

2263

79-439016  
FILE/PAGE NO.  
BOOK 1979  
RECORDED REQUEST OF

TITLE INSURANCE AND TRUST

OCT 19 11 37 AM '79

OFFICIAL RECORDS  
RECORDER  
SAN DIEGO COUNTY, CALIF.

Recording requested by: )  
Declarant )  
When Recorded Mail to: )  
Mr. and Mrs. Jack G. Whitney )  
1754 Colgate Circle )  
La Jolla, CA 92037 )

) Space Above For Recorder's Use

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, made and executed by JACK G. WHITNEY and HELEN WHITNEY, husband and wife, herein referred to as "Declarant,"

WITNESSETH THAT:

WHEREAS, Declarant is the owner of the property described as:

Parcel 2 of Parcel Map No. 7420 filed in the office of the County Recorder of said San Diego County, June 11, 1978.

WHEREAS, Declarant has caused to be recorded a Condominium Plan, (as the same is described in California Civil Code Section 1351) affecting said property.

WHEREAS, Declarant is about to sell and convey condominiums and Declarant desires and intends to hereby subject the same,

79-439016  
41

pursuant to California Civil Code Section 1355, to certain limitations, restrictions, conditions and covenants herein set forth.

NOW THEREFORE, by this Declaration of Restrictions, Declarant hereby certifies and declares that it has established, and does hereby establish, the protective limitations, restrictions, conditions and covenants upon said property, subject to which each and every condominium shall be conveyed by Declarant and thereafter held, leased, encumbered, sold and/or conveyed by each and every successor in interest of Declarant.

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 "Declaration" shall mean this instrument as the same may be amended pursuant to the Article entitled "Amendment."

1.1.2 "Plan" shall mean that certain Condominium Plan recorded February 19, 1979, File/page No. 79-439018, Official Records of San Diego County, California, being a Condominium Plan as the same described in California Civil Code Section 1351, and any amendments to said Condominium Plan.

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

79-439018  
41

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

1.1.5 "Living Unit" shall mean the elements of a Condominiums which are not owned in common with the owners of other Condominiums; each Living Unit, and the boundaries thereof, are described in the Plan. "Living Unit" consists of living unit, balcony, patio, garage, and storage areas being the same number as the Living Unit.

1.1.6 "Common Area" shall mean Common Area as the same is defined in the Plan. The unnumbered parking spaces are shown as such on the condo<sup>minium</sup> plan and are part of the common area to be assigned by the Homeowners Association.

1.1.7 "Association" shall mean the West Point Loma Owners' Association, Inc., a California nonprofit corporation, composed of the Owners described below.

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

1.1.9 "By-laws" shall mean the By-laws of the Association and any amendments to said By-laws.

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

1.1.11 "Owner" shall mean the person(s) who hold(s) record title to any Condominium.

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

ARTICLE 2

Use

2.1 Each Unit shall be improved, used and occupied only for private single-family dwelling purposes, except that Unit No. 1 (which is specifically described on the Plan) may be used by Declarant for the purposes of an office for a general contractor for only so long as Declarant is the Owner of said Unit No. 1, except further that no child under the age of 15 years shall reside in any Unit for any period exceeding, in the aggregate, 90 days in any one calendar year. Notwithstanding anything in this Declaration to the contrary, no amendment, revocation or rescission of this Paragraph 2.1 may be had without the written consent of Declarant and (ii) recording of such consent in the Office of the Recorder of San Diego County, California.

2.1.1 Each Owner shall have the exclusive right to (i) paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, doors and fences in or bounding such Owner's Unit, provided that the floors of a Unit that is located above another Unit shall at all times be covered by cushion floor tile or carpeting over a heavy duty foam pad having a thickness of at least one-half inch, and (ii) alter such Owner's Unit, provided such alteration shall not affect the Common Area, any other Unit or the structural portions of any building wall or fence.

