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**RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CAMINO DEL PRADO HOMEOWNERS ASSOCIATION**

November 16, 2001

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**RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CAMINO DEL PRADO HOMEOWNERS ASSOCIATION**

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**RESTATED DECLARATION**  
**OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF**  
**CAMINO DEL PRADO HOMEOWNERS ASSOCIATION**

The Declaration, executed by Valley Title Company, a corporation ("Declarant"), entitled "Declaration of Covenants, Conditions and Restrictions (Enabling Declaration Establishing A Plan for Condominium Ownership) " and recorded September 21, 1973, in Volume 0574, Page 49, *et seq.*, File No. 4611112 of the Official Records of Santa Clara County, California, as amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions recorded March 6, 1978 in Book D507, Page 10, *et seq.* (the "Original Declaration"), which Declaration affects all of the Properties described and commonly known as Camino del Prado, is hereby amended and restated in its entirety to read as follows:

**Recitals**

1. Declarant was the owner of a fee interest in certain real property in the County of Santa Clara, State of California, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Properties"). Declarant consented to the creation and imposition of the plan of beneficial restrictions contemplated herein. Declarant established a residential condominium project on said real property under the provisions of the California Condominium Act, providing for separate title to each Unit within said project, and each Unit to have an undivided interest in all of the remaining property.

2. Declarant desired to subdivide and develop the Properties and to subject the Properties to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which

are for the benefit of all portions of the Properties and for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

3. It was the further intention of the Declarant to sell and convey to the owners condominium Units consisting of the area of space contained in each Unit as well as co-ownership by the individual owners, as tenants in common, and as hereafter set forth, of all the remaining portions of the project, defined and referred to under said Declaration as the "Common Area", subject to the protective covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges and equitable servitudes between Declarant and such Owners which are set forth in the Original Declaration, which were in furtherance of a general plan for the subdivision, development, sale and use of the Properties. It was also the intention of Declarant that the Common Facilities constructed on the Common Area within the Properties be reserved exclusively for the use and enjoyment of the Members of the Association, their tenants, lessees, guests and invitees, all subject to the terms and conditions of this Declaration, the Articles and the Bylaws.

4. On the date specified in the Officers' Certification of Amendment attached hereto, seventy-five percent (75%) of the total voting power of Camino del Prado Homeowners Association (the successors in interest to the Declarant) voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in Article W of the Original Declaration. As so amended and restated, these easements, covenants, restrictions, and conditions shall run with the Properties and shall be binding on all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### Definitions

**Section 1.01.** "Apartment" shall mean the airspace described in Section 2.02(a) of this Declaration.

**Section 1.02.** "Architectural Standards" shall mean written specifications, details, plans and/or drawings adopted by the Board pursuant to Article IX, Section 9.01 of this Declaration.

**Section 1.03.** "Articles" shall mean the Articles of Incorporation of Camino del Prado Homeowners Association, which are filed in the Office of the Secretary of State of the State of California.

**Section 1.04.** "Assessment" means an assessment made or assessed against an Owner and the Owner's Condominium in accordance with the provisions of Article VI of this Declaration.

**Section 1.05.** "Association" shall mean and refer to Camino del Prado Homeowners Association, a California non-profit mutual benefit corporation, its successors and assigns.

**Section 1.06.** "Association Management Documents" means this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, and Architectural Standards.

**Section 1.07.** "Association Rules" shall mean the rules adopted by the Board of Directors of the Association, as the same may be in effect from time to time pursuant to Article V, Section 5.08 of this Declaration.

**Section 1.08.** "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

**Section 1.09.** "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may, from time to time, be amended.

**Section 1.10.** "Common Area" shall mean the entire project excepting the Units.

**Section 1.11.** "Common Expense" means any use of Common Funds authorized by Article VI and/or described in Exhibit "B" attached hereto and includes (a) all expenses or charges for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Facilities as incurred or as may be estimated from time to time by the Association and/or its Board of Directors, (b) any amounts reasonably necessary for reserves for maintenance and for nonpayment of any assessments, (c) the costs and expenses of the Association in the

performance of its functions as provided for in its Articles of Incorporation, the Bylaws, or this Declaration, and (d) an adequate reserve fund for replacement of Common Facilities, which shall be established by the Association and funded by Regular Assessments and Special Assessments, when required.

**Section 1.12.** "Common Facilities" means the recreational center, the swimming pool, pool apron area, pool storage and pump house, pool furniture, play areas, other community facilities, and the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, streets, sidewalks, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located on the Common Area.

**Section 1.13.** "Common Funds" means all funds collected or received by the Association (a) for use in the maintenance, management, administration, insurance, operation, replacement, repair, addition to, alteration or reconstruction of, all or any portion of the Common Area and Common Facilities and (b) for use in discharging any and all of its functions as provided for in its Articles of Incorporation, the Bylaws and this Declaration.

**Section 1.14.** "Condominium" shall mean an estate in real property as defined in California Civil Code Section 783, consisting of title to a Unit and an undivided interest in a portion of the Common Area. The ownership of each Condominium shall include the ownership of a Unit, garage airspace, the respective undivided interest in the Common Area, and membership in the Association. Each Unit shall be a separate freehold estate consisting of the space described and defined in Section 1351(f) of the California Civil Code. Each Unit includes the portions of the structure so described and the airspace so encompassed. The Unit and Common Area are more particularly described in Sections 2.02(a) and 2.02(e) of this Declaration.

**Section 1.15.** "Condominium building" shall mean a residential structure containing Condominium Units.

**Section 1.16.** "Condominium documents" means and includes this Declaration as it may be amended from time to time, the exhibits, if any, attached thereto, the Articles, the Bylaws of the Association, and the Rules and Regulations for the Members as established from time to time.

**Section 1.17.** "Condominium Plan" shall mean and refer to the recorded diagrammatic floor plan of the Units built or to be built on the property which identifies

each Unit and shows its dimensions pursuant to California Civil Code Section 1351 a copy of which was recorded as Exhibit "A" to the Original Declaration and on the Declaration of Annexation relating to Lots 37 and 39 of Tract No. 5295 described on Exhibit "A" to this Declaration.

**Section 1.18.** "County" means the County of Santa Clara, State of California.

**Section 1.19.** "Declarant" shall mean and refer to the project developer of the Properties, namely, Valley Title Company, a corporation, its successors and assigns.

**Section 1.20.** "Declaration" shall mean this Restated Declaration of Covenants, Conditions and Restrictions as such Declaration may, from time to time, be amended. The "Original Declaration" shall mean the document referenced in the preamble to this Declaration.

**Section 1.21.** "Director" shall mean a Member of the Board of Directors of the Association.

**Section 1.22.** "Eligible Mortgage Holder" shall mean a first lender who has requested notice of certain matters from the Association in accordance with Section 17.13.

**Section 1.23.** "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with Section 17.13.

**Section 1.24.** "Exclusive Use Common Area" means that portion of the Common Area that is reserved for the exclusive use of the Owners. Each such Exclusive Use Common Area shall be appurtenant to the Owner's Unit and may not be conveyed or transferred apart from the Unit. The boundaries or location of and limitations on the Exclusive Use Common Area are described in Article II, Section 2.02(c) of this Declaration.

The Association acting on behalf of all Owners may reserve to Owners in the name of all Owners as their attorney-in-fact (or in the name of the Association for any property to which the Association holds title) Exclusive Use Common Areas for any purpose not inconsistent with the rights of other Owners under this Declaration.

**Section 1.25.** "First Mortgage, or "First Mortgagee" is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Condominium or other portions of the Project.

