Association can enter without notice. In an emergency situation if the Owner is available to provide access but refuses to do so the Owner shall pay the cost of all damage and shall have no right of action against the Association or its representatives if it is necessary to damage or destroy property to gain access to Unit. If there is an unabated nuisance and the occupant or his designee cannot be contacted, the Board, in the exercise of prudent judgment may authorize entry of the premises for the sole purpose of abating said nuisance. In no event shall any premise be left unsecured.

**6.07 Financial Records and Accounts: Inspection.**

The Secretary and Treasurer and/or such other officers of the Association, as may from time to time be designated by the Board, shall keep or cause to be kept a membership register setting forth all names, mailing addresses and telephone numbers of Owners of Units within the Project, detailed records of the actions of the Board, and its committees, the officers of the Association, the Manager, his staff, minutes of the meetings of the Board, officers and Owners and financial records and books of account of the Association, including a chronological listing of all receipts and expenditures of Common Funds, as well as a separate account for each Common Assessment, Capital Assessment and Special Assessment levied or charged against each Condominium or the Owner thereof, the dates when so assessed and when the same is due, the amounts paid thereon, and the balance, if any, of any Assessment remaining unpaid. Said register, books and records may be inspected, copied or audited by any Owner or his duly authorized representatives at the Owner's sole expense at any

reasonable time and for a purpose reasonably related to his interest as an Owner, at the office of the Association or at such other place within the Project as the governing body shall prescribe. The Board of Directors shall establish reasonable rules with respect to:

- (a) Notice to be given to the custodian of the records by the Owner desiring to make the inspection.
- (b) Hours and days of the week when such inspection may be made.
- (c) Payment of the cost of reproducing copies of documents requested by Owner.

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

**6.08 Limitation of Liability.**

The Association and its officers, directors, agents and employees, and each of them, shall not be liable for any act or omission whatsoever, or for damage or injury to any person, provided that the alleged wrongdoer has, upon the basis of such information as may be possessed by him, acted in good faith and without wilful or intentional misconduct.

**6.09 Indemnification.**

The Association shall and does hereby indemnify the Board of Directors (and each member thereof), the officers of the Association (and each of them), the Manager and each member of his staff and each of the employees of the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by such person or persons in connection with any proceeding to which he may be a party, by reason of his being or having been a Director, officer or Manager or employee of the Association, except in such cases where he is adjudged to have acted in bad faith in the performance of his duties.

**6.10 Board May Cause Repairs to Units.**

In the event any Owner fails to maintain the interior of his Unit and make repairs thereto in such a manner as deemed reasonably necessary in the judgment of a majority of the Board to preserve and protect the value of such Unit, the value or appearance of the Project as a whole, or the safety and welfare of the other Owners and occupants of the Units, the Board shall give written notice to such Owner, stating with particularity the work, maintenance or repair which the Board finds to be required and requesting that the same be carried out within a period of twenty (20) days from the giving of such notice or such longer period as may be reasonably required for the prompt completion thereof. In the event the Owner fails to carry

out such maintenance or repairs within the period specified by the notice, or within such longer period as may be reasonably required for the prompt completion thereof, the Board shall cause such work to be done in the name of such Owner and the Board shall assess the cost thereof, including the cost of all necessary building or other permits, to such Owner. In the event this shall occur entrance to the Unit shall be gained pursuant to Section 6.06 hereof and neither the Association nor any of its authorized representatives shall be liable for any reasonable damage caused in gaining access to the interior of the Unit. Such an assessment shall become an Assessment as defined in Section 1.03 hereof, and furthermore, said assessment shall be subject to Section 6.13 of this Declaration. The assessment provided for by this Section shall be made by written notification from the Board of Directors of the Association to such Owner pursuant to the notice and hearing requirements established in Section 4.24(a)-(c) hereof and shall be payable in full to the Association within thirty (30) days following such notice, unless the Board, after conducting a hearing, if any, determines that said assessment is not warranted. In the event that any Owner shall fail to pay any amount assessed against him pursuant to this Section, then the Board of Directors of the Association, on behalf of the Association, shall have the right to pursue its available legal rights and remedies in order to satisfy said obligation. In the event that the Board resorts to collection proceedings in order to satisfy said Owner's obligations provided for in this Section, then said Owner shall be liable for all costs and attorneys' fees in connection therewith. Prior to the commencement of any work described above for which a building or special permit is required by any governmental department or agency having jurisdiction, said Owner shall apply for and obtain such permit. For the purposes only of this Section and Section 1369 of the California Civil Code, any work, maintenance or repairs the Board shall cause to be performed in accordance with this Section shall be and the same is hereby expressly agreed and deemed to be (i) "emergency repairs" to the Unit involved and (ii) performed or furnished with the express consent of the Owner of the Unit involved.

**6.11 Personal Property of Association.**

The Association may acquire and hold tangible and intangible personal property as set forth in this declaration. The Association may dispose of the same by sale or otherwise. Such sale or other disposition shall require due notification to the homeowners with the precise description and itemization of the property to be disposed of. If within five (5) days of notice there are written objections by more than ten (10) homeowners then the provisions and procedures specified in Section 6.02 shall pertain. Upon termination of condominium ownership of the Project and dissolution of the Association the beneficial interest in any such property shall be deemed to be owned by the then Owners in accordance with their Percentage Interests.

**6.12 Nonprofit Character of Association.**

Notwithstanding anything contained in this Declaration to the contrary, neither the Association nor its Board of Directors, the Manager or the Manager's staff may do, conduct or

64

engage in any activity, or cause the same to be done, which may jeopardize the nonprofit character of the Association.

**6.13 Association Power to Discipline Members for Breach of Declaration.**

The Board of Directors of the Association has the right to 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 Declaration, the Articles of Incorporation or the Bylaws of the Association, provided, however, that the procedures for notice and hearing set forth in Section 4.25 of this Declaration are followed with respect to the accused Member before a decision to impose discipline is reached. Any monetary penalty so imposed shall be deemed to constitute a special assessment against the Owner and shall be enforceable by any means available under this Declaration or as prescribed in the Civil Code.

**ARTICLE SEVEN**

**ASSESSMENTS**

**7.01 Purpose of Assessments.**

The Assessments levied by the Association shall be used exclusively for the purpose of improving, protecting, operating and maintaining the Common Area and the facilities, improvements, landscaping and structures located thereon, and providing for the acquisition and maintenance of property, services and facilities devoted to this purpose, and directly related to the use and enjoyment of the Common Area and the Units, and otherwise providing for the performance by the Board of each and every one of the powers and duties of the Board.

**7.02 Common Assessment.**

- (a) **Purpose.** The Common Assessment shall be levied by the Association for the purpose of obtaining Common Funds to pay Common Expenses.
- (b) **Budgets and Financial Statements.** The Board of Directors of the Association shall arrange and be responsible for all of the financial information, described in Section 6.03(j) of this Declaration, to be regularly prepared and distributed to all Owners of the Project.
- (c) **Individual Assessment.** The total Estimated Common Expenses shall be divided among, assessed and charged to and against the individual Owners and their Condominiums in accordance with the percentage figure appearing after the respective Units in the Assessment Schedule attached hereto as Exhibit "A" and by this reference made a part hereof. If an annual Common Assessment is

65

not made as required for a new fiscal year, the Common Assessment for the prior fiscal year shall apply and govern each Owner's payments until changed by a new Common Assessment.

The Board of Directors of the Association shall not, without the vote or written consent of Owners, constituting a majority of a quorum of the Association, impose a Common Assessment per Unit which is more than twenty percent (20%) greater than the Common Assessment for the immediately preceding fiscal year. For the purposes of this section, quorum means more than 50% of the Owners. Any meeting or election of the Association for purposes of complying with this section shall be conducted in accordance with Chapter 5 (commencing with Section 7510) of Part III, Division 2, of Title 1 of the California Corporations Code and Section 7613 of the Corporations Code.

- (d) **Payable Monthly.** The Common Assessment shall be payable by each Owner against whom assessed in twelve (12) equal monthly installments on the first day of each calendar month (commencing with the date on which he becomes an Owner and prorated to that date) or at such other date or times and in such other installments as the Association shall determine. Common Assessments shall be delinquent if not paid within fifteen (15) days after the Assessment becomes due, and all delinquent installments shall bear interest at the rate of twelve percent (12%) per annum commencing from the date on which the Assessment becomes delinquent, or at such other reasonable rate to be fixed by the Board of Directors depending upon prevailing economic conditions.

