

CC&R'S

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79-395962

FILE/PAGE NO. 79-395962
RECORDED REQUEST OF

TITLE INSURANCE AND TRUST
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OFFICIAL RECORDS
RECORDER
SAN DIEGO COUNTY, CALIF.

WHEN RECORDED MAIL TO:

Ronald J. Keeler
P. O. Box 1022
San Diego, California 92112
1039996

\$49.00

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

VERMONT VILLAS CONDOMINIUMS HOMEOWNERS ASSOCIATION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("DECLARATION"), made on September 17, 1979, by RONALD J. KEELER ("DECLARANT"), is made with reference to the following facts:

RECITALS

A. Declarant is the owner of Lot 1 of Escondido Tract No. 352, in the City of Escondido, County of San Diego, State of California, according to Map thereof No. 9058, as filed for record in the Office of the San Diego County, California, Recorder on December 18, 1978 ("Lot 1").

B. Declarant has improved or intends to improve Lot 1, by constructing thereon a condominium project. Declarant intends to establish said condominium project under the provisions of the California Condominium Act.

C. Lot 1 together with all structures and improvements thereon shall hereinafter be referred to as the "Project." It is intended that the Project, when developed, shall contain 108 living units. The owner of a living unit in the Project will receive title to his individual living unit plus an undivided 1/108th interest as tenant in common in the Common Area of the Project. Each living unit shall have appurtenant to it a membership in Vermont Villas Condominiums Homeowners Association, a nonprofit corporation, which shall administer and control the Common Area.

D. Declarant intends by this document to impose upon the Project mutually beneficial restrictions under a general plan of improvement for the benefit of all of the said condominiums and the owners thereof.

E. Declarant hereby establishes by this Declaration a plan for the ownership of real property estates consisting of the individual ownership of the area of space contained in each living unit as well as the co-ownership, as tenants in common and as herein set forth, of the remaining portions of the Project.

Declarant hereby declares that the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Project, and every part thereof, in accordance with the plans for its improvement and the division thereof into condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant and his respective successors, assigns, grantees and personal representatives, and all parties having or acquiring any right, title or interest in or to any part of the Project.

ARTICLE I

DEFINITIONS

1. "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.
2. "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the Project which is to be paid by each living unit owner as determined by the Association.
3. "Association" shall mean and refer to Vermont Villas Condominiums Homeowners Association, a California nonprofit corporation.
4. "Board" or "Board of Directors" shall mean and refer to the governing body of the Association.

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

6. "Common Area" shall mean and refer to those portions of the Project not constituting individual condominium living units. The Common Area includes, without limitation: land; parking and driveway areas; common and exterior stairs; entryways; storage areas; bearing walls, columns, girders, subfloors, unfinished floors, roofs and foundations; conduits, pipes, fireplace appurtenances and flues, plumbing, wires and other utility installations (except the outlets thereof when located within a living unit), required to provide power, light, telephone, gas, water, sewerage, drainage and heat; sprinklers, sprinkler pipes, and sprinkler heads which protrude into the air-space of a living unit; cable television system.

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

8. "Common interest" means the proportionate undivided interest in the Common Area which is appurtenant to each living unit as set forth in this Declaration.

9. "Condominium" shall mean an estate in real property as defined in California Civil Code § 783, consisting of title to a living unit and an undivided interest in the Common Area. The ownership of each condominium shall include the ownership of a living unit and the respective undivided interest in the Common Area of the Project and membership in the Association.

10. "Condominium building" shall mean a residential structure containing living units.

11. "Condominium documents" means and includes this Declaration, the exhibits, if any, attached thereto, the Articles, the Bylaws, and the rules and regulations for the members as established from time to time.

12. "Condominium Plan" shall mean and refer to the recorded diagrammatic floor plan of the living units built or to be built in the Project which identifies one or more living units and shows their dimensions pursuant to Civil Code § 1351.

13. "Declarant" shall mean and refer to RONALD J. KEELER.

14. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as the same may be amended from time to time.

15. "Exclusive Use Area" shall mean and refer to those portions of the Common Area, if any, set aside for the exclusive use of a living unit owner or owners.

16. "Institutional Lender" shall mean any bank, savings and loan association, insurance company, mortgage company, federal or state agency, or other financial institution holding a recorded first mortgage on any condominium in the Project.

17. "Living unit" shall mean and refer to those elements of a condominium which are not owned in common with the owners of other condominiums in the Project.

18. "Member" shall mean and refer to a person entitled to membership in the Association as provided herein. Whenever "member" or "membership" is used in this Declaration for the purpose of determining quorums, percentages, or minimum or maximum numbers for voting as specified in this Declaration, all persons who are members because of their joint ownership of a particular condominium shall be counted as one.

19. "Mortgage" shall include a deed of trust as well as a mortgage. A "first mortgage" shall mean a mortgage or deed of trust which is recorded, which has first priority over all other mortgages and deeds of trust, and which was made in good faith and for value.

20. "Mortgagee" shall include a beneficiary or holder of a deed of trust as well as a mortgagee.

21. "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

22. "Owner" shall mean and refer to the record holder or holders of title, if more than one, of a condominium in the Project. "Owner" shall include any person having a fee simple title to any living unit and shall include contract sellers, but shall exclude persons or entities having any interest merely as security for the performance of an obligation. Whenever "owner" is used in this Declaration for the purposes of determining quorums, percentages, or minimum or maximum numbers for voting as specified in this Declaration, all the owners of a particular condominium shall be counted as one.

23. "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

24. "Project" shall mean and refer to Lot 1 together with all structures and improvements erected or to be erected thereon.

ARTICLE II

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

1. Description of Project: The Project shall consist of Lot 1 with condominium living units and all other improvements located and to be located thereon. Declarant intends to construct upon Lot 1 condominium buildings, plus recreational facilities and other usual appurtenances and other facilities. Reference is hereby made to the Condominium Plan to supply further details concerning the Project.