**Section 1.26.** "Household" shall mean the persons residing in a Unit as their principal place of residence.

**Section 1.27.** "Institutional Mortgagee" is a Mortgagee that is a bank or savings and loan association or mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans, or any insurance company or any federal or state agency or instrumentality, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

**Section 1.28.** "Lease" means any agreement (written or verbal) under which a person is permitted to occupy a Unit for compensation of any kind including, without limitation, any fee, service, gratuity or other consideration while the Owner is not in residence. The verb "leasing" shall include renting or otherwise permitting a person other than an Owner to occupy a Unit for compensation of any kind including any fee, service, gratuity or other compensation while the Owner is not in residence.

**Section 1.29.** "Map" shall mean that Subdivision Map of Tract No. 5295, filed in the Office of the County Recorder of Santa Clara County, California on April 27, 1973, in Book 322 of Maps, Pages 10 and 11, as amended by a Certificate of Correction filed April 27, 1973 in Book 322 of Maps at Pages 10 and 11, Santa Clara County Records, as further amended by a Certificate of Correction recorded July 22, 1974 in Book B604, Page 226, Instrument No. 4813682, Santa Clara County Records.

**Section 1.30.** "Member" shall mean and refer to every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article XV, Section 15.06 hereof.

**Section 1.31.** "Mortgage" means a mortgage or deed of trust encumbering a Condominium or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage.

**Section 1.32.** "Office of Recorder" shall mean the Office of the Recorder, County of Santa Clara, State of California.

**Section 1.33.** "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Condominium (including contract sellers, but excluding those having such interest merely as security for the payment of a debt or the performance of an obligation) and includes, unless the context otherwise requires, the household, guests, tenants, and invitees of such Owner.

**Section 1.34.** "Owner of Record" and "Member of the Association" include an Owner and means any person, firm, corporation or other entity in which title to a Unit is vested as shown by the official records of the Office of the County Recorder.

**Section 1.35.** "Person" shall mean and include any individual, corporation, partnership, association or other entity recognized by the laws of the State of California.

**Section 1.36.** "Properties" shall mean and refer to that certain real property described in the first Recital to this Declaration and such additions thereto as may thereafter be brought within the jurisdiction of the Association. The Properties are more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

**Section 1.37.** "Regular Assessment" means an assessment levied against an Owner and the Owner's Condominium in accordance with Article VI, Section 6.02 hereof.

**Section 1.38.** "Residential Use" shall mean occupation and use of a Unit for residential dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or municipal rules and regulations.

**Section 1.39.** "Special Assessment" means an assessment levied on an Owner and the Owner's Condominium in accordance with Article VI, Section 6.03 hereof.

**Section 1.40.** "Special Individual Assessment" means an assessment made against an Owner in accordance with Article VI, Section 6.04 hereof.

**Section 1.41.** "Tenant" means and includes any lessee or renter of a Unit.

**Section 1.42.** "Unit" shall mean an apartment as defined in Section 2.02(a) of this Declaration. The term "Unit" is synonymous with the term "Apartment" as defined in Section 1.01 of this Declaration.



**Section 1.43.** "Voting Power" shall mean the total membership of the Association eligible to vote, that is, all memberships, except those suspended for default in payment of assessments or otherwise.

## ARTICLE II

### Description of Project, Division of Property and Creation of Property Rights

**Section 2.01. Description of Project.** The Project consists of the underlying real property with Condominium Units (also referred to herein as "apartments") and all other improvements located thereon. The Project consists of eighty-seven (87) residential Condominium Units and the Common Area. The Project includes the Common Area facilities, open space, appurtenances, and easements, all as more particularly set forth on the Condominium Plan. The common interest subdivision referred to herein is a Condominium project within the meaning of California Civil Code Section 1353 (a).

**Section 2.02. Division of Property.** The property is hereby divided into the following separate freehold estates consisting of two (2) airspaces (apartment airspace and garage airspace), the apartment airspace being designated with the Unit number and the garage area airspace being designated with the same number followed by the letter "A".

- (a) Apartments. The boundaries of each apartment shall consist of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors, door frames and trim of each apartment, which includes the portions of the building so described and the airspace so encompassed. Soffits and exposed beams in ceilings shall be part of the Unit. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of including, without limitation, gas and electric heating, hot water heaters, space heaters, air conditioning units (if any), lighting fixtures and cabinetry, which are located entirely within the Unit they serve. Each Unit includes both the portions of the building so described and the airspace so encompassed.
- (b) Garages. The boundaries of the garage airspace shall be: (i) the lower vertical boundary is the floor thereof; (ii) the upper vertical

boundary is a horizontal plane eight (8) feet above the floor thereof; (iii) the lateral boundaries are the interior surfaces of the interior perimeter wall(s) thereof where they exist, otherwise the lateral boundaries are vertical planes established by vertical projections of the horizontal boundaries shown for each garage airspace. Each airspace therefore includes both the portions of the building so described and the airspace so encompassed.

(c) Exclusions from Apartments and Garages.

- (1) Bearing walls located within the interior of the apartment are Common Area, not part of the apartment, except for the finished surfaces thereof.
- (2) Chimneys and flues are Common Area.
- (3) The Unit does not include those areas and those things which are defined as "Common Area" in Article II, Section 2.02(b). Each Unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Article XI, Section 11.01. In interpreting deeds and plans, the then existing physical boundaries of an apartment and garage 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.

(d) Easements.

The title of each Unit Owner to an apartment and garage is subject to the following:

- (1) Any portion of the Common Area lying within said apartment or garage.

- (2) An easement appurtenant to the Common Area for encroachment upon the airspace of the apartment or garage by any portions of the Common Area located within the apartment or garage.
- (3) An easement through said apartment or garage appurtenant to the Common Area and all other apartments and garages for support, maintenance and repair of the Common Area and all other apartments and garages.

The ownership of each apartment and garage shall include appurtenant easements to and for the benefit of the apartment and garage as follows:

- (1) Non-exclusive easements for ingress and egress to and from the apartment and garage and for support of the apartment and garage through the Common Area and for maintenance and repair of the apartment and garage through all other apartments and garages and the Common Area.
- (2) An exclusive easement for use of the Exclusive Use Common Area referred to in Section 2.02(g) of this Article II.
- (3) A non-exclusive easement for the use and enjoyment of the Common Area as provided herein.

(e) Common Areas. A freehold estate consisting of the remaining portion of the property is described and referred to herein as Common Area "A" for each of Lots 37, 38 and 39 as shown on the Map and Common Area "B" which consists of Lot 40 as shown on the Map and the recreational improvements on said Lot 40. Common Area "A" shall include, without limitation: land; parking and driveway areas; garages; storage areas; bearing walls, columns, girders, subfloors, unfinished floors, roofs, and foundations; ducts, flues, conduits, pipes, plumbing, wires, utility enclosures, and other utility installations (except the outlets thereof when located within the apartment or garage), required to provide power, light, telephone, gas, water, sewage, drainage and heat; landscape irrigation system; and central television antenna or cable television system.