79-439016

41

2.1.2 No shutter, screen blind, curtain, drape or appurtenance shall be constructed, permitted, or maintained in or on any window or door without the express written consent of the Directors.

2.1.3 Waterbeds or water furniture may be permitted in a Unit.

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

2.3 No Unit shall be used in such manner as to interfere with the enjoyment of occupants of other 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 Unit. No noxious or offensive activity shall be carried on in the Common Area, nor shall anything be done therein which may be or become an annoyance or nuisance to the Owners.

2.4 No pet(s) or other animal(s) may be raised or kept anywhere in or on the Project except as permitted by regulations adopted by the Directors.

2.5 The Common Area, except buildings, shall be improved and used only for (i) vehicular parking, (ii) vehicular and pedestrian movement within the Project, including access to the Units, (iii) recreational use by the Owners and occupants of 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. If any portion of the Common Area encroaches on any Unit or any Unit encroaches on the Common Area, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. A nonexclusive easement for ingress, egress, and support throughout the Common Area is and shall be appurtenant to each Unit, and the Common Area is and shall be subject to such easement. The unnumbered 24 spaces shall remain a part of the Common Area to be assigned by the Homeowners Association.

79-439016  
41

2.6 Nothing shall be done in any Unit, or in, on or to the Common Area which would impair the structural integrity of any building of 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 Unit or the Common Area. All equipment, garbage cans and other containers shall be kept screened and concealed from view from neighboring Units, streets and the Common Area. All rubbish, trash and garbage shall be regularly removed from each Unit and shall not be allowed to accumulate thereon or on the adjacent Common Area. No wearing apparel, garments, linens, towels, laundry or the like shall be kept or maintained on a terrace, patio or balcony, if any, of a Unit that is visible from another Unit, nor shall equipment be kept maintained thereon or therein. No Owner shall cause its terrace, patio balcony, if any, to be enclosed without the prior written consent of the Directors. The Directors shall have the right and power to adopt reasonable rules and regulations relating to the type(s) and kind(s) of fixtures, personal property or other object which may be kept or maintained

79-439016  
41

on a terrace, patio or balcony of a Unit (and/or the manner in which any of the same may be kept or maintained on a terrace, patio or balcony if permitted to be kept or maintained thereon by such rules and regulations).

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

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

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

2.10 The Owner of a 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 Unit to be repaired or restored at the expense of the Owner. This obligation shall not extend to the installation of furniture and the like, but is for the purpose of preventing unsightliness with respect to such damages Unit and any resultant health or safety problems to other Owners within

79-439016  
41



the Project and the community. Nothing herein shall be construed in any manner whatsoever, to alter or modify the obligation of the Association to repair or restore under the Article entitled "Destruction; Insurance."

2.11 Anything in the preceding paragraphs of this Article to the contrary notwithstanding, Declarant (any any successor in interest of Declarant) may use any Units owned by it, not exceeding at any one time five in number, for the purpose of maintaining sales models. Such use shall be made of such Units only during reasonable hours and such use shall terminate on December 31, 1980.

#### ARTICLE 3

##### Ownership of the Common Area and of Beneficial Interest in Common Personality

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

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

#### ARTICLE 4

##### Partition and Severance

4.1 Except as set forth in the following paragraphs, the Common Area shall remain undivided, and there shall be no judicial partition thereof. Nothing herein shall be deemed to

prevent partition of a co-tenancy in a Condominium.

4.2 An action may be brought by any Owner for partition of the Project by sale of the entire Project, as if the Owners of all of the Condominiums in the Project were tenants in common in the entire Project in the same proportion as their interest in the Common Area; provided, however, that partition shall be made only upon the showing that (i) three years after damage or destruction to the Project which renders a material part thereof unfit for its use prior thereto, the Project has not been rebuilt or repaired substantially to its state prior to its damage or destruction, or (ii) that three-fourths or more of the Project has been destroyed or substantially damaged (or that three-fourths or more of the Units have been rendered unfit for their use prior thereto), and that Owners holding in the aggregate more than fifty percent 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 years, that it is obsolete and uneconomic, and that the Owners holding in the aggregate more than fifty percent interest in the Common Area are opposed to repair or restoration of the Project; provided, however, further that at least 75% of all first Mortgagees (based upon one vote for each first mortgage owned) consent in writing to any such partition.

