

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS ESTABLISHING A PLAN
OF CONDOMINIUM OWNERSHIP
FOR
BAYVIEW COURT HOMEOWNERS
ASSOCIATION

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DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
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FOR
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This declaration is made this 31st day of March, 1986, by BAYVIEW I, a joint venture composed of J.M. Peters Company, Inc., a California corporation, and DSL Service Company, a California corporation, ("Declarant").

R E C I T A L S :

A. Declarant is the owner of certain real property located in the City of Newport Beach, County of Orange, State of California, and described on Exhibit "A" attached hereto and incorporated herein by this reference.

B. Declarant has improved or intends to improve the property by constructing improvements thereon consisting of dwelling units and recreational and other facilities in accordance with plans and specifications on file with the City of Newport Beach, California.

C. By this Declaration, Declarant intends to establish a plan of condominium ownership for the property.

D E C L A R A T I O N:

Declarant declares that the property is, and shall be, held, assigned, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, restrictions, easements, covenants, conditions, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code Sections 1350-1372 for the subdivision, improvement, protection, maintenance, and sale of condominiums within the property, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the property. All of the limitations, restrictions, easements, covenants, conditions, liens and charges shall run with the land, shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code, Sections 1353 and 1354.

ARTICLE I

DEFINITIONS

Section 1.1 The "articles" mean the Association's articles of incorporation and their amendments.

Section 1.2 The "Association" means the Bayview Court Homeowners Association, a California non-profit mutual benefit corporation, its successors and assigns.

Section 1.3 The "Association rules" mean the rules and regulations regulating the use and enjoyment of the common area adopted by the board from time to time.

Section 1.4 The "board" means the board of directors of the Association.

Section 1.5 The "bylaws" mean the Association's bylaws and their amendments.

Section 1.6 The "common area" means the entire development except all units as defined in this Declaration or as shown on the condominium plan, and without limiting the generality of the foregoing, specifically includes all structural projections within a unit which are required for the support of a condominium building, gas, water, waste pipes, utility meter cabinets, all sewers, all ducts, chutes, conduits, wires and other utility installations of the structures wherever located (except the outlets thereof when located within the units), the land upon which the structures are located, the air space above these structures, all bearing walls, columns, exterior doors, floors (not including floor coverings), the roof, the foundation, common stairways, window and skylight glass and the like. Common area shall specifically exclude all garage door opening systems notwithstanding that the foregoing are located in the common area. The common area upon which the recreational facilities shall be constructed is described in Exhibit "B". On or before the date of the first conveyance of a condominium in the development by Declarant to an owner, Declarant shall convey to the Association title to the real property described in Exhibit "B", free and clear of all encumbrances and liens other than those approved by the California Department of Real Estate.

Section 1.7 The "restricted common area" shall mean and include those portions of the common area over

which exclusive easements are reserved for the benefit of certain owners, including, but not limited to, patios, driveways, balconies, entry area decks, exterior stairs and air conditioning pads as those areas are described on the condominium plan.

Section 1.8 A "condominium" means an estate in real property as defined in California Civil Code, Section 783 consisting of an undivided interest as a tenant in common in the common area, together with an interest in a unit shown and described on a condominium plan, and all easements appurtenant thereto.

Section 1.9 The "condominium plan" means the condominium plan recorded pursuant to California Civil Code, Section 1351 respecting the development, and any amendments to the plan.

Section 1.10 The "Declarant" means BAYVIEW I, a joint venture, and its successors and assigns, if such successors and assigns, acquire or hold record title to any portion of the development for development purposes.

Section 1.11 The "development" means all the property subdivided or to be subdivided into condominiums, including the units, and common area.

Section 1.12 The "Governing instruments" mean the articles, bylaws, this Declaration and the Association rules.

Section 1.13 A "member" means every person or entity who holds a membership in the Association.

Section 1.14 A "mortgage" means a mortgage or deed of trust encumbering a condominium or other portion of the development. A "mortgagee" shall include the beneficiary under a deed of trust. An "institutional" mortgagee, is a mortgagee which is a bank or savings and loan association or mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property, or any insurance company or any federal or state agency. A "first mortgage" or "first mortgagee" is one having priority as to all other mortgages or holders of mortgages encumbering the same condominium or other portions of the development.

Section 1.15 An "owner" means each person or entity holding a record ownership interest in a condominium, including Declarant, and contract purchasers under recorded contracts. "Owner" shall not include persons or entities who hold an interest in a condominium merely as security for the performance of an obligation.

Section 1.16 A "unit" means the elements of a condominium that are not owned in common with the other owners of condominiums in the development, including the garage, such units and their respective elements and boundaries being shown and particularly described in the condominium plan. In interpreting deeds and plans the existing physical boundaries of a unit or of a unit reconstructed in substantial accordance with the original plans shall be conclusively presumed to be its boundaries rather than the description expressed in the deeds or plans, regardless of minor variance between boundaries shown on the plans or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference is made in this Declaration, in the condominium plan, in any deed or elsewhere to a unit it shall be assumed that such reference is made to the unit as a whole, including each of its component elements, and to any and all exclusive easements appurtenant to such unit over common area, if any.

ARTICLE II

DESCRIPTION OF COMMON INTERESTS, PROPERTY RIGHTS, RIGHTS OF ENJOYMENT AND EASEMENTS

Section 2.1 Ownership of Condominium. Ownership of each condominium within the development shall include a unit, an undivided interest in the common area, which undivided interest shall be specified in the deed from Declarant to each owner and which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a condominium remains in effect as provided in this Declaration, a membership in the Association, and any exclusive or non-exclusive easement or easements appurtenant to such condominium over the common area as described in this Declaration, the condominium plan, or the deed to the condominium.

Section 2.2 Reservation of Easements. Declarant expressly reserves for the benefit of the owners in the development reciprocal, non-exclusive easements for access, ingress and egress over all of the common area, which easements

may be conveyed by Declarant to owners and to the Association for so long as Declarant owns any interest in the development. Subject to the provisions of this Declaration governing use and enjoyment thereof, such easements may be used by Declarant, its successors, purchasers and all owners, their guests, tenants and invitees, residing on or temporarily visiting the development, for recreational purposes, walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a condominium in the development. Declarant expressly reserves for the benefit of the board and all agents, officers and employees of the Association non-exclusive easements over the common area as necessary to maintain and repair the common area and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the common area shall be appurtenant to and shall pass with the title to every condominium conveyed. Declarant expressly reserves for the benefit of certain owners exclusive easements for the use of the restricted common area depicted on the condominium plan for patios, driveways, balconies, entry area decks, exterior stairs and air conditioning pads as those areas are described on the condominium plan, as assigned to particular owners for correspondingly numbered units in the condominium plan and the individual deeds of the respective condominiums. Declarant expressly reserves, for the benefit of the Association the right of Declarant to grant additional easements and rights-of-way over the development to utility companies and public agencies, as necessary for the proper development of the development, until but in no event longer than five (5) years from the date of issuance of the original final public report by the Department of Real Estate. The board of the Association, with a vote or written consent of a majority of both the Class A and Class B members, shall have the right to grant easements and rights-of-way over the common areas after the close of escrow for the sale of the first condominium from the Declarant in the development. Declarant, the Association and owners of contiguous units shall have a reciprocal easement appurtenant to each of the units over the units and the common area for the purpose of (1) accommodating any existing encroachments of any wall of the building, and (2) maintaining the same and accommodating authorized construction, reconstruction, repair, shifting, movement or development housing their respective units. There are specifically reserved for the benefit of the owners easements and reciprocal servient tenements for utility services and repairs, replacement and maintenance of the same over all of the common area. Such easements shall not unreasonably interfere with the use and enjoyment by the owners of adjoining units.

Section 2.3 Owners Non-Exclusive Easements of Enjoyment, etc. Every owner of a condominium shall have a non-exclusive easement of use and enjoyment in, to and throughout the common area; however, such non-exclusive easements shall be subordinate to, and shall not interfere with, exclusive easements appurtenant to units over the common area, if any. Each such non-exclusive easement shall be appurtenant to and pass with the title to every condominium, subject to the following rights and restrictions:

(a) The rights of the Association to limit the number of guests, and to adopt and to enforce the Association rules.

(b) The right of the Association to charge reasonable admission and other fees for use of any unassigned parking and storage spaces and any recreational facility situated upon the common area.

(c) The right of the Association to borrow money to improve, repair or maintain the common area.

(d) The right of the Association to assign, rent, license or otherwise designate and control use of unassigned parking and storage spaces within the common area (other than those portions subject to exclusive easements appurtenant to units, if any).