2. Division of Project: The Project is hereby divided into the following separate freehold estates:

a. Living units: Each of the living units, as separately shown, numbered and designated in the Condominium Plan for the Project, which was recorded on July 27, 1979, as File/Page No. 79-312978 in the Official Records of San Diego County, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and doors of each living unit, each of such spaces

being defined and referred to herein as a "living unit". Each living unit includes both the portions of the building so described and air-space so encompassed. The living unit does not include those areas and those things which are defined as "Common Area." In the event any portion of the Common Area encroaches upon any living unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist, so long as the encroachment exists. In interpreting deeds and plans, the then existing physical boundaries of a living unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the building.

b. Common Area: The remaining portion of the Project, referred to herein as "Common Area," shall include, without limitation, all of the elements set forth in Article I, Paragraph 6. The pro rata ownership in the Common Area appurtenant to each living unit is declared to be permanent in character and shall not be altered by the Association without the prior written consent of at least sixty-six and two-thirds percent (66-2/3%) of the Institutional Lenders (based on one (1) note for each first mortgage owned) or owners (other than the Declarant). The ownership of each condominium shall include a living unit and an undivided interest in the Common Area of the Project. Such common interest cannot be separated from the living unit to which it is appurtenant. Except for the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area, the Association shall not, without the prior written approval of at least sixty-six and two-thirds percent (66-2/3%) of the Institutional Lenders (based on one (1) vote for each first mortgage owned) or owners (other than the Declarant), by act or omission, seek to abandon, partition, subdivide, encumber,

sell or transfer all or any part of the Common Area. The City of Escondido shall have the right to veto any act or omission by the Association which seeks to abandon, partition, subdivide, encumber, sell or transfer all or any part of the Common Area. Each living unit owner may use the Common Area in accordance with the purposes for which it is intended so long as said use does not hinder the exercise or encroach upon the rights of the other living unit owners. Control of the Common Area shall be transferred from Declarant to the Association upon commencement of the first properly called meeting of the membership of the Association at which a quorum is present, except as to the Declarant's right to grant easements for public facilities and similar or related purposes, as provided for in Article VIII, Paragraph 16 herein. Each living unit owner is hereby granted a non-exclusive easement for ingress, egress and support through the Common Area, which easement shall be appurtenant to such living unit. The Common Area shall be subject to the foregoing non-exclusive easements in favor of all the living unit owners.

c. Exclusive Use Area: The balconies, patios, carports and uncovered parking spaces designated as "Exclusive Use Area" on the Condominium Plan are hereby set aside and allocated for the exclusive use of the owners of the living unit to which they are assigned on the Condominium Plan.

d. No Separate Conveyance of Undivided Interests: The foregoing undivided interests are hereby established and are to be conveyed with the respective living units as indicated above and cannot be changed except as herein set forth; Declarant, his successors, assigns, grantees and personal representatives covenant and agree that the undivided interests in the Common Area and the fee title to the respective living units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective living unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the living unit.

3. Partition Prohibited: The Common Area shall remain undivided as set forth above. Except as provided by California Civil Code § 1354, no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the Project. Judicial partition by sale of a single living unit owned by two or more persons and division of the sale proceeds is not prohibited hereby but partition of title to a single living unit is prohibited. Notwithstanding anything to the contrary set forth in the Condominium documents, unless at least sixty-six and two-thirds percent (66-2/3%) of the Institutional Lenders (based upon one (1) vote for each first mortgage owned) or Owners (other than the Declarant) give their prior written approval, the Association shall not be entitled to partition or subdivide any living unit. The City of Escondido shall have the right to veto any action taken by the Association to partition or subdivide any living unit.

ARTICLE III

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND

VOTING RIGHTS

1. Association to Manage Common Area: The management of the Common Area shall be vested in the Association in accordance with its Bylaws. The owners of all the condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of the Condominium documents.

2. Membership: The owner of a living unit shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

3. Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or

encumbrance of the living unit to which it is appurtenant, and then only to the purchaser (in the case of a sale) or mortgagee (in the case of an encumbrance) of such living unit. Any attempt to make a prohibited transfer is void. In the event the owner of any living unit should fail or refuse to transfer the membership registered in his name to the purchaser of his living unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void. Within three days of the transfer of any living unit, the transferor and transferee thereof must each notify the Board of Directors of the transfer.

4. Membership Classes and Voting Rights:

a. Class A Membership. Class A members shall be all owners (with the exception of the Declarant while Class B membership is in existence). Each living unit shall be entitled to one vote. When more than one person holds an interest in any living unit, all such persons shall be members, and the vote for such living unit shall be exercised as the majority of such persons among themselves determine. In no event shall more than one vote be cast with respect to any living unit, and in no event shall the vote of any living unit be split. The owner (or valid proxy) exercising the vote for any living unit at a meeting shall be conclusively presumed to be voting in the manner determined by the majority of the owners of that living unit unless the Association is otherwise notified in writing prior to the meeting, or an objection is made by another owner of that living unit from the floor of the meeting.

b. Class B Membership. The Class B member shall be the Declarant, who shall be entitled to vote as follows: voting shall be the same as for Class A memberships, except that the Class B member shall have three votes for each living unit owned by it. The Class B membership shall be converted to Class A membership and shall cease to exist on the occurrence of whichever of the following is first in time:

(1) When the total outstanding votes held by Class A members equals the total outstanding votes held by the Class B member (tripled as stated above); or

(2) The date of the second anniversary of the original issuance of the most recently issued public report for the Project;

Whenever there is no Class B membership, provisions of this Declaration which require action by both classes of the voting membership shall require the stated action by Class A members only.

Any provision of the Condominium documents calling for membership approval of action to be taken by the Association, except provisions with respect to the action set forth in Title 10, California Administrative Code Section 2792.4 to enforce the obligations of the Declarant, shall expressly require the vote or written assent of a prescribed percentage of each class of membership during the time that there are two outstanding classes of membership.

Where the Condominium documents require the vote or written assent of each class of membership as a prerequisite to the initiation of action by or in the name of the Association, any requirement in the Condominium documents that the vote of the Declarant shall be excluded in any such determination, except for the requirements set forth in Title 10, California Administrative Code Section 2792.4, shall not be applicable.

5. Budgets and Financial Statements: The Association shall cause a balance sheet and a pro forma operating statement (budget) to be prepared for the Association and shall cause copies thereof to be distributed to each member and upon request, to each Institutional Lender, in accordance with the following:

a. A pro forma operating statement (budget) for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year;

b. A balance sheet, as of the accounting date which is the last day of the month closest in time to six (6) months from the date of closing of

the first sale of a living unit in the Project, and an operating statement for the period from the date of the first closing to said accounting date, shall be distributed within sixty (60) days after said accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the number of the living unit and the name of the individual or entity assessed.

c. A balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year shall be distributed within ninety (90) days after the close of said fiscal year. In the event, in any year, the gross income to the Association exceeds \$75,000.00, an external audit by an independent public accountant shall be required for fiscal year financial statements (other than budgets).

6. Institutional Lender Inspection: Each Institutional Lender shall be entitled to examine, upon request and during reasonable business hours, the books and records of the Association.