(f) Ownership of Common Areas. Each Unit Owner shall have, as appurtenant to the Owner's Unit, an undivided fractional interest in Common Area "A" as follows: Owners of Condominiums located on Lot 37 shall have an undivided one twenty-eighth (1/28th) interest in Common Area "A" related to Lot 37; Owners of Condominiums located on Lot 38 shall have an undivided one thirty-third (1/33rd) interest in Common Area "A" related to Lot 38; Owners of Condominiums located on Lot 39 shall have an undivided one twenty-sixth (1/26th) interest in Common Area "A" related to Lot 39. Each Owner also shall have an undivided one eighty-seventh (1/87th) interest in Common Area "B". The ownership of each Condominium shall include a Unit and garage airspace and such undivided interest in the Common Area. The common interest appurtenant to each Unit is permanent in character and cannot be altered without the consent of all the Unit Owners affected, and the first mortgagees of such Unit Owners, as expressed in an amended declaration. Such undivided common interest cannot be separated from the Unit to which it is appurtenant. Each Unit Owner may use the Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Unit Owners.

The undivided interest of each Unit Owner in the Common Area as more particularly provided herein is subject to the following exceptions and reservations:

- (1) Non-exclusive easements appurtenant to all apartments and garages for ingress and egress to and from all Units and garages for support, maintenance and repair of all Units.
- (2) Exclusive easements for use of attic spaces above the garage airspace.
- (3) Easements for the installation and maintenance of utilities.
- (4) Non-exclusive easements for the benefit of Unit Owners for the use and enjoyment of the Common Area as provided herein.

(g) Exclusive Use Common Area. Each Owner shall have the exclusive right to use the attic space located above the Owner's garage airspace for purposes allowed by the Association Rules. Each Owner also shall have the exclusive right to use the fenced yard area directly adjacent to the Owner's Unit. The Exclusive Use Common Area also shall include the following portions of Common Area designated to serve the Owner's Unit exclusively: any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, door frames, and hardware incident thereto, screens and windows

or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest.

Except as set forth in this Declaration, no other portion of the Common Area shall be Exclusive Use Common Area.

(h) **No Separate Conveyance of Undivided Interests.** The foregoing undivided interests are hereby established and are to be conveyed with the respective Units as indicated above, cannot be changed, except as herein set forth, and the Members, their successors, assigns and grantees covenant and agree that the undivided interest conveyed therewith, shall not be separated or separately conveyed, and such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

**Section 2.03. Partition Prohibited.** Except as expressly provided in this clause and in Article III of this Declaration, an Owner shall have no right to partition or divide the Owner's ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Article XIII (relating to damage or destruction) or in Article XIV (relating to condemnation) or in California Civil Code Section 1359(b) have been met. Nothing in this Declaration shall prevent partition of a cotenancy in a Condominium.

**Section 2.04. Distribution of Proceeds.** Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums determined as provided in Article XIII and Article XIV but as of a date immediately prior to the event giving rise to the right of Owners to partition the Common Area.

## ARTICLE III

### Circumstances Warranting Partition of Common Area

**Section 3.01. Power of Attorney.** Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition

of the Project may be had under Civil Code Section 1359 and under the circumstances authorizing partition under this Declaration. The power of attorney shall (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of 75% of the Owners and 75% of all institutional first Mortgagees; and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

**Section 3.02. Provision to Prohibit Severance.** An Owner shall not be entitled to sever the Owner's Unit in any Condominium from the Owner's membership in the Association, and shall not be entitled to sever the Owner's Unit and the Owner's membership from the Owner's undivided interest in the Common Area for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with, and any violation or attempted violation of this provision shall be void. Similarly, no Owner can sever any exclusive easement appurtenant to the Owner's Unit over the Common Area from the Owner's Condominium, and any attempt to do so shall be void. The suspension of such right of severability will not extend beyond the period set forth in Article II, Section 2.03 respecting the suspension of partition. It is intended by this provision to restrict severability under California Civil Code Section 1358(b).

**Section 3.03. Provision To Limit Interests Conveyed.** Any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from limiting the duration of the enjoyment of the Owner's Condominium estate, such as by creating an estate for life or an estate for years, or from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

## ARTICLE IV

### Property Rights

**Section 4.01. Owners' Non-Exclusive Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area, including

ingress and egress to and from the Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.

(b) The right of the Association to suspend the voting rights and right to use of the Common Area and/or recreational facilities by an Owner for any period during which any Regular, Special or Special Individual Assessment against the Owner, individually, remains unpaid.

(c) The right of the Association to adopt Rules and Regulations as provided in Article V, Section 5.08 hereof, and after prior notice of at least fifteen (15) days and a hearing before the Board, if requested by the Owner, to temporarily suspend the voting rights and right to the use of Common Area and/or recreational facilities by any Owner, the Owner's tenants and guests in accordance with Article XV, Section 15.06.

(d) The right of the Association, to the extent reasonably necessary to protect the rights, privileges, benefits, uses and enjoyment of the Members in common, to limit the number of guests of Members who may use Common Area and/or recreation facilities and to adopt uniform Rules and Regulations pursuant to Section 5.08 of Article V hereof regulating use and enjoyment of the Properties.

(e) The right of the Association, or its agents, when necessary, to enter any Unit or Exclusive Use Common Area to perform its obligations under this Declaration, including the enforcement of restrictions, any obligations with respect to construction, maintenance and repair as necessary for the benefit of the Common Areas or the Owners in common, or to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association property. Without limitation, such entry may be had for the purpose of conducting an inspection to determine compliance with this Declaration. The Association's right of entry for such purposes shall be immediate in case of an emergency originating in or threatening such Unit, and the Association's work may be performed under such circumstances whether or not the Owner is present. In all non-emergency situations the Association, or its agents, shall furnish the Owner with at least twenty-four (24) hours written notice of its intent to enter the Unit, specifying the purpose of such entry.

(f) The right of the Association, in accordance with this Declaration (including, but not limited to, Section 7.02(i)), its Articles and Bylaws, to borrow money for the

purpose of improving and maintaining the Common Area and facilities and in aid thereof to mortgage said property; provided, the rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

(g) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners. No such dedication or transfer shall be effective unless an instrument, approved by at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the Owners.

(h) The right of the Association to adopt and enforce Association Rules concerning the control and use of any private streets, roadways and paving areas located upon or across the Common Area, including the right to regulate the kind of vehicles and their speed and the parking of vehicles upon such private streets and roadways. The Association is authorized to delegate to a municipality or other governmental entity or to contract with any private security patrol company or towing service to exercise its authorized rights in connection with such private streets, roadways, and parking areas.

#### **Section 4.02. Delegation of Use/Rights and Obligations of Lessees.**

(a) Leasing of Units. Any Owner who leases a Condominium must comply with each of the following restrictions, and each lease will be subject to these restrictions, whether they are expressly included within the lease or not.

- (1) Each lease must be in writing.
- (2) No lease shall be for an initial term of less than one hundred eighty (180) days.
- (3) Leases shall provide that they are subject in all respects to provisions of this Declaration, the Bylaws, and all Rules and Regulations.
- (4) Owners shall notify the Secretary of the Association or the Association manager, in writing, within fourteen (14) days of entering into a lease, of the names of all tenants and members of tenants' household occupying the Condominium, and a description for each vehicle to be parked on the Properties by the residents of the Condominium, and shall provide the Secretary of the Association with a complete copy of the lease; Owners leasing their Condominium



additionally shall notify the Secretary of the Association of the address and telephone number where such Owner can be reached.

- (5) Any failure of the tenant to comply with this Declaration, the Bylaws or Rules and Regulations shall be a default under the lease, regardless of whether the lease so provides. The Owner shall at all times be responsible for compliance of Owner's tenant with all of the provisions of this Declaration, the Bylaws and Articles and the Association Rules during the tenant's occupancy and use of the Condominium.
- (6) In the event that any tenant fails to honor the provisions of this Declaration, the Bylaws or the Association Rules, the Owner immediately shall take all action to cure the default including, if necessary, eviction of the tenant or lessee. The Association may maintain an eviction action against the tenant in the event that the Owner has not taken action to prevent and/or correct the actions of the Owner's tenant giving rise to the Common Area or Common Facility damage or nuisance after receiving written notice from the Association, or an authorized committee of the Board, detailing the nature of the violation and having a reasonable opportunity to either take appropriate corrective action on a voluntary basis or appear before the Board or committee to present arguments as to why such action is not necessary. The remedy provided by this subsection is not exclusive and is in addition to any other remedy or remedies of the Association.