(e) The right of the Association 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 governing instruments provided that the procedures for notice and hearing, satisfying the minimum requirements of Section 7341 of the Corporations Code, are followed with respect to the accused members before a decision to impose discipline is reached. Notwithstanding the foregoing, the Association has no power to cause a forfeiture or abridgement of an owner's rights to the full use and enjoyment of his individually-owned subdivision interest on account of a failure by the owner to comply with provisions of the governing instruments or of duly-enacted rules of operation for common area and facilities except where the loss or forfeiture is the result of the judgment of a court or a decision arising out of arbitration or on account of a foreclosure or sale under a power of sale for failure of the owner to pay assessments levied by the Association.

Section 2.6 Easements Granted By Association.

The Association shall have the right to grant and convey to any third party easements and rights-of-way in, on, over or under the common area for the purpose of constructing, erecting, operating or maintaining lines, cables, wires, conduits, or such other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and each purchaser, in accepting a deed to a condominium, expressly consents to such easement. However, no such easement can be granted if it would interfere with the use, occupancy or enjoyment by any owner of his unit.

ARTICLE III

USE RESTRICTIONS

Section 3.1 Residential Use. Units shall be used for residential purposes only. However, units owned by Declarant may be used by Declarant or its designees as models, sales offices, and construction offices for the purpose of developing, improving and selling condominiums in the development. However, this use shall be limited to no longer than five (5) years from the date of issuance of the original final public report by the Department of Real Estate. Nothing in this Declaration shall prevent an owner from leasing or renting his condominium. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to all provisions of this Declaration, the articles, the bylaws, and the Association rules and any lease or rental agreement must specify that failure to abide by such provisions shall be a default under the lease or rental agreement. Also, no owner shall rent, lease or let his condominium for transient or hotel purposes.

Section 3.2 Commercial Use. Except as otherwise provided in Section 3.1, no part of the development shall be used or caused, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending, or other such non-residential purpose.

Section 3.3 Window Coverings. Windows can be covered only by drapes, shades, blinds or shutters and cannot be painted or covered by aluminum foil, cardboard, or other similar materials.

Section 3.4 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in the development, no oil wells, tanks, tunnels or mineral excavations or shafts shall be permitted on the surface of the development or within five hundred (500) feet below the surface of the development. No derrick or other structure designed for use in drilling for water, oil or natural gas shall be erected, maintained or permitted on the development.

Section 3.5 Offensive Conduct; Nuisances. No noxious or offensive activities, including but not limited to, repair of automobiles or other motorized vehicles, except for minor repairs, shall be conducted within the development. Nothing shall be done on or within the development that may be or may become an annoyance or nuisance to the residents of the development, or that in

any way interferes with the quiet enjoyment of occupants of units. Unless otherwise permitted by the Association rules, no owner shall serve food or beverages, cook, barbeque or engage in similar activities, except within such owner's unit and except within those portions of the common area subject to exclusive easements appurtenant to such owner's condominium, if any.

Section 3.6 Parking Restrictions; Use of Garage. Unless otherwise permitted by the board, no automobile shall be parked or left within the development other than within a garage, carport, or assigned or appurtenant parking stall or space. No boat, trailer, recreational vehicle, camper, motorhome, truck, or commercial vehicle shall be parked or left within the development other than in a parking area designated by the board for the parking and storage of such vehicles. However, parking by commercial vehicles for the purpose of making deliveries shall be permitted in accordance with the Association rules. Any garages and carports shall be used for parking automobiles only and shall not be converted for living or recreational activities. Any garage doors shall remain closed at all times except when being used to enter or exit. ✕

Section 3.7 Signs. Until the development is sold out and/or until improvements to the condominiums are completed, but in no event longer than five (5) years from the date of issuance of the original final public report by the Department of Real Estate, Declarant or its designees may display signs to the public view for the purpose of developing, selling and improving condominiums within the development on or from any unit or within the common area without the approval of the board. No other signs shall be installed within the development, within the common area, or on or from any unit without the prior approval of the Board.

Section 3.8 Antennae, External Fixtures, etc. No television or radio poles, antennae, flag poles, clothes-lines, or other external fixtures other than those originally installed by Declarant or approved by the board and any replacements shall be constructed, erected or maintained on or within the common area or any structures on it. No wiring, insulation, air-conditioning, or other machinery or equipment other than that originally installed by Declarant or approved by the board, and their replacements shall be constructed, erected or maintained on or within the common area, including any structures on it. Each owner shall have the right to maintain television or radio antennae within completely enclosed portions of his unit, or the attic space, if any, directly above his unit.

Section 3.9 Fences, etc. No fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the development except those that are installed in accordance with the original construction of the development, and their replacements or as are authorized and approved by the board. *

Section 3.10 Animals. No animals, reptiles, rodents, birds, fish, livestock or poultry shall be kept in any unit or elsewhere within the development except that domestic dogs, cats, fish and birds may be kept as household pets within any unit if they are not kept, bred or raised for commercial purposes. The board can prohibit maintenance of any animal that constitutes a nuisance to any other owner in the sole and exclusive opinion of the board. Each person bringing or keeping a pet upon the development shall be absolutely liable to other owners, their family members, guests, and invitees, for any damage to persons or property caused by any pet brought upon or kept upon the development by such person or by members of his family, his guests or invitees.

Section 3.11 Restricted Use of Recreation Vehicles, etc. No boat, truck, trailer, camper, motorhome, recreational vehicle or tent shall be used as a living area while located on the development. However, trailers or temporary structures for use incidental to the initial construction of the development or the initial sales of condominiums may be maintained within the development, but shall be promptly removed on completion of all initial construction and all initial sales.

Section 3.12 Trash Disposal. Only trash bags shall be placed on the curb for collection. No trash cans or receptacles shall be placed on the curb or anywhere else in the common area. Trash, garbage or other waste shall be kept out of sight. No owner shall permit or cause any trash or refuse to be kept on any portion of the development other than in the receptacles customarily used for it, which shall be located only in places specifically designated for such purpose except on the scheduled day for trash pickup. *

Section 3.13 Outside Drying and Laundering. No exterior clothesline shall be erected or maintained and there shall be no exterior drying or laundering of clothes on balconies, in entryways or other areas.

Section 3.14 Structural Alterations. No structural alterations to the interior of or common area surrounding any unit shall be made and no plumbing or electrical work within any bearing or common walls shall be performed by any owner without the prior written consent of the board.

Section 3.15 Exterior Alterations. No owner shall at his expense or otherwise make any alterations or modifications to the exterior of the buildings, doors, windows, fences, railings, or walls situated within the development without the prior written consent of the board.

Section 3.16 Compliance With Laws, etc. Nothing shall be done or kept in any unit or in the common area that might increase the rate of, or cause the cancellation of, insurance for the development, or any portion of the development, without the prior written consent of the board. No owner shall permit anything to be done or kept in his unit that violates any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

Section 3.17 Indemnification. Each owner shall be liable to the remaining owners for any damage to the common area that may be sustained by reason of the negligence of that owner, members of his family, guests or invitees, but only to the extent that any such damage is not covered by insurance. Each owner, by acceptance of his deed, agrees for himself and for the members of his family, guests or invitees, to indemnify each and every other owner, and to hold him harmless from, and to defend him against, any claim of any person for personal injury or property damage occurring within the unit of that particular owner or within any exclusive easements over the common area appurtenant to the owner's unit.

Section 3.18 Owner's Obligation for Taxes. To the extent allowed by law, all condominiums, including their pro rata undivided interest in the common area and the membership of an owner in the Association, shall be separately assessed and taxed so that all taxes, assessments and charges which may become liens prior to first mortgages shall relate only to the individual condominiums and not to the development as a whole. Each owner shall be obligated to pay any taxes or assessments assessed by the Orange County Assessor against his condominium and against his personal property. ✕

Section 3.19 Future Construction. Declarant shall complete construction of improvements to the common area and to condominiums owned by Declarant within five (5) years from the date of issuance of the original final public report by the Department of Real Estate. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of any Declarant's interest in the development, as developer, by an express assignment that transfers any such interest to a successor.

Section 3.20 Enforcement. The failure of any owner to comply with any provision of this Declaration or the articles or bylaws shall give rise to a cause of action in the Association and any aggrieved owner for the recovery of damages or for injunctive relief, or both.

Section 3.21 Balconies and Patios. No furniture shall be placed on or in balconies or patios except furniture which is designated as patio furniture. Nothing shall be placed or kept on a balcony or in a patio except such furniture, trees, shrubs, bushes or plants and other items as may be permitted therein or thereon, pursuant to the Association Rules or this Declaration.

Section 3.22 Floor Coverings. For noise purposes, no hard surface floor coverings, including but not limited to tile or wood, shall be placed anywhere on the floors of "upstairs units" which units are located above that of another owner. Permitted floor coverings for upstairs units shall include, but are not limited to, carpet and resilient vinyl. *

ARTICLE IV

THE ASSOCIATION

Section 4.1 Formation. The Association is a nonprofit mutual benefit corporation formed under the laws of California. Upon the close and recording of the first condominium sale to an owner, the Association shall be charged with the duties and invested with the powers set forth in the articles, the bylaws and this Declaration, including, but not limited to, control and maintenance of the common area and any facilities on the common area.