ARTICLE IV

MAINTENANCE AND ASSESSMENTS

1. Creation of the Lien and Personal Obligations of Assessments: The Declarant, for each living unit within the Project, hereby covenants, and each owner of any living unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges (payable in equal monthly installments), and (2) special assessments for capital improvements and as hereafter set forth, such assessments to be established and collected as hereafter provided. Each annual and special assessment, together with interest, costs and reasonable attorneys' fees incurred by the Association in collecting any delinquent assessments, shall be a charge on the condominium and shall be a continuing lien upon the condominium against which each such assessment is made, the lien to become effective upon recordation of a notice

of assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them. No owner of a condominium may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his condominium.

The annual assessments for the condominiums in the Project shall commence upon the first day of the first calendar month following the close of escrow for the first sale of a condominium in the Project. Annual and special assessments chargeable to or payable for each unsold Condominium in the Project shall be charged to, paid by, and be the debt of Declarant.

2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively (a) to promote the recreation, health, safety, and welfare of the residents in the Project, (b) for the improvement and maintenance of the Common Area for the common good of the Project, and (c) for the maintenance, for the common good of the Project, of the areas adjacent to the Project which are owned by United California Bank as Trustee, which areas are generally described as follows:

- a. A strip of land 5 feet wide, 2-1/2 feet on each side of the centerline described below, over, under, along and across a portion of Parcel 1 of Parcel Map No. 3775, as said map is filed in the office of the County Recorder of said County, the centerline of said strip of land being described as follows:

Beginning at a point on the northerly line of Parcel A of Parcel Map 7493 as filed in the office of the County Recorder of said County, said

point being 154 feet west of the northeasterly corner of said Parcel A; thence north 30°47'59" west 18 feet to the terminus thereof.

- b. All that certain real property situate in the City of Escondido, County of San Diego, State of California, and being the easterly 626.69 feet of the most southerly 20 feet, and the westerly 155.84 feet of the southerly 13 feet, of Parcel 1 of Parcel Map No. 3775 as said map is filed in the office of the recorder of said county; Excepting therefrom those portions of said strip which are improved with buildings or asphaltic concrete pavement or other structural improvements, or which otherwise do not fall within the planting area.

3. Determining Annual Assessments: Within ninety (90) days before the close of each fiscal year of the Association, the Board of Directors shall determine the operating budget for the Association for the next succeeding fiscal year. The operating budget shall include all expenses of the Association, and an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area and other property owned by the Association that must be replaced on a periodic basis and shall be payable in regular installments rather than by special assessments. The amount so determined (less any surplus expected to be on hand from the prior year's operating budget) shall be the total Project annual assessment. The Board may appoint a Finance Committee to assist in the determination of the operating budget. Notwithstanding anything to the contrary set forth in the Condominium documents, the method of determining the obligations, assessments, dues or other charges which may be levied against an owner shall not be changed unless at least sixty-six and two-thirds percent (66-2/3%) of the Institutional Lenders (based

upon one vote for such first mortgage owned) or of the owners (other than Declarant) have given their prior written approval.

4. Procedure for Increasing Annual Assessments:

a. From and after January 1 of the year immediately following the first conveyance of a living unit to an owner, the total Project annual assessment may be increased by the Board of Directors each year by not more than twenty percent (20%) above the total Project annual assessment for the previous year without a vote of the members other than the Declarant.

b. From and after January 1 of the year immediately following the first conveyance of a living unit to an owner, the total Project annual assessment may be increased by more than twenty percent (20%) over the total Project annual assessment for the previous year by the affirmative vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant.

The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

5. Special Assessments: In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area (including fixtures and personal property related thereto), or any unallocated taxes pursuant to Article IV, Paragraph 12 below, provided that any such assessment shall have the affirmative vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant.

6. Notice and Quorum for Any Action Authorized Under

Article IV, Paragraphs 4 and 5: Any action authorized under Article IV, Paragraphs 4 or 5 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) days (except in emergency situations) nor more than forty-five (45) days in advance

of the meeting. A quorum for such meeting shall be twenty-five percent (25%) of the Class A members. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum for such resumed meeting shall be the presence of twenty-five percent (25%) of the total voting power of the Association. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite fifty-one percent (51%) of the votes entitled to be cast by each class of members, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the Association not later than thirty (30) days from the date of such meeting.

7. Division and Payment of Assessments: Except as otherwise provided in this paragraph, the aggregate cost of those items shown on the operating budget for the Association, from year to year, shall be divided equally among the condominiums in determining annual assessments. The costs attributable to the following listed items, however, shall not be so equally divided in determining annual assessments but rather shall be based on a proration of certain expenses and based upon the relative square footage of all living units in the Project. A one-bedroom living unit in the Project bears .007% of the total aggregate cost thereof, and a two-bedroom living unit in the Project bears .011% of the total aggregate cost. Each year in fixing the regular annual assessments, the Board of Directors shall prorate the anticipated expenses for Insurance, Hot Water, Domestic Water, Paint Reserve, Roof Reserve, Hot Water Equipment Reserve, and Solar Equipment. Special assessments, except for those relating to the special categories listed above, shall be charged to and divided among each of the living units equally. Special assessments relating to the categories stated above shall be charged to and divided among each of the living units based on the proration percentages for one and two bedroom living units referred to above. The owners of each living unit shall be jointly and severally liable for the assessment made against their living unit. Each owner shall be obligated to pay to the Association his regular

assessment in twelve equal monthly installments on or before the first (1st) day of each calendar month, and to pay special assessments within thirty (30) days after their levy or at such other times as the Board of Directors shall designate. All assessments shall be paid at such place as the Board of Directors shall designate.

8. Commencement of Annual Assessment: As stated in Article IV, Paragraph 1 above, the annual assessments provided for herein shall commence as to all condominiums in the Project on the first day of the month following the first conveyance of a condominium in the Project. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall determine and fix the amount of the annual assessment against each living unit at least ninety (90) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified living unit have been paid. A properly executed certificate of the Association as to the status of assessments on a living unit is binding upon the Association as of the date of its issuance.

9. Nonpayment of Assessments; Recording of Lien: If any assessment is not paid within fifteen (15) days after the due date, a late charge of five dollars (\$5.00) shall be assessed for each month or fraction thereof from the due date until the assessment and all late charges are paid. Notwithstanding the foregoing, in no event shall the amount of said late charges, in any given calendar year, exceed an amount equal to ten percent (10%) of that year's delinquent assessments. The Association may bring an action at law against the owner personally obligated to pay the same, or foreclose the lien against the condominium.

