

COPY

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CALIFORNIA WORLD TITLE COMPANY

Kathy Hedlund

Recording Requested By:)
California World Title Co.)
Declarant(s) 64449-05)
When Recorded Mail To:)
JAMES P. BRENNAN)
c/o Kolodny, Katkov & Pressman)
A Professional Corporation)
The Historic Tucker House)
2470 Union Street)
San Diego, California 92101)
Attention: Howard I. Katkov, Esq.)

Space Above for Recorder's Use

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made this 23rd day of July, 1984, by VILLA TEMPRA, a general partnership, hereinafter referred to as "Declarant(s),"

WITNESSETH

WHEREAS, Declarant(s) are the owners of that certain real property located in the City of Chula Vista, County of San Diego, State of California, which is more particularly described as follows:

Lot 1 of VILLA TEMPRA, Chula Vista Tract NO. 4409 in the City of Chula Vista, County of San Diego, State of California, according to Map thereof No. 10973 filed in the Office of the County Recorder of San Diego County, State of California, on June 25, 1984;

and hereinafter called the "Condominium Property;" and

WHEREAS, Declarant(s) has or intends to improve the Condominium Property by constructing thereon 36 condominium units and intends to establish a condominium project under the provisions of the California Condominium Act providing for separate title to Living Units and Garage Spaces (as hereinafter defined) appurtenant to which will be an undivided fractional interest in the Condominium property other than the Living Units and Garage Spaces. The Project entails a complete development of the described area for living and recreational use and enjoyment by the owners, their families and guests. The Project consists of 36 Units.

The Owners of a Condominium will receive title to the Living Unit, a Garage Space, plus an undivided 1/36th fractional interest as tenant in common in the Common Area (as hereinafter defined) of Lot No. 1 Tract No. 4409 Map No. 10973. Each Condominium shall have appurtenant to it a membership in the VILLA TEMPRA

OWNERS' ASSOCIATION, INC., a California nonprofit mutual benefit corporation ("Association"), which will be the management body for the overall condominium project.

The Project consists of eight (8) individual buildings which contain thirty-six (36) two-bedroom Living Units. Twenty-six (26) Living Units have an area of approximately 1,172 square feet; and ten (10) Living Units have an area of approximately 1,297 square feet.

The buildings are of colonial architecture design and are two stories high. The construction is wood frame and stucco with brick veneer.

Additionally, the Project is landscaped and each Unit has a Balcony or Patio which is Restricted Common Area appurtenant to the Unit; and

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

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

WHEREAS, before selling or conveying any interests in the Condominium Property Declarant(s) desires to subject the Condominium Property in accordance with a common plan to certain covenants, conditions and restrictions for the benefit of Declarant(s) and any and all present and future owners of the Condominium Property,

NOW, THEREFORE, Declarant(s) hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE I

Definitions

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

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

1.1.2 "Association" shall mean and refer to VILLA TEMPRA OWNERS' ASSOCIATION, INC., a California nonprofit mutual-benefit Corporation composed of the Owners described below, its successors and assigns.

1.1.3 "Board" or "Board of Directors" shall mean and refer to the governing body of said Association.

1.1.4 "Boundaries" shall mean that in interpreting deeds and plans, the then existing physical boundaries of a Living Unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the building.

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

1.1.6 "Common Area" shall mean and refer to all portions of the Condominium Property not located within a Living Unit or Restricted Common Area. Said Common Area to include ~~27~~ guest parking spaces.

1.1.7 "Common Expense" means and includes the actual and estimated expenses of operating the Condominium Property and any reasonable reserve for such purpose.

1.1.8 "Condominium" shall mean and refer to a fee simple estate in the Condominium Property as defined in Section 783 of the California Civil Code and shall consist of a separate interest in a Living Unit, including a Garage, and an undivided fractional interest as tenant in common in the Common Area.

1.1.9 "Condominium Plan" shall mean and refer to the Condominium Plan recorded concurrently herewith, Official Records of San Diego County, California, pursuant to California Civil Code Section 1351 covering the Condominium Property, including such amendments thereto as may from time to time be recorded.

1.1.10 "Condominium Property" shall mean and refer to that certain real property located in the County of San Diego, State of California, more particularly described as follows:

Lot 1 of VILLA TEMPRA, Chula Vista Tract NO. 4409 in the City of Chula Vista, County of San Diego, State of California, according to Map thereof No. 10973 filed in the Office of the County Recorder of San Diego County, State of California, on June 25, 1984;

1.1.11 "Declarant(s)" shall mean and refer to VILLA TEMPRA, a general partnership, its successors and assigns, if such successors or assigns should acquire more than one (1) undeveloped lot in the Condominium Property from Declarant(s) for the purpose of development.

1.1.12 "Declaration" shall mean and refer to this enabling Declaration of Covenants, Conditions and Restrictions, and Amendments.

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

1.1.14 "FHA" shall mean and refer to the Federal Housing Authority.

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

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

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

1.1.18 "Living Unit" or Unit shall mean and refer to those portions of the Condominium Property shown and described as such on the Condominium Plan; provided, however, that the following are not part of any Living Unit: Bearing walls, columns, floors, roofs, foundations, central heating, central refrigeration and central air conditioning equipment, reservoir tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, whenever located, except the outlets thereof then located in the Living Unit.

1.1.19 "Member" shall mean and refer to an Owner as defined in Section 1.1.24, Article I herein.

1.1.20 "Mortgage" shall mean and refer to a Deed of Trust as well as a mortgage.

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

1.1.22 "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any Condominium which is part of the Condominium Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.1.23 "Project" shall mean and refer to the entire real property above described, including all structures and improvements erected or to be erected thereon, and such additions as may hereafter be brought within the jurisdiction of the Association.

1.1.24 "Restricted Common Area" shall mean that portion of the Common Area shown and described on the Condominium Plan and shall consist of balconies and patios.

1.1.25 "Subdivider" shall mean and refer to the Declarant(s), at all times herein mentioned in this document.