Section 4.2 Association Action; Board of Directors and Officers; Members' Approval. Except as to matters requiring the approval of members as set forth in this Declaration, the articles, or the bylaws, the affairs of the Association shall be conducted by the board and such officers as the board may elect or appoint. Such election or appointment shall be in accordance with this Declaration or the bylaws, and their amendments. Except as otherwise provided in this Declaration, the articles or the bylaws, all matters requiring the approval of members shall be deemed approved if members holding a majority of the total voting rights assent to them by written consent as provided in the bylaws or if approved by a majority vote of a quorum of members at any regular or special meeting held in accordance with the bylaws.

Section 4.3 Powers of the Association. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California, subject only to such limitations on the exercise of such powers as are set forth in the articles, the bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the articles and the bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

(a) Assessments. The Association shall have the power to establish, fix, and levy assessments against the owners and to enforce payment of such assessments, in accordance with the provisions of this Declaration. However,

the approval of members shall be required as to the amounts of all regular and special assessments except as otherwise provided in this Declaration.

(b) Right of Enforcement. The Association in its own name and on its own behalf, or on behalf of any owner who consents, can commence and maintain actions for damages or to restrain and enjoin any actual or threatened breach of any provision of this Declaration or of the articles or bylaws, or of the Association rules or any resolutions of the board, and to enforce by mandatory injunction, or otherwise, all of the provisions. In addition, the Association shall have the powers to initiate and execute disciplinary proceedings against members of the Association for violations of provisions of the governing instruments in accordance with procedures set forth in the governing instruments.

(c) Right of Entry. The Association shall have the power to enter upon any privately-owned subdivision interest as necessary in connection with construction, maintenance or emergency repair for the benefit of the common area or the owners in common.

(d) Borrowing Money. The Association shall have the power to borrow money and incur indebtedness for the purpose of maintenance of the Association's property and to execute and deliver therefor, in the Association's name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges or other evidences of debt and security therefor. *

(e) Delegation of Powers; Professional Management. The Association acting by and through the board can delegate its powers, duties, and responsibilities to committees or employees, including a professional managing agent ("manager"). Any agreement for professional management of the development shall be terminable by either party with or without cause and without payment of a termination fee on thirty (30) days written notice. The term of any such agreement shall not exceed one (1) year, although such agreement may be renewed from year to year by the board.

(f) Association Rules. The board shall have the power to adopt, amend and repeal the Association rules as it deems reasonable. The Association rules shall govern the use of the common area by all owners, and their families, guests, invitees or by any contract purchaser, or tenant, and their respective family members, guests or invitees.

However, the Association rules shall not be inconsistent with or alter any provisions of this Declaration, the articles or the bylaws. A copy of the Association rules as adopted, amended or repealed, shall be mailed or otherwise devliered to each owner and a copy shall be posted in a conspicuous place within the development. In case of any conflict between any of the Association rules and other provisions of this Declaration, the articles, or bylaws, the conflicting Association rule shall be deemed to be superseded by the provisions of this Declaration, the articles or the bylaws.

(g) Pledge of Assessment Rights. The Association shall have the power to pledge the right to exercise its assessment powers in connection with obtaining funds to repay a debt of the Association; provided, however, any such pledge shall require the prior affirmative vote or written assent of not less than seventy-five percent (75%) of the Class A Members and seventy-five percent (75%) of the Class B Members and shall require the affirmative vote of not less than seventy-five percent (75%) of the first mortgagees based on one (1) vote for each first mortgage held. Said power shall include, but not be limited to, the ability to make an assignment of assessments which are then payable to or which will become payable to the Association, which assignment may be then presently effective but shall allow said assessments to continue to be paid to and used by the Association as set forth in this Declaration, unless and until the Association shall default on the repayment of the debt which is secured by said assignment. The Association may levy special assessments against the members to obtain such funds. Upon the failure of any member to pay said special assessment when due, the Association may exercise all its rights, including, without limitation, the right to foreclose its lien, pursuant to Article VII hereof.

Section 4.4 Duties of the Association. In addition to the powers delegated to it by its articles or the bylaws, and without limiting their generality, the Association, acting by and through the board, or persons or entities described in Section 4.3(e), has the obligation to conduct all business affairs of common interest to all owners and to perform each of the following duties:

(a) Operation and Maintenance of Common Area. To operate, maintain, and otherwise manage or provide for the operation, maintenance and management of the common area,

and all its facilities, improvements, and landscaping including any entry gates, awnings, street lights, private driveways, alleys, private streets, and perimeter walls and fences, and any other property acquired by the Association, including personal property, in a good condition and in a good state of repair. In this connection, the Association may enter into contracts for services or materials for the benefit of the Association or the common area, including contracts with Declarant.

(b) Taxes and Assessments. To pay all real and personal property taxes and assessments and all other taxes levied against the Association. Such taxes and assessments may be contested or compromised by the Association; provided, that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

(c) Water and Other Utilities. To acquire, provide and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, cable television, gas and other necessary utility services for the common area, and for condominiums when condominiums are not separately billed.

(d) Insurance. To obtain, from reputable insurance companies, and maintain the insurance described in Article VIII.

(e) Enforcement of Restrictions and Rules. To perform such other acts, whether or not expressly authorized by this Declaration, that may be reasonably necessary to enforce any of the provisions of this Declaration, the articles and bylaws, and the Association's rules and board resolutions.

(f) Preparation of Budgets and Financial Statements. To prepare budgets and financial statements for the Association as required by the Declaration or bylaws.

(g) Election of Officers. To elect officers of the Association.

(h) Filling of Vacancies on Board. To fill vacancies on the board except for a vacancy created by the removal of a director.

(i) Enforcement of Bonded Obligation. If the Association is the obligee under a bond or other arrangement ("bond") to secure performance of a commitment of the Declarant or its successors or assigns to complete common area improvements, not completed at the time the California Commissioner of Real Estate issues a final subdivision public report for the development, the board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the "planned construction statement" appended to the bond. However, if the Association has given an extension in writing for the completion of any common area improvement, the board shall consider and vote on the action to enforce the obligations under the bond only if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. If the board fails to consider and vote on the action to enforce the obligations under the bond, or if the board decides not to initiate action to enforce the obligations under the bond, then on the petition in writing to the board signed by members of the Association representing not less than five percent (5%) of the total voting power of the Association, the board shall call a special meeting of members for the purpose of voting to override the decision of the board not to initiate action or to compel the board to take action to enforce the obligations under the bond. The meeting shall be called by the board by fixing a date not less than thirty-five (35) days nor more than forty-five (45) days after the receipt by the board of said petition and by giving written notice to all owners entitled to vote in the manner provided in this Declaration or in the bylaws for notices of special meetings of members of the Association. At the meeting, the vote in person or by proxy of a majority of the owners entitled to vote (other than Declarant) in favor of taking action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the board shall then implement this decision by initiating and pursuing appropriate action in the name of the Association.

(j) Landscape Maintenance Contract. The Association through the Board shall have the duty and obligation to enter into a contract with Bayview Commercial Association with respect to the maintenance, repair, replanting and replacement of certain landscaping located (i) within the median strips on Bayview Place, and (ii) on that portion of the Development fronting Bayview Place which landscaping is on the perimeter of the Development.

Section 4.5 Limitations on Authority of Board.

The board of the Association shall be prohibited from taking any of the following actions, except with the vote or written assent of a majority of each class of members during the time of the two-class voting structure and after the termination of the two-class voting structure the vote or written assent of a majority of the voting power of the Association and a majority of members other than the Declarant:

(a) Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or to the Association for a term longer than one year with the following exceptions:

(i) A management contract, the terms of which have been approved by the Federal Housing Administration of Veterans Administration.

(ii) A contract with a public utility company if the rates charged for the material 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 years duration provided that the policy permits short rate cancellation by the insured.

(b) Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(c) Selling during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(d) Paying compensation to directors or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the board may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

(e) Filling of a vacancy on the board created by the removal of a director.

Section 4.6 Personal Liability. No member of the board, or of any committee of the Association, or any officer of the Association, or any manager, or Declarant, or any agent of Declarant, shall be personally liable to any owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity of such person or entity has, on the basis of such information as may be possessed by him or it, acted on in good faith without willful or intentional misconduct.

ARTICLE V

MEMBERSHIP AND VOTING RIGHTS

Section 5.1 Membership Qualifications. Each owner of a condominium, including Declarant, shall be a member of the Association. No owner shall hold more than one membership in the Association even though such owner may own, or own an interest in more than one condominium. Ownership of a condominium or interest in it shall be the sole qualification for membership in the Association. Each owner shall remain a member of the Association until his ownership or ownership interest in all condominiums in the development ceases at which time his membership in the Association shall automatically cease. Persons or entities who hold an interest in a condominium merely as security for performance of an obligation shall not be regarded as members.