The Board of Directors may cause to be recorded as to any delinquent assessment in the Office of the County Recorder of San Diego County,

California, a Notice of Assessment Lien, which shall state the amount of the assessment and such related charges as may be authorized by this Declaration, a description of the condominium against which the lien has been assessed, and the name of the record or reputed owner of the condominium. The notice shall be signed by any member of the Board of Directors, or by the Association's managing agent. The assessment lien shall also be deemed to secure all of the foregoing items which shall become due or incurred relative to the condominium subsequent to the recordation of the Notice of Assessment Lien until the completion of the enforcement of the lien or the payment of the full amount secured by the lien, or other satisfaction to be made in connection therewith.

10. Subordination of the Lien to First Deeds of Trust

and First Mortgages; Notice of Default: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any living unit shall not affect the assessment lien. However, the sale or transfer of any living unit pursuant to a judicial foreclosure under a first mortgage or an exercise of the power of sale under a first mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such living unit from liability for any assessments thereafter becoming due or from the lien thereof.

Where the mortgagee of a first mortgage of record or other purchaser of a condominium obtains title to the same as a result of a judicial foreclosure, or an exercise of the power of sale under said first mortgage, such acquirer of title, and its successor and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such condominium which became due prior to the acquisition of title to such condominium by such acquirer.

Upon request, the Association shall provide the Institutional Lender ~~who holds the first mortgage on a condominium with prompt written notification~~ of any default by the owner of such condominium in the performance of such

owner's obligations under the Condominium documents, when such default is not cured within sixty (60) days of its occurrence.

11. Priorities; Enforcement; Remedies: When a notice of assessment has been recorded, such assessment shall constitute a lien on such condominium prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage.

Such lien, when delinquent, may be enforced by sale by the Association, its attorney, or any other person authorized to make the sale; provided, however, that no proceeding or action shall be instituted to foreclose the lien, either judicially or under the power of sale granted herein, until notice of intention to proceed to foreclose the lien shall have been delivered by the Board of Directors to the owners of the condominium affected by the lien at least thirty (30) days prior to the commencement of any such action or proceeding, and such sale shall be conducted in accordance with the provisions of Sections 2924-2924h of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

The Association, acting on behalf of the owners, shall have the power to bid for the condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

Subject to the provisions of the Bylaws, the Board may suspend the voting rights and right to use the recreational facilities of a member who is in default in payment of any assessment.

12. Separate Taxes and Assessments: Each owner shall execute such documents and take such action as may be reasonably required, as determined by the Board of Directors, to obtain separate assessments for any taxes, assessments, or charges which may under local law become liens prior to the

first mortgage on a living unit. In the event any of the aforesaid taxes, assessments or charges are for any reason not separately levied upon the living unit responsible therefor, then such taxes, assessments or charges shall be paid by the Board of Directors and thereupon added to the annual assessments or, if necessary, a special assessment may be levied (in the manner set forth in Article IV, Paragraphs 5 and 6) against the living units in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the date of each tax installment.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

1. Duties and Powers: In addition to the duties and powers enumerated in the Articles and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the right and authority to:

a. Maintain, repair, replace, restore, operate and manage all of the Common Area, all facilities, improvements, furnishings, equipment and landscaping thereon, the areas referred to in Article IV 2.(iii), and all property that may be acquired by the Association, and establish an adequate reserve fund for repair, replacement and restoration thereof.

b. Obtain, for the benefit of the Common Area, all gas and electric service, refuse collection, and janitorial service, and obtain, for the benefit of the Common Area and all of the condominiums, all water service.

c. Subject to the provisions of Article II, Subparagraph 2.b., grant easements where necessary for utilities, services and sewer facilities over the Common Area to serve the Common Area and the condominiums.

d. Secure and maintain (i) appropriate fidelity bond coverage against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds belonging to or administered by the Association; (ii) insurance for the protection of its directors and offi-

cers from personal liability in the management of the Association's affairs, (iii) a "multi-peril" type policy of property insurance on the entire Project, (iv) a comprehensive policy of public liability insurance covering all of the Common Area and the commercial spaces and public ways in the Project, (v) workman's compensation insurance, and (vi) such other policy or policies of insurance as the Board of Directors deems necessary or desirable in protecting the interest of the Association and its members.

e. Employ, at its option, a manager or other persons or contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association. Notwithstanding anything in the Condominium documents to the contrary, any agreement for professional management of the Project, or any other contract providing for services by the Declarant must provide for termination by either party, without cause or payment of a termination fee, on ninety (90) days or less written notice and have a maximum contract term of one (1) year.

f. Discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the member or members responsible for the existence of said lien.

g. Adopt reasonable rules not inconsistent with this Declaration relating to the use of the Common Area, all facilities located thereon, and the conduct of owners and their tenants and guests with respect to the Common Area, and to establish penalties for the infractions thereof.

2. Maintenance by Association of Condominiums: The Association shall provide maintenance of the condominiums as follows: paint, maintain, repair and replace roof, exterior building surfaces (other than exterior glass surfaces), landscaping, parking areas, recreational facilities and the other portions of the Common Area. In the event that the need for maintenance or repair of any area subject to maintenance by the Association is caused through the willful or negligent act of any owner, his family, or invitees, the cost of such maintenance or repair in excess of insurance proceeds payable to the Associa-

tion for such maintenance or repair shall be added to and become a part of the assessment to which such owner's condominium is subject. Notwithstanding the foregoing, the Association shall not be entitled to levy such an assessment until the Board has conducted a hearing, upon ten (10) days prior written notice to the affected owner, to determine whether such maintenance or repair was caused through the negligent or willful actions of such owner or his family or invitees. Such affected owner shall have the opportunity, if he so elects, to be heard at such Board meeting with regard to such issue.

3. Use of Recreational Facilities: The Association shall have the right to limit the number of guests which each Owner may allow to use the recreational facilities, and to limit the days and duration of any such guest's use.

4. Maintenance by Association of Private Access Ways: Notwithstanding anything herein to the contrary, the Association shall be responsible for the maintenance of: (a) all private access ways located in the Project; and, (b) all facilities appurtenant to the aforesaid public access ways whose maintenance is not the responsibility of a public utility agency (provided, however, that all maintenance to said facilities necessitated by backfill failure shall be the responsibility of the Association).