(b) Use of Recreational Facilities by Lessors. Any non-resident Owner who leases the Owner's Condominium is no longer eligible to use the Common Facilities that the Owner would otherwise be entitled to use by virtue of the ownership of the Unit.

**Section 4.03. Owner Registration.** Each Owner shall notify the Secretary of the Association or the property manager, if any, in writing, of the names of the Owner's household members occupying such Condominium and of the address of the Owner, if not the property address, and the telephone numbers where the Owner can be reached, as well as the telephone number of the Condominium. Further, all Owners shall provide a description for each vehicle to be parked on the Properties by residents of the Condominium.

**Section 4.04. Notification Regarding Declaration/Assessments.** As more particularly provided in Section 1368 of the California Civil Code, the Owner of the Unit, as soon as practicable before transfer of title or execution of a real property sales contract therefor, shall provide the following to the prospective purchaser: (a) a copy of the governing documents of the Association including this Declaration, the Articles and Bylaws and all amendments thereto; (b) a copy of the most recent financial statement distributed pursuant to California Civil Code Section 1365; and (c) a true statement in writing from an authorized representative of the Association as to the amount of any assessments levied upon the Condominium which are unpaid on the date of the statement, together with true information on late charges, interest and costs of collection which, as of the date of this statement are, or may be, a lien upon the Condominium.

**Section 4.05. Easements to Accompany Conveyance of Condominium.** Easements that benefit or burden any Condominium shall be appurtenant to that Condominium and shall automatically accompany the conveyance of the Condominium, even though the description in the instrument of conveyance may refer only to the fee title to the Condominium.

**Section 4.06. Owners' Rights and Easements for Utilities.** The rights and duties of the Owners of Units within the Properties with respect to sanitary sewer, drainage, water, electricity, gas, pipes, vents, television receiving, telephone equipment, cables and lines, exhaust flues, and heating and air conditioning facilities (if any) (hereinafter referred to, collectively, as "utility facilities") shall be as follows:

(a) Whenever utility facilities are installed within the Properties, which utility facilities or any portion thereof lie in or upon a Unit or Units owned by other than the Owner of a Unit served by said utility facilities, the Owners of any Units served by said utility facilities shall have the right of reasonable access for themselves or for utility companies or the City of Sunnyvale to repair, to replace and generally maintain said utility facilities as and when the same may be necessary.

(b) Whenever utility facilities are installed within the Properties which utility facilities serve more than one Unit, the Owner of each Unit served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facilities as service the Owner's Unit.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one Owner addressed to the other Owner(s), the matter shall be

submitted to alternative dispute resolution as provided in Article XV, Section 15.08 of this Declaration.

(d) Easements over and under the Properties for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Maps, and as may be hereafter required or needed to service the Properties, held by the Association, together with the right to grant and transfer the same.

(e) The Association shall maintain all utility facilities located in the Common Area, except for those facilities maintained by utility companies, public, private, or municipal, and those maintained by the Owners as described in Article VIII of this Declaration. The Association shall pay all charges for utilities applied to the Properties, except those metered or charged separately to the Condominiums.

**Section 4.07. Utility Easements.** The project was approved by the City of Sunnyvale by the granting of a Special Development Permit. Any changes, modifications, restoration or reconstruction to be carried out at any time within the project must first be submitted to the City of Sunnyvale for approval, in accordance with the terms of the Special Development Permit. All utilities and fixtures and appurtenances thereto located within the Common Area within any public utility easement as shown on the Map of said Tract No. 5295, are owned, and shall be maintained, repaired or replaced by the Association, to the extent not maintained, repaired or replaced by a public utility. The water system is owned, maintained, repaired and replaced by the City of Sunnyvale to and including water meters. Without limitation, the Properties are subject to public utility easement as shown on the Map and as reflected in an instrument recorded November 21, 1960 in Book 4971 of Official Records, Page 34 and recorded April 3, 1961 in Book 5123 of Official Records, Page 176.

## ARTICLE V

### Homeowners Association

**Section 5.01. Association Membership.** Every Owner of a Unit shall be a Member of the Association which shall have the responsibility of managing and maintaining the Common Area and discharging the other duties and responsibilities

described in this Declaration, the Articles and the Bylaws. Such membership is appurtenant to and may not be separated from ownership of any Unit within the Properties.

**Section 5.02. Single Class of Membership.** As more particularly provided in the Bylaws, the Association shall have one class of membership. The rights, duties, obligations and privileges of the Members shall be as set forth in the Articles, the Bylaws, this Declaration and the Association Rules.

**Section 5.03. Voting Rights of Memberships.** Each Member of the Association shall be entitled to one vote for each Unit owned by said Member. When more than one person holds an interest in any Unit, all such persons shall be Members, although in no event shall more than one vote be cast with respect to any Unit. Voting rights may be temporarily suspended under those circumstances described in Article XV, Section 15.06 hereof.

**Section 5.04. Assessments.** Members of the Association shall be obligated to pay the assessments imposed by Article VI of this Declaration with respect to each Unit owned by said Member. Any assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of this Declaration.

**Section 5.05. Transfer of Membership.** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or encumbrance of the Unit to which it is appurtenant.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of the Owner's Unit, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void. In the case of a sale, membership passes automatically to the purchaser upon transfer of title to the Unit. In the case of an encumbrance of such Unit, a mortgagee does not have membership rights until it becomes an Owner by foreclosure or deed in lieu thereof. Lessees who are delegated rights of use pursuant to Article IV, Section 4.02 hereof do not thereby become Members, although the lessee and members of the lessee's household shall, at all times, be subject to the provisions of this Declaration, the Articles, Bylaws, and the Rules and Regulations of the Association.

**Section 5.06. Rights and Duties of the Association Board of Directors.** The rights, duties and obligations of the Board of Directors of the Association shall be as set

forth in this Declaration, the Articles, the Bylaws and the Rules and Regulations of the Association.

**Section 5.07. Powers and Authority of the Association.** The Association shall have all of the powers of a non-profit mutual benefit corporation organized under the laws of the State of California in operating for the benefit of its Members, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, Bylaws and this Declaration. The Association and its Board of Directors shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under and by virtue of this Declaration, the Bylaws and California law, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association for the peace, health, comfort, safety or general welfare of the Owners. The specific powers of the Association and the limitations thereon shall be as set forth in Article IX of the Bylaws.

**Section 5.08. Association Rules.**

(a) **Rulemaking Power.** The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend Rules of general application to the Owners of Units within the Properties. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Areas and Common Facilities, signs, collection and disposal of refuse, minimum standards of maintenance of landscaping or improvements in any Unit, the elimination of improvements which obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic, the keeping of household pets in Units, the number of guests of an Owner who may use the recreational facilities, and any other subject or matter within the jurisdiction of the Association as provided in this Declaration and the Bylaws of the Association. Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of, or the rights, preferences and privileges of Members as set forth in, the Articles or Bylaws of the Association or this Declaration. In the event of any material conflict between any Association Rule and any provision of the Articles, Bylaws or Declaration, the provision contained in the Articles, Bylaws or Declaration (as the case may be) shall prevail.