Section 5.2 Members' Rights and Duties. Each member shall have the rights, duties, and obligations set forth in this Declaration, the articles, the bylaws and the Association's rules, as the same may from time to time be amended.

Section 5.3 Transfer of Membership. The Association membership of each person or entity who owns, or owns an interest in, one or more condominiums shall be appurtenant to each such condominium, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except on a transfer of title to each such condominium or interest in it and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a condominium or interest in it shall operate automatically to transfer the appurtenant membership rights in the Association to the new owner.

Section 5.4 Classes of Voting Membership. The Association shall have two (2) classes of voting membership:

Class A: Class A members are all owners, with the exception of Declarant during such time or times that it shall have Class B membership. Each Class A member shall be entitled to one (1) vote for each condominium in which such member owns an interest. However, when more than one Class A member owns an interest in a condominium, the vote

for such condominium shall be exercised as they themselves determine, but in no case shall more than one (1) vote be cast with respect to any one condominium.

Class B: The Class B member shall be the Declarant who shall be entitled to three (3) votes for each condominium owned in the development.

The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

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

(b) The date which is the second anniversary of the original issuance of the most recently issued public report for a phase of the development; or

(c) The date which is the fourth anniversary of the original issuance of the subdivision public report for the first phase of the development.

Section 5.5 Special Class A Voting Rights.

Notwithstanding the provisions of Section 5.4, if the Class A members do not have sufficient voting power pursuant to the voting rights set forth in this Declaration to elect at least one director at any meeting at which directors are to be elected, and at which Class A members are entitled to vote, then such Class A members shall, by majority vote, among themselves, elect at least one director and the remaining vacancies on the board shall be elected by the Class B member.

Section 5.6 Vote of Two Classes as Prerequisite.

Notwithstanding anything to the contrary as may be contained elsewhere in this Declaration, any action by the Association which must have the approval of the membership of the Association before being undertaken, except provisions with respect to the action referred to at Section 4.4(i) preceding, shall require the vote or written assent of the required

percentage of each class of membership during the period of time that there are two (2) outstanding classes of membership, and any requirement that the vote of the Declarant is to be excluded in any such determination shall not be applicable.

Section 5.7 Joint Owner Votes. The voting rights for each condominium may not be cast on a fractional basis. If the joint owners of a condominium are unable to agree among themselves as to how their voting rights shall be cast, they shall forfeit the vote on the matter in question. If any owner exercises the voting rights of a particular condominium, it will be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same condominium. If more than one (1) person or entity exercises the voting rights for a particular condominium, their votes shall not be counted and shall be deemed void.

Section 5.8 Cumulative Voting. Election to and removal from the board shall be by secret written ballot. Cumulative voting in the election of directors shall be prescribed for all elections in which more than two positions on the board are to be filled, subject only to the procedural prerequisites to cumulative voting prescribed in Section 7615(b) of the Corporations Code. Pursuant to such cumulative voting, no member shall be entitled to cumulate votes for a candidate or candidates unless such candidate's name or candidates' names have been placed in nomination prior to the voting and the member has given notice at the meeting prior to the voting of the member's intention to cumulate votes. If any one member has given notice, all members may cumulate their votes for candidates in nomination.

Section 5.9 Suspension and Penalties. The Association shall be authorized 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 this Declaration, the bylaws, the Association rules or any other governing instruments provided that the procedures for notice and hearing, satisfying the minimum requirements of Section 7341 of the Corporations Code are followed with respect to the accused member before a decision to impose said discipline is reached. However, a monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with this Declaration, the bylaws, the Association rules or any other 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 interest into compliance with the governing instruments shall not be an assessment which may become a lien against the member's subdivision interest enforceable by a sale of interest in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the California Civil Code. The aforesaid sentence shall not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

ARTICLE VI

ASSESSMENTS

Section 6.1 Agreement to Pay. The Declarant, for each condominium owned by it in the development which is expressly made subject to assessment as set forth in this Declaration, covenants and agrees, and each purchaser of a condominium by his acceptance of a deed, covenants and agrees, for each condominium owned, to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this Declaration.

Section 6.2 Personal Obligations. Each assessment or installment, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation, of the person or entity who was an owner at the time such assessment, or installment became due and payable. If more than one person or entity was the owner of a condominium, the personal obligation to pay such assessment, or installment respecting such condominium shall be both joint and several. The personal obligation for delinquent assessments, or delinquent installments and other such sums, shall not pass to an owner's successors in interest unless expressly assumed by them. No owner may exempt himself from payment of assessments, or installments, by waiver of the use of enjoyment of all or any portion of the common area or by waiver of the use or enjoyment of, or by abandonment of, his condominium.

Section 6.3 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the members of the Association, the improvement, replacement, repair, operation and maintenance of the common area and the performance of the duties of the Association as set forth in this Declaration.

Section 6.4 Regular Assessments. The board shall prepare or cause to be prepared a budget for the forthcoming fiscal year not less than forty-five (45) days and not more than sixty (60) days before the beginning of each fiscal year of the Association. The budget shall be prepared each year regardless of the number of members or the amount of assets of the Association.

A copy of the budget shall be distributed to each owner and to each mortgagee which has requested in writing that copies be sent to it. The budget shall at least include the following information:

- (A) Estimated revenue and expenses on an accrued basis;
- (B) The amount of the total cash reserves of the Association currently available for replacement or major repair of common facilities and for contingencies;
- (C) An itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to major components of the common facilities and any other facilities for which the Association is responsible; and
- (D) A general statement setting forth the procedures used by the governing body in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the common facilities and any other facilities for which the Association is responsible.

A balance sheet (as of an accounting date which is the last day of the month closest in time to six months from the date of closing of the first sale of a condominium in the Development) - and an operating statement (for the period from the date of the first closing to the said accounting date) shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by address of the condominium and the name of the individual or entity assessed.

A report consisting of the following shall be distributed within one hundred and twenty (120) days after the close of the fiscal 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.

For any fiscal year in which the gross income to the Association exceeds \$75,000, a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy shall also be distributed. If said report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

In addition to financial statements, the Association shall annually distribute a statement of the Association's policies and practices in enforcing its remedies against members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against members' condominium interests. This statement shall be distributed within sixty (60) days prior to the beginning of each fiscal year.

Not more than sixty (60) days nor less than forty-five (45) days before the beginning of each fiscal year of the Association, the board shall meet for the purpose of establishing the regular annual assessment for the forthcoming fiscal year. At such meeting the board shall review the budget, any written comments received and any other information available to it and, after making any adjustments that the board deems appropriate, without a vote of the members of the Association, shall establish the regular assessment for the forthcoming fiscal year; provided, however, that the board may not establish a regular assessment for any fiscal year of the Association which is more than twenty percent (20%) greater than the regular assessment for the immediately preceding fiscal year, without the vote or written consent of a majority of each class of members during the time of the two-class voting structure and after termination of the two-class voting structure the vote or written assent of a majority of the voting power of the Association and a majority of members other than the Declarant.

Unless the Association or its assessment income shall be exempt from federal or state income taxes, to the extent possible, all reserves shall be accounted for and handled as contribution to the capital of the Association and as trust funds segregated from the regular income of the Association or in such other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board as will prevent such funds from being taxed as income of the Association.

Section 6.5 Special Assessments. If the board determines that the estimated total amount of funds necessary to defray the common expenses of the association for a given fiscal year is or will become inadequate to meet expenses for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the common area, the board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the board it shall become a special assessment. The board may, in its discretion, pro rate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each condominium. Unless exempt from federal or state income taxation, all proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it shall be otherwise handled and used in a manner authorized by law or regulations of the Internal Revenue Service or the California Franchise Tax Board in order to avoid, if possible, its taxation as income of the Association.

Section 6.6 Limitation Respecting Special Assessments. In any fiscal year, the board may not, without the vote or written assent of a majority of each class of members during the time of the two-class voting structure and after termination of the two-class voting structure the vote or written assent of a majority of the voting power of the Association and a majority of members other than the Declarant, levy special assessments to defray the costs of any action or undertaking on behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

Except as provided in (a) and (b) hereof, every special assessment shall be levied upon the same basis as that prescribed for the levy of regular assessments.

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

(b) The provisions hereof with respect to special assessments do not apply in the case where the special assessment against a member is a remedy utilized by the board to reimburse the Association for costs incurred in bringing the member and his condominium interest into compliance with provisions of the governing instruments for the subdivision.

Section 6.7 Uniform Rate of Regular Assessments. Regular assessments must be fixed at a uniform rate for all condominiums and shall be determined by dividing the amount by the total number of condominiums then within the development and subject to assessment.