### 7.03 **Capital Assessment.**

In addition to the Common Assessment, the Association may levy during any fiscal year a Capital Assessment, for the purpose of defraying, in whole or in part, the cost of any new construction, or anticipated repair or replacement, of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto provided, however, that no Capital Assessments shall be levied to defray costs, exceeding in the aggregate five percent (5%) of the budgeted gross expenses of the Association for such fiscal year, without first being approved by the Owners at a duly noticed meeting or in any other manner prescribed by Section 1366(b) of the Civil Code or Section 7510 et seq. of the Corporations Code. The total estimated Capital Assessment shall be divided among, assessed and charged to and against the individual Owners and their Condominiums in accordance with the percentage figure appearing after the respective units in the Assessment Schedule attached hereto as Exhibit "A." A Capital Assessment shall be made by written notification from the Board to each Owner of a Condominium at least thirty (30) days in advance of the first payment due under such Capital Assessment, and shall be payable in the manner specified in said notice. Delinquent payments shall bear interest at the rate of not more than twelve percent

(12%) per annum commencing thirty (30) days after the Capital Assessment becomes due, or at such other reasonable rate to be fixed by the Board of Directors depending upon prevailing economic conditions.

**7.04 Special Assessment.**

Special Assessments may only be levied against Owners and their respective Condominiums in the following circumstances:

- (a) Insurance Proceeds Unavailable. In the event the proceeds of insurance obtained by the Association are paid to any Mortgagee of a Unit and by reason of such payment, said insurance proceeds are not made available to the Association as trustee or otherwise to effect any repair, reconstruction or restoration of any damage and/or destruction to all or any portion of the Project as provided in Article Eleven hereof, then the amount of such proceeds not made available shall be assessed and charged solely to and against the Owner and his Condominium as a Special Assessment. Said Special Assessment shall be made by written notification from the Board of the Association to the Owner or Owners against whom made and shall be payable in full to the Association as trustee within fifteen (15) days following such notice.
- (b) Other Special Assessments Authorized by this Declaration. A Special Assessment may be levied by the Board to pay for any proper act of the Association under this Declaration or for any purpose provided by law. Whenever in this Declaration it is provided that the Association shall have the right to assess a cost or expense against an Owner and his Condominium as a Special Assessment, said Special Assessment shall be made by written notification from the Board of the Association to the Owner and shall be payable in full to the Association within fifteen (15) days from such notice, or within such extended period as the Association shall determine shall be applicable to any such Special Assessment.
- (c) Interest: Limitations. Any Special Assessment made in accordance with this Declaration shall be the separate debt of each Owner against whom the same is specially assessed. Unpaid Special Assessments shall be deemed delinquent fifteen (15) days after they are due and shall bear interest at the rate of twelve percent (12%) per annum on the portion thereof which is delinquent. The Board of Directors of the Association may not, in any fiscal year, without the vote or written assent of the Owners of a majority of the voting power of the Association impose Special Assessments to defray the cost of any action or undertaking on behalf of the Association which, exceed in the aggregate five percent (5%) of the budgeted gross expenses of the Association for such fiscal

year. The limitation on assessment increases described herein shall not apply to Special Assessments against an Owner to reimburse the Association for costs incurred in bringing the member and his subdivision interest into compliance with the Managing Documents.

- (d) Procedure for Imposition of Special Assessment. Every Special Assessment shall be imposed in the manner prescribed in Section 7.02(c) herein, with the exception of the following: (i) Special Assessments imposed against Owners for the purpose of rebuilding or making major repairs to the structural common area housing units of the project, which Special Assessment shall be computed in accordance with the percentage figure appearing after the respective units in the Assessment Schedule attached hereto as Exhibit B and (ii) Special Assessments imposed against an Owner to reimburse the Association for costs incurred in bringing the Owner and his Unit into compliance with the provisions of the Managing Documents.

**7.05 Liability for Assessments.**

The Owner of a Unit shall be personally liable for any and all Common Assessments, Capital Assessments or Special Assessments and any other assessments as provided for by this Declaration, made by the Board of Directors of the Association in accordance with the provisions hereof. In a voluntary conveyance of a Unit by an Owner, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

**7.06 Assessment Roll.**

Each Assessment, whether Common Assessment, Capital Assessment or Special Assessment, against an Owner and his Condominium shall be set forth and recorded upon an assessment roll which shall be accurately maintained and available in the office of the Manager for inspection at all reasonable times by any Owner or his duly authorized representative. Said Assessment roll shall indicate for each Condominium, the name and address of the Owner thereof and the amount of all Assessments, paid and unpaid. A certificate executed and acknowledged by the Secretary or Treasurer of the Association stating all unpaid Assessments against an Owner and his Condominium shall be conclusive upon the Association and the Owner of such Condominium as to the amount of such unpaid Assessments as of the date of such certificate, in favor of all persons who rely thereon in good faith, and such a certificate shall be furnished by the Association to any Owner or to any Mortgagee under a Mortgage encumbering a Condominium upon written request therefor at a reasonable fee payable to the Association, which fee shall be established by the Board.

**7.07 Deposits: Bank Account.**

Subject to the provisions of Section 7.09 hereof, all sums received or collected by the Association from Assessments, together with any interest charges attributable thereto, shall be promptly deposited in a checking or savings account in a bank or savings and loan association located within the County of Los Angeles, State of California and selected by the Board of Directors of the Association, which account shall be clearly designated "Santa Monica Bay Towers Homeowners Association Common Funds Account". The Board and such officers of the Association as the Board shall designate, shall have exclusive control of said account and shall be responsible to the Owners for the maintenance at all times of accurate records thereof.

**7.08 Commingling.**

Subject to the provisions of Sections 7.07 and 7.09 hereof, all sums received or collected by the Association from Assessments or otherwise, together with any interest charges attributable thereto, may be commingled in a single fund. Any interest payable with respect to any funds deposited in accordance with Sections 7.07 and 7.09 hereof shall be applied to reduce Common Expenses for the next fiscal year. No Owner shall have the right to receive interest on any such funds deposited.

**7.09 Reserves.**

Notwithstanding the provisions of Sections 7.07 and 7.08 hereof, all sums assessed and collected by the Association as part of the Common Assessments which are budgeted to fund reserves for anticipated long-term maintenance, repair and replacement of capital improvements upon the Common Area, the cost of which would not ordinarily be incurred on an annual basis, shall be received by the Association as contributions to the capital of the Association by the member assessed, and shall be received in trust by the Board, set aside and segregated from the other Common Funds, invested at interest in savings accounts or certificates of deposit of banks or savings and loan associations within the County of Los Angeles, State of California, or forms of indebtedness backed by the full faith and credit of the United States Federal Government, and shall be used for the sole purpose of paying the cost of long-term maintenance, repair and replacement of capital improvements upon the Common Area, the cost of which would not ordinarily be incurred on an annual basis. Withdrawal of funds from the Association's reserve account shall require the signature of two (2) members of the Board of Directors.

**7.10 Emergency Assessments.**

Notwithstanding any other provision contained in this Article, including without limitation the restrictions on assessment increases provided by Sections 7.02, 7.03 and 7.04 hereof, the Board of Directors of the Association may increase assessments necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

- (a) An extraordinary expense required by an order of a court of competent jurisdiction.
- (b) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible where a threat to personal safety on the Project is discovered.
- (c) An extraordinary expense necessary to repair or maintain the Project or any part of it for which the Association is responsible and could not have been reasonably foreseen by the Board of Directors of the Association in preparing and distributing the pro-forma operating budget. However, prior to the imposition or collection of an assessment under this subsection, the Board of Directors of the Association shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the Owners with the notice of the Assessment imposed pursuant to this subsection.

**ARTICLE EIGHT**

**ASSESSMENT LIENS: ENFORCEMENT**

**8.01 Creation of Lien and Personal Obligation.**

The Common Assessment, any Capital Assessment and any Special Assessment, together with such interest thereon and cost of collection thereof (including attorneys' fees) as hereinafter provided, shall be a charge on, and a continuing lien upon, the real property against which each such Assessment is made as hereinafter provided, and shall also be the joint and several obligation of each person who was an Owner of the Condominium at the time such Assessment became due. Any Assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within fifteen (15) days after its due date. There shall be a late charge of ten percent (10%) or Ten Dollars (\$10.00), whichever is greater. A late charge may not be imposed more than once on any delinquent payment, but it shall not eliminate or supersede any charges imposed on prior delinquent payments.