1.1.26 "Subdivision" shall mean and refer to the Project as defined in Section 1.1.25 of this Article.

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

ARTICLE 2

The Association

2.1 The Association is, effective upon the recordation hereof, the "management body" to provide for the management, control, maintenance, architectural control and preservation of the Common Area, all as more specifically set forth in this Declaration, the Articles, the Bylaws and the regulations from time to time adopted by the Directors.

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

2.3 A Board of Directors, consisting of four (4) persons elected at the first meeting of the Association shall possess and be vested with the rights, powers and duties set forth in this Declaration, the Articles and the Bylaws including, but not limited to, the right to initiate and execute disciplinary proceedings against members of the Association for violations of provisions of this Declaration, the Articles and the Bylaws, in accordance with the procedures set forth in said governing instruments.

ARTICLE 3

Membership and Voting Rights in Association

3.1 Every Owner of a Condominium shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Condominium. Each Owner is obligated to comply with the Articles, Bylaws, and the rules and regulations adopted by the Board of Directors of the Association. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Condominium to which it is appurtenant, and then only to the purchaser of such Condominium. Any attempt to make a prohibited transfer is void. In the event the Owner of any Condominium should fail or refuse to transfer the membership registered in his name to the purchaser of his unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2 Any voting right attributable to membership interest in the Association shall not vest until assessments against that interest have been levied by the Association.

3.3 The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all owners, with the exception of Declarant(s), and shall be entitled to one (1) vote for each Condominium owned. When more than one (1) person holds an interest in any Condominium, all such persons shall be

members. The vote for such Condominium shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

Class B. Class B member(s) shall be Declarant(s) and shall be entitled to three (3) votes for each Condominium owned. The Class B membership shall forever cease and be converted to Class A membership on the happening of the earliest of the following to occur:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) In no event later than the second anniversary of the original issuance of the Subdivision Public Report for a single-phase development.

3.4 Declarant's Rights. Except as specifically provided for herein, the requirement of approval of a prescribed majority of the voting power of the members of the Association other than the Declarant(s) for action to be taken by the Association is not intended to preclude the Declarant(s) from casting votes attributable to the subdivision interests held by the Declarant(s).

ARTICLE 4

Assessments

4.1.1 Pursuant to California Civil Code Sections 1355(e)(1) and 1356, the Directors have and shall have the right and power to make from time to time reasonable assessments upon the Owners to meet anticipated authorized expenditures (including the establishment of an adequate reserve fund for the periodic maintenance, repair, and replacement of facilities and improvements in and to the Common Area) of the Association, and to change from time to time the amount, installments and/or frequency of payment of assessments, but the Board cannot make any such changes as long as the Declarant(s) may elect a majority of the Board members.

4.1.2 The Declarant(s), for each Condominium owned within the Project, hereby covenants, and each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) annual assessments, which shall include an adequate reserve fund for the periodic maintenance, repair and replacement of the Common Area, and (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of notice of assessment. Each such assessment, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Condominium at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

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

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

4.1.5 Until January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment shall be Seven Hundred Eighty-Eight Dollars Seventy-Six Cents (\$788.76) per Condominium.

(a) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1st of the year immediately following the conveyance of the first Condominium to an Owner, the maximum annual assessment may be increased above ten percent (10%) by the vote or written assent of fifty-one percent (51%) of each class of members; provided, however, that following the conversion of the Class B membership to Class A membership, the maximum annual assessment may be increased more than ten percent (10%) above the maximum annual assessment for the previous year by the vote or written assent of (i) fifty-one percent (51%) of the total voting power of the Association and (ii) fifty-one percent (51%) of the total voting power of the Members other than the Declarant.

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

4.2 In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the vote or written assent of (i) fifty-one percent (51%) of the total voting power of the Association and (ii) fifty-one percent (51%) of the total voting power of the Members other than the Declarant. The Association may also levy a special assessment against any member to reimburse the Association for costs incurred in bringing a member and his Condominium into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the Bylaws, and the Association rules and regulations, which special assessment may be levied upon the vote of the Board after notice and an opportunity for a hearing which satisfy the requirements of Section 7341 of the California Corporation Code, set forth in the Bylaws.

4.3 Any action authorized under Articles 4 or 6 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) nor more than ninety (90) days in advance of the meeting. A quorum for such meetings shall be fifty-one percent (51%) of the total voting power of the Association. If the required quorum is not present, another meeting may be called

subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum for the preceding meeting.

4.4 Except as otherwise provided herein, both annual and special assessments shall be fixed at an equal rate for all Condominiums and may be collected on a monthly basis or as otherwise determined by the Board. A special assessment against members to raise funds for the rebuilding or major repair of a portion of the structural Common Area shall be levied upon the basis of the ratio of the square footage of the floor area of the Living Unit of the Condominium to be assessed to the total square footage of the aggregate floor area of the Living Units in all Condominiums to be assessed. A special assessment against a member to reimburse the Association for costs incurred in bringing the member and his Condominium into compliance with the provisions of the Condominium documents shall be assessed only against that member and his Condominium. Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of ten percent (10%) per annum from the due date until paid.

4.5 The annual assessments provided for herein shall commence as to all Condominiums on the first day of the month following the conveyance of the first Condominium to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Condominium at least thirty (30) days in advance of each annual assessment period. Separate written notices of the making of such assessment (including in such notice the amount thereof and the frequency of payment) shall be deposited into the United States Mail, postage prepaid, addressed respectively to each Condominium; such assessment shall be a debt of the Owner thereof at the time such assessment is made. The due date shall be established by the Board.

4.6 Any assessment made in accordance with this Declaration shall be a debt of the Owner of a Condominium from the time the assessment is due. At any time after any assessments levied by the Association affecting any Condominium have become delinquent, the Board may file for recording in the Office of the County Recorder of San Diego County a notice of delinquency as to such Condominium, which notice shall state all amounts which have become delinquent with respect to such Condominium and the costs and interest which have accrued thereon, the amount of any assessments relating to such Condominium which is due and payable although not delinquent, a description of the Condominium with respect to which the delinquent assessments are owed, and the name of the record or reputed record Owner of such Condominium. Such notice shall be signed by the President or Vice President and Secretary or Assistant Secretary of the Association.