ARTICLE VI

UTILITIES

1. Owners' Rights and Duties: The rights and duties of the owners of condominiums with respect to sanitary sewer, water, electricity, gas and telephone lines and facilities, and heating facilities shall be as follows:

a. Whenever sanitary sewer, water, electricity, gas, television receiving, telephone lines or connections, heating or air conditioning, conduits, ducts, or flues are installed within the Project, which connections, lines, conduits, ducts or flues (or any portion thereof) lie in or upon condominiums owned by other than the owner of a condominium served by said connections, the Association and the affected owner shall have the right, and are

hereby granted an easement to the full extent necessary therefor, to enter upon the condominiums or to have the utility companies enter upon the condominiums in or upon which said connections, or any portion thereof, lie, to repair, replace and generally maintain said connections, lines, conduits, ducts and flues as and when necessary.

b. Whenever sanitary sewer, water, electricity, gas, or telephone lines or connections, heating or air-conditioning conduits, ducts, or flues are installed within the Project which lines, connections, conduits, ducts or flues serve more than one condominium, the owner of each condominium served by said lines, connections, conduits, ducts or flues shall be entitled to the full use and enjoyment of such portions of the same as service his condominium.

2. Association's Duties: The Association shall maintain all utility installations located in the Common Area except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay for all water, gas and electric service, refuse collection, and janitorial service supplied to or for the Common Area.

ARTICLE VII

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Project and each condominium therein is subject to the following:

1. Condominium Use: No condominium shall be occupied and used except for residential purposes by the owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, his successors, assigns or personal representatives, may use any living unit or living units in the Project owned by Declarant for a model site or sites and display and sales office.

2. Nuisances: No noxious or offensive activities shall be carried on upon any condominium, or in any part of the Project, nor shall anything be done thereon which may be or may become an unreasonable annoyance or an

unreasonable nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of his respective living unit, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

3. Vehicle Restrictions: No trailer, camper, mobile home, commercial vehicle, truck (other than standard size pickup truck or van), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Project, other than temporarily. Commercial vehicles shall not include sedans or standard size pickup trucks or vans which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project. No off-road unlicensed motor vehicles shall be operated upon the Project.

4. Signs: Subject to Declarant's right to erect and maintain signs on or about the Project, as provided for in Article VIII, Paragraph 11.d. herein, no signs shall be displayed to the public view on any living units or on any portion of the Project except such signs as are approved by the Board except "For Sale" or "For Rent" signs of customary and reasonable dimensions and as permitted by law.

5. Animals: The resident(s) of each condominium shall be collectively entitled to keep one (1) usual and ordinary household pet, provided that it is not kept, bred, or maintained for commercial purposes, and further provided they are kept under reasonable control at all times. Notwithstanding the foregoing, no pets may be kept on the Project which, in the determination of the Board, result in an unreasonable annoyance to the other owners. No pets shall be allowed in the Common Area except as may be permitted by rules of the Board. No dog shall enter the Common Area except while on a leash which is held by a person capable of controlling the dog. Owners shall pre-

vent their pets from soiling any portion of the Common Area where other persons customarily walk.

6. Garbage and Refuse Disposal: All rubbish, trash and garbage shall be regularly removed from the Project, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, woodpiles, or storage piles shall be kept screened and concealed from view of other living units, streets and the Common Area.

7. Radio and Television Antennas: No alteration to or modification of the installed cable television system shall be permitted. No owner may be permitted to construct or use an external radio or television antenna without the prior written consent of the Board.

8. Right to Lease: The respective condominiums shall be used only as single family residences and shall not be rented by the owners thereof for transient or hotel purposes, which are defined as (a) rental for any period less than thirty (30) days, or (b) any rental if the occupants of the living unit are provided customary hotel service such as room service for food and beverage, maid service, laundry and linen service or bellboy service. Subject to the foregoing restrictions, the owners of the respective condominiums shall have the right to lease the same provided that the lease is made subject to the covenants, conditions, restrictions, limitations and uses contained in the Condominium documents.

9. No Construction: No building, fence, wall obstruction, balcony, screen, patio, patio cover, tent, awning, garage, carport, carport cover, improvement, or structure of any kind shall be commenced, erected, painted or maintained upon any part of the Project, nor shall any alteration or improvement of any kind be made thereto until (a) the same has been approved in writing by the "Committee," as defined and established by the provisions of Article VIII, Paragraph 12 herein, and (b) any required city permits have been obtained as to the same. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, altera-

tions, and the like shall be submitted in writing to the Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee, or to rebuild in accordance with plans and specifications previously approved by the Committee.

No landscaping of patios, balconies or yards visible from the street or from the Common Area not involving the use of natural plants, grass, trees, or shrubs, and which does involve the use of synthetic materials, or of concrete, rock, or similar materials, shall be undertaken by any owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Committee.

Whenever any plans and specifications are submitted in writing to the Committee pursuant to the provisions of this paragraph, said plans and specifications will be deemed approved for the purposes of this Paragraph 9 if the Committee fails to disapprove the plans and specifications within thirty (30) days after the date of submission to the Committee.

10. Drapes: All window openings visible from the street or Common Area shall have facing the exterior either draperies, drape linings, or casements, and all such draperies, drape linings, and casements shall be of a neutral color approved by the Committee. Notwithstanding anything herein to the contrary, no window opening visible from the street or the Common Area shall have affixed to it or be otherwise lined with any foil, paper or similar material.

11. Clothes Lines: No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

12. Power Equipment and Car Maintenance: No power equipment, hobby shops, or car maintenance (other than emergency work) shall be permitted on the Project except with prior written approval of the Board. Approval shall

not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections.

13. Liability of Owners for Damage to Common Area: The owner of each living unit shall be liable to the Association for all damages to the Common Area or improvements thereon caused by such owner or any occupant of his living unit or invitee, except for that portion of said damage, if any, fully covered by insurance, to the extent that such owner would be legally responsible under the laws of the State of California. Notwithstanding the foregoing, the Association shall not hold the owner of a living unit liable for damage to the Common Area or improvements thereon caused by such owner or any occupant of his living unit or invitee until the Board has conducted a hearing, upon ten (10) days prior written notice to the affected owner, to determine whether such damage was in fact caused by said owner or any occupant of his living unit or his invitees. Such living unit owner shall have the opportunity, if he so desires, to be heard at such Board meeting with regard to such issue.

14. Parking: Carports and certain of the uncovered parking spaces within the Project shall be deeded to owners as a portion of their respective Condominium. No one other than the owner to which a particular parking space has been deeded (except for persons authorized by such owner) shall use such parking space.

ARTICLE VIII

GENERAL PROVISIONS

1. Enforcement: The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, and in such action shall be entitled to recover reasonable attorneys' fees and costs. Failure of the Association or any owner

to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. Invalidity of any Provision: Should any provision or portion of this Declaration be declared invalid or in conflict with any law of the jurisdiction where the Project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

3. Term: The covenants and restrictions of this Declaration shall run with and bind the Project, and all parts thereof and shall inure to the benefit of and shall be enforceable by the Association or the owner of any condominium subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the owners of a majority of the condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change this Declaration in whole or in part, or to terminate the same. The City of Escondido shall have the right to veto any such change or termination of this Declaration.