Interest also shall accrue on any delinquent payment (including the late charges and collection costs) at the rate of twelve percent (12%) per annum. Interest shall commence thirty (30) days after the Assessment becomes due.

Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether to the knowledge of the Association, the Owner or the Owner's Unit is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or Association rules; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (iii) the amount of any assessments levied against the Owner's Unit that are unpaid as of the date of the statement, including any late charges, interest, or costs of collection that as of the date of the statement are or may be made a lien against the Owner's Unit as provided by this Declaration, the Articles, Bylaws, or Association rules.

**8.02 Enforcement of Lien.**

The Association has the right to collect and enforce Assessments and may enforce delinquent Assessments, including delinquent installments, by suing the Owner directly on the debt established by the Assessment, or by establishing a lien against the Owner's Unit as provided below and foreclosing the lien through either judicial proceedings or nonjudicial proceedings under a power of sale as provided below. The Association may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Unit for the delinquent Assessment. In any action instituted by the Association to collect delinquent Assessments, accompanying late charges, or interest, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

A delinquent Assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties as may be authorized under this Declaration shall become a lien on the Unit against which the Assessment was levied on the recordation of a Notice of Delinquent Assessment in the Office of the County Recorder of the County in which the Unit is located. The notice shall describe the amount of the delinquent Assessment or installment, the related charges authorized by this Declaration, a description of the Unit, the name of the Owner, and, if the lien is to be enforced by power of sale under nonjudicial foreclosure proceedings, the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association, or any employee or agent of the Association authorized to do so by the Board. A monetary penalty imposed by the Association as a disciplinary measure for failure of member to comply with the governing instruments or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to common areas and facilities for which the member was allegedly responsible or in bringing the member and his subdivision interest into compliance with the governing instruments shall not be deemed an assessment which may become a lien against the member's subdivision interest enforceable by a sale of the interest in accordance with the provisions of Sections 2924, 2924b and 2924c of the Civil Code.

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

**8.03 Assignment of Rents.**

As security for the payment of all such Assessments and liens, and sums owed by an Owner to the Association, each Owner hereby gives and confers upon the Association the right, power and authority, during the continuance of such ownership, to collect the rents, issues and profits of said Owner's Unit, reserving unto the Owner the right, prior to any default by such Owner in performance of that Owner's obligation under this Declaration, or the Bylaws or the Articles to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, the Association may, at any time, upon ten (10) days written notice to such Owner, then either in person, by agent or by a receiver to be appointed by a court of competent jurisdiction, and without regard to the adequacy of any security for such indebtedness, enter upon and take possession of such Owner's Unit or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, in payment of any indebtedness of the Association or in performance of any agreement thereunder, and in such order as the Association may determine. The entering upon and taking possession of said Unit, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure nor waive any default hereunder or invalidate any act done pursuant to this Declaration.

The assignment of rents and powers described in the foregoing paragraph shall not affect, and shall in all respects be subordinate to, the rights and powers of the holder of any first or second mortgage on any Condominium, or any part thereof, to do the same or similar acts.

**8.04 Additional Remedies.**

The remedies and liens provided in this Article Eight and enforcement thereof as herein provided shall be in addition to and not in substitution for any other rights and remedies which the Association may have hereunder or by law.

**8.05 Rights of Board: Waiver by Owners.**

Each Owner hereby vests in and delegates to the Board or its duly authorized representative the right and power to bring all actions at law or lien foreclosures, whether judicially or by power of sale, or otherwise, against any Owner or Owners for the collection of delinquent Assessments in accordance herewith, and hereby expressly waives any objection to the enforcement in accordance with this Declaration of the obligation to pay Assessments as set forth in this Declaration.

**8.06 Waiver of Homestead Exemption.**

Each Owner does hereby waive to the fullest extent permitted by law, with respect only to liens created pursuant to this Article Eight, the benefit of any homestead or exemption or redemption laws of the State of California in effect at the time any payment of any Assessment becomes delinquent as herein provided, and such Owner shall be deemed to be estopped to raise said homestead or other exemption or redemption in any action or proceeding to enforce or foreclose such liens.

**ARTICLE NINE**

**PROTECTION OF LENDERS: RIGHTS OF MORTGAGEE**

Notwithstanding all other provisions hereof:

**9.01 Subordination to Lien of Lender.**

The Liens authorized to be created hereunder or by law upon a Condominium in the Project shall be subject and subordinate to, and shall not affect the rights of the obligee of any indebtedness secured by any recorded First Mortgage or any other mortgage upon such Condominium made in good faith and for value, provided that after the foreclosure of any such Mortgage, the Board shall have the authority to create, in the manner prescribed in Section 7 (Assessments) and 8 (Liens) hereof, a lien on the interest of the purchaser at such foreclosure sale to secure all assessments levied hereunder for a payable during any period after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the same manner as provided herein in the case of other liens for unpaid assessments.

73

**9.02 Amendments.**

No amendment to any part of this Declaration shall affect the rights of the Mortgagee of any such Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

**9.03 Change in Governing Documents.**

The holder of the trust deed is entitled to written notification from the Home Owners Association of the Condominium thirty (30) days prior to the effective date of:

- (a) Any change in the Condominium declaration of restrictions, master deed, or Bylaws and regulations.

**9.04 Notice of Default By Trustor.**

The holder of the trust deed is entitled to written notification from the Home Owners Association of the Condominium of any default by the trustor of any Unit in the performance of restrictions, master deed, or regulations and Bylaws which is not cured within thirty (30) days.

**9.05 Possession By Beneficiary.**

Any beneficiary under a deed of trust which comes into possession of the Unit pursuant to remedies provided by law, the conditions of the trust deed, or by a deed in lieu of foreclosure, shall be exempt from any "right of first refusal" or other such restriction on the sale or rental of the Unit involved.

**9.06 Status of Ownership by Lender.**

Any holder of a trust deed which comes into possession of the Unit pursuant to the remedies provided by law, the deed of trust, or deed in lieu of foreclosure, shall take the property free of any claims for unpaid assessments or charges against the subject Unit which accrue prior to the time such holder comes into possession of such Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all Units including the subject Unit).

**9.07 No Action Which Affects Lender.**

Unless all holders of first trust deed liens on individual Units have given their prior written approval, the Home Owners Association of the Condominium shall not:

- (a) Change the pro rata interest or obligations of any Unit for purposes of levying assessments and charges and determining shares of the common elements of the Project.
- (b) Partition or subdivide any Unit or common elements of the Project, except as provided in Section 4.
- (c) By act or omission to act, seek to abandon the Condominium status of the Project as provided by statute in case of substantial loss of the Units or common elements of the Condominium Project.
- (d) 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.

**9.08 Examination of Records.**

First Mortgagees shall have the right to examine the books and records of the Association or the Project.

**ARTICLE TEN**

**INSURANCE**

The insurance, other than title insurance, which shall be carried upon the Project shall be governed by the following provisions:

**10.01 Authority to Purchase.**

All insurance provided for in this Article Ten (except where otherwise specifically provided) or otherwise deemed prudent by the Association shall be purchased, obtained, carried and maintained by the Association and the premiums thereon shall be part of the Common Expenses to be paid out of Common Funds. The Association shall be deemed for the purpose of this Article Ten to be the agent, coupled with an interest, of all the Owners.

**10.02 Casualty.**

The Association shall, if economically practical and available, purchase, obtain, carry and maintain a master or blanket policy naming as insureds the Association, its Board and officers, the manager and his staff, employees of the Association and all Owners and their

Mortgagees, as their interest may appear; naming the Association as trustee for all of the Owners and for their Mortgagees as their interests may appear; and containing as a part thereof, the standard "All-Risk" endorsement except earthquake and flood and replacement cost endorsements and such other or special endorsements (including but not limited to "Agreed Amount", "Inflation Guard" and construction code endorsements) as will afford protection and insure, for the current replacement cost of the Project as determined by an independent appraisal (excluding foundations and excavations but without deduction for depreciation) all the Common Area, all Units (but not including the personal property, furniture, furnishings and decorations contained within a Unit nor any improvements to a Unit beyond building standard improvements), the Building, Improvements, Personal Property including balcony railings, of the Association located on or within the Project for or against the following:

- (a) Loss or damage by fire or other risks covered by the standard "All Risk" endorsement excluding earthquake and flood;
- (b) Loss or damage to or as a result of theft, vandalism, malicious mischief, boilers, pressure vessels, pressure pipes, or sprinkler leakage; and
- (c) Such other risks, perils or coverage as the Association may determine.