Immediately upon recording of any notice of delinquency pursuant to the foregoing provisions of this section, the amounts delinquent, as set forth in such notice, together with the costs and interest accruing thereon, shall be and become a lien upon the Condominium described therein, which lien shall also secure all other payments and/or assessments which shall become due and payable with respect to said Condominium following such recording, and all costs and interest accruing thereon. Said lien shall continue for a period of one (1) year unless extended for a period of an additional year by the recording of a written extension of the Association. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens, except (i) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (ii) the lien or charge of any first mortgage of record.

In the event the delinquent assessments and all other assessments which have become due and payable with respect to the same Condominium together with all costs and interest which have accrued on such amounts are fully paid or otherwise satisfied prior to the completion of any sale held to foreclose the lien provided for in this Article, the Board shall record a further notice, similarly signed, stating the satisfaction and releasing of such lien.

Each assessment lien may be foreclosed as and in the same manner as the foreclosure of a mortgage upon real property under the laws of the State of California, or may be enforced by sale pursuant to Sections 2924, 2924(b), 2924(c) and 1356 of the California Civil Code, and to that end a power of sale is hereby conferred upon the Association. The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at a foreclosure sale, and to acquire and hold, lease, mortgage and convey said Condominium in the name "The Board of Directors of VILLA TEMPRA OWNERS' ASSOCIATION, INC., under 'Declaration of Restrictions' recorded _____, Official Records of San Diego County, California" (said recording reference being the recording data of this instrument). Suit to recover a money judgment for unpaid assessments, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

4.7 Declarant(s), to the extent that each owns any units shall be absolutely liable for the monthly installments of assessment constituting a lien on any Condominium and accruing prior to the conveyance thereof by Declarant(s).

4.8 The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage upon any Condominium. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to judicial or nonjudicial foreclosure of a first Mortgage 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 Condominium from lien rights for any assessments thereafter becoming due. Where the Mortgagee of a first Mortgage of record or other purchaser of a Condominium obtains title to the same as a result of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Condominium which became due prior to the acquisition of title to such Condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Condominiums including such acquirer, his successors and assigns.

4.9 The Association shall furnish or cause an appropriate officer to furnish, upon demand by any person, a certificate signed by an officer of the Association setting forth whether the assessments on a specified Condominium have been paid. A properly executed certificate of the Association as to the status of assessments on a Condominium is binding upon the Association as of the date of its issuance.

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

4.11 Notwithstanding anything herein to the contrary, real estate shall be assessed and lienable only against individual units, together with their undivided

interest in the Common Area, and not against the entire Project. In the event that any taxes are assessed against the Common Area or the personal property of the Association, rather than against the individual Condominiums, said taxes shall be added to the annual assessments. The share of this tax shall be included in assessment upon each owner which share shall be a fraction of such tax equal to such Owner's interest in the Common Area. This interest shall be proportioned according to the relative fair market value of the units as determined by the sales price of the units or the offered sales price of the units as of the day of assessment.

4.12 Upon acquisition of record title to a Condominium from Declarant(s), each Owner shall contribute to the capital of the Association in an amount equal to one-sixth (1/6) the amount of the then annual assessment for that Condominium as determined by the Board. This amount shall be deposited by the buyer into the purchase and sale escrow and disbursed therefrom to the Association. Within six (6) months after close of the first sales escrow of a Condominium by Declarant(s), as seller, it shall deposit into an escrow an amount equal to one-sixth (1/6) of the annual assessment for any and all Condominiums not yet sold. Escrow shall remit these funds to the Association. Upon the close of escrow of any Condominium for which the capitalization fund was prepaid by Declarant(s), escrow shall remit to the Declarant(s) the capitalization fee collected from the buyer.

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

4.14 A monetary penalty imposed by the Association as a disciplinary measure for failure of a member to comply with the Declaration or Bylaws or as a means of reimbursing the Association for costs incurred by the Association in the repair of damage to the Common Area for which the member was allegedly responsible or in bringing the member and his Condominium into compliance with the Declaration or By laws shall not be treated as an assessment which may become a lien against the member's Condominium enforceable as provided in section 1356 of the Civil Code. This paragraph shall not apply to charges imposed against an Owner which are reasonable late payment penalties for delinquent assessments nor 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.

4.15 Obligation of Owner: The owner of a Unit shall, as soon as practicable before transfer of title or the execution of a real property sales contract, give to the prospective purchaser a copy of the declarations of restrictions, bylaws, and articles of incorporation affecting rights to the property being offered for transfer, and a true statement in writing from the Association as to the amount of any delinquent assessments and information relating to penalties, attorney's fees, and other charges therein as provided by the declaration of restrictions or the management documents of the Association on the Unit as of the date the statement is issued, and a copy of the most current financial statements, as set forth in Section 9.21 of the Bylaws, which have already been distributed to the owner of such a Unit.

Upon written request, the Association shall, within 10 days of the mailing or delivery of such request, provide the owner of a Unit with a copy of the declarations of restrictions, bylaws, and articles of incorporation applicable to that subdivision, together with a true statement in writing as to the amount of any delinquent

assessments, penalties, attorney's fees, and other charges therein as provided by the declaration of restrictions or the management documents of the Association on the Unit as of the date of the request. The Association may impose a fee for providing such documents and statement, but in no event shall the fee exceed the reasonable cost to prepare and reproduce the requested documents.

The provisions of this section, except those provisions relating to a written statement of delinquent assessments and such other charges as may be authorized by the declaration of restrictions or management documents, shall not apply to the transfer of a lot or Unit the transfer of which is required to be preceded by the furnishing to a prospective purchaser of a copy of a public report pursuant to Section 11018.1 of the Business and Professions Code.