(b) **Distribution of Rules.** A copy of the Association Rules, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and a current copy thereof shall be maintained in the Association's corporate records.

(c) Amendment of Rules. The Association Rules may be amended from time to time by majority vote of the entire Board. Amendments to the Rules shall be distributed to the Owners either by mail or by personal delivery. Any duly adopted amendment to the Rules shall become effective forty-eight (48) hours after the date of distribution to the Owners or at such later date as the Board may deem appropriate under the circumstances following adoption of such amendment.

#### **Section 5.09. Breach of Rules or Restrictions.**

(a) In the event of a breach of any Rule or of any of the restrictions contained in the Bylaws or this Declaration by an Owner, or the Owner's household, guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, shall enforce the obligations of each Owner to obey such Rules or restrictions in any manner provided by law or in equity, including but not limited to appropriate hiring of legal counsel, the pursuing of legal action, or suspension of the Owner's right to use the Common Area and/or Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided, however, that any suspension for an infraction of the Association Rules may not be for a period in excess of sixty (60) days, after notice and hearing, if requested, as provided in Article XV, Section 15.06, hereof. The provisions of this Section 5.09(a) shall not apply to the rights, remedies, legal action and/or suspension of an Owner's right to use the Common Area and/or Common Facilities or suspension of the Owner's voting rights as a Member of the Association resulting from the failure to pay assessments as provided in Article VI of this Declaration.

(b) In addition to the other remedies herein set forth, the Board, by vote of a majority of a quorum, may levy a fine against such Owner, after appropriate notice and hearing as hereinafter provided, in an amount not to exceed two (2) monthly installments of the Regular Assessment for each such violation and the payment of such fine may be enforced as a Special Individual Assessment in the manner set forth in Section 6.04 of Article VI hereof. The Board shall also implement schedules of reasonable fines and penalties as part of its general rulemaking power. A violation shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board shall include one component for the violation and a per diem component for so long as the detrimental effect continues, according to the Board's discretion. Similar violations on different days shall justify cumulative imposition of discipline. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance in the Common Area at the cost of the responsible Owner; provided that no discipline may be

founded upon continuance of a violation beyond a date when the Association should reasonably have commenced action to end it.

Prior to imposing any penalty provided herein for breach of any Rules enacted hereunder or restrictions contained in this Declaration (other than late charges, interest and collection expenses, including attorney's fees incurred for non-payment of assessments), the Board shall comply with the procedures and requirements of Article XV, Section 15.06, hereof.

**Section 5.10. Limitation on Liability of the Association and the Association's Directors and Officers.**

(a) No member of the Board of Directors or officers, committee members or employees of the Association shall be personally liable to any of the Association's Members or to any other person, for any error or omission of any such person, their agents, representatives and employees, in the discharge of their duties and responsibilities hereunder or under the Bylaws, or for their failure to provide any service required hereunder or under the Bylaws; provided that such person, officer, employee or manager has, upon the basis of such information as may be possessed by him or her, acted reasonably and in good faith. Without limiting the generality of the foregoing, this limitation on liability shall extend to such matters as the establishment of the Association's annual financial budget and the funding of Association capital replacement and reserve accounts.

(b) Neither the Association nor any member of its Board of Directors, nor any of its officers, committee members, agents or employees shall be responsible to any Owner or to any member of the Owner's household or any of the Owner's lessees, guests, servants, employees, licensees, invitees or any others for any loss or damage suffered by reason of damage, theft or other loss of any article, vehicle or other item of personal property which may be stored by such Owner or other person within any Unit or for any injury to or death of any person or loss or damage to the property of any person caused by fire, explosion or the elements or the act or omission of any other Owner or person within the Properties, or by any other cause, unless the same is attributable to its or the Owner's own negligence.

(c) Each Owner and lessee, on behalf of the Owner, the Owner's heirs, successors, and assigns, agrees not to make any claim against the Association or any member of its Board, or any of its officers, committee members, agents or employees for or on account of any loss, damage or conduct coming within the limitations on liability

referred to in this Section 5.10 and agrees to indemnify each of them against, and hold each of them harmless from, any such claim made by any member of the Owner's household, any of the Owner's guests, servants, employees, licensees or invitees or the heirs, successors or assigns of any such person.

## **ARTICLE VI**

### **Assessments**

#### **Section 6.01. Assessments Generally.**

(a) Each Owner of a Condominium by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Association the Regular Assessments, Special Assessments and Special Individual Assessments hereinafter provided for and to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law.

(b) Each installment payment of any Regular Assessment and each lump sum or installment payment of any Special Assessment or Special Individual Assessment, together with any interest charge provided for in subparagraph (e) hereof, late charges, and reasonable costs of collection, as assessed in accordance with California Civil Code Section 1366 attributable thereto or incurred in the collection thereof, shall be a separate debt of the Owner against whom the same has been assessed at the time the assessment or other sums are levied. Furthermore, each Regular Assessment and certain Special Assessments are hereby declared and agreed to be a lien upon and against the Unit so assessed in the nature of a mortgage with a power of sale in accordance with California Civil Code Section 2924 (or a comparable superseding statute), all as more particularly described in Section 6.09 of this Article VI. Special Individual Assessments may be imposed as a lien against the Owner's Unit only in those instances specifically identified in Section 6.04 of this Article VI.

(c) Each Owner who acquires title to a Condominium (whether at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Condominium so purchased which become due and payable after the date of purchase by such Owner; provided that any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and any lien created pursuant to the provisions of this Article VI by reason of such unpaid Assessment shall remain in force



and effect as a lien on the Condominium sold and may be subject to foreclosure as provided in Section 6.09 hereof.

(d) If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof shall be subject to a late charge not exceeding ten percent (10%) of the delinquent assessment or Ten and no/100 Dollars (\$10.00) whichever is greater, pursuant to California Civil Code, Section 1366(d) or such larger sum as may hereafter be allowed by such statute or any successor statute thereto.

(e) Interest on regular and Special Assessments together with reasonable costs of collection and late charges shall accrue at an annual percentage rate of twelve percent (12%) per annum commencing thirty (30) days after the assessment becomes due, or at such higher interest rate as may hereafter be permitted by California Civil Code Section 1366(d)(3) or any successor statute thereto.

(f) No Owner may exempt the Owner or the Owner's Condominium from liability or charge for the Owner's share of any Regular, Special or Special Individual Assessment rightfully made and assessed against the Owner and the Owner's Condominium by waiving or relinquishing, or offering to waive or relinquish, the Owner's right to use and enjoy all or any portion of the Common Area or Common Facilities or by the abandonment or nonuse of the Condominium.

### **Section 6.02. Regular Assessment.**

(a) **Determination of Assessment.** Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the anticipated Common Expenses (including prudent contributions to the capital reserve fund for replacement of Common Facilities) for the next succeeding fiscal year and shall deduct therefrom the amount of any estimated surplus which will remain from the current year's Assessment. In preparing its annual estimates of Common Expenses and the appropriate deductions therefrom on account of surplus, the Board shall consider the Common Expenses all as more particularly provided in Exhibit "B" attached hereto. The total expenses (less deductions) thus estimated shall be allocated among all the Condominiums within the Properties in the manner described in subparagraph (b) of this Section 6.02 as the Regular Assessment for such Condominium; notwithstanding any other provision in this Declaration to the contrary, the Board may not impose a Regular Assessment for any fiscal year more than twenty percent (20%) above the Regular Assessment for the

Association's preceding fiscal year without the approval of a majority of the votes at a meeting of the Members of the Association at which a quorum is present. For purposes of this section, a quorum means more than fifty percent (50%) of the Owners of the Association, and the meeting must be conducted in accordance with Corporations Code Sections 7510-7527, 7613.