The master policy and the endorsements made a part thereof may provide for such deductibles from any amounts otherwise payable thereunder as the Association may determine, and should, if economically practical and available at reasonable premiums, also: (i) specify that portion or percentage of the proceeds payable thereunder that are attributable to each Condominium in accordance with a fraction whose numerator is the fair market value of the specified Unit, and whose denominator is the aggregate fair market value of all the Units in the Project as determined by an independent appraiser hired by the Association; (ii) provide that the insurer issuing said policy agrees to abide by the decision of the Association whether to repair; reconstruct or restore all or any damaged or destroyed portion of the Common Area; (iii) contain no "escape" or "other insurance" clause that would cause said policy to become void in whole or in part or cause any proceeds payable thereunder to be reduced, set off, apportioned, prorated or otherwise brought into contribution with or by reason of separate insurance obtained by or for any Owner or his Mortgagee; (iv) provide that only improvements made or installed by the Association shall affect the valuation of any Building or Improvement on the Property for co-insurance purposes; (v) contain a waiver by said insurer of any and all rights of subrogation against any Owner (and each member of its staff or employees), the Association, its Board (and each member thereof), its officers (and each of them), the Manager, and each member of his staff or employee of the Association; (vi) provide that said master policy cannot be canceled, invalidated, suspended, substantially modified, terminated, avoided or expire in whole or in part by reason of any act, omission or breach of any Covenant contained in this Declaration by the Association, its Board, officers, Manager, his staff or any one or more Owners without a prior written demand that the Association cure such breach, and

that in no event shall said policy be canceled, invalidated, suspended, substantially modified, terminated, avoided or expire for any reason without thirty (30) days' prior written notice from the insurer to the Association, and to any Owner or Mortgagee who shall have filed a written request with said insurer for such notice; (vii) provide that the Board or its authorized agent or representative shall have the exclusive authority to adjust any and all losses covered by said policy; (viii) provide that the insurance obtained pursuant to this Article Ten shall not be prejudiced by any act or neglect of any of the insureds when such act or neglect is not within the knowledge and control of the insureds collectively or by any act or omission of individual Unit Owners that are not under the control of the Association; (ix) provide that the insurance obtained pursuant to this Article Ten shall not be prejudiced by failure of the insureds collectively to comply with any warranty or condition with regard to any portion of the premises over which the insureds collectively have no control; (x) provide that the insurance obtained pursuant to this Article Ten shall not be prejudiced by reason of the vacancy or non-occupancy of any one or more Units within the Project, provided that this Declaration (as the same may be amended from time to time) is in force and the Project is operating as a Condominium Project; and (xi) provide that all insurance proceeds under said master policy shall be payable to the Association as trustee to be held and expended as provided in this Declaration for the benefit of the Owners and their respective Mortgagees as their interests may appear.

**10.03 Public Liability and Property Damage.**

The Association shall purchase, obtain, carry, and maintain one or more comprehensive public liability and property damage policies naming as insureds the Association, its Board (and each member thereof), its Officers (and each of them), the Manager, his staff, all employees of the Association and all of the Owners. Said policy or the endorsements made a part thereof shall provide immediate protection with minimum liability limits of Five Million Dollars (\$5,000,000.00) for injury or death to one or more persons in any one accident or occurrence and Five Million Dollars (\$5,000,000.00) for property damage and shall also (i) insure against bodily injury, death, or property damage occurring in, on or about any portion of the Common Area and/or within or on any Unit or Patio, (ii) contain a cross-liability endorsement so as not to prejudice the rights of a named insured against another named insured, (iii) include elevator liability coverage, "off-premises employee" coverage and (iv) provide for the same waivers of the insurers' rights of subrogation, "other insurance" provisions, loss adjustment clause, cancellation clause, "no control" clause and insurance proceeds payment clause as contained in Section 10.02 hereof.

**10.04 Worker's Compensation.**

The Association shall purchase, obtain, carry and maintain worker's compensation and employer's liability insurance to the extent necessary to comply with applicable laws.

**10.05 Owner Insurance.**

Each Owner, and not the Association, shall have the responsibility:

- (a) To purchase at his sole expense, liability insurance with limits of not less than \$500,000 per occurrence; and
- (b) In his discretion, to purchase at his sole expense, property insurance covering the personal property, furniture, furnishings, and decorations within his Unit, any improvements in the Unit over and above building standard improvements, or otherwise protecting his Condominium.

**10.06 Additional Insurance and Bonds.**

The Association shall also purchase with Common Funds (i) demolition insurance in amounts adequate to cover demolition in the event of destruction and a decision not to rebuild, (ii) fidelity bonds as described in paragraph 10.11 of this Declaration, and (iii) insurance to cover unpaid or uncollected Assessments.

**10.07 Choice of Contractor.**

With respect to any repairs for which proceeds of insurance are paid or are payable to the Association, the Board of Directors of the Association alone shall designate the contractor to perform said repairs, provided that nothing herein contained shall be construed to prohibit the individual Owners from overseeing repairs done to their respective Units.

**10.08 Choice of Insurance Company.**

All policies of insurance obtained by the Association or its Board of Directors as provided in this Article Ten shall be obtained from an insurance company qualified to do and doing business in the State of California and holding a rating of "A" (or such other comparable rating if Best uses a different standard in rating insurance companies) or better in Best's Insurance Reports and may be obtained from one or more companies.

**10.09 Expense of Collecting Insurance Proceeds.**

All costs and expenses incurred by the Association to collect or recover the proceeds of any insurance policy purchased by the Association as provided in this Article Ten (including but not limited to any and all fees of attorneys, appraisers and adjusters) shall be part of the Common Expenses.

**10.10 Act Increasing Insurance Premiums.**

In the event any act or omission of any Owner and/or occupant, any member of his family, or any of his guests, servants, employees, licensees, agents or invitees, shall increase the premiums for any insurance policy purchased or obtained by the Association for the benefit of the Project and the residents thereof, the amount of said increase shall be assessed and charged solely to and against such Owner and his Condominium as an Assessment in accordance with the notice and hearing provisions of Section 4.24(a)-(c) of this Declaration and subject to Section 6.13 of this Declaration. Said assessment shall be made by written notification from the Board of the Association to the Owner and shall be payable in full to the Association at least ten (10) days in advance of the date or dates for the payment of such increased insurance premiums, or within ten (10) days following such notice, whichever is later. In the event that any Owner fails to pay any amount assessed pursuant to this Section, then the Board of Directors shall have the right to pursue its available legal rights and remedies on behalf of the Association, in order to satisfy said obligation in which event the Owner shall be liable for all costs and attorneys' fees in connection with collection of the assessment.

**10.11 Fidelity Bonds.**

Notwithstanding anything to the contrary contained in this Declaration, the Association shall be required to maintain blanket fidelity bond coverage for all officers, directors, trustees and employees of the Association and all persons handling or responsible for funds of or administered by the Association. In the event the Association has delegated some or all of the responsibility for the handling of funds to a management agent, said management agent shall also be required to maintain blanket fidelity bond coverage for said management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage required shall be based upon the business judgment of the Board of Directors but shall not be less than \$100,000. In no event shall the aggregate amount of the fidelity bond or bonds be less than a sum equal to as (a) if for the Federal National Mortgage Association, then three months' aggregate Assessments on all units plus reserve funds, (b) if for the Federal Home Loan Mortgage Corp., then one and one-half times the Association's estimated annual operating expenses and reserves, whichever of subparts (a) and (b) preceding may be applicable; or (c) if for both the Federal National Mortgage Association and the Federal Home Loan Mortgage Corp., then the greater of the amounts specified in subparts (a) and (b) preceding.

The fidelity bond or bonds required pursuant to this Section shall, if reasonably possible, and if available, meet the following requirements: (i) the bonds shall name the Association as an obligee; (ii) the bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; (iii) the premiums on all bonds required

pursuant to this section for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a common expense; and (iv) the bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten days' prior written notice to the Association or, to any insurance trustee and each Lender as defined in Section 9.01 of the Declaration, on behalf of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corp., whichever may be applicable.