Section 6.8 Commencement of Regular Assessments; Assessment Period. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of such year, and regular assessments shall be payable in equal monthly installments unless the board adopts some other basis for collection. However, the initial regular assessment period shall commence on the first day of the calendar month following the date on which the sale of the first condominium to a purchaser is closed and recorded (the "initiation date") and shall terminate on December 31 of the year in which the initial sale is closed and recorded. The first regular assessment shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the board adopts some other basis for collection. The Association shall not change the pro rata interest or obligation of any condominium for purposes of levying assessments except with the vote or written assent of a majority of each class of members during the time of the two-class voting structure and after the termination of the two-class voting structure the vote or written assent of a majority of the voting power of the Association and a majority of members other than the Declarant. The regular annual assessments for any annexed lots shall commence on the first day of the month following the sale of the first condominium in the annexed property, and the first regular annual assessment for the annexed property shall be adjusted according to the number of months remaining in the calendar year.

Section 6.9 Notice and Assessment; Installment Due Dates. A single ten (10) day prior written notice of each annual regular assessment and each special assessment shall be given to each owner of every condominium subject to assessment in which the due dates for the payments of installments shall be specified. The due dates for the payment of installments normally shall be the first day of each month unless some other due date is established by the board. Each installment of regular assessments and special assessments shall become delinquent if not paid within fifteen (15) days after its due date. There shall accrue with each delinquent installment a late charge determined by the board but in no event to exceed the maximum permitted by California State law, together with interest at the rate of ten percent (10%) per annum calculated from the due date to and including the date full payment is received by the Association.

Section 6.10 Certificate of Payment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or authorized agent of the Association setting forth whether the assessment on a specified condominium has been paid; such certificate shall be conclusive evidence of such payment upon any third party relying thereupon in good faith.

Section 6.11 Subordination of the Lien to Mortgages. The lien of the regular and special assessments provided for herein shall be subordinate to the lien of the first mortgage. Sale or transfer of any condominium shall not affect the assessment lien. However, the sale or transfer of any condominium pursuant to foreclosure of the first mortgage or as the result of the exercise of a power of sale shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such new condominium owner from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII

COLLECTION OF ASSESSMENTS: LIENS

Section 7.1 Rights to Enforce. The right to collect and enforce assessments is vested in the board acting for and on behalf of the Association. The board or its authorized representative, including any manager, can enforce the obligations of the owners to pay assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the board may foreclose by judicial proceedings or through the exercise of the power of sale pursuant to Section 7.2 to enforce the lien rights created. Suit to recover a money judgment for unpaid assessments together with all other amounts described in Section 6.2 shall be maintainable without foreclosing or waiving the lien rights.

Section 7.2 Creation of Lien. If there is a delinquency in the payment of any assessment, or installment on a condominium, as described in Section 6.9, any amounts that are delinquent, together with the late charge described in that section, interest at the rate of ten percent (10%) per annum, and all costs that are incurred by the board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees, shall be a lien against such condominium upon the recordation in the office of the Orange County Recorder of a notice of assessment as provided in California Civil Code, Section 1356. However, a monetary penalty imposed by the Association as a disciplinary measure for failure of a 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 may not be characterized nor treated as 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 Section 2924, 2924(b) and 2924(c) of the Civil Code. The above statement does not apply to charges imposed against an owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments. The notice of assessment shall not be recorded until fifteen (15) days after the board or its authorized representative has mailed by first class mail to the delinquent owner or owners a written notice of delinquency and a demand for payment. The lien shall expire and be void unless, within one (1) year after the recordation of the notice of

assessment, the board or its authorized representative records (a) a one year extension of said lien, (b) a notice of default as provided hereinafter, or (c) institutes judicial foreclosure proceedings with respect to such lien.

Section 7.3 Notice of Default; Foreclosure. Not less than one (1) year or two (2) years if the lien has been extended, nor more than fifteen (15) days after the recording of the notice of assessment, the board or its authorized representative can record a notice of default and can cause the condominium with respect to which a notice of default has been recorded to be sold in the same manner as a sale is conducted under California Civil Code, Section 2924, 2924(b) and 2924(c), or through judicial foreclosure. However, as a condition precedent to the holding of any such sale under Section 2924(c) appropriate publication shall be made. In connection with any sale under Section 2924(c) the board is authorized to appoint its attorney, any officer or director, or any title insurance or foreclosure company authorized to do business in California as trustee for purposes of conducting the sale. If a delinquency is cured before sale, or before completing a judicial foreclosure, the board or its authorized representative shall cause to be recorded in the office of the Orange County Recorder a certificate setting forth the satisfaction of such claim and release of such lien upon payment of actual expenses incurred, including reasonable attorneys' fees by any delinquent owner. On becoming delinquent in the payment of any assessments, or installments each delinquent owner shall be deemed to have absolutely assigned all rents, issues and profits of his condominium to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the owners, shall have the power to bid upon the condominium at foreclosure sale and to acquire, hold, lease, mortgage and convey the condominium.

Section 7.4 Waiver of Exemption. Each owner, to the extent permitted by law, waives to the extent of any liens created pursuant to this Article VII, the benefit of any homestead or exemption laws of California in effect at the time any assessment, or installment, becomes delinquent or any lien is imposed.

ARTICLE VIII

INSURANCE

Section 8.1 Liability Insurance. The Association shall obtain and maintain at all times comprehensive public liability insurance insuring the Association, any manager, and the owners and occupants of condominiums, and their respective family members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the common area and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than One Million Dollars (\$1,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use.

Section 8.2 Fire and Extended Coverage Insurance. The Association also shall obtain and maintain a master or blanket policy of fire insurance for the full insurable value of all of the improvements within the development. If more than one institutional mortgagee has a loan of record against a condominium in the development, the policy and endorsements shall meet the maximum standards of the various institutional mortgagees represented in the development. The policy shall contain an agreed amount endorsement or its equivalent, an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or its equivalent, an extended coverage endorsement, vandalism, malicious mischief coverage, a special form endorsement and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy shall provide amounts of coverage as shall be determined by the board. The policy shall name as insured the Association, the owners, and all mortgagees as their respective interests may appear, and may contain a loss payable endorsement in favor of the trustee described hereinafter.

Section 8.3 Individual Fire Insurance Limited. Except as provided in this Article, no owner shall separately insure his unit against loss by fire or other casualty covered by any insurance carrier under Section 8.2. If any owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in Section 8.2 that results from the existence of such other insurance will be chargeable to the owner who acquired other insurance, and such owner will be liable to the Association to the extent of any such diminution. An owner can insure his personal property against loss. In addition, any improvements made by an owner within his unit may be separately insured by the owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." All such insurance that is individually carried must contain a waiver of subrogation rights by the carrier as to other owners, the Association, and any institutional mortgagee of such condominium.

Section 8.4 Trustee. All insurance proceeds payable under Section 8.2 and 8.3, subject to the rights of mortgagees under Section 8.8, may be paid to a trustee, to be held and expended for the benefit of the owners, mortgagees and others, as their respective interests shall appear. Said trustee shall be a commercial bank in Orange County that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Board shall have the duty to contract for such work as provided for in this Declaration.

Section 8.5 Other Insurance. The board may purchase and maintain demolition insurance in adequate amounts to cover demolition in case of total or partial destruction and a decision not to rebuild, and a blanket policy of flood insurance. The board also shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The board also shall purchase and maintain fidelity bonds or insurance (which shall be in an amount not less than 150% of each year's estimated annual operating expenses and reserves and shall contain an endorsement of coverage of any person who may serve without compensation) sufficient to meet the requirements of any institutional mortgagee. The board shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance, that it deems necessary.

Section 8.6 Owner's Insurance. An owner may carry whatever personal liability and property damage liability insurance with respect to his condominium that he desires. However, any such policy shall include a waiver of subrogation clause acceptable to the board and to any institutional mortgagee. ★

Section 8.7 Adjustment of Losses. The board is appointed attorney-in-fact by each owner to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Section 8.1, 8.2 and 8.5. The board is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

Section 8.8 Distribution to Mortgagees. Any mortgagee has the option to apply insurance proceeds payable on account of a condominium in reduction of the obligation secured by the mortgage of such mortgagee. ?

ARTICLE IX

DESTRUCTION OF IMPROVEMENTS

Section 9.1 Restoration of Development. Except as hereinafter otherwise provided in this Section, in the event of a total or partial destruction of the development, it shall be the duty of the Association to restore and repair the same to its former condition in accordance with all building codes in effect at the time of such reconstruction, as promptly as practical. The proceeds of any insurance maintained pursuant to Article VIII hereof for reconstruction or repair of the development shall be used for such purpose, and the deficiency, if any, shall be raised by a special assessment imposed pursuant to Article VI hereof. The board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The development shall be reconstructed and rebuilt substantially in accordance with the condominium plan and the original construction plans if they are available, unless changes recommended by the board shall have been approved in writing by a majority of the voting power of the Association.