ARTICLE 5

Ownership of the Common Area

and of Beneficial Interest in Common Personalty

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

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

5.3 None of the common elements, recreational facilities, parking space or other amenities contemplated as a part of the Project are proposed to be leased to the Unit Owners or to the Owners Association; nor shall the same be subject to any other restriction in favor of the developer of the Project or any affiliate of such developer.

ARTICLE 6

Responsibilities of Maintenance

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

6.2 Each Owner hereby grants easements to the Board to enter into each Condominium and to have utility companies enter into Condominiums to repair the plumbing, heating, and electrical systems located thereon, subject to the following

limitations. Entry into a Living Unit for emergency purposes may be immediate; provided, however, such entry shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party. Entry into a Living Unit for other than emergency repairs shall be made only after three (3) days notice has been given to the Owner and shall be made with as little inconvenience as possible to the Owner and any damage caused thereby shall be repaired by the entering party.

6.3 Except as otherwise provided herein, the Association acting through the Board and its officer shall have the sole and exclusive right and duty to manage, operate, control, repair, replace or restore all of the Common Area or any portion thereof, together with the improvements, trees, shrubbery, plants and grass thereon, all as more fully set forth in this Declaration of Restriction, the Articles and the Bylaws. The Owner shall maintain and repair his own exclusive use area, which includes his patio or balcony or garage or parking space.

6.4 The Association or its agents or employees shall have the right to enter upon any private individual unit as necessary in connection with construction, maintenance or emergency repairs for the benefit of the Common Area or the Owners in common. For other than emergency repairs, the Association's agents or employees shall have the right to enter any Living Unit or any portion of the Common Area, after approval by two-thirds (2/3) vote of the Board. Such entry shall be made with as little inconvenience to the Owner as possible and any damage caused thereby shall be repaired by the Association. Further, such entry for other than emergency repairs shall be made only after not less than three (3) days' notice has been given to the Owner.

6.5 The Board shall have the right to adopt reasonable rules not inconsistent with the provisions contained in this Declaration, and to amend the same from time to time relating to the use of the Common Area and the recreational and other facilities situated thereon by Owners and by their tenants or guests, and the conduct of such persons with respect to automobile parking, outside storage of boats, trailers, bicycles and other objects, disposal of waste materials, drying of laundry, control of pets and other activities which, if not so regulated, might detract from the appearance of the community or offend or cause inconvenience or danger to persons residing or visiting therein. The Board may suspend the voting rights and right to use the recreational facilities located on the Common Area of a Member who is in default in the payment of any assessment for any period during which such assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations, after reasonable written notice and an opportunity for a hearing before the Board as set forth in the Bylaws which satisfies the minimum requirements of §7341 of the California Corporations Code.

ARTICLE 7

Use

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

7.1.1 Each Owner shall have the exclusive right to (i) paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, doors and fences in or bounding such Owner's Living Unit, provided that the

floors of the Living Unit shall at all times be covered by carpeting over a pad (except that the kitchen, bathroom(s), utility room and/or entry hall of such Living Unit may be covered by floor tile in lieu of such carpeting), and (ii) alter such Owner's Living Unit, provided such alteration shall not affect the Common Area, any other Living Unit or the structural portions of any building, wall or fence.

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

7.2 No Living Unit shall be occupied or used for any purpose or in any manner which shall cause any structure in the Project to be uninsurable against loss by fire or the perils of the extended coverage endorsement to the California Standard Fire Policy form, or cause any policy or policies representing such insurance to be cancelled or suspended or the company issuing the same to refuse renewal thereof.

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

7.4 No pet(s) or other animal(s) may be raised or kept anywhere in or on the Project except as permitted by regulations adopted by the Directors. Notwithstanding the foregoing, each Owner may raise or keep (i) not more than one domesticated dog, cat or other commonly accepted household pet, provided such animal does not exceed 20 pounds in weight at mature growth, and (ii) caged birds or fish in a household aquarium, in any number; provided, however, that such pets and other animals, including birds and fish, must be kept for noncommercial purposes. In the event the Directors determine that any such pets or other animals create an unreasonable annoyance or nuisance to the Owners, the raising or keeping thereof shall be discontinued within a reasonable time after such determination. No pets or other animals, including birds or fish, shall be permitted in the Common Area except as specifically permitted by regulations adopted by the Directors.

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

7.6 Nothing shall be done in any Living Unit or in, on or to the Common Area which would impair the structural integrity of any building or which would structurally change any building except as is otherwise provided herein. No drilling or mining operations of any kind shall be permitted upon or in any Living Unit or the Common Area. All equipment, garbage cans and other containers shall be kept screened and concealed from view from neighboring Living Units, streets and the Common Area. All rubbish, trash and garbage shall be regularly removed from each Living Unit and shall not be allowed to accumulate thereon or on the adjacent Common Area. No wearing apparel, garments, linens, towels, laundry or the like shall be kept or maintained on the outside area, if any, of a Living Unit, nor shall equipment be kept or maintained thereon

or therein. No Owner shall cause its outside area, if any, to be enclosed without the prior written consent of the Directors. The Directors shall have the right and power to adopt reasonable rules and regulations relating to the type(s) and kind(s) of fixtures, personal property or other objects which may be kept or maintained upon the outside areas of of a Living Unit (and/or the manner in which any of the same may be kept or maintained on said outside areas if permitted to be kept or maintained thereon by such rules and regulations).

→ 7.7 No activity shall be carried on in the Common Area which shall be contrary to the regulations of the Directors relating to use of or activity in the Common Area.

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

re: destruction to asphalt ducts skateboarding
7.9 The Owner of each Living Unit shall be liable to the Association for all damages to the Common Area or any improvements thereon or thereto (including but not limited to buildings, recreational facilities and landscaping) or to any wall or fence adjacent to the Common Area caused by such Owner, its guests or any occupant of such Owner's Living Unit as such liability may be determined pursuant to the laws of the State of California.