4. Amendments: Prior to the close of escrow for the sale of the first condominium, Declarant may amend this Declaration. After the sale of the first condominium, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of the total voting power of the Association which shall include a majority of the votes of members other than Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded and shall become effective upon being recorded in the Office of the San Diego County, California, Recorder.

5. Encroachment Easements: Each owner of a condominium within the Project is hereby declared to have an easement over all adjoining condominiums and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, or any other cause. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall an easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful misconduct of said owner or owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the owners of each condominium agree that minor encroachments over adjoining condominiums or Common Area shall be permitted and that there shall be easements for the maintenance of said encroachments so long as they shall exist.

6. Owner's Right and Obligation to Maintain and Repair: Except for those portions of the Project which the Association is required to maintain and repair, each living unit owner shall, at his sole cost and expense, maintain and repair his living unit. Each owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors and doors bounding his living unit.

7. Entry for Repairs: Upon twenty-four (24) hours prior notice to the owner of such living unit, the Association or its agents may enter any living unit when necessary in connection with any maintenance, landscaping or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association. The Association or its agents may enter any living unit without the necessity of giving prior notice to the owner thereof in the case of an emergency threatening substantial damage to the Project or that living unit.

8. Insurance:

a. The Association shall obtain and continue in effect a "multiperil" type policy of property insurance on the entire Project, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use, on a replacement cost basis in an amount not less than one hundred percent (100%) of the Project's insurable value (based upon replacement cost). The proceeds payable under said policy for damage to or the destruction of a living unit shall be paid directly to the Association and (or) the contractor hired to repair such damage and shall, in all cases, be used solely to cause the repair of the damaged living unit. The insurance provided for under this subparagraph must meet the following provisions and limitations:

(1) Such policies must contain or have attached the standard mortgage clause commonly accepted by private institutional mortgage investors in the area in which the Project is located. Such clause must be endorsed to provide that any proceeds shall be payable to the Association for the use and benefit of mortgagees, as their interest may appear, or must be otherwise endorsed to fully protect the interests of the Institutional Lenders. Said clause must further provide that the insurance carrier shall notify all of the Institutional Lenders (or trustees) named at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy;

(2) Each such policy must be written by an insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better. A carrier which has a financial rating by Best's Insurance Reports of Class V shall be acceptable, provided said carrier has a general policy holder's rating of at least A. Each carrier must be specifically licensed or authorized by law to transact business within the state in which the Project is located.

(3) Such policies are unacceptable where: (a) under the terms of the carrier's charter, bylaws or policy, contributions may be made against

an owner or an Institutional Lender (or its designee); or (b) by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or, (c) the policy includes any limiting clauses (other than insurance conditions) which could prevent an Institutional Lender or Owner from collecting insurance proceeds.

(4) The name of the insured under each such policy must be stated in form and substance similar to the following: "Vermont Villas Condominiums Homeowners Association, for the use and benefit of the individual owners."

If any of the Project improvements, fixtures or equipment are damaged by fire or other casualty, the insurance proceeds payable to the Association shall be used to rebuild or repair such damage substantially in accordance with the original plans and specifications therefor, subject to the provisions of Article VIII, Paragraph 9 below. Custom-built items added by owners to their living units shall be rebuilt or replaced at the expense of owners or their insurers. Any excess insurance shall be deposited to the general funds of the Association. In no event shall the pro rata interest or obligations of any living unit for purposes of allocating distributions of property insurance proceeds be altered without the prior written approval of at least sixty-six and two-thirds percent (66-2/3%) of the Institutional Lenders (based on one (1) vote for each first mortgage owned) or owners (other than Declarant).

b. The Association shall obtain and continue in effect a comprehensive policy of public liability insurance covering all of the Common Area and commercial spaces and public ways in the Project. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an owner because of negligent acts of the Association or other owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use and shall be in

amounts of not less than One Million Dollars (\$1,000,000.00) per occurrence, for personal injury or property damage.

c. If necessary the Association shall obtain and continue in effect workers' compensation insurance.

d. The Association shall obtain and continue in effect fidelity coverage to protect against dishonest acts on the part of the directors, managers, trustees, employees and volunteers responsible for handling funds belonging to or administered by the Association. Such coverage shall meet the following provisions and limitations:

(i) Such fidelity bonds shall name the Association as the named insured;

(ii) Such fidelity bonds shall be written in an amount equal to at least one hundred fifty percent (150%) of the estimated annual operating expenses of the Project, including reserves;

(iii) Such fidelity bonds shall contain an appropriate endorsement to cover any persons who serve without compensation if the policy would not otherwise cover such individuals.

e. The Association shall obtain and continue in effect insurance for the protection of its officers and directors from personal liability in the management of the Association's affairs.

f. Premiums for insurance procured by the Association shall be a common expense to be included in the monthly assessments levied by the Association, and the portion of such payments necessary for such premiums may be held in a separate account of the Association and used solely for the payment thereof as such premiums become due.

9. Destruction of Improvements:

a. In the event of partial or total destruction of any building in the Project, the Board of Directors shall promptly (i) ascertain the cost of reconstruction by obtaining fixed price bids from two (2) reputable contractors, including the obligation to obtain a performance bond, and (ii) deter-

mine the amount of insurance proceeds, if any, payable by contacting the appropriate representative of the insurer of the building. The decision as to whether reconstruction will take place will be made as follows:

(1) The Board of Directors shall meet and determine whether the insurance proceeds, if any, will cover eighty-five percent (85%) or more of the estimated cost of reconstruction or whether the portion of the estimated cost not covered by insurance is less than five thousand dollars (\$5,000.00). Such cost shall hereinafter be referred to as the "Acceptable Range of Reconstruction Cost." If the bids obtained under this Paragraph 9 are within the Acceptable Range of Reconstruction Cost, the Board of Directors shall cause reconstruction to take place as promptly as practical and shall levy a uniform reconstruction assessment against each owner at such time and in such amount as the Board of Directors determines is necessary to cover the costs of reconstruction in excess of insurance proceeds. The partially or totally destroyed building shall be reconstructed to substantially conform to the Condominium Plan referred to hereinabove. If the Board of Directors in good faith determines that any bid submitted under this section is not within the Acceptable Range of Reconstruction Cost, the Board of Directors shall proceed according to subparagraph b. of this paragraph.