Section 9.2 Automatic Reconstruction. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be at least eighty-five percent (85%) of the estimated cost of restoration and repair or the cost not covered by insurance is less than the sum of Thirty Thousand Dollars (\$30,000.00) per unit, a Reconstruction Assessment, with each owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction, over and above the amount of any insurance proceeds available for such purpose, and the Board shall cause the damaged or destroyed development to be restored as closely as practical to its condition prior to the destruction or damage. *

Section 9.3 Vote of Members. In the event that (i) the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than eighty-five percent (85%) of the estimated cost of restoration and repairs or (ii) an owner would have to contribute more than the sum of Thirty Thousand Dollars (\$30,000.00) per unit, the development shall not be replaced or restored unless a majority of the voting power of the Association agree in writing to such replacement or restoration, or gives its affirmative vote at a meeting duly called therefor. If the members approve *

such replacement or restoration, the Board shall cause the damaged or destroyed development to be restored as closely as practical to its former condition prior to the destruction or damage.

Section 9.4 Sale of Project. In the event of a determination not to rebuild, the Association shall cause the development to be offered for sale at the highest and best price obtainable, either in its damaged condition, or after damaged structures have been razed. The net proceeds of such sale and the proceeds of any insurance carried by the Association shall be distributed by the Association among the owners of the units and their respective mortgagees proportionately based upon the respective selling prices of the units in the original sales of the units by the Declarant, with all prices adjusted on account of subsequent price increases in the development.

Section 9.5 Right to Partition. No owner shall have the right to judicial partition of his interest in the development, or any part thereof, except in the event that restoration has not actually commenced within six (6) months from the date of any partial or total destruction in which event the conditions for partition as set forth in Subdivision (4) of Section 1359 of the Civil Code shall be deemed to have been satisfied. Nothing herein shall be deemed to prevent partition of a co-tenancy in any condominium. Except as provided above, each owner and the successors of each owner, whether by deed, gift, devise, or by operation of law, for their own benefit and for the units and for the benefit of all other owners, specifically waive and abandon all rights, interests and causes of action for a judicial partition of the tenancy in common ownership of the development and do further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

Section 9.6 Interior Damage. With the exception of any casualty or damage insured against by the Association pursuant to Article VIII, restoration and repair of any damage to the interior of any individual unit, including without limitation all fixtures, appliances, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall be made by and at the individual expense of the owner of the unit so damaged. In the event of an obligation or determination to rebuild the development after partial or total destruction as provided in this Article IX, such

interior repair and restoration shall be completed by each unit owner as promptly as practical and in a lawful and workmanlike manner, in accordance with the original plans and specifications or as otherwise approved by the board pursuant to Section 3.14, hereof.

Section 9.7 Notice to Unit Owners and Listed Mortgagees. The board, immediately upon having knowledge of any damage or destruction (a) to the common area or any portion thereof, with damage exceeding Ten Thousand Dollars (\$10,000.00), or (b) to any individual unit which damage or destruction may only be restored at a cost exceeding One Thousand Dollars (\$1,000.00), shall promptly notify all owners, and all mortgagees who have filed a written request for such notice with the board.

ARTICLE X

CONDEMNATION

A condemnation award affecting all or a part of the structural common area of the development which is not apportioned among the owners by court judgment or by agreement between the condemning authority and each of the affected owners of the development, shall be distributed among the affected owners and their respective mortgagees according to the relative values of the condominium units affected by the condemnation as determined by independent appraisal to be obtained by the board.

ARTICLE XI

PARTITION

Except as is provided in California Civil Code Section 1359, as the same may be amended from time to time, the common area of the development shall remain undivided, and there shall be no judicial partition thereof.

ARTICLE XII

NON-SEVERABILITY OF COMPONENT
INTERESTS IN A CONDOMINIUM

Section 12.1 Prohibition Against Severance. An owner shall not be entitled to sever his unit from his membership in the Association, and shall not be entitled to sever his unit and his membership from his undivided interest in the common area for any purpose. None of the component interests in a condominium can be severally sold, conveyed, encumbered, hypothecated or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no owner can sever any exclusive easement appurtenant to his unit over the common area from his condominium, and any attempt to do so shall be void. The suspension of such right of severability shall not extend beyond the period in which the right to partition a condominium project is suspended under California Civil Code, Section 1359. It is intended hereby to restrict severability pursuant to California Civil Code, Section 1358.

Section 12.2 Conveyances. After the initial sales of the condominiums, any conveyance of a condominium by an owner shall be presumed to convey the entire condominium. However, nothing contained in this section shall preclude the owner of any condominium from creating a co-tenancy or joint tenancy in the ownership of the condominium with any other person or persons.

ARTICLE XIII

TERM OF DECLARATION

This declaration shall run with the land, and shall continue in full force and effect for a period of sixty (60) years from the date on which this Declaration is recorded. After that time, this Declaration and all covenants, conditions, restrictions and other provisions shall be automatically extended for successive ten (10) year periods unless this Declaration is revoked by an instrument executed by a majority of the owners and mortgagees, and such instrument is recorded in the office of the Orange County Recorder.



ARTICLE XIV

PROTECTION OF MORTGAGEES

Section 14.1 Mortgage Permitted. Any owner may encumber his condominium with a mortgage.

Section 14.2 Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of the first mortgage that encumbers all or a portion of the development, or any condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage unless the mortgagee expressly subordinates his interest, in writing, to such lien.

Section 14.3 Amendment. The prior written consent of seventy-five percent (75%) of the holders of first mortgages (based upon one vote for each mortgage held) shall be required for any material amendment to this Declaration, to the articles or to the bylaws. As used in this Section 14.3, the term "any material amendment" is defined to mean amendments to provisions of this Declaration, to the articles or to the bylaws governing the following subjects:

- (a) The purpose for which the development may be used;
- (b) Voting;
- (c) Assessments, collection of assessments, creation and subordination of Assessment liens;
- (d) Reserves for repair and replacement of common area improvements;
- (e) Maintenance of common area, and improvements thereon;
- (f) Casualty and liability insurance;
- (g) Rebuilding or reconstruction of common area and improvements thereon, in the event of damage or destruction;
- (h) Rights of use to and in the common area;

- (i) Annexation of additional property; and
- (j) Any provisions, which by their terms, are specifically for the benefit of first mortgagees, or specifically confers rights on first mortgagees.

Section 14.4 Right to Examine Books and Records.

Institutional first mortgagees can examine the books and records of the Association of the condominium development and can require the submission to them of financial data concerning the Association or the condominium development, including annual audit reports and operating statements as furnished to the owners.

Section 14.5 Distribution of Insurance and Condemnation Proceeds. No owner, or any other party, shall have priority over any rights of institutional mortgagees of condominiums pursuant to their mortgages in case of a distribution to owners of insurance proceeds or condemnation awards for losses to or a taking of units or common area. Any provision to the contrary in this Declaration or in the bylaws or other documents relating to the development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected institutional mortgagees naming the mortgagees, as their interests may appear.

Section 14.6 Amenities. All amenities (such as parking, recreation and service areas) and common area shall be available for use by owners and all such amenities with respect to which regular or special assessments for maintenance or other uses may be levied shall constitute common area. All such amenities shall be owned in fee by the owners in undivided interests or by the Association free of encumbrances except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the owners or by the Association.

Section 14.7 Notices to Mortgagees of Record.

Upon any loss to any unit covered by a mortgage, if such loss exceeds One Thousand Dollars (\$1,000.00), or on any loss to the common area, if such loss exceeds Ten Thousand Dollars (\$10,000.00), or on any taking of the common area, notice in writing of such loss or taking shall be given to each mortgagee of record. If any owner of a unit is in

default under any provision of these covenants, conditions and restrictions, or under any provision of the bylaws or the Association rules, which default is not cured within thirty (30) days after written notice to such owner, the Association shall give to the mortgagee of record of such owner written notice of such default and of the fact that said thirty (30) day period has expired.

Section 14.8 Payments by Mortgagees. Mortgagees of condominiums may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the common area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for common area improvements or other insured property of the Association and, upon making any such payments, such mortgagees shall be owed immediate reimbursement therefor from the Association. This provision shall constitute an agreement by the Association for the express benefit of all mortgagees and upon request of any mortgagees the Association shall execute and deliver to such mortgagee a separate written agreement embodying the provisions of this Section 14.8.

Section 14.9 Effect of Breach. No breach of any provision of these covenants, conditions and restrictions shall invalidate the lien of any mortgage in good faith and for value, but all of covenants, conditions and restrictions shall be binding on any owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

Section 14.10 Foreclosure. If any condominium is encumbered by a first mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the first mortgage. On foreclosure of a first mortgage, the lien for assessments on installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the first mortgage, with the foreclosure-purchaser taking the title to the condominium free of the lien for assessments on installments that have accrued up to the time of the foreclosure sale. On taking title to the condominium the foreclosure-purchaser of a first mortgage shall only be obligated to pay assessments or other charges levied or assessed by the Association after the foreclosure-purchaser acquired title to the condominium. The subsequently levied assessments or other charges may include previously unpaid assessments provided all owners, including the foreclosure-purchaser, and his successors and assigns are required to pay their proportionate share as provided in this Section.