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

ARTICLE 5

The Association

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

5.2 Each Owner shall be and become a Member of the Association contemporaneously with his acquisition of a Condominium (whether such acquisition occurs by (i) conveyance of a Condominium by Declarant, (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.

79-439016  
41

5.3 A Board of Directors, consisting initially of three persons, shall possess and be vested with the rights, powers and duties set forth in this Declaration, the Articles and the Bylaws.

ARTICLE 6  
Assessments

6.1 Pursuant to California Civil Code Sections 1355 (e) (1) and 1356, the Directors shall be required to make from time to time reasonable assessments upon the Owners to meet anticipated authorized expenditures (including the establishment of an adequate reserve fund for replacement of facilities and improvements in and to the Common Area) of the Association, and to change from time to time the amount, installments and/or frequency of payment of assessments. No increase or decrease in the amount of such reasonable assessments for anticipated authorized expenditures of the Association in any one fiscal year of the Association which exceeds 20% of the regular assessment for the immediately preceding fiscal year may be made without the approval of (i) a majority of the Owners (other than Declarant) and (ii) Declarant, only until that certain date which is two years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with

respect to the Project and provided that Declarant holds more than 25% interest in the Common Area. Each Owner shall be assessed separately for a share of such anticipated authorized expenditures, which share shall be a fraction of the total of such anticipated authorized expenditures equal to such Owner's fractional undivided interest in the Common Area. Separate written notices of the making of such assessment (including in such notice the amount thereof and the frequency of payment) shall be deposited into the United States Mail, postage prepaid, addressed respectively to each Condominium, at least 60 days prior to the beginning of a fiscal year; such assessment shall be a debt of the Owner thereof at the time such assessment is made. Amounts, or installments, of assessments shall bear interest at the rate of ten percent per annum from and after the due date thereof established by the Directors. The amount of any such assessment together with said interest, costs and reasonable attorneys' fees in the event enforcement is commenced shall be and become a lien upon any Condominium, the Owner of which is assessed, when the Directors cause to be recorded with the County Recorder of San Diego County, California, a notice of assessment, which shall state the amount of such assessment and the aforesaid interest, costs and attorneys' fees, a description of the Condominium upon

79-439016  
41

which such assessment shall constitute a lien and the name of the record Owner thereof. Upon payment of said assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Directors shall cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. Unless sooner satisfied and released or the enforcement thereof initiated as herein provided, such lien shall expire and be of no further force or effect one year from the date of recordation of said notice of assessment; provided, however, that said one-year period may be extended by the Directors for not more than one additional year by recording a written extension thereof. Such lien may be enforced by sale of the Condominium by the Directors or other person authorized by the Directors to conduct the same, after failure of the Owner to pay such an assessment in accordance with its terms; such sale is to be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924b and 2924c, applicable to the exercise of powers of sale in mortgages and deeds of trust or in any other manner permitted by law. The Directors on behalf of the Association shall have the right to (i) bid at any foreclosure sale of a Condominium, (ii) a credit in any such bidding, in the amount of the aggregate of the unpaid assessment(s), said interest and said charges and (iii) hold, lease, mortgage and convey said Condominium

in the name "The Board of Directors of West Point Loma Owners' Association, Inc. under 'Declaration of Restrictions' recorded \_\_\_\_\_, Official Records of San Diego County, California" (said recording reference being the recording date of this instrument).