(2) The foregoing determinations shall be made by the Board of Directors as soon as possible. However, if for any reason such determinations cannot be made within sixty (60) days of the date of destruction, it shall be deemed that it has been initially determined that the insurance proceeds do not satisfy the requirements of the Acceptable Range of Reconstruction Cost, and the Board of Directors shall immediately call a meeting of the owners pursuant to subparagraph b. of this paragraph.

(3) If the Board of Directors determines that any condominium has become uninhabitable by reason of its total or partial destruction, regular assessments shall abate against the owner thereof until the Board of Directors determines that the reconstruction of the condominium has restored its habitability.

b. If the Board of Directors determines that the insurance proceeds do not satisfy the requirements of the Acceptable Range of Reconstruction Cost, the Board of Directors shall call a meeting of all owners in the Project by mailing notice of such determination and of the meeting to each owner at his address as shown on the records of the Association. Such meeting shall be held not less than fourteen (14) days and not more than twenty-one (21) days after the Board of Directors makes the determination that the cost of reconstruction was not within the Acceptable Range of Reconstruction Cost. Any owner of a living unit in a totally or partially destroyed building may dispute the finding of the Board of Directors that the cost of reconstruction was not within the Acceptable Range of Reconstruction Cost by submitting to the Board of Directors before the date set for the meeting of owners a bid from a reputable contractor, including the obligation to obtain a performance bond, the total of which bid is within the Acceptable Range of Reconstruction Cost. Such bid shall be accompanied by a statement by the owner or owners submitting the bid agreeing to pay the amount by which the actual construction costs exceed the estimate submitted. If a submitted bid is found by the Board of Directors to be reasonable, the Board of Directors shall cause reconstruction assessments equal to fifteen percent (15%) of such bid to be levied as set forth in subparagraph a. of this paragraph, and shall cause a special assessment to be levied against the owner or owners submitting the bid in an amount which shall equal the amount by which actual construction costs exceed the estimate submitted. The Board of Directors may reschedule any meeting called pursuant to this section in order to consider such a submitted bid. If the Board of Directors, in good faith, reasonably determines that any bid submitted under this section does not reasonably reflect the anticipated reconstruction cost it shall proceed according to subparagraph c. of this paragraph.

c. If the determination of the Board of Directors that the cost of reconstruction was not within the Acceptable Range of Reconstruction Cost is not challenged by the submission of a bid in the manner set forth in subpara-

graph b. of this paragraph, or if such bid is rejected in the manner set forth in subparagraph b. of this paragraph, the meeting of the owners called by the Board of Directors shall take place as scheduled. The owners may, by a vote or written consent of not less than sixty-six and two-thirds percent (66-2/3%) of the voting power of each class of members of the Association determine to proceed with the reconstruction. If the owners so determine to reconstruct the partially or totally destroyed building, the Board of Directors shall levy a uniform reconstruction assessment against each owner in the Project at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds.

d. In the event that the owners determine at such meeting not to reconstruct, the insurance proceeds shall be allocated by the Board of Directors between the owners of living units in the partially or totally destroyed building, after deducting from the insurance proceeds any costs of removal of damaged structures and cleaning of the area; provided that the balance then due on any valid mortgage of record with respect to a condominium within the partially or totally destroyed building shall be first paid in order of priority before the distribution of any proceeds to an owner whose condominium is so encumbered. The Board of Directors shall base its allocation upon the price of the first sale by Declarant of each condominium.

e. In the event that the Association or an owner or owners determines to reconstruct pursuant to this article, the Association or the owners, as appropriate, shall file a certificate of their decision to reconstruct with the County Recorder of the County of San Diego within one hundred eighty (180) days of the date of the meeting of the owners pursuant to subparagraph c. of this paragraph. If no certificate of reconstruction is filed with the County Recorder of the County of San Diego within said one hundred eighty (180) days, it shall be conclusively presumed that the Association and the owners have determined not to reconstruct the building.

f. The Board of Directors shall have full authority to negotiate in good faith with representatives of the insurer of the totally or partially destroyed building and to make settlement with the insurer for less than full insurance coverage on the damage to the building. Any settlement made by the Board of Directors in good faith shall be binding upon all owners. Insurance proceeds shall be paid into a trust account in a bank selected by the Board of Directors, and funds shall be disbursed from the trust account pursuant to the orders of the Board of Directors.

g. Installation of and repair of any damage to the interior of a condominium shall be made by and at the individual expense of the owner of that condominium and, in the event of a determination to reconstruct after partial or total destruction, shall be completed as promptly as practical and in a lawful and workmanlike manner. In the event any dispute arises as to whose responsibility it is to repair damage to a living unit, the Board shall hold a hearing, upon ten (10) days prior written notice to the owner of such living unit, to determine such responsibility. The owner of such living unit shall have the opportunity, if he so elects, to be heard at such Board meeting with regard to such issue.

h. In the event that reconstruction is to take place pursuant to this paragraph, the Board of Directors shall have the power to file an amendment to the Condominium Plan referred to hereinabove.

i. In determining whether a reconstructed building is in substantial conformance with the Condominium Plan referred to hereinabove, the Board of Directors may take into consideration the availability and expense of the labor and materials in the original construction of the building. If such labor or materials are not available or are prohibitively expensive at the time of reconstruction, the Board of Directors may permit the substitution of other labor or materials as it deems proper.

j. Notwithstanding anything in this paragraph 9 to the contrary, unless at least sixty-six and two-thirds percent (66-2/3%) of the Institutional

Lenders (based on one (1) vote for each first mortgage owned), or the owners (other than the Declarant) give their prior written consent, the Association shall not use property insurance proceeds for losses to any portion of the Project (whether to living units or to the Common Area) for other than the repair, replacement or reconstruction of such property, except as provided for by law.

k. Notwithstanding any provision in the Condominium documents to the contrary, no owner or other party shall be entitled to priority over an Institutional Lender with respect to the distribution to such owner of insurance proceeds for losses to living units or the Common Area.

10. Condemnation:

a. In no event shall the pro rata interest or obligations of a living unit, for purposes of allocating distributions of condemnation awards, be altered by the Association without prior written approval of at least sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the Institutional Lenders (based on one (1) vote for each first mortgage owned) or owners (other than the Declarant).

b. Notwithstanding any provision in the Condominium documents, no owner or other party shall have priority over any Institutional Lender with respect to the distribution of condemnation awards for losses to or a taking of any portion of the living units or the Common Area.