Section 14.11 Non-Curable Breach. Any mortgagee who acquires title to a condominium by foreclosure or by deed-in-lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is non-curable or of a type that is not practical or feasible to cure.

Section 14.12 Loan to Facilitate. Any mortgage given to secure a loan to facilitate the resale of a condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of this Article XIV.

ARTICLE XV

AMENDMENT

Section 15.1 Amendment Before the Close of First Sale. Prior to the close of the first sale of a condominium in the development to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution by Declarant and of an instrument amending or revoking this Declaration, after such instrument has been approved by the Department of Real Estate of the State of California. The amending or revoking instrument shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the Orange County Recorder.

Section 15.2 Amendment After Close of First Sale. After the close of the first sale of a condominium in the development to a purchaser other than Declarant, and during such time that the two-class voting structure is still in effect, this Declaration may not be amended or revoked in any respect, except by the vote or written consent of the holders of not less than fifty-one percent (51%) of the voting rights of each class of members. Upon the termination of the two-class voting structure, this Declaration may not be amended or revoked in any respect except by the vote or written consent of a majority of the total voting power of the Association which is at least a bare majority; and at least a bare majority of the votes of members other than Declarant if Declarant still retains voting rights. However, if any provision of this Declaration requires a greater percentage of the voting rights of any class of members in order to take affirmative or negative action under such provision, the same percentage of such class or classes of members shall be required to amend or revoke such provision. Also, if the consent or approval of any governmental authority, any mortgagee or other person, firm, agency or entity is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of such first sale shall be evidenced by an instrument certified by the Secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the Orange County Recorder.

Section 15.3 Conflict with Article XIV or Other Provision of this Declaration. To the extent any provisions of this Article XV conflict with the provisions of Article XIV or any other provision of this Declaration, the provisions of Article XIV or the other provisions shall control.

Section 15.4 Reliance on Amendments. Any amendment made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

Section 15.5 Amendments to Conform with Mortgagee Requirements. It is the intent of Declarant that this Declaration and the articles and bylaws of the Association, and the development in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a condominium in the development by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Veterans' Administration. In furtherance of that intent, Declarant expressly reserves the right and shall be entitled by unilateral amendment of the Declaration so long as Declarant owns more than twenty-five percent (25%) of the condominiums in the development to amend this Declaration in order to incorporate any provisions or to enter into any agreement on behalf and in the name of the Association that are, in the opinion of any of the cited entities or governmental agencies, required to conform the Declaration, the articles, the bylaws or the development to the requirements of any of the entities or governmental agencies, including without limitation, the execution on behalf of and in the name of the Association of a regulatory agreement between the Association and the Federal Housing Commissioner and any other agreement sufficient to satisfy the requirements for mortgage purchase, guarantee or insurance by any of said entities or agencies. Declarant is hereby granted an irrevocable power of attorney to execute any such amendment or agreement by and in the name of the Association. Any such provision shall first be approved by the California Department of Real Estate in connection with its issuance of a final subdivision public report or amendment to it with respect to the development. Each owner of a condominium and each mortgagee of a condominium by acceptance of a deed

or encumbrance of a condominium consents to the incorporation in this Declaration of any such provision and to the execution of any amendment or regulatory agreement and agrees to be bound by any such provisions as if they were incorporated in this Declaration. The board and each owner shall take any action or shall adopt any resolutions required by Declarant or any mortgagee to conform this Declaration or the development to the requirements of any of said entities or agencies.

ARTICLE XVI

REPAIR AND MAINTENANCE

Section 16.1 Repair and Maintenance of the Units by Owners. Except to the extent that the Association is obligated hereunder to maintain a portion of a unit, each owner shall maintain, repair, replace and restore all portions of his unit including, without limitation, the interior walls, ceilings, floor coverings and interior doors in a clean, sanitary and attractive condition. All such repairs and maintenance pursuant to this Section shall be subject to such rules therefor as the Association may from time to time establish.

Section 16.2 Repair and Maintenance of Certain Common Areas and Restricted Common Areas by or at the Expense of Owners.

(a) Common Area. In the event the board shall determine that the walls, ceilings, sub-floors, exterior doors or any other portion of the common area forming the boundaries of a unit have been damaged from within the unit, notwithstanding that such damage may be to the common area, the owner of the unit shall be responsible for repairing such damage in a timely manner and in accordance with such rules as the board shall from time to time adopt. In the event such repair is not so accomplished by the owner, the Association or its delegates shall have the right at reasonable time to enter the unit to effect such repair, and the cost thereof shall be charged to the owner of the unit and, if not paid in a timely manner, shall be a special assessment.

(b) Window Glass and Skylights. Each owner shall be responsible at his sole expense for the interior and exterior cleaning, repair and replacement of all window glass and skylights, if any, of his condominium.

(c) Air Conditioning Units. Each owner shall be responsible at his sole expense for the repair, maintenance and replacement of the air conditioning unit, if any, servicing his condominium.

(d) Garage Doors, Openers and Interiors. Each owner shall be responsible at his sole expense for the repair, maintenance or replacement of the garage doors of his condominium, including without limitation, hinges,

springs and other parts of the door mechanism, including automatic door openers, and excepting only the exterior painting thereof. Each owner shall also be responsible at his sole expense for the repair and maintenance of the interior surfaces of the garage area appurtenant to his condominium.

(e) Rights of Association. In the event that an owner fails to accomplish any maintenance or repair required by this section, the Association or its delegates shall have the right at reasonable times to enter the unit to effect such maintenance or repair, and the costs thereof shall be charged to the owner of the unit and, if not paid in a timely manner, shall be a special assessment.

Section 16.3 Repair and Maintenance by The Association.

(a) Common Area. Except as set forth in Sections 16.1 and 16.2 above, the Association shall maintain and repair the exterior surfaces of all condominium buildings, including the painting thereof, and shall maintain and repair all landscaping and recreational facilities on the common area, awnings on certain units, if any, the private streets, street lights, driveways, entry gates and alleys located within the development, and the roofs of all condominium buildings and recreational facilities, and all the perimeter walls and fences located within the development.

(b) Restricted Common Area. Except as set forth in Section 16.2 above, the Association shall be obligated to maintain, repair, restore, replace and make all necessary improvements to the restricted common area identified as those items set forth in Section 1.7 hereinabove.

(c) Drainage. The Association shall maintain and repair that certain wall and drainage swale adjacent to said wall on the northwestern property line of the development. The Association shall not alter said wall or drainage swale from its original construction as the Association is aware any modification would affect the drainage for said certain area of the development.

ARTICLE XVII

GENERAL PROVISIONS

Section 17.1 Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

Section 17.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision shall not invalidate any other provisions.

Section 17.3 Cumulative Remedies. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver thereof.

Section 17.4 Violations as Nuisance. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies herein set forth, may be abated or enjoined by any owner, any member of the board, and the manager, or the Association.

Section 17.5 No Racial Restriction. No owner shall execute or cause to be recorded any instrument which imposes a restriction upon the sale, leasing or occupancy of his condominium on the basis of race, sex, color or creed.

Section 17.6 Access to Books. Any owner may, at any reasonable time and upon reasonable notice to the board or manager at his own expense, cause an audit or inspection to be made of the books and financial records of the Association.

Section 17.7 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision thereafter.

Section 17.8 Notification of Sale of Condominium. Concurrently with the 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 the name of the transferee and his mortgagee and transferor, the street address of the condominium purchased by the transferee, the transferee's and the mortgagee's mailing address, and the date of sale. Prior to the receipt of such notification, any and all communications required or permitted to be given by the Association, the board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor. Mailing addresses may be changed at any time upon written notification to the board. Notices shall be deemed received forty-eight (48) hours after mailing it by certified mail, return receipt requested and addressed to the address above specified. Notices shall also be deemed received twenty-four (24) hours after being sent by telegram, or upon personal delivery to any occupant of a condominium over the age of twelve (12) years.

Section 17.9 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

Section 17.10 Easements Reserved and Granted. Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, by reference to this Declaration in a deed to any condominium.

Section 17.11 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of the Declarant, and the heirs, personal representatives, grantees, tenants, successors and assigns of the owners.

Section 17.12 Unsegregated Real Estate Taxes. Until such time as real property taxes have been segregated by the Orange County Assessor they shall be paid by the respective owners of condominiums. The proportionate share of the taxes for a particular condominium shall be determined by dividing the initial sales price or offered initial sales price of the condominium by the total initial sales prices and offered initial sales prices of all condominiums within the development (the term "offered initial sales price" means the price at which an unsold condominium is then being offered for sale by the Declarant). If, and to the extent, that taxes are not paid by any owner of a condominium and are allowed to become delinquent, they shall be collected from the delinquent owner by the Association as a special assessment. ★

ARTICLE XVIII

ANNEXATION

Section 18.01 Annexation Without Approval and Pursuant to General Plan. If within three (3) years of the date of issuance of the most recent preliminary or final public report on any portion or phase of the project by the California Department of Real Estate, Declarant should develop additional lands within the real property described in Exhibit "C" attached hereto, such additional lands may be annexed to said properties and brought within the jurisdiction of the Association without the assent of either class of members, provided; however, that the development of such additional lands shall be in substantial conformance with a detailed plan of phased development submitted to the California Department of Real Estate with the application for a public report for the first phase of the properties. If any such annexation is not in accordance with this Section, then annexation can only take place pursuant to Section 18.02 hereof.