The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. For purposes of this Section 6.02, an emergency situation is any one of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain when a threat to personal safety on the property is discovered.
- (3) An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under California Civil Code Section 1365, provided that before the imposition or collection of any assessment under this subparagraph, the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Members with the notice of assessment.

However, the Board may not increase the Regular Assessment for a fiscal year as provided herein unless the Board has complied with subdivision (a) of Section 1365 of the California Civil Code with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. "Quorum" for purposes of such a vote means more than 50% of the Owners of the Association.

This Section 6.02(a) incorporates the statutory requirements of California Civil Code Section 1366(b). If this Section of the California Civil Code is amended in any way, this Section 6.02(a) automatically shall be amended in the same manner without the necessity of amending this Declaration.

(b) Allocation of Regular Assessments Among the Owners. The total estimated Common Expenses shall be divided equally among, assessed against and charged to all Condominiums within the Properties.

(c) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded upon an assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or the Owner's authorized representative. The assessment roll shall show for each Condominium the name and address of the Owner of record thereof, all Assessments, whether Regular or Special, levied against each Owner and the Owner's Condominium, and the amount of such Assessments which have been paid or remain unpaid. A certificate executed and acknowledged by the Secretary or Treasurer of the Association stating the indebtedness secured by any lien created hereunder upon any such Condominium shall be conclusive upon the Association and the Owner of such Condominium as to the amount of such indebtedness as of the date of such certificate, in favor of all persons who rely thereon in good faith, and such a certificate shall be furnished by the Association to any Owner or to any first Mortgagee under a Mortgage encumbering a Condominium upon written request therefor at a reasonable fee payable to the Association.

(d) Mailing. The Board of Directors shall cause to be mailed to each Owner at the street address of the Condominium, or at such other address as such Owner may from time to time designate to the Association in writing, a statement of the amount of the Regular Assessment assessed against the Owner's Condominium for the next succeeding fiscal year within thirty (30) days after determination thereof in accordance with Section 6.02(a) hereof. The Association shall provide notice by first-class mail to the Owners of any increase in the regular assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

(e) Failure to Make Estimate. If, for any fiscal year, the Board of Directors shall fail to make an estimate of the Common Expenses, the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 6.03 hereof for that year, shall be assessed against each Owner and the Owner's Condominium on account of the then current fiscal year, and installment payments (as

hereinafter provided) based upon such automatic assessment shall be payable on the regular payment dates established by the Association.

(f) **Installment Payment.** The Regular Assessment made against each Owner shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or on such other date or dates as may be established from time to time by the Association. Monthly installments of Regular Assessments shall be delinquent if not paid by the fifteenth (15th) day of the month. In addition to the remedies provided elsewhere in this Article VI, in the event the monthly installment of Regular Assessments is delinquent, the Board of Directors may, at its discretion, accelerate and declare to be immediately due, any remaining installment payments of the Regular Assessment levied for a fiscal year.

### **Section 6.03. Special Assessments.**

(a) **Special Assessments.** The Board, at any time, may levy a Special Assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such purposes as the Board in its discretion considers appropriate. Special Assessments hereunder may be imposed upon Board action alone except in those instances where membership approval is required pursuant to subparagraph (c) of this Section 6.03.

(b) **Capital Improvements.** Subject to subparagraph (c) of this Section 6.03 and Article IX, Section 9.02(c) of this Declaration, the Association may also levy Special Assessments for capital improvements of the Association Common Area and Common Facilities unrelated to repairs for damage or normal wear and tear to or destruction of the Common Facilities. In addition to the foregoing, but also subject to subparagraph (c) of this Section 6.03 and Article IX, Section 9.03(b) of the Bylaws, the Board on its own motion may undertake the construction, installation or acquisition of a capital improvement.

(c) **Assessment Increases Requiring Membership Approval.** As more particularly provided in California Civil Code Section 1366(b), no Special Assessment described in subparagraphs (a) or (b) hereof shall be made by the Board of Directors whereby the Special Assessments in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year without the approval of Owners constituting a quorum, casting the majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the

Corporations Code. For purposes of this Section 6.03(c), quorum means more than fifty percent (50%) of the Owners. Written notice of any such meeting shall be given not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of California Corporations Code Section 7513.

The provisions of this subdivision do not limit assessment increases for emergency situations. Emergency situations are any one of the following:

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain when a threat to personal safety on the property is discovered.
- (3) An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under California Civil Code Section 1365, provided that before the imposition or collection of any assessment under this subparagraph the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Members with the notice of assessment.

This Section 6.03(c) incorporates the statutory requirements of California Civil Code Section 1366(b). If this Section of the California Civil Code is amended in any way, this Section 6.03(c) automatically shall be amended in the same manner without the necessity of amending this Declaration.

(d) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above, a Special Assessment levied under Section 6.03(a) be allocated among the Members and their Condominiums as provided in Section 6.02(b) hereof and a Special Assessment levied under subparagraph (b) shall be equally divided among, assessed against and charged to, such Members and their Condominiums

and shall be recorded on the Association's Assessment Roll in accordance with Article VI, Section 6.02(c) of this Declaration and notice thereof shall be mailed to each Owner subject thereto.

#### **Section 6.04. Special Individual Assessments.**

(a) In addition to the Special Assessments provided for in Section 6.03 hereof, the Association may also impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (1) through (4) below. A lien may be imposed only for Special Individual Assessments described in Subsection (a)(2) of this Section 6.04.

- (1) Special Individual Assessments for Particular Recreation or Other Privileges - Rental Assessment. Owners who wish to rent the Clubhouse (exclusive of any recreational facilities) may do so at such rental rates as are set from time to time by the Board. Any rental charges thus incurred shall be payable as a Special Individual Assessment.
- (2) Damage to Common Area. In the event the Association incurs costs in the repair of damage to the Common Areas and Common Facilities, for which an Owner or the Owner's guests or tenants were responsible, the Association may impose a monetary penalty against the Owner for such costs. Such costs shall be assessed and charged solely to and against such Owner and the Owner's Condominium as a Special Individual Assessment. Nothing in this Subsection (2) shall require the Board to make a claim on any insurance carrier issuing a policy relating to the Common Area in the event of any such damage or destruction.
- (3) Act Increasing Insurance Premiums. In the event any act or omission of any Owner, any member of the Owner's household, or any of the Owner's tenants, guests, servants, employees, licensees or invitees, shall in any way cause or be responsible for any increase in the premiums for any insurance purchased or obtained by the Association in accordance with the provisions of Article XII hereof, the amount of such increase may, in the discretion of the Board, be assessed and charged solely to and against such Owner as a Special Individual Assessment, but without right to record a lien.

- (4) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, including reasonable title company, accounting, legal fees, or fees or costs of experts or consultants, to accomplish (i) any repair, under this Declaration, the Bylaws or the Association Rules, (ii) to prevent the continued maintenance of a nuisance or (iii) otherwise bring the Owner and/or the Owner's Condominium into compliance with the provisions of this Declaration, the Bylaws or the Association Rules, the amount incurred by the Association or any monetary penalties and interest thereon duly imposed hereunder shall be assessed and charged solely to and against such Owner and the Owner's Condominium as Special Individual Assessment, but without right to record a lien; provided that Special Individual Assessments of the kind described in this Subparagraph (a)(4) may only be imposed after the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article XV, Section 15.06 hereof, and has been given a reasonable opportunity to comply voluntarily with the Association's governing documents before the assessment is imposed.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this Section 6.04, such Special Individual Assessments shall be entered on the Association assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner.