7.10 The Owner of a Living Unit damaged or destroyed by fire or other calamity shall, unless partition shall be undertaken pursuant to the Article entitled "Partition and Severance," cause the interior of such Living Unit to be repaired or restored at the expense of the Owner. This obligation shall be extended to the installation of furniture and the like, but is for the purpose of preventing unsightliness with respect to such damaged Living Unit and any resultant health or safety problems to other Owners within the Project and the community. Nothing herein shall be construed, in any manner whatsoever, to alter or modify the obligation of the Association to repair or restore under the Article entitled "Destruction; Insurance."

7.11 Anything in the preceding paragraphs of this Article to the contrary notwithstanding, Declarant(s) and any successor in interest of Declarant(s) may use any Living Units owned by them, not exceeding at any one time three (3) in number, for the purpose of maintaining sales models for the sale of condominium units within the project by Declarant(s). Such use shall be made of said Living Units only during reasonable hours and such use shall not terminate until the last unit in the project is conveyed or within three (3) years, whichever occurs first.

7.12 No signs other than one (1) sign of customary and reasonable dimensions advertising a Condominium for sale or lease shall be erected or displayed in any Living Unit so that it is visible from without such area without the prior written permission of the Board, and all signs must conform with applicable City of San Diego ordinances. No signs shall be erected or displayed on the Common Area except signs placed by authority of the Board. This provision does not restrict Declarant(s) from facilitating the use of signs anywhere on the Project for the purpose of selling the units as long as such use does not unreasonably interfere with the rights and uses of the Owners in the Common Area and such use shall terminate upon the conveyance by Declarant of the last unit in the project or within three (3) years, whichever occurs first.

ARTICLE 8

Architectural Control

No building, fence, wall or other structure or improvement shall be commenced, erected, placed or altered upon the Common Area until the location and complete plans and specifications showing the nature, kind, shape, height and materials, including the color scheme, have been submitted to and approved in writing as to harmony of external design and location of surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee appointed by the Board of Directors and composed of five (5) representatives. In the event the Board or its designated committee fails to approve or disapprove such location, plans and specifications or other requests within thirty (30) days after the submission thereof, then such approval will not be required, provided that any structure or improvement so erected or altered, conforms to all of the conditions and restrictions herein contained, and is in harmony with similar structures erected within the project. The grade, level, or drainage characteristics of the Condominium Property or any portion thereof, shall not be altered without the prior written consent of the Board or its designated committee. The provisions of this Article shall not apply to the initial construction by Declaration of Condominiums or other improvements to the Condominium Property, and neither the Board nor any committee appointed by the Board shall have any authority or right to approve or disapprove the initial construction by Declarant(s) of Condominiums or other improvements to the Condominium Property.

ARTICLE 9

Partition and Severance

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

9.2 No Owner may sell, assign, lease or convey (i) his interest in the Common Area separate and apart from his Living Unit, nor (ii) his interest in any Exclusive Use Area separate and apart from his interest in the Common Area and his Living Unit.

9.3 Each of the Owners of a Condominium, whether such ownership is in fee simple or as a tenant-in-common, is hereby prohibited from partitioning or in any other way severing or separating such ownership from any of the other ownerships in the Condominium Property, except upon the showing that: (i) more than three (3) years before the filing of action, the Project was damaged or destroyed so that a material part thereof was unfit for its use and the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (ii) that three-fourths (3/4) or more of the Project has been destroyed or substantially damaged, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project, or (iii) that the Project has been in existence in excess of fifty (50) years, that is is obsolete and uneconomic, and that Owners holding in aggregate more than a fifty percent (50%) interest in the Common Area are opposed to repair or restoration of the Project; provided, however, that if any Condominium shall be owned by two (2) or more co-tenants as tenants in common or as joint tenants, nothing herein shall be deemed to prevent a judicial

partition as between such co-tenants and no Condominium may be partitioned or subdivided without the prior written approval of the Mortgagee holding the first Mortgage on that Condominium.

9.3.1 For the Conditions mentioned in 9.3 upon which a partition may be had, such right to partition may be conditional upon failure of the Condominium Owners to elect to rebuild within a certain period, specified inadequacy of insurance proceeds, specified damage to the building, a decision of an arbitrator, or upon any other reasonable condition.

9.4 The Association is hereby granted an irrevocable power of attorney to sell the Condominium Property for the benefit of all the Owners thereof when the partition of the Owners' interests in said Condominium Property may be had pursuant to Section 9.3 above. The power of attorney herein granted may be exercised upon the vote or written consent of Owners holding in the aggregate at least two-thirds (2/3) of the interest in the Common Area or by less than all but not less than a majority of the Board. Upon the occurrence of either the Board or any two (2) Board Members who are hereby authorized to record a certificate of exercise in the Office of the County Recorder, San Diego County, which certificate shall be conclusive evidence thereof in favor of any person relying thereon in good faith; provided, however, that said power of attorney shall not apply to the Administrator of The Veterans Administration, an officer of the United States of America.

9.5 The proceeds resulting from any such sale as described in this section shall be distributed to the Owners in proportion to the fair market value of the Owner's unit(s) as compared to the total fair market value of all units as of the date of partition as determined by an independent appraiser hired and compensated by the Board.

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

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

ARTICLE 10

Rights of Mortgagees

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

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

10.3 Except as provided in Paragraphs 10.3.1, 10.3.2 and 10.3.3, each and every lien created by or pursuant to this Declaration, including but not limited to, the assessment liens described in the Article entitled "Assessments" is and shall be subordinate, inferior and subject to the lien and charge of any (i) real property first mortgage or first deed of trust of record prior to the date of said assessment lien encumbering any Condominium and given for value.

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

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

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

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

10.3.5 In the event any Mortgagee (i) shall acquire title to any Condominium by judicial foreclosure, exercise of power of sale contained in any real property mortgage or deed of trust, and (ii) shall thereafter sell and convey such Condominium, any real property mortgage or deed of trust received by such lender as security for all or a portion of the purchase price of such Condominium shall be incontrovertibly deemed "given for value." Notwithstanding the provisions of Paragraph 10.3 above, any lien created by or pursuant to this Declaration, which arises from the failure to pay assessment(s) accruing during the period of such Mortgagee's holding of title to said Condominium, shall be a lien superior to the lien of said real property mortgage or deed of trust received to secure a portion of said purchase price.