Section 18.02 Annexation Pursuant to Approval. Except as is otherwise provided in Section 18.01 preceding, the annexation of additional residential lots and common area property, and the subjecting of it to the jurisdiction of the Association can only be accomplished upon the affirmative vote, at a special meeting duly called for this purpose, of two-thirds (2/3) of the total votes residing in Association members other than the Declarant.

Section 18.03 Declaration of Annexation. Annexation shall be accomplished by a duly recorded Declaration of Annexation executed by Declarant alone if annexation is pursuant to Section 18.01 hereof, or by the owners of the annexed property and by two or more members of the board of directors if annexation is pursuant to Section 18.02 hereof. The Declaration of Annexation shall describe the property annexed, any additional common areas, and any additional slope easement areas, if any, and state that it is made pursuant to the terms of this Article XVIII for the purpose of annexing the property so described to the properties and extending the jurisdiction of the Association to cover the same. If the annexation occurs after a meeting of the members pursuant to Section 18.02 hereof, it shall so state, including a statement of the time and place of the meeting, the date of notice, the number of members present, the number of members who voted in favor of the annexation, and

the Declaration of Annexation shall be executed, verified and acknowledged by two or more members of the board of directors. Any Declaration of Annexation recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after annexation, the property annexed shall be subject to the provisions of this Declaration and the jurisdiction of the Association pursuant to the terms hereof, and its articles of incorporation and bylaws, except that assessments shall commence as provided in Section 6.8 of Article VI hereof entitled "Covenant for Maintenance Assessments."

Section 18.04 Declaration of Annexation - Optional Provisions. Such Declaration of Annexation contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Declaration of Annexation revoke, modify or add to the covenants established by this Declaration within the existing properties.

Section 18.05 Expansion of Association Membership. Membership in the Association shall be expanded to include owners within annexed phases of development.

Section 18.06 No Obligation to Annex. Notwithstanding any provisions of this Declaration expressly or impliedly to the contrary, Declarant shall have no obligation whatsoever to annex any real property hereto including, without limitation, the real property described in Exhibit "C".

Section 18.07 Improvements on Future Phases of Development. Declarant expressly makes no representations or warranties in connection with improvements constructed on lots within future phases of the development. Declarant makes no guarantee that it will build similar or comparable improvements on lots within future phases of the development. Declarant expressly reserves the right to change the style, quality, size and cost of said improvements from those constructed in the first phase of the development, or any other phase.

ARTICLE XIX

ARCHITECTURAL CONTROL

The Board of Directors shall have the full authority over the architectural and landscape control of the properties and must approve in writing any and all changes thereto. The Board of Directors is authorized to delegate said duties and responsibilities to an architectural committee in its sole discretion.

No exterior changes, additions or alterations of any type shall be erected, installed or maintained on the properties, including, but not limited to, awnings, patio covers, fences or landscape, unless said changes have been submitted to and approved in writing by the Board of Directors.

ARTICLE XX

JOHN WAYNE AIRPORT

The Declarant herein on behalf of itself and its successors and assigns, acknowledges that:

- (a) The John Wayne Airport may not be able to provide adequate air service for business establishments which rely on such service;
- (b) When an alternate air facility is available, a complete phase out of jet service may occur at the John Wayne Airport;
- (c) The City of Newport Beach will continue to oppose additional commercial air service expansions at the John Wayne Airport; and
- (d) Declarant, and its successors and assigns, will not actively oppose any action taken by the City of Newport Beach to phase out or limit jet air service at the John Wayne Airport.

Each owner, by recordation of this Declaration, acknowledges that said owner is aware that the development is subject to overflight, sight and sound of aircraft operations from John Wayne Airport, located in the County of Orange, State of California.

IN WITNESS WHEREOF, the Declarant has executed
this Declaration on the date first above written.

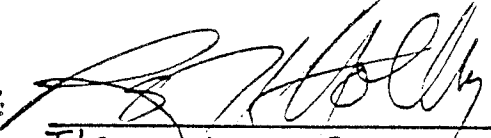
BAYVIEW I, a joint venture

BY: J.M. PETERS COMPANY, INC.
A California corporation

By: 
Its: Vice President

BY: DSL SERVICE COMPANY,
A California corporation

By: 
Its: VICE PRESIDENT

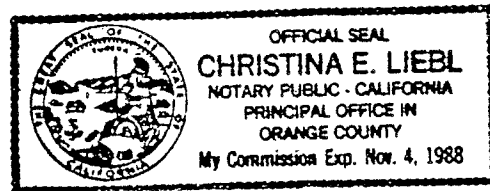
By: 
Its: ASST. SECRETARY

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On March 31, 1986, before me, the undersigned, a Notary Public, in and for said State, personally appeared Robert J. Trapp and ~~Robert C. Liewer~~, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Vice President and ~~Vice President~~, on behalf of J.M. PETERS COMPANY, INC., the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors, said corporation being known to me to be one of the Joint Venturers of BAYVIEW I, the Joint Venture that executed the within instrument, and acknowledged to me that such corporation executed the same as such Venturer and that such Joint Venture executed the same.

WITNESS my hand and official seal.

Christina E. Liebl



STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On MARCH 31, 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared R.F. Driscoll and Ron D. Holley, personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the persons who executed the within instrument as Senior Vice President and Assistant Secretary, on behalf of DSL SERVICE COMPANY, the corporation therein named, and acknowledged to me that said corporation executed the within instrument pursuant to its bylaws or a resolution of its board of directors, said corporation being known to me to be one of the Joint Venturers of BAYVIEW I, the Joint Venture that executed the within instrument, and acknowledged to me that such corporation executed the same as such Venturer and that such Joint Venture executed the same.

WITNESS my hand and official seal.

Janice Genelle

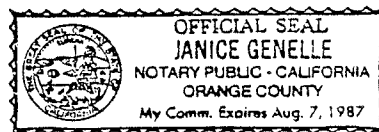


EXHIBIT "A"

PROPERTY

All that certain land situated in the State of California,
County of Orange, City of Newport Beach described as follows:

Lots 2 and 3 of Tract 12362 as shown on a map recorded
in Book 551, Pages 35 through 37, inclusive of Miscellaneous
Maps, Records of Orange County, California.

EXHIBIT "B"

COMMON AREA

All that certain land situated in the State of California,
County of Orange, City of Newport Beach described as follows:

Lot 3 of Tract 12362 as shown on a Map recorded in
Book 551, Pages 35 through 37, inclusive of Miscellaneous
maps, records of Orange County, California.

EXHIBIT "C"

ANNEXATION PROPERTY

All that certain land situated in the State of California,
County of Orange, City of Newport Beach described as follows:

Lot 1 of Tract 12362 as shown on a Map recorded in
Book 551, Pages 35 through 37, inclusive of Miscellaneous
maps, records of Orange County, California

(f) The right of Declarant or its designees to enter on the development to construct the development and to make repairs and remedy construction defects if such entry shall not unreasonably interfere with the use of any occupied unit unless authorized by the unit owner.

(g) The right of the Association, or its agents, to enter any unit to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair for the benefit of the common area, or the owners in common, or to make necessary repairs that the unit owner has failed to perform. The right shall be immediate in case of an emergency originating in or threatening such unit, whether or not the owner is present.

(h) The right of any owner, or his representative, to enter the unit of any other owner to perform permissible installations, alterations or repairs to mechanical or electrical services, including installation of television antennae and related cables, if requests for entry are made in advance and such entry is at a time convenient to the owner whose unit is being entered, except that in the case of emergency such right of entry shall be immediate.

Section 2.4 Delegation of Use; Contract Purchasers; Tenants. Any owner may delegate his rights of use and enjoyment in the development, including any recreational facilities to members of his family, guests, invitees, tenants, unrecorded contract purchasers, and to such other persons as may be permitted by the bylaws and the Association rules, subject however, to this Declaration, to the bylaws and to the Association rules. Any delegated rights of use and enjoyment are subject to monetary penalties, temporary suspensions, or other appropriate discipline to the same extent as are the rights of owners.

Section 2.5 Minor Encroachments. If any portion of the common area encroaches on any unit or if any portion of a unit encroaches on the common area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and, all units and the common area are made subject to such easements. If any structure containing a unit is partially or totally destroyed and then rebuilt and any encroachment on the common area results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and, all units and the common area are made subject to such easements.