Special Individual Assessments imposed pursuant to Section 6.04(a)(1), (3) or (4) hereof may not be characterized nor treated as an assessment which may become a lien against the Member's Condominium. Special Individual Assessments imposed pursuant to Section 6.04(a)(2) may become a lien against the Member's Condominium as provided in Section 6.09 of this Article VI. However this Section 6.04(b) shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Special Individual Assessments imposed pursuant to either Section 6.04(a)(1), 6.04(a)(2) or 6.04(a)(4) shall be payable in full to the Association within 30 days after the mailing of notice of the assessment and Special Individual Assessments imposed pursuant

to Section 6.04(a)(3) shall be payable in full to the Association at least ten (10) days in advance of the date or dates for the payment of the increased insurance premium giving rise to the assessment.

**Section 6.05. Purpose and Reasonableness of Assessments.** Each Assessment, whether it be a Regular, Special or Special Individual Assessment, made in accordance with the provisions of this Declaration, is hereby declared and agreed (a) to be for use exclusively to promote the recreation, health, safety and welfare of the residents of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees, or for the repair, maintenance, replacement and protection of the Common Areas and Common Facilities within the Properties and other portions of the Properties that the Association is obligated to maintain and repair under Article VIII of this Declaration, (b) to be a reasonable assessment, and (c) to constitute a separate, distinct and personal obligation (with respect to which a separate lien may be created to the extent provided in Section 6.04 above) of the Owner of the Condominium against which the Assessment is made and shall bind the Owner's heirs, successors and assigns; provided that the personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them. No offsets against Assessments, whether Regular, Special or Special Individual Assessment, shall be permitted for any reason, including without limitation, a claim that the Association is not properly exercising its duties of maintenance or enforcement.

**Section 6.06. Exemption of Certain of the Properties from Assessments.** The following real property subject to this Declaration, unless devoted to use as a residential dwelling, shall be exempt from the Assessments and the lien thereof provided herein:

- (a) Any portion of the Properties dedicated and accepted by a local public authority.
- (b) The Common Facilities.
- (c) Any Condominium owned by the Association.

**Section 6.07. Notice and Procedure for any Action Authorized Under Sections 6.02 and 6.03.** Any action authorized under Sections 6.02 and 6.03 of this Article VI requiring the vote of the Association Members shall be taken either by written ballot or at a meeting of the Members called for that purpose, written notice of which shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting or mailing of the written ballots.



## **Section 6.08. Maintenance of Assessment Funds.**

(a) **Deposit; Bank Account.** All sums received or collected by the Association from Assessments, whether Regular or Special, together with any interest charge thereon, shall be promptly deposited in a checking and/or savings account in a federally insured depository selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investment of reserve funds in insured certificates of deposit, money market funds or similar investments consistent with the investment standards normally observed by trustees. The Board and such officers or agents of the Association as the Board shall designate shall have exclusive control of said account(s) and shall be responsible to the Owners for the maintenance at all times of accurate records thereof. The withdrawal of funds from Association accounts shall be subject to the minimum signature requirements imposed by California Civil Code Section 1365.5 and Article XII, Section 12.08 of the Bylaws.

To preclude a multiplicity of bank accounts, the proceeds of all assessments may be commingled in one or more accounts and need not be deposited in separate accounts so long as the separate accounting records described herein are maintained. Any interest received on such deposits shall be credited proportionately to the balances of the various assessment fund accounts maintained on the books of the Association as provided in subparagraph (b) below, or may be allocated exclusively to reserve funds.

(b) **Separate Accounts; Commingling of Funds.** Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which such assessment was levied, such surplus may, in the Board's discretion, be (1) returned proportionately to the contributors thereof; (2) reallocated among the Association's reserve accounts if any such account is, in the Board's opinion, underfunded; or (3) credited proportionately on account of the Owner's future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate account of all funds received by it in payment of each Assessment, and of all disbursements made therefrom, except that receipts and

disbursements of Special Assessments made pursuant to Section 6.03(a) of this Article VI shall be combined with the receipts and disbursements of the Regular Assessments.

Unless the Association is exempt from federal or state taxes, all sums allocated to capital replacement funds shall be accounted for as contributions to the capital of the Association and as trust funds segregated from the regular income of the Association or in any other manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board that will prevent such funds from being taxed as income of the Association.

**Section 6.09. Effect of Non-Payment of Assessments; Enforcement of Liens.**

(a) Before the Association may place a lien upon the separate interest of an Owner to collect a debt which is past due under this Article VI, the Association shall notify the Owner in writing, by certified mail, of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges, and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. Any payments towards such debt shall first be applied to the principal owed, and only after the principal owed is paid in full, shall such payments be applied to interest or collection expenses.

(b) The amount of the delinquent Regular or Special Assessment, plus any costs of collection (including but not limited to attorneys fees), late charges, and interest assessed in accordance with this Article VI, shall become a lien upon the Condominium of the Owner so assessed from and after the time the Association causes to be recorded with the County Recorder a Notice of Delinquent Assessment which shall state the amount of the assessment or other sums imposed in accordance with this Declaration and consistent with California Civil Code Section 1366, a legal description of the Owner's interest against which the assessment or other sums are levied, the name of the record Owner of the Owner's interest against which the lien is imposed and, in order for the lien to be enforced by non-judicial foreclosure as provided in Civil Code Section 1367, the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be mailed in the manner set forth in Civil Code Section 2924b, to all record owners of the Owner's interest no later than ten (10) calendar days after recordation. The notice shall be signed by any officer of the Association or any agent of the Association authorized to do so by the Board.

(c) The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment, or foreclose its lien against the Owner's Condominium. Provided, however, that lien enforcement proceedings shall not be undertaken until the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment pursuant to Section 6.09(b). To the extent permitted hereunder, foreclosure by the Association of its lien may be by judicial foreclosure or by non-judicial foreclosure, in the same manner as the foreclosure of a mortgage or deed of trust upon real property under the laws of the State of California. Non-judicial foreclosure shall be commenced by the Association or its duly authorized agent by recording in the Office of the County Recorder a notice of default, which notice shall state all amounts which have become delinquent with respect thereto and the costs (including attorneys' fees), penalties and interest which have accrued thereon, the amount of any assessment which is due and payable although not delinquent, a description of the property in respect to which the delinquent assessment is owed, the name and address of the trustee authorized by the Association to enforce the lien by sale and the name of the record or reputed Owner thereof. The Association shall have the rights conferred by Section 2934a of the Civil Code to assign its rights and obligations as Trustee in any non-judicial foreclosure proceeding to the same extent as a Trustee designated under a deed of trust and for purposes of said Section 2934a the Association shall be entitled to employ the services of a title insurance company or responsible company engaged in the business of acting as a trustee in foreclosure to act as an agent on behalf of the Association in commencing and prosecuting the foreclosure process.

The notice of default shall state the election of the Association to sell the Condominium or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under Section 2924c of the California Civil Code. The recordation of the notice of delinquency shall correspond to the recordation of a notice of default under Section 2924 of the California Civil Code. The Association or its assignee shall mail a copy of the notice to the Owner or reputed Owner at the last address appearing on the books or records of the Association, and to any person to whom the giving of notice is required by applicable provisions of Section 2924b of the California Civil Code. In the event such notice is given by the Association or its assignee, the Owner and junior encumbrancers shall have reinstatement rights identical to those provided by law for trustors or mortgagors, which rights must be exercised during the period specified by law for reinstatement of obligations secured by deeds of trust.