6.1.1 Anything herein to the contrary notwithstanding, the Directors may levy and collect special assessment(s) for capital improvements or other purposes in the same manner as regular assessments are levied and collected as described in Paragraph 6.1. Such special assessment(s) shall become a lien upon a Condominium in the same manner as regular assessments become a lien. Provided, however, no such special assessment costing in the aggregate in excess of 5% of the budgeted gross expenses of the Association for the then current fiscal year of the Association may be levied without the approval of (i) a majority of the Owners (other than Declarant) and (ii) Declarant, only until that certain date which is two years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to the Project and provided that Declarant holds more than 25% interest in the Common Area; the above provisions with respect to special assessment(s) shall not apply to special assessment(s) for repair, or the like,

described in the Article entitled "Destruction; Insurance."

6.2 Until such time as the Directors shall change the same pursuant to Paragraph 6.1, such assessments shall be due and payable monthly on the first day of each calendar month, commencing the first day of the calendar month next following the recording of the first conveyance by Declarant of a Condominium. Declarant shall be absolutely liable for the monthly installment of assessment, and any special assessment, constituting a lien on any Condominium and accruing prior to the conveyance thereof by Declarant.

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

6.4 The Association shall comply with the requirement of the Consumer Credit Protection Act (Public Law 90-321, 82 Stat. 164 et seq.), also known as the "Federal Truth-In-Lending Act," to the extent the same may be applicable.



## ARTICLE 7

Destruction; Insurance

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

7.2 In the event of any loss, damage or destruction of any of the buildings or improvements in the Project, the Directors shall cause the same to be replaced, repaired or rebuilt. In the

event the cost of such replacement, repair or rebuilding exceeds the hazard insurance proceeds received therefor, each Owner shall be assessed separately for a share of such deficiency, which share shall be a fraction of such deficiency equal to such Owner's fractional undivided interest in the Common Area. In any event, all hazard insurance proceeds received for such loss, damage or destruction shall be used for replacement, repair or rebuilding.

7.3 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 days' prior notice in writing to the Association and all first Mortgagees, (ii) contain a waiver of subrogation by the insurer(s) against the Association, Directors and Owners and (iii) contain or have attached a standard mortgagee clause or endorsement (customarily used by private institutional lenders in the County of San Diego, California) in favor of all first Mortgagees, together with such other endorsement(s) as such first Mortgagees may require to fully protect their interests.

7.4 The Association shall give notice in writing to (i) all first Mortgagees in the event of any loss or "appropriation" affecting the Common Area which exceeds \$10,000.00 and (ii) all

affected first Mortgagees in the event of any damage to a Unit which exceeds \$1,000.00.

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

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

7.7 The Directors shall procure and keep in force during the term hereof insurance (with a "severability of interest" endorsement) in the name of the Association and the Owners against any liability to the public resulting from any occurrence in or about the Common Area with bodily injury limit not less than \$1,000,000.00 for each occurrence and property damage limit not less than \$1,000,000.00 for each occurrence. The policy(ies) of such insurance shall contain a waiver of subrogation by the insurer(s) against the Association, Directors and Owners.

79-439016  
41

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

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

8.0 The Directors shall provide for an annual review of the adequacy of insurance coverage.

#### ARTICLE 8

##### Condemnation

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

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

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

any transfer of any part of the Project (or any interest therein) made in avoidance of such an exercise.

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

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

8.2.4 "Condominium Total Value" means the cash fair market value of a Condominium the Unit of which is determined (pursuant to Paragraph 8.4) to be, as a result of (i) an appropriation and (ii) the use to which appropriated land will thereafter be put and (iii) restoration and repair of any Common Area damaged or destroyed as a result of such appropriations, unsuitable for the purpose intended.

8.2.5 "Condominium Partial Value" means the diminution in cash fair market value of a Condominium the Unit of which is determined (pursuant to Paragraph 8.4) to be, as a result of (i) an appropriation and (ii) the use to which the land appropriated will thereafter be put and (iii) restoration and repair of any Common Area damaged or destroyed as a result of such appropriation, suitable for the purpose for which it was intended.