**ARTICLE ELEVEN**

**DAMAGE OR DESTRUCTION OF PHYSICAL IMPROVEMENTS**

**11.01 Bids and Determination of Available Insurance Proceeds.**

As soon as practicable after damage or destruction of all or any portion of the Common Area, the Board of Directors of the Association shall (i) obtain bids from at least two (2) reputable contractors, licensed in California, which bids shall set forth in detail the work required to repair, reconstruct and restore the damaged or destroyed portions of the Common Area to substantially the same condition as they existed prior to such damage and the itemized cost of such work, and (ii) determine the amount of all insurance proceeds available to the Association, as trustee or otherwise, for the purpose of effecting such repair, reconstruction and restoration.

**11.02 Sufficient Insurance Proceeds.**

In the event of damage or destruction to all or a portion of the Common Area and the insurance proceeds available to the Association, as trustee or otherwise, are sufficient (when added to any sums actually received by the Association as the result of any Special Assessments made in accordance with Sections 7.04(a) and 7.04(c) hereof) to effect the total repair, reconstruction and restoration of the damaged or destroyed Common Area, then the Association, in accordance with the provisions of this Article Eleven, shall cause such Common Area to be repaired, reconstructed and restored to substantially the same condition as the same existed prior to such damage or destruction.

**11.03 Insurance Proceeds Partially Sufficient.**

In the event of damage or destruction to all or any portion of the Common Area and the insurance proceeds available to the Association, as trustee or otherwise, are sufficient (when added to any sums actually received by the Association as the result of any Special Assessments made in accordance with Sections 7.04(a) and 7.04(c) hereof) to cover at least eighty-five percent (85%) of the cost of such repair, reconstruction and restoration, the Association shall take all reasonable steps to cause the Common Area to be repaired,

reconstructed and restored to substantially the same condition as said Common Area existed prior to such damage, and the difference between the insurance proceeds available to the Association for such purpose and the actual cost of such repair, reconstruction and restoration shall be assessed against each Owner as a Special Assessment in accordance with Section 7.04(g) hereof, provided that, notwithstanding anything herein contained to the contrary, no repair, reconstruction or restoration provided for in this Section shall be conducted if, within sixty (60) days from the date of such damage or destruction, the Owners of at least a majority of the voting power determine that such repair, reconstruction and/or restoration shall not take place.

**11.04 Insurance Proceeds Less Than Eighty-Five Percent (85%) of the Cost to Restore.**

If the proceeds of insurance available to the Association, as trustee or otherwise, are insufficient (when added to any sums actually received by the Association as the result of any Special Assessments made in accordance with Sections 7.04(a) and 7.04(c) hereof to cover at least eighty-five percent (85%) of the cost of repair, reconstruction and restoration to the damaged or destroyed Common Area, then the Owners of at least a majority of the voting power shall determine whether (i) to repair, reconstruct and restore the damaged or destroyed Common Area and assess all Condominium Owners as a Special Assessment in accordance with Section 7.04(g) hereof for all additional funds needed for such purpose, or (ii) not to repair, reconstruct or restore the damaged Common Area but to distribute the insurance proceeds available for such reconstruction together with any other sums otherwise available to the Association for such purpose to the Owners, each in proportion to his Unit Fair Market Percentage Interest, as defined in Article Twelve hereof, but subject to rights of Mortgagees holding Mortgages encumbering Condominiums within the Project and all unpaid Assessments together with any interest charges attributable thereto.

Notwithstanding anything to the contrary contained in Article Seven or Article Eleven hereof, a Unit's proportionate share of all Special and Capital Assessments made by the Association against a Unit, in order to cover the cost of repair, reconstruction, and restoration to the Common Area, shall be computed and levied upon the basis of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units to be assessed.

**11.05 Duties of Board During Reconstruction.**

If repair, reconstruction and restoration are to take place in accordance with the provisions of this Article Eleven, the Board shall (i) enter into a written contract with a contractor licensed in California and submitting the most reasonable bid for such repair, reconstruction and restoration; (ii) disburse insurance proceeds available for said work and funds collected by reason of Assessments authorized therefor in appropriate progress payments; and, (iii) take all steps necessary to ensure the commencement and completion of

such repair, reconstruction and restoration in a lawful, workmanlike manner at the earliest possible date.

**11.06 Certificate of Intention.**

After any vote of the Owners as provided in this Article Eleven with respect to whether to repair and restore or not to repair and restore all or any portion of the Common Area, the Board shall, within thirty (30) days after such vote, cause to be executed, acknowledged and recorded in the Office of the County Recorder for the County of Los Angeles, State of California a certificate setting forth the intention to repair and restore the Common Area or not to repair and restore the Common Area. Immediately upon the recordation of such a certificate setting forth the intention of the Owners not to repair and restore the damaged portions of the Common Area, the right of partition suspended by Article Thirteen of this Declaration shall be revived.

**11.07 Revision of Condominium Documents: Reorganization.**

In the event it is the determination and vote of the Owners, as provided in this Article Eleven, not to repair, reconstruct or restore any damaged portion of the Common Area, the Board shall, as soon as practicable, cause to be prepared, filed and/or recorded any revised subdivision map, condominium plan or other documents, reports, schedules or exhibits necessary to show the changed or altered status of the Project, including, without limitation, the elimination of all or part of one or more of the Units as a result of such damage. In the event of the elimination of all of a Unit, the Condominium containing that Unit shall cease to be part of the Project, the Owner thereof shall cease to be a Member of the Association, and the undivided interest in the Common Area appurtenant to that Unit shall automatically become vested in the Owners of the remaining Condominiums in proportion to their respective Percentage Interest in the Common Area. In the event of the elimination of a part of a Unit, the Percentage Interest in the Common Area appurtenant to that Unit shall be reduced in direct proportion to the reduction in square footage of the Unit, and the Percentage Interests of Owners in Common Areas and the Assessment obligations of all Owners shall automatically be adjusted accordingly.

**11.08 Interior Damage.**

Restoration and repair of any damage to the personal property, furniture, furnishings and decorations contained within a Unit, or any improvements which were added by any present or prior Owner to the Unit, shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to rebuild after partial or total destruction, shall be completed as promptly as practical and in a lawful and workmanlike manner. If the work to be performed is of a nature that would normally require approval by the Association under Section 4.05 of this Declaration, then that same procedure must be followed in this case.

ARTICLE TWELVE

CONDEMNATION

12.01 Common Area Awards.

In the event that an action in eminent domain is brought to condemn all or any portion of the Common Area within the Project, the Association shall represent the Owners in any proceedings, negotiations or settlements and the award made for such taking shall be payable as follows:

- (a) If the award is for the acquisition of the entire Common Area, the amount payable shall be paid to the Board, as trustee, for distribution to the Owners, each in proportion to his Unit Fair Market Value Percentage Interest, subject to (i) the rights of Mortgagees holding Mortgages covering each such Owner's Condominium and (ii) all unpaid Assessments of such Owner together with any interest charges attributable thereto.
- (b) If the award is for the acquisition of only part of the Common Area and is less than Thirty Thousand Dollars (\$30,000.00), the entire amount thereof shall be payable to the Board, as trustee, (subject to the rights of Mortgagees holding Mortgages on Condominiums within the Project) and such an amount, together with any interest earned thereon, shall be held by the Board to reduce the Common Expenses for the next succeeding fiscal year.

All amounts to be received by Owners pursuant to this Article Twelve shall be computed by multiplying the total award by the "Fair Market Value" (as hereinafter defined) of all Units within the Project by a fraction, the numerator of which shall be the Fair Market Value of the Unit so assessed and the denominator of which shall be the Fair Market Value of all Units within the Project. The Fair Market Value of each Unit within the Project shall be determined by the following procedures: (i) The Board of Directors shall appoint a competent independent appraiser to determine the "Fair Market Value" of each Unit within the Project, which fair market value shall be based upon, among other things, comparable sales of comparable Units within the Project or surrounding areas, and other data deemed relevant by the independent appraiser, and (ii) all costs of appraisal shall be borne by the Association.

For purposes hereof, the term "Unit Fair Market Percentage Interest" shall mean and refer to a Unit's proportionate share of any award for the acquisition of Common Area, determined in accordance with the above described

63  
calculations and procedures, but subject to (i) the rights of Mortgagees holding Mortgages covering each such Owner's Condominium and (ii) all unpaid Assessments of such Owner together with any interest charges attributable thereto.