After the lapse of such time as may then be required by law following the recordation of a notice of default under a deed of trust, the Association or its assignee may give notice of sale in the manner and for the period required in the case of deeds of trust.

After the giving of the notice of sale, the Association, or its assignee, without demand on the Owner, may sell the Condominium or other property at the time and place fixed in the notice of sale, at public auction to the highest bidder for cash in lawful money of the United States, payable at the time of sale. The Association or its assignee may postpone sale by public announcement at the time fixed by the preceding postponement. The Association shall deliver to the purchaser at such foreclosure sale the Association's deed conveying the Condominium or other property so sold, but without covenant or warranty, express or implied. The recitals in such deeds shall be conclusive proof of the truthfulness thereof. Any person, including the Association, may bid on the property and purchase the same at such sale.

After deducting all costs, fees, and expenses of the Association from the sale proceeds, the Association or its assignee shall apply the balance of the proceeds of sale to payment of all sums secured by its lien at the time of sale, including principal, interest, late charges, costs and attorneys' fees, and the remainder, if any, shall be disbursed to the person or persons legally entitled thereto.

During the period a Condominium is owned by the Association, following foreclosure: (1) no right to vote shall be exercised on behalf of the Condominium; (2) no assessment shall be assessed or levied on the Condominium; and (3) each other Condominium shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure. After acquiring title to the Condominium at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the Condominium, which deed shall be binding upon the Owners, successors, and all other parties.

Suit to recover a money judgment for unpaid common expenses, rent and attorneys' fees shall be maintainable without foreclosure or waiving the lien securing the same. Furthermore, the Board may take such additional action, consistent with this Declaration, as is necessary or appropriate to enforce its assessment rights hereunder.

**Section 6.10. Transfer of Condominium by Sale or Foreclosure.** Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Condominium from liability for any assessments thereafter becoming due or from the lien thereof. "First mortgage" as used in this Section 6.10 and in Section 6.11

means any recorded mortgage or deed of trust encumbering the Condominium having priority over all other mortgages or deeds of trust and made in good faith and for value.

Where the mortgagee of the first mortgage of record or other purchaser of a Condominium obtains title to the same as the result of foreclosure of any such first mortgage, the person acquiring title, and such person's successors and assigns, shall not be solely 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 Owners of all of the Condominiums including such acquirer, and the acquirer's successors and assigns.

In any transfer of a Condominium, the grantor shall remain liable to the Association for all unpaid assessments against the Condominium up to the date of the transfer. The grantor shall be entitled to a statement from the Association dated as of the date of transfer, setting forth the amount of the unpaid assessments against the grantor due the Association and the Condominium so transferred shall not be subject to a lien for unpaid assessments in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such assessments that become due after the date of the transfer.

**Section 6.11. Priorities.** 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 (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first mortgage of record made in good faith and for value; provided, however, that such subordination shall apply only to the assessment installments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage or deed of trust or pursuant to the power of sale in such mortgage or deed of trust. Such foreclosure shall not relieve such property from liability for any assessment installments thereafter becoming due or from the lien of any such subsequent assessment.

**Section 6.12. Unallocated Taxes.** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Condominium Units, such taxes shall be included in the assessments made under the provisions of Section 6.02 of this Article VI and, if necessary, a Special Assessment may be levied against the Condominium in an amount equal to such taxes to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

**Section 6.13. Assignment of Rents.** Each Owner does hereby presently assign to the Association, absolutely and regardless of possession of the property, all rents and other monies now due or hereafter to become due under any lease or agreement or otherwise for the use or occupation of any or all parts of any Condominium owned by the Owner, now existing or hereafter made for the purpose of collection of all assessments due the Association pursuant to this Declaration which are in default. The Association hereby confers on each Owner the authority to collect and retain the rents and other monies as they become due and payable; provided, however, that the Association in its sole discretion, may revoke such authority at any time, upon written notice to the Owner of a default in the payment of assessments. Upon revocation of such authority the Association may, pursuant to court order or by court appointed receiver, collect and retain such monies, whether past due and unpaid or current.

**Section 6.14. Waiver of Exemptions.** Each Owner, to the extent permitted by law, waives, to the extent of any liens created pursuant to this Article VI, the benefit of any homestead or exemption law of California in effect at the time any assessment or installment thereof becomes delinquent or any lien is imposed.

**Section 6.15. Disclosure re Defaults.** Within ten (10) days of the mailing or delivery of a written request by any Owner, the Board shall provide the Owner with a written statement containing the following information: (a) whether to the knowledge of the Association the Owner or the Owner's Condominium is in violation of any of the provisions of this Declaration, the Articles, Bylaws, or Association Rules; (b) the amount of Regular and Special Assessments, including installment payments, paid by the Owner during the fiscal year the request is received; and (c) the amount of any assessments levied against the Owner's Condominium that are unpaid as of the date of the statement, including any late charges, interest, or costs of collection that as of the date of the statement are or may be made a lien against the Owner's Condominium as provided by this Declaration, the Articles, Bylaws, or Association.

## ARTICLE VII

### Duties and Powers of the Association

**Section 7.01. Duties.** In addition to the duties enumerated in its Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

(a) Maintenance. The Association shall maintain, repair, replace, restore, operate and manage all of the Common Area as more particularly set forth in Article VIII, Section 8.01 of this Declaration.

(b) Insurance. The Association shall maintain such policy or policies of insurance as are required by Article XII of this Declaration.

(c) Discharge of Liens. The Association shall discharge by payment, if necessary, any lien against the Common Area, and assess the cost thereof to the Member or Members responsible for the existence of said lien.

(d) Assessments. The Association shall fix, levy, collect and enforce assessments as set forth in Article VI hereof.

(e) Payment of Expenses. The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes or governmental charges levied or imposed against the property of the Association.

(f) Enforcement. The Association shall enforce this Declaration. The Association shall maintain and operate the Common Area of the Project in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. The Association shall also, as a separate and distinct responsibility, insure that third parties (including Owners and their guests) utilize the Common Area in accordance with the aforementioned regulations. The Association shall, when it becomes aware of any violation of the aforementioned regulations, expeditiously correct such violations.

**Section 7.02. Powers.** In addition to the powers enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall have the following powers:

(a) Utility Service. The Association shall have the authority to obtain, for the benefit of all of the Condominiums, all water, gas and electric service and refuse collection, janitorial and CATV or cable television service.

(b) Easements. The Association shall have authority, by document signed or approved by sixty-six and two-thirds percent (66 2/3%) of the total voting power of the Association, to grant permits, licenses and easements in addition to those shown on the

Map, where necessary for roads, utilities, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominium Units.

(c) **Manager.** The Association shall have the authority to employ a community association manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy fines, impose discipline, hold hearings, file suit, or make capital expenditures. The term of the management contract shall be limited as provided in Section 17.14 of this Declaration.

(d) **Adoption of Rules.** The Board of Directors may adopt reasonable rules not inconsistent with this Declaration relating to the use of the Properties including the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Properties and other Owners. Written copies of such Rules and any schedule of fines and penalties adopted by the Board shall be furnished to Owners.

(e) **Access.** For the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of Directors of their respective responsibilities, the Association's agents or employees shall have the right, after reasonable written notice (not less than 24 hours except in emergencies) to enter a Unit or the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association.

(f) **Assessments, Liens and Fines.** The Association shall have the power to levy and