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

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

10.6 In the event there shall be any express or implied conflict between any provision of this Article 10 and any other provisions of this Declaration, the provisions of this Article 10 shall govern and prevail.

10.7 Provided that the Mortgagee informs the Association in writing of its appropriate address and requests in writing to be notified, neither the Association nor any Owner shall do any of the following, unless at least sixty-seven percent (67%) of the first Mortgagees of Mortgages encumbering Condominiums (based upon one ¼1½ vote for each Mortgage) have given their prior written approval:

- (i) The abandonment or termination of the Project, except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or in the case of a taking by condemnation or eminent domain; and
- (ii) The effectuation of any decision by the Association to terminate any then existing professional management, and thereafter assume self-management of the Project.
- (iii) partition or subdivide any Condominium;
- (iv) seek, by act or omission, to abandon, partition, subdivide, encumber, sell or transfer the Common Area; provided, however, that the granting of easements for public utility or other public purposes consistent with the uses of the Common Area shall not be deemed a transfer within the meaning of this provision;
- (v) use hazard insurance proceeds for losses to any portion of the Condominium Property for other than the repair, replacement or reconstruction of the Condominium Property, except as may be provided by statute upon substantial loss to the Living Unit or Common Area;
- (vi) fail to maintain fire and extended coverage insurance on the Common Area and the improvements thereto on a current replacement cost basis in an amount less than one hundred percent (100%) of the insurable value, based on current replacement cost.
- (vii) change the pro rata interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of the Common Area appurtenant to each Living Unit;

10.8 Any institutional Lender is, upon request, entitled to:

- (i) inspect the books and records of the Association during normal business hours;
- (ii) receive an annual audited financial statement of the Association; and
- (iii) receive written notice of all meetings of the Association, and be permitted to designate a representative to attend all such meetings.

ARTICLE 11

Destruction of Common Area or Living Units

11.1 If any portion of the Common Area is damaged or destroyed by fire or other casualty, then:

11.1.1 If the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding is necessitated, the Board shall contract to repair or rebuild the damaged portions of the Common Area substantially in accordance with the original plans and specifications therefor.

11.1.2 If the cost of repairing or rebuilding exceeds the amount of available insurance proceeds by more than five percent (5%) of the budgeted gross expenses of the Association for the fiscal year during which the repairs or rebuilding is necessitated, and if the Owners holding in aggregate more than fifty percent (50%) interest in the Common Area agree to repair or restoration of the project, then the Board shall contract as provided in 11.1.1 above.

11.1.3 If the Owners do not so agree to the repair or rebuilding of the Common Area as provided in 11.1.2 above, then each Owner (and his Mortgagee(s)), as their respective interests shall then appear, shall be entitled to receive that portion of the insurance proceeds equal to the proportion of the decrease in fair market value of his Condominium as compared to the aggregate decrease in the fair market values of all the Condominiums caused by such damage or destruction. For purposes hereof, fair market value shall be determined by a Member of the American Institute of Real Estate Appraisers selected by the Board and hired by and at the expense of the Association. Should dispute arise as to the distribution of insurance proceeds, the dispute shall be decided by arbitration by the American Arbitration Association pursuant to its Commercial Rules of Arbitration.

11.1.4 The date of valuation for a loss under this section shall be the fair market value of the property and/or structure on the day immediately preceding the date of destruction.

11.1.5 If a bid to repair or rebuild is accepted, the Board shall levy a special assessment against each Condominium in the proportion the Condominiums are assessed, pursuant to Article 4 of this Declaration, for purposes of raising funds for the rebuilding or major repair of a portion of the structural Common Area, to make up any deficiency between the total insurance proceeds and the contract price for such repair and rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to the account of the Association to be used for such rebuilding.

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

ARTICLE 12

Destruction; Insurance

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

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

12.3 The Association shall obtain and continue in effect the following insurance:

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

(b) A public liability and property damage insurance policy with cross liability endorsement, if available, insuring the Association, any manager, the Declarant(s) and the owners against liability incident to ownership or use of the Common Area. The limits of such insurance shall not be less than \$1,000,000.00 covering all claims for death, personal injury and property damage arising out of a single occurrence.

(c) A Fidelity Bond protecting against dishonest acts by the Officers, Directors, Trustees and employees, and any other managerial agent, if any, and its employees, and all others who are responsible for handling funds of the Association. Such Fidelity Bonds shall meet the following requirements:

- (i) all shall name the Association as an obligee;
- (ii) all shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Condominium project, including reserves, unless a greater amount is required by FNMA or VA;

- (iii) all shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;
- (iv) all shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days' prior written notice to the Servicer on behalf of FNMA or VA.

(d) Worker's Compensation Insurance covering any employees of the Association.

(e) A blanket policy of flood insurance in the name of the Owners' Association in the maximum amount available per building under the National Flood Insurance Program.

12.3.1 The policy(ies) of such insurance shall contain a waiver of subrogation by the insurer(s) against the Association, Directors and Owners.

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

12.5 Copies of all such insurance policies (or certificates thereof showing the premiums thereon to have been paid) shall be retained by the Association and open for inspection by Owners at any reasonable time(s). All such insurance policies shall (i) provide that they shall not be reducible or cancellable by the insurer, without first giving ten (10) days' prior notice in writing to the Association and all first Mortgagees, (ii) contain a waiver of subrogation by the insurer(s) against the Association, Directors and Owners, and (iii) contain or have attached a standard Mortgagee clause of endorsement (customarily used by private institutional lenders in the County of San Diego, California) in favor of all first Mortgagees, together with such other endorsement(s) as such first Mortgagees may require to fully protect their interest.