- (c) If the award is for the acquisition of only part of the Common Area and is in excess of Thirty Thousand Dollars (\$30,000.00), it shall be distributed to the Owners, each in proportion to its Unit Fair Market Value Percentage Interest, subject to (i) the rights of Mortgagees holding Mortgages covering such Owner's Condominium and (ii) all unpaid Assessments of such Owner together with any interest charges attributable thereto.

#### **12.02 Unit Awards.**

In the event that an action in eminent domain is brought to condemn all or any portion of one or more Units within the Project, the award made for such taking shall be payable to the respective Owners of the Units so taken in proportion to their respective Unit Fair Market Percentage Interest, subject to (i) the rights of Mortgagees holding Mortgages covering such Units and (ii) all unpaid Assessments of each Owner taken together with interest charges attributable thereto.

#### **12.03 Revision of Condominium Documents: Reorganization.**

In the event of any condemnation of a part of the Project, the Board shall, as soon as practicable, cause to be prepared, filed and/or recorded any revised subdivision map, condominium plan or other documents, reports, schedules or exhibits necessary to show the changed or altered status of the Project, including, without limitation, the elimination of all or part of one or more of the Units as a result of such condemnation. In the event all of a Unit is taken in condemnation, the Condominium containing that Unit shall cease to be part of the Project, the Owner thereof shall cease to be a Member of the Association, and the undivided interest in Common Area appurtenant to that Unit shall automatically become vested in the Owners of the remaining Condominiums in proportion to their respective Undivided Interests in the Common Area. In the event part of the Unit is taken in condemnation, the Percentage Interest in the Common Area appurtenant to that Unit shall be reduced in direct proportion to the reduction in square footage of the Unit, and the Undivided Interests of Owners in Common Areas and the assessment obligations of all Owners shall automatically be adjusted accordingly.

84

**ARTICLE THIRTEEN**

**SUSPENSION OF RIGHT OF PARTITION**

In accordance with the provisions of Section 1359 of the California Civil Code, the right of partition of the Common Area is hereby suspended and no proceeding shall be brought for the partition of said Common Area, except (i) as provided by Section 1359 of the California Civil Code as said Section may be amended from time to time or (ii) as specifically provided in Section 11.06 of this Declaration, in which event a majority of the Board shall have an irrevocable power of attorney to sell the entire project for the benefit of all the Owners, which power shall be binding upon all the Owners, whether or not they assume the obligations of this Declaration. Nothing contained herein shall prohibit the partition or division of joint or common interest of any two or more Owners in any one Condominium within the Project. Each Owner does hereby grant to the Board of Directors (as the same may from time to time be constituted) an irrevocable power of attorney coupled with an interest, to sell the entire Project for the benefit of all of the Owners, which power of attorney shall be binding upon all such Owners, but shall be exercisable only after: (i) the happening of one of the conditions set forth in Section 1359 of the California Civil Code, (ii) the approval of such exercise by the Owners owning at least fifty-one percent (51%) interest in the Common Area, and (iii) the recordation in the office of the County Recorder of the County of Los Angeles, California, a certificate executed by the Secretary of the Association or other authorized person on behalf of the Association, and stating that said power of attorney is properly exercisable hereunder.

**ARTICLE FOURTEEN**

**PROHIBITION AGAINST SEVERANCE OF**

**COMPONENT INTERESTS IN CONDOMINIUMS**

No Owner shall have the right, for any purpose, to sever his Unit in any Condominium from his undivided interest in the Common Area. The undivided interests in the Common Area established hereby and the fee title to the respective Units conveyed therewith shall not be separated, severed or separately conveyed, encumbered or otherwise transferred, and each such undivided interest in the Common Area shall conclusively be deemed to be conveyed, transferred or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit.

ARTICLE FIFTEEN

OBLIGATION OF OWNERS

**15.01 Maintenance and Repair of Units and Patios.**

Each Owner shall at his sole expense have the duty to maintain, service and repair his Unit in accordance with Sections 4.02 and 4.05 of this Declaration. This shall include, but not be limited to, all plumbing fixtures, lighting fixtures, refrigerators, heating and air conditioning equipment, dishwashers, disposals, ranges, ovens, washers and dryers (Penthouse Unit only), within his Unit, within his Patio and serving same, and all screens, railings, glass doors and windows enclosing such Unit or Patio, together with such parts and equipment as are reasonably necessary to comply with the provisions of this Section. Each Owner shall also have the duty, at his sole expense, to maintain, service, and repair his Patio (and all components thereof) except for the railings.

**15.02 Improvement of Units and Patios.**

All electrical and plumbing work, and all other changes which may affect the structural integrity, noise level or uniform appearance of the Project, the common areas, or the right to privacy and quiet enjoyment of the other Owners, shall not be commenced unless and until detailed plans and specifications have been submitted and approved in writing by the Association and the City of Santa Monica as provided in Section 4.05 and the Owner has a signed written construction agreement supplied by the Association for this purpose. Notwithstanding the foregoing, it is the Owner and not the Association who must ensure that the final product meets all applicable laws and regulations, is free of defects, meets all provisions of this Declaration, and does not disturb the quiet enjoyment of any other Owner. The approval and consent of the Association under this Section 15.02 (or under Sections 4.02, 4.05, or 15.01) shall not relieve the Owner of such duty or provide a defense to a legal action by the Association, nor shall it give rise to any liability on the part of the Association or its representatives. Notwithstanding anything contained in this Section to the contrary, each Owner shall promptly upon the completion of any repairs or improvements (unless the same was performed by the Association in accordance with the provisions of this Declaration as part of the Common Expenses) notify the Board of Directors of the nature and extent of any such repairs or improvements made or caused to be made in his Unit exclusive of painting and redecorating.

**15.03 Mechanic's Liens.**

No labor performed or materials furnished for use in connection with any Unit shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting such labor or materials or against any interest in the Common Area except the undivided Percentage Interest therein appurtenant to the Unit of the

Owner for whom such labor shall have been performed and such materials shall have been furnished.

No labor performed or services or materials furnished with the consent of, or at the request of, an Owner in the Project or his or her agent or his or her contractor shall be the basis for the filing of a lien against any other property or Unit of any other Owner in the Project unless that other Owner has expressly consented to or requested the performance of the labor or furnishing of the materials or services. However, express consent shall be deemed to have been given by the Owner of any Unit in the case of emergency repairs thereto. Labor performed or services or materials furnished for the Common Areas, if duly authorized by the Association, shall be deemed to be performed or furnished with the express consent of each Owner within the Project. The Owner of any Unit may remove his or her Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the Undivided Interest (as defined in Section 1.32 of this Declaration) of the total sum secured by the lien which is attributable to his or her Unit.

Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against the Unit of the Owner, or any part thereof, for labor performed or for materials furnished in work on such Owner's Unit.

**15.04 Personal Injury or Property Damage Sustained Within a Unit.**

In the event any personal injury or property damage is sustained by any person while in a Unit or any Patio attached thereto which shall result in a claim against any other Owner or the Association, any of its officers, members, or its Board of Directors, the Manager or his staff, the Owner of such Unit or Patio within which such injury or damage occurred (i) shall and does hereby agree to fully indemnify and hold harmless such other Owner and the Association, officer, director, Manager or member of his staff, against whom such claim or suit is brought and (ii) does hereby agree to defend at his own cost and expense any litigation resulting therefrom in which such other Owner and/or the Association, officer, director, Manager or member of his staff has been made a party; provided that no such obligation shall exist with respect to such other Owner or other person whose negligence or willful misconduct caused or contributed to the cause of any such injury or damage. In the event of joint ownership of any Condominium within the Project, the liability of such Owners shall be joint and several.

**15.05 Association Not Responsible for Loss.**

In the absence of clear and convincing evidence of negligence by the Association or its representatives, neither the Association nor any officer, director, Manager or other employee shall be responsible to any Owner nor to any member of his family, social guests, servants, employees or invitees, for any loss or damage suffered by reason of (a) theft of or damage to any article, vehicle or thing which may be stored by such Owner or other Person in any Unit

or any part of the Common Area; or (b) water infiltration from any source whatsoever which damages the interior of a Unit including personal property, furnishings, furniture, improvements, floor covering, wall covering, artwork and the like.