8.3 Each and every Director is hereby appointed the attorney in fact for every Owner to (i) negotiate with any condemnor for settlement of an award for any appropriation, (ii) defend any action brought for an appropriation, and to engage and compensate counsel and expert witnesses therefor or to aid said Director in the exercise of any of its powers under this Article, (iii) receive in the name of the Association any award and to retain the same, pending its disbursement, in a noninterest-bearing bank account in the name of the Association and (iv) disburse the same as soon as may be practicable, pursuant to the following paragraphs of this Article. Notwithstanding any provision herein to the contrary, Mortgagees shall automatically be entitled to join in any appropriation proceedings. No settlement of an award negotiated by the Association on behalf of the Owners shall be binding upon said Mortgagees without their prior written consent.

8.4 In the event of any appropriation, the Directors shall, within ten days of the initiation of such proceedings, notify all Mortgagees (whose security interest shall be affected by such appropriation) thereof; and as soon as may be practicable, shall determine upon competent evidence satisfactory to it:

8.4.1 Whether, as to each Unit, the same will be suitable or unsuitable for the purpose for which it was intended, as a result of and after an appropriation and/or the use to which the land appropriated will thereafter be put.

8.4.2 As to any Unit so determined to be unsuitable for the purpose for which it was intended, the identity, description and the Condominium Total Value of the Condominium of which such Unit is a part.

8.4.3 As to any Unit so determined to be suitable for the purpose for which it was intended, the identity, description and the Condominium Partial Value, if any, of the Condominium of which such Unit is a part.

8.5 Any determination made by the Directors pursuant to Paragraph 8.4 shall be binding upon all Owners. Nothing herein contained shall be construed to preclude the Directors from reconsidering, and changing, any such determination.

8.6 As soon as may be practicable after the receipt by the Association of any award the Directors will disburse the same pursuant to the following:

8.6.1 First, to Mortgagees as their interest may appear.

8.6.2 Second, to contractors, subcontractors, materialmen and others for the costs of the repair or restoration of damage or destruction to the Common Area caused by appropriation, or to the Association in reimbursement for such costs; the balance of the award is hereinafter referred to as "award balance".

8.6.3 Third, the award balance to Owners as follows:

(a) If the award balance equals or exceeds the aggregate of Condominium Total Values and Condominium Partial

2276

Values (i) to each Owner the amount of the Condominium Total Value or Condominium Partial Value, if any, determined, pursuant to Paragraph 8.4, for such Owner's Condominium and (ii) to the Association, the remainder of the award balance.

(b) If the award balance is less than the aggregate of Condominium Total Values and Condominium Partial Values, to each Owner that portion of the award balance which bears to the award balance the same ratio as the Condominium Total Value (or Condominium Partial Value), if any, determined, pursuant to Paragraph 8.4, for such Owner's Condominium bears to the aggregate of Condominium Total Values and Condominium Partial Values.

8.7 In the event there shall be any express or implied conflict between any provision of this Article and any provision of a note or deed of trust held by a Mortgagee, the provisions of said note or deed of trust shall govern and prevail.

#### ARTICLE 9

##### Accounting

9.1 The Directors shall maintain books of account of all its receipts and expenditures and shall cause such books to be examined as of the close of each fiscal year and a report to be made thereon to the Association. The Directors shall deliver a copy of such report to the Owner of each Condominium within 90 days after

79-439016  
41



the end of such year. Each Owner (or its duly appointed representative) 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 its duly appointed representative) or first Mortgagee, at his own expense, shall have the right to have such books and records independently audited by a public accountant.

ARTICLE 10

Scope; Enforcement

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

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

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

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

10.5 Any of the foregoing to the contrary notwithstanding, no action to enforce this Declaration shall be instituted (excepting the enforcement for failure to pay assessment(s) as set forth in the Article entitled "Assessments") unless and until

79-439016  
41

a written notice of such breach setting forth the facts of such breach and the legal description of the Condominium affected thereby has been (i) filed for record in the Office of the Recorder of San Diego County, California, and (ii) delivered by certified mail to the Owner of such Condominium prior to such recording, and such breach has not been remedied within thirty days after the recording of such notice. Any action instituted hereunder shall be commenced within one hundred twenty days, but not prior to thirty-one days, after the recording of such notice.