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

ARTICLE 13

Condemnation

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

13.2 In this Article, the following words shall have, respectively, the following meanings:

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

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

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

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

13.4 If any portion of the Common Area is taken by condemnation, eminent domain or any proceeding in lieu thereof, and the award is not apportioned among the Owners and their respective Mortgagee(s) as their respective interests then appear by court judgment or agreement between the condemnor and each of the affected Owners, then the affected Owners and their Mortgagees as their respective interests then appear shall be entitled to receive in proportion a distribution from the award for such taking according to the relative fair market value of the Condominium units affected by the condemnation as determined by a licensed independent appraiser retained and compensated by the Association in accordance with the procedures for disbursement set out above.

13.4.1 Should it be determined to repair or rebuild any portion of the Common Area, such proceeds shall be paid to the Association for that purpose in the same manner and subject to the same terms, conditions and limitations as are set forth in Article 11 for repairing damaged or destroyed portions of the Common Area. A decision to repair or rebuild shall be made in the same manner and subject to the same conditions and limitations as provided in Article 11 for determining whether to rebuild or repair following damage or destruction.

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

13.5.1 In such event said Owner shall grant his remaining interests in the Common Area appurtenant to the Living Unit so taken, if any, to the other Owners owning a fractional interest in the same Common Area, such grant to be in proportion to the fractional interest in the Common Area then owned by each.

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

ARTICLE 14

Budget and Financial Statements

14.1 The Directors shall maintain books of account of all its receipts and expenditures and shall cause such books to be examined as of the close of each fiscal year and a report to be made thereon to the Association. The Directors shall deliver a copy of such report to the Owner of each Condominium within one hundred twenty (120) days after the end of such year. Each Owner and each first Mortgagee shall be entitled at reasonable times to inspect the books and records of the Association, and to have such books and records examined at said Owner's or first Mortgagee's expense by an attorney or accountant representing such Owner or first Mortgagee, and may make excerpts or copies of such books and records or portions thereof, and each such Owner or first Mortgagee, at his own expense, shall have the right to have such books and records independently audited by a public accountant.

14.2 The procedures and guidelines for the financial reporting of the Association shall be set forth in Article 9 of the Bylaws.

ARTICLE 15

Declarants' Security for Their Obligations

15.1 If the Association is the obligee under a bond (the "Bond") obtained pursuant to Business and Professions Code Section 11018.5(a)(2)(A) to secure completion of improvements in and to the Common Area, the following provisions shall govern any action brought by the Association to enforce the obligations under the Bond:

15.1.1 The Board shall consider and vote on the question of action by the Association to enforce the obligations under the Bond with respect to any improvement for which a Notice of Completion has not been filed within sixty (60) days after the completion date specified for that improvements in the Planned Construction Statement appended to the Bond. If the Association has given an extension, which is in no instance to exceed ninety (90) days, in writing for the completion of any common-area improvement, the governing body shall be directed to consider and vote on the aforesaid question if a Notice of Completion has not been filed within thirty (30) days after the expiration of the extension.

15.1.2 If the Directors fail to consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond or should the Directors decide not to initiate action to enforce said obligations, a special meeting of Members shall be held to consider and vote on such action if Members having at least 5% of the total voting power of the Association sign and submit to the Directors a

petition demanding such meeting. Such meeting shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Directors of said petition. At such special meeting, all Members other than Subdivider shall be entitled to vote.

15.1.3 If, at such special meeting, Members having a majority of the voting power of the Association residing in members other than the declarant(s) vote in favor of taking action to enforce the bond, the decision shall be deemed to be that of the Association, and the Directors shall immediately initiate and thereafter pursue appropriate action in the name of the Association to enforce the obligations under the Bond. If the Directors refuse to pursue such action, then any Member(s) may initiate and pursue appropriate action in the name of the Association to enforce the obligations under the Bond. Funds for pursuing such action shall be obtained by means of a special assessment of the Owners pursuant to Article 4; such funds shall be kept in a separate account at a bank designated by the Association and used only for initiation and prosecution of said action.

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

ARTICLE 16

General Provisions

16.1 The Association and any Owner shall have the right to enforce by any proceedings at law or in equity, all covenants, conditions, restrictions, and reservations, now or hereafter imposed by the provisions of this Declaration. Failure by the Association or any Owner to enforce any covenant, condition, restriction or reservation herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

Each Owner shall have a right of action against the Association for any failure by the Association to comply with the provisions of this Declaration or the Bylaws or Articles.

16.2 The limitations, restrictions, conditions and covenants set forth in this Declaration constitute a general scheme for (i) the maintenance, protection and enhancement of value of the Project and all Condominiums, and (ii) the benefit of all Owners. Said limitations, restrictions, conditions and covenants are imposed on each Condominium for the benefit of every other Condominium and the present and future Owners thereof. Said limitations, restrictions, conditions and covenants are and shall be covenants running with the land or equitable servitudes, as the case may be.

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

16.4 Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted (excepting the enforcement for failure to pay assessment(s) as set forth in the Article entitled "Assessments") unless and until a written notice of such breach setting forth the facts of such breach and the legal description of the Condominium affected thereby has been delivered by certified mail to the Owner of such Condominium and such breach has not been remedied within thirty (30) days after the receipt of such notice. Any action instituted hereunder shall be commenced within one hundred twenty (120) days, but not prior to thirty-one (31) days, after the receipt of such notice.

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

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

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

16.8 Each and all of these covenants, conditions and restrictions shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which date they shall automatically be extended for successive periods of ten (10) years.

16.9 So long as there is a Class B membership, the following shall require prior approval of VA: annexation of additional properties, mergers and consolidations, special assessments and any amendment to this Declaration.

16.10 In the event any portion of the Common Area encroaches upon any Living Unit encroaches upon the Common Area or another Living Unit as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists. Said valid easement shall apply only to minor encroachments. There shall be easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of Owners shall not be altered in any way by said encroachments, settlement or shifting provided, however, that in no event shall an easement for encroachment be created in favor of an Owner if said encroachment occurred due to the willful misconduct of any Owner. In

the event any portion of a structure on the Condominium Property is partially or totally destroyed and then repaired or rebuilt, each Owner agrees that minor encroachments over adjoining Living Units or Common Area shall be easements for the maintenance of said encroachments so long as they shall exist.