**15.06 Notice of Danger.**

In the event any Owner observes any equipment, furniture, structure, vehicle, conduct or activity within any portion of the Project which said Owner deems likely to cause or result in serious injury to the health or safety of any resident or occupant within the Project unless immediate corrective action is taken, said Owner shall immediately notify the Manager, a member of his staff, a security guard, an officer of the Association or a member of the Board so that the appropriate action can be taken.

**15.07 Notification of Sale of Condominium.**

Concurrently with consummation of the sale of any Condominium under circumstances whereby the transferee becomes an Owner thereof or within five (5) business days thereafter, the transferee shall notify the Board in writing of such sale. Such notification shall set forth (i) the name of the transferee and his transferor, (ii) the unit number of the Condominium purchased by the transferee, (iii) the transferee's mailing address, and (iv) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

**15.08 Compliance with Declaration.**

The Board shall have the power to levy an assessment against an owner for the purpose of reimbursing the Association for all costs and expenses incurred in bringing that Owner and his interest in the Project into compliance with the terms of this Declaration, or the terms of the Articles of Incorporation or Bylaws of the Association. In the event that any Owner shall fail to pay any amount assessed against him pursuant to this Section, then the Board of Directors of the Association shall have the right to pursue its available legal rights and remedies in order to satisfy said obligation. In the event that the Board resorts to legal proceedings in order to satisfy said Owner's obligations provided for in this Section, then said Owner shall be liable for all costs and attorneys' fees in connection therewith.

ARTICLE SIXTEEN

TAXES AND GOVERNMENTAL ASSESSMENTS

16.01 Taxes Separately Assessed.

In accordance with the provisions of Section 2188.6 of the California Revenue and Taxation Code, each Condominium shall be separately assessed to the Owner thereof and the tax on each such Condominium shall constitute a lien solely thereon.

16.02 Unallocated Taxes.

Any unallocated taxes or assessments levied or assessed against the Common Area, the Association or the Personal Property of the Association, which taxes or assessments are not separately assessed pursuant to Section 16.01 hereof, shall be deemed part of the Common Expenses and shall be assessed against each Owner as part of the Common Assessment.

ARTICLE SEVENTEEN

TERM OF DECLARATION

Subject to the other provisions hereof, the Covenants contained in this Declaration shall run with and benefit the land within the Project and shall be binding upon the Owners, the Association, its Board of Directors, its officers, its Manager and his staff and their successors or assigns and shall continue in full force and effect for a term of fifty (50) years from the date of recordation of this Declaration, after which time the same shall be automatically extended for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of the initial fifty (50) year term or any ten (10) year extension period, a written agreement executed and acknowledged by the Owners of at least seventy-five percent (75%) of the Condominiums in the Project shall be placed on record in the Office of the County Recorder of Los Angeles County, State of California, terminating the effectiveness of this Declaration.

**ARTICLE EIGHTEEN**

**AMENDMENTS**

**18.01 Amendment.**

Except as otherwise expressly provided herein, this Declaration may be amended only by the vote or written consent of Owners comprising a majority of the ninety-one (91) units of the Association. Any amendment enacted in compliance with this Article shall become effective when recorded in the office of the Los Angeles County Recorder. A certificate signed and sworn to by two (2) officers of the Association that a majority of the Owners (109) have either voted or consented in writing to any amendment, when recorded, shall be conclusive evidence of such fact. The Association shall maintain in its files a record of all such votes or written consents for a period of at least four years.

A certificate reflecting any amendment which requires the written consent of any first mortgagees shall be signed (with notarial acknowledgement) by such first mortgagees, and when recorded, it shall be noted that such amendment has been so approved.

**18.02 Amendment in Derogation of Obligation to Maintain Common Area.**

Notwithstanding anything in this Declaration to the contrary, any amendment to this Declaration which would defeat the obligation of the Association to maintain the Common Area in a first-class condition and in a good state of repair or which would defeat the Assessment procedure set forth in this Declaration to assure said maintenance, must be approved by the City of Santa Monica.

**18.03 Power of Court To Approve An Amendment.**

(a) Notwithstanding anything in this Declaration to the contrary, the Association, or any Owner of a Unit, may petition the Superior Court of the county in which the Project is located for an order reducing the percentage of the affirmative votes necessary for such an amendment. The petition shall describe the effort that has been made to solicit approval of the Association members in the manner provided in this Declaration, the number of affirmative and negative votes actually received, the number or percentage of affirmative votes required to effect the amendment in accordance with the existing Declaration, and other matters the petitioner considers relevant to the Court's determination. The petition shall also contain, as exhibits thereto, copies of all of the following:

- (1) The governing documents.

- (2) A complete text of the amendment.
- (3) Copies of any notice and solicitation materials utilized in the solicitation of owner approvals.
- (4) A short explanation of the reason for the amendment.
- (5) Any other documentation relevant to the Court's determination.
- (b) Upon filing the petition, the Court shall set the matter for hearing and issue an ex parte order setting forth the manner in which notice shall be given.
- (c) The Court may, but shall not be required to, grant the petition if it finds all of the following:
  - (1) The petitioner has given not less than fifteen (15) days written notice of the Court hearing to all members of the Association, to any mortgagee of a mortgage or beneficiary of a deed of trust who is entitled to notice under the terms of the Declaration, and to the city, county, or city and county in which the Project is located that is entitled to notice under the terms of this Declaration.
  - (2) Balloting on the proposed amendment was conducted in accordance with all applicable provisions of the Condominium Documents.
  - (3) A reasonably diligent effort was made to permit all eligible members of the Association to vote on the proposed amendment.
  - (4) Owners having more than fifty percent (50%) of the votes, in a single class voting structure, voted in favor of the amendment. Where this Declaration requires a majority of more than one class to vote in favor of the amendment, Owners having more than fifty percent (50%) of the votes of each class required by this Declaration to vote in favor of the amendment voted in favor of the amendment.
  - (5) The amendment is reasonable.
  - (6) Granting the petition is not improper for any reason stated in Section 18.04(e) hereinbelow.
- (d) If the Court makes the findings required by paragraph (c) hereinabove, any order issued pursuant to this section may confirm the amendment as being validly approved on the basis of the affirmative votes actually received during

the balloting period or the order may dispense with any requirement relating to quorums or to the number or percentage of votes needed for approval of the amendment that would otherwise exist under the Condominium Documents.

- (e) Notwithstanding anything to the contrary contained in Sections 18.04 (a) to (d) inclusive, the Court shall not be empowered by this section to approve any amendment to this Declaration that:
  - (1) Would eliminate any special rights, preferences, or privileges designated in this Declaration as belonging to the City of Santa Monica, without the consent of the City.
  - (2) Would impair the security interest of a mortgagee of a mortgage or the beneficiary of a deed of trust without the approval of the percentage of the mortgagees and beneficiaries specified in this Declaration, if this Declaration requires the approval of a specified percentage of the mortgagees and beneficiaries.
- (f) An amendment is not effective pursuant to this Article until the Court order and amendment have been recorded in every county in which a portion of the Project is located. The amendment may be acknowledged by, and the Court order and amendment may be recorded by, any person designated in this Declaration or by the Association for that purpose, or if no one is designated for that purpose, by the President of the Association. Upon recordation of the amendment and Court order, this Declaration, as amended in accordance with this Article, shall have the same force and effect as if the amendment were adopted in compliance with every requirement imposed by the Condominium Documents.
- (g) Within a reasonable time after the amendment is recorded the Association shall mail a copy of the amendment to each member of the Association, together with a statement that the amendment has been recorded.

## ARTICLE NINETEEN

### BREACH OR DEFAULT BY CONDOMINIUM OWNERS

#### 19.01 Submission of Disputes to Arbitration.

Any dispute which arises in connection with the management or operation of the Association (other than the collection of Assessments), including but not limited to claims to

enforce or interpret the terms of this Declaration, the Bylaws, or the Rules and Regulations, shall first be submitted for resolution to a retired Judge of the Superior Court, who shall hear the case without a jury and whose decision shall be final and binding. The Judge shall be selected by the parties from any list of retired judges maintained for that purpose by the Superior Court and, if the parties cannot agree, the Court shall appoint a judge to hear the trial and all pre-trial proceedings upon the petition of any party. The trial shall be commenced in all cases, if possible, within six (6) months from the date the matter has been submitted to the retired Judge.