11. Limitation of Restrictions on Declarant: Declarant is undertaking to establish residential dwellings and incidental improvements upon the Project. The completion of that work, and the sale, rental, and other disposal of living units is essential to the establishment and welfare of the Project as a residential community. In order that said work may be completed and the Project be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

a. Prevent Declarant, its contractors, or subcontractors from doing on the Project or any living unit, whatever is reasonably necessary or advisable in connection with the completion of said work; or

b. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the Project, such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said Project as a residential community and marketing the condominiums; or

c. Prevent Declarant from conducting on any part of the Project its business of completing said work, and of establishing a plan of condominium ownership; or

d. Prevent Declarant from maintaining such sign or signs on any parts of the Project as may be necessary in the reasonable discretion of Declarant.

The rights of Declarant as provided in Article VIII, Section 11, shall be protected through Declarant's controlling interest in the Association, until such time as such control no longer exists by reason of the provisions of this Declaration.

12. Architectural Control Committee:

a. The Architectural Control Committee ("Committee") shall consist of not less than three (3) nor more than five (5) members.

b. The Declarant shall appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original public report for the Project. Thereafter, the Declarant shall have the right to appoint a majority of the members of the Committee until ninety percent (90%) of the condominiums in the Project have been sold or until the fifth anniversary of the original issuance of the final public report for the Project, whichever occurs first.

c. Notwithstanding anything herein to the contrary, after the first anniversary of the issuance of the original public report for the Project, the Board shall have the power to appoint at least one (1) member to the Committee. Such right shall exist until ninety percent (90%) of the condominiums in the overall Project have been sold or until the fifth anniversary date of the

original issuance of the final public report for the Project, whichever occurs first. Thereafter, the Board shall have the power to appoint all of the members of the Committee.

d. Members appointed to the Committee by the Board shall be from the membership of the Association. Members appointed to the Committee by the Declarant need not be members of the Association.

13. Owners' Compliance: Each owner, tenant or occupant of a condominium shall comply with the provisions of this Declaration, the Articles, Bylaws, and decisions and resolutions of the Association or its duly authorized representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall constitute the basis for an action to recover sums due for damages, or for injunctive relief.

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

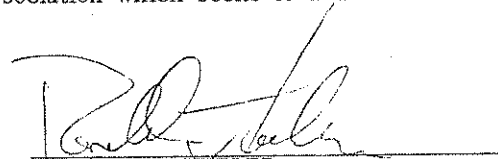
14. Notices: Except as may otherwise be provided by specific provisions of the condominium documents, any notice permitted or required by the condominium documents may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, certified or registered mail, addressed to each person at the current address given by such person to the secretary of the Association or addressed to the living unit of such person if no address has been given to the secretary.

15. Conflicting Provisions: In the event there is any conflict between the provisions of the Articles or Bylaws and the provisions of this Declaration, the provisions of this Declaration shall control.

16. Amendment and Granting of Easements: Declarant shall have the absolute right and power, at any time, to enter into any written agreement with the City of Escondido, changing the location of any of the easements to

the City of Escondido or other governmental or public agencies or utilities in connection with the development and/or improvement of the Project, or any portion or portions thereof. Each owner hereby appoints Declarant as his attorney-in-fact for the purposes of effecting such agreement and also for the purposes of granting easements affecting the Project to other governmental or public agencies or utilities in connection with the development or improvement of the Project; the power herein granted Declarant shall be and is a power coupled with an interest.

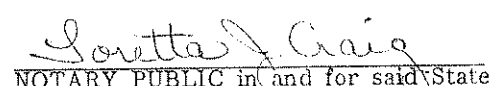
17. Abandonment or Termination: The Association shall not, by act or omission, seek to abandon or terminate the Project without the prior written approval of at least sixty-six and two-thirds percent (66-2/3%) of the Institutional Lenders (based on one (1) vote for each first mortgage owned) or the owners (other than the Declarant). The City of Escondido shall have the right to veto any act or omission by the Association which seeks to abandon or terminate the Project.

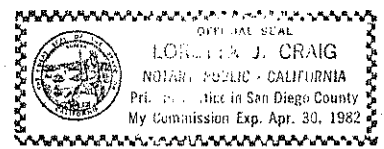
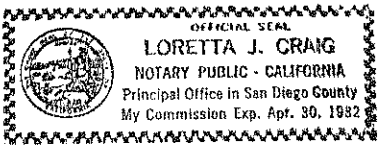
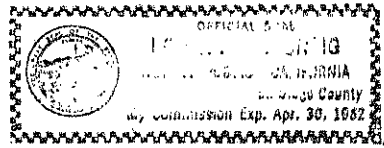

RONALD J. KEELER

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

On Sept. 17, 1979, before me the undersigned, a Notary Public in and for said State, personally appeared Ronald J. Keeler, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.


NOTARY PUBLIC in and for said State
and County



SUBORDINATION AGREEMENT

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN DIEGO, a corporation, a beneficiary of that certain Deed of Trust, recorded in the Office of the San Diego County, California, Recorder on December 7, 1978, as File/Page No. 78-527141, hereby agrees that the lien and charge of said Deed of Trust is and shall be subordinate to the within Declaration of Covenants, Conditions and Restrictions.

DATED: September 19, 1979.

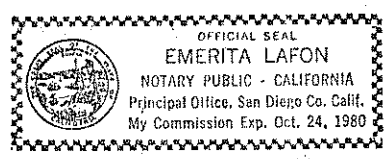
HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF SAN DIEGO, a corporation

By: Dale E. Hawley ASSISTANT COUNSEL
By: Robert W. Grove ASSOCIATE COUNSEL

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

On September 19, 1979 before me, the undersigned, a Notary Public in and for said State, personally appeared Dale E. Hawley, known to me to be the Asst Counsel, and Robert W. Grove, known to me to be the Associate Counsel of the corporation that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.



Emerita Lafon
Notary Public in and for said State

SUBORDINATION AGREEMENT

W. E. COMFORT AND SONS, a California partnership, as beneficiary of that certain Deed of Trust, recorded in the Office of the San Diego County, California, Recorder on February 9, 1979, as File/Page No. 79-062156, hereby agrees that the lien and charge of said Deed of Trust, is and shall be subordinate to the within Declaration of Covenants, Conditions and Restrictions.

DATED: Sept. 17, 1979.

W. E. COMFORT AND SONS,
a California partnership

By: Wayne M. Comfort

By: Charles W. Comfort

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

On September 17, 1979 before me, the undersigned, a Notary Public in and for said State, personally appeared Wayne M. Comfort, known to me to be the _____, and Charles W. Comfort, known to me to be the partners of the partnership that executed the within Instrument, known to me to be the persons who executed the within Instrument on behalf of the partnership therein named, and acknowledged to me that such partnership executed the within instrument pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

Judy Gibson
Notary Public in and for said State