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

16.12 If any Condominium Owner or other occupant of the Condominium owned by him shall fail to observe any of the provisions of this Declaration, or any of the rules or regulations adopted by the Board of Directors, the Board of Directors shall give written notice of such fact to the Condominium Owner and accorded a hearing which complies with a procedure that satisfies the minimum requirements of Section 7341 of the Corporations Code, if the Board concludes that the alleged violation did in fact occur, the Board may take any disciplinary action permitted by this Declaration or the Bylaws of the Association.

16.13 Upon approval in writing of the Association, pursuant to two-thirds (2/3) of a majority of the voting power of its members, excluding the voting power of the Declarant(s), the Owner of any property who desires to add it to the scheme of this Declaration and to subject to it the jurisdiction of the Association, may file of record a Declaration of Annexation which shall extend the scheme of this Declaration to such property.

16.14 Every right, privilege, duty and obligation in or upon the Association shall be exercised by, and shall be a burden upon any California corporation incorporated (i) for a purpose exercising or discharging, as the case may be, said rights, privileges, duties and obligations, and (ii) by, or with the written consent of, the Owners of a majority of the Condominiums.

16.15 This Declaration and every provision hereon shall be construed to facilitate the operation of the Project.

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

16.17 Any agreement for professional management of the condominium project, or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days' or less written notice, and are renewable for successive one-year periods.

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

16.19 The Board of Directors may impose monetary penalties, temporary suspensions of an Owner's rights as a member of the Association or other appropriate discipline for failure to comply with the governing instruments provided that the minimum procedures that satisfy Section 7341 of the Corporation Code is complied with before a decision to impose discipline is reached.

16.20 The development of the Project will be consistent with the overall development Plan, as defined in Article 1, Paragraph 1.1.24 of this Declaration.

16.21 For purposes of this paragraph, the holder of a first mortgage is referred to as a "first Mortgagee." Notwithstanding anything to the contrary in this Declaration or any other governing documents, the following provisions shall control:

16.21.1 Any "right of first refusal" which may be contained in the governing documents shall not impair the right of a first Mortgagee to:

- (i) foreclose or take title to a Condominium pursuant to the remedies provided in the first mortgage;
- (ii) accept a deed (or assignment) in lieu of foreclosure in the event of a default by a Mortgagor; or
- (iii) sell or lease a Condominium acquired by the first Mortgagee.

16.21.2 A first Mortgagee who obtains title to a condominium pursuant to the remedies provided in a first mortgage or foreclosure of a first Mortgagee shall not be liable for such Condominium's unpaid dues or charges which accrue prior to the acquisition of title to such condominium by the first Mortgagee. However, such unpaid dues or charges shall be deemed to be common expenses collectible from all of the Condominium Owners, including such first Mortgagee, its successors and assigns. For the purposes of this paragraph, the remedies provided in the mortgage shall not include a deed in lieu of or an assignment in lieu of foreclosure.

16.21.3 All taxes, assessments, and charges which may under local law become liens against a Condominium prior to the first mortgage of such Condominium shall relate only to the individual Condominium, and not to the Project as a whole.

16.22 In the event of substantial damage to or destruction of any unit or part of the Common Area, each Institutional Lender shall be entitled to timely written notice of such damage or destruction, and no owner or other party shall have priority over such Institutional Lender with respect to the distribution of any insurance proceeds to which the Institutional Lender is otherwise entitled.

16.23 Any restriction contained in this Declaration prohibiting the leasing of a Unit for transient or hotel purposes shall not apply to an Institutional Lender in possession of a unit following a default in a first mortgage or a foreclosure proceeding or deed or other arrangement in lieu of foreclosure. No Unit Owner may lease less than the entire unit. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration and the Bylaws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any Unit Owner to lease his Unit.

16.24 The right of a Living Unit Owner to sell, transfer, or otherwise convey the Owner's Unit will not be subject to any right of first refusal or any similar restriction in favor of the Association.

ARTICLE 17

Amendments

17.1 During the period of time prior to conversion of the Class B membership to the Class A membership, this Declaration may be amended by an instrument in writing signed by seventy-five percent (75%) of the voting power of each class of members of the Association, which amendment shall become effective upon the recording thereof by the Office of the County Recorder of San Diego County, California. After the conversion of the Class B membership in the Association to Class A membership, the Declaration may be amended by an instrument in writing signed by (i) seventy-five percent (75%) of the total voting power of the Association and (ii) at least seventy-five percent (75%) of the voting power of members of the Association other than Declarant(s).

Notwithstanding the foregoing the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes prescribed for action to be taken under that clause.

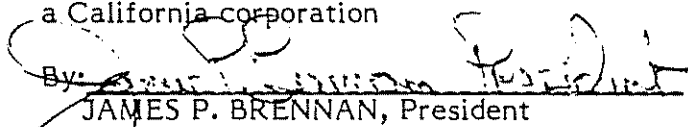
IN WITNESS WHEREOF, the undersigned, being Declarant(s) herein, has executed this instrument the day and year first hereinabove written.

VILLA TEMPRA, a general partnership

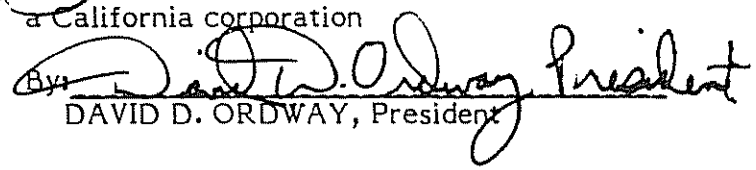
By: O'KEEFE DEVELOPMENT CO., INC.,
a California corporation

By: 
WILLIAM J. O'KEEFE, President

By: VILLA TEMPRA, INC.,
a California corporation

By: 
JAMES P. BRENNAN, President

By: O. TEMPRA, INC.,
a California corporation

By: 
DAVID D. ORDWAY, President