- a. **Judge's Fees.** Each party shall post, in advance, one half (1/2) of the Judge's fees and costs required to try the dispute.
- b. **Attorneys Fees.** In any such proceeding to enforce or interpret the terms, covenants, conditions and restrictions of this Declaration, the By Laws, or the House Rules, the prevailing party shall be awarded its reasonable attorneys' fees and court costs.
- c. **Other Legal Remedies.** Violation of any of the provisions of this Declaration may be enjoined, abated, restrained or otherwise remedied by appropriate legal or equitable proceedings as described above. Notwithstanding the foregoing, if it is necessary to obtain a temporary restraining order and/or preliminary injunction such relief may be granted by the Superior Court rather than by a retired judge; provided, however, that after the issue of the restraining order/preliminary injunction is decided, the balance of the dispute shall thereafter be submitted to the retired judge. Proceedings to restrain such violation may be brought at any time that such violation appears reasonably likely to occur in the future. Such proceedings may be brought by the Board of Directors, any aggrieved Owner, or their respective agents or representatives. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy shall not, under any circumstances, be construed as a waiver of that remedy.
- d. **Small Claims.** Claims under \$5,000 (other than Assessment collection issues) shall also be submitted to a retired judge for determination as provided for above.

**19.02 Cumulative Remedies.**

The respective rights and remedies, provided by this Declaration or by law or available in equity, shall be cumulative and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or for the same or different failures of the Owners or others to perform or observe any provision of this Declaration.

**19.03 Failure Not a Waiver.**

The failure of any Owner, the Board of Directors of the Association, the Association, its officers, Manager or his staff to enforce any of the Covenants contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter.

**19.04 Suspension of Voting Rights.**

In the event any Owner shall fail for a period of more than thirty (30) days to pay when due any Assessment, said Owner shall not be entitled to vote upon any matter put to a vote at any annual or special meeting of the Association for the period of time said Owner shall remain in default on payment of any such Assessments. For the purposes of this Section, the Manager shall, immediately upon the expiration of the thirtieth (30th) day of default in payment of any such Assessment or Assessments, notify or cause to be notified said Owner in writing of such failure and suspension and also cause a copy of said notice to be sent to the secretary of the Association.

**19.05 Costs and Attorneys' Fees.**

In any action or arbitration brought, the court or arbitrator may award to the prevailing party, such attorneys' fees and other costs as are deemed just and reasonable.

**ARTICLE TWENTY**

**NOTICES**

Any communication or notice of any kind permitted or required herein may be delivered as provided in this Declaration and shall be in writing and may be served, as an alternative to personal service, by mailing same as follows:

If to the Owner: To street address of his Condominium or at such other address as said Owner may from time to time designate in writing to the Association.

If to the Association: To the Santa Monica Bay Towers Homeowners Association, Inc. at the Street address of the Project.

94

If to Manager, the Board of Directors, any member of the Board or any officer of the Association:

To the person by his or its title at the street address of the Project.

All notices or demands to be served by mail shall be by first class regular mail with postage thereon fully prepaid. Service shall be deemed to be completed three (3) business days after such mailing. Notices may also be provided by facsimile transmission to a facsimile number as provided by the Owner. The original documents will follow by mail, if requested.

**ARTICLE TWENTY-ONE**

**MISCELLANEOUS**

**21.01 Article, Section and Paragraph Headings.**

The headings of the several Articles, Sections and paragraphs of this Declaration are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision of this Declaration.

**21.02 Interpretation.**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the use, operation and maintenance of the Project. In case any term, covenant, provision, phrase, Section or other element contained in this Declaration or in any other Condominium Document for any reason shall be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect, alter, modify or impair in any manner whatsoever any other application thereof or any other term, covenant, provision, phrase, Section or other element contained in this Declaration or in any other Condominium Document, the provision of which shall be carried out as if such invalid, illegal or unenforceable provision were not contained herein or therein. Whenever the context so requires, the singular number includes the plural, the plural includes the singular, the masculine gender includes the feminine and/or neuter and the neuter gender includes the masculine and/or feminine. In the case of any conflict between the Declaration and the provisions of any other Condominium Document, the Declaration shall control.

**21.03 No Dedication Implied.**

Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Project to the general public or for any public use or purpose whatsoever.

45

**21.04 Successors and Assigns.**

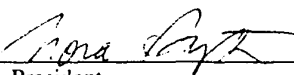
This Declaration shall inure to the benefit of and be binding upon the Owners, and their respective heirs, personal representatives, grantees, lessees, licensees, successors and assigns.

**21.05 Documents on File.**

A true and correct copy of all Condominium Documents, as the same may from time to time be amended, shall at all times be maintained within the Project by the Association or the Manager, and the same may be inspected by any Owner at all reasonable times.

IN WITNESS WHEREOF, this Restated Declaration has been executed on the day and year first written above.

SANTA MONICA BAY TOWERS  
HOMEOWNERS ASSOCIATION  
a California corporation

By:   
President

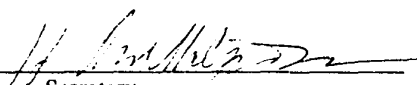
By:   
Secretary

EXHIBIT A  
ASSESSMENT SCHEDULE

Unit Numbers	Present Assessment
101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101, 1201, 1401, 102, 202, 302, 402, 502, 602, 702, 802, 902, 1002, 1102, 1202, 1401	\$ 505/month
206, 306, 406, 506, 606, 706, 806, 906, 1006, 1106, 1206, 1406, 107, 207, 307, 407, 507, 607, 707, 807, 907, 1007, 1107, 1207, 1407	\$ 442/month
204, 304, 404, 504, 604, 704, 804, 904, 1004, 1104, 1204, 1404	\$ 646/month
303, 403, 503, 603, 703, 803, 903, 1003, 1103, 1203, 1403	\$ 313/month
205, 305, 405, 505, 605, 705, 805, 905, 1005, 1105, 1205, 1405	\$ 308/month
103, 105	\$ 294/month
106	\$ 331/month
Penthouse	\$1,185/month

ANY FUTURE INCREASES IN REGULAR ANNUAL ASSESSMENTS, AND ALL SPECIAL ASSESSMENTS, SHALL BE CALCULATED AND IMPOSED BASED ON THE RESPECTIVE PERCENTAGE INTERESTS SHOWN IN EXHIBIT B.

EXHIBIT B

PERCENTAGE INTEREST IN COMMON AREA

Unit Numbers	%
101, 201, 301, 401, 501, 601, 701, 801, 901, 1001, 1101, 1201, 1401, 102, 202, 302, 402, 502, 602, 702, 802, 902, 1002, 1102, 1202, 1401	1.21871
206, 306, 406, 506, 606, 706, 806, 906, 1006, 1106, 1206, 1406, 107, 207, 307, 407, 507, 607, 707, 807, 907, 1007, 1107, 1207, 1407	1.06447
204, 304, 404, 504, 604, 704, 804, 904, 1004, 1104, 1204, 1404	1.55956
303, 403, 503, 603, 703, 803, 903, 1003, 1103, 1203, 1403	.75788
205, 305, 405, 505, 605, 705, 805, 905, 1005, 1105, 1205, 1405	.74646
103, 105	.70837
106	.79977
Penthouse	2.71848

97 459100

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EXHIBIT C

CERTIFIED COPY  
OF  
ORDER GRANTING  
PETITION

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FEB 17 1997

LOS ANGELES  
SUPERIOR COURT

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

In re the Matter of	) Case No. SS 007 076
	)
SANTA MONICA BAY TOWERS	) ORDER GRANTING PETITION
HOMEOWNERS ASSOCIATION, a	) PURSUANT TO CIV. CODE §1356 TO
California nonprofit mutual benefit	) REDUCE REQUIRED VOTING
corporation,	) PERCENTAGE AND TO APPROVE
	) RESTATED DECLARATION OF
Petitioner.	) COVENANTS, CONDITIONS AND
	) RESTRICTIONS

DATE: February 20, 1997  
TIME: 1:30 p.m.  
DEPT: B

The petition of Santa Monica Bay Towers Homeowners Association ("Association") pursuant to Civil Code Section 1356 to Reduce Required Voting Percentage and to Approve Restated Declaration of Covenants, Conditions and Restrictions came on regularly for hearing on February 20, 1997 at 1:30 p.m. in Department B of the above-entitled court before the Honorable Robert M. Letteau. An appearance was made by Glen L. Kulik, Esq. on behalf of the petitioner. There were no other appearances.

The court, having read and considered the petition, and good cause appearing,

IT IS ORDERED AS FOLLOWS:

1. The petition is granted;

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EXHIBIT C