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

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

2280

ARTICLE 11

Rights of Mortgagees

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

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

11.3 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 mortgage or deed of trust of record prior to the date of said assessment lien encumbering any Condominium and given for value and (ii) any blanket construction (including acquisition) mortgage(s) or deed(s) of trust encumbering all or any part of the

79-439016  
41

Project which mortgage(s) or deed(s) of trust may have been expressly subordinated to this Declaration.

11.3.1 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. Such unpaid assessments shall be reallocated among the Owners (other than said purchaser).

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

the lien of said real property mortgage or deed of trust received to secure a portion of said purchase price.

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

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

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

79-439016  
41

## ARTICLE 12

Declarant's Security for its Obligations

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

12.1.1 The Directors shall, within ten days after passage of the Grace Period (hereinafter defined), consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond with respect to any improvement in or to the Common Area for which a Notice of Completion has not been filed within 60 days (the "Grace Period") after the completion date specified for that improvement in the "Planned Construction Statement" appended to the Bond. If the Association has, in writing, extended the time for completion of any improvement in or to the Common Area, the Directors shall consider and vote on the question of action to be taken to enforce the obligations under the Bond if a Notice of Completion has not been filed for said improvement within 30 days (the "Grace Period") after the expiration of said extended time period. Any such extension granted by the Association shall override any contrary decision of the Directors.

12.1.2 If the Directors fail to consider and vote on the question of action to be taken by the Association to enforce the obligations under the Bond or should the Directors decide not to initiate action to enforce said obligations, a special meeting of members shall be held to consider and vote on such action if members having at least five percent of the voting power of the Association sign and submit to the Directors a petition demanding such meeting. Such meeting shall be held not less than 15 days nor more than 30 days after receipt by the Directors of said petition. At such special meeting, all Members other than Declarant shall be entitled to vote.

12.1.3 If, at such special meeting, Members (other than Declarant) having a majority of the voting power of the Association (exclusive of the voting power attributed to Declarant) vote in favor of taking action to enforce the Bond, the Directors shall immediately initiate and thereafter pursue appropriate action in the name of the Association to enforce the obligations under the Bond. If the Directors refuse to pursue such action, then any Member(s) may initiate and pursue appropriate action in the name of the Association to enforce the obligations under the Bond. Funds for pursuing such action shall be obtained by means of a special assessment of the Owners pursuant to Paragraph 6.1.1; such funds shall be kept in a separate account at



a bank designated by the Association and used only for initiation and prosecution of said action.

12.1.4 If, at such special meeting, Members (other than Declarant) having a majority of the voting power of the Association (exclusive of the voting power attributed to Declarant) vote against taking action to enforce the Bond, then no such action may be taken by any Director or Member on behalf of the Association for a period of 60 days after said special meeting. If no Notice of Completion is filed for said improvements in or to the Common Area within 60 days after the date of said special meeting, the provisions of the foregoing Paragraphs shall govern the action to be taken by the Directors and the Association with respect to enforcing the obligations under the Bond.

12.2 If Declarant posts a surety bond or deposits 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 of its 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 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

79-439016  
41

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; however, the costs of such arbitration shall ultimately be borne as determined by the Arbitrator(s) under the aforesaid Rules.

ARTICLE 13

Amendment

13.1 This instrument may be amended only as follows:

13.1.1 At any time(s) prior to the earlier occurrence of Declarant holding 25% (or a lesser interest) in the Common Area or two years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to the Project, by written instrument (or counterparts thereof) (i) signed and acknowledged by Declarant and by 75% of all of the Owners (other than Declarant), (ii) bearing, or to which is attached, the written consent of 75% of First Mortgagees (as of the time of recording of such amendment) of all Condominiums and (iii) filed for record in the Office of the Recorder of San Diego County, California.

79-439016

41

13.1.2 At any time(s) after the earlier occurrence of Declarant holding 25% (or a lesser interest) in the Common Area or two years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to the Project, by written instrument (or counterparts thereof) (i) signed and acknowledged by 75% of all of the Owners of the Project (including Declarant, provided that the foregoing requisite percentage of 75% includes the signatures and acknowledgments of 75% of all of the Owners other than Declarant), (ii) bearing, or to which is attached, the written consent of 75% of First Mortgagees (as of the time of recording such amendment) of all Condominiums and (iii) filed for record in the Office of the Recorder of San Diego County, California.

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

79-439016  
41

ARTICLE 14

General Provisions

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

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

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

79-439016  
41

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

14.5 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 15

Voting Rights

1. Members' Right to Vote.

1.1 Only persons who are Members of the Association shall be entitled to vote at a meeting of Members.

2. Classes of Voting Members.

2.1 Members shall be divided into two classes for the purposes of voting, Class A and Class B. Class A Member(s) shall be all Owners of Condominiums except Declarant and said Class A Member(s) shall be entitled to one vote for each Condominium owned. The lone Class B Member shall be Declarant who shall be entitled to three votes for each Condominium owned. Declarant's Class B voting status shall cease and convert to Class A voting status on the earlier occurrence of one of the following: (i) when the total votes outstanding in Class A equal the total votes outstanding in

Class B or (ii) on that certain date which is two years after the original issuance by the California Department of Real Estate of a Final Subdivision Public Report with respect to the Project.

3. Voting Rights; Required Vote; Cumulative Voting.

3.1 On all matters, including the election of each director to be elected, a Member shall have the number of votes as set forth above for each Condominium owned by said Member.

3.2 When a quorum is present at any regular or special meeting or Meetings, the affirmative vote of Members holding a majority of the total number of votes at such meeting shall be required for Members to transact any business, except as may be otherwise provided herein.

3.3 Every Member entitled to vote at any election for Directors of the Association may cumulate his votes and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which he is entitled, or distribute his votes on the same principle among as many candidates as he may desire. The candidates receiving the highest number of votes up to the number of Directors to be elected shall be elected Directors of the Association.

3.4 In the event that Members other than Declarant lack sufficient votes in the aggregate, after cumulating the votes of each of said Members, to elect not less than 20% of the

79-439016  
41

2201

total number of Directors authorized hereunder, Declarant shall not be entitled to vote in the election of 20% of the Directors to be elected.

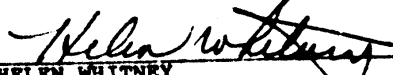
3.5 If more than one legal person constitutes a Member, (i) a vote(s) cast in person or by proxy by such persons will not be considered (except for the purpose of establishing a quorum) unless those persons attempting to vote declare to the same effect on the issue being voted upon and (ii) a vote(s) cast by less than all of such persons shall be binding upon the other persons who fail to cast their vote and shall conclusively be deemed the vote of such Member.

4. Proxies.

4.1 Every Member entitled to vote or to authorize action may do so either in person or by one or more agents authorized by a written proxy executed by the person or his duly authorized agent and filed with the Secretary of the Association.

IN WITNESS WHEREOF, this Declaration has been executed at San Diego, California, on this 30 day of August, 1979.

  
\_\_\_\_\_  
JACK G. WHITNEY

  
\_\_\_\_\_  
HELEN WHITNEY

79-439016  
51

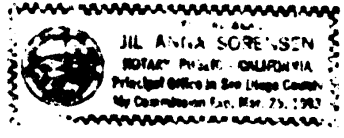
2202

STATE OF CALIFORNIA )  
                                  )  
COUNTY OF SAN DIEGO )

On 8/30/79, before me, the undersigned, a Notary Public in and for said County and State, personally appeared JACK G. WHITNEY and HELEN WHITNEY, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

WITNESS my hand and official seal.

*Jil Anna Sorensen*  
NOTARY PUBLIC



79-439016  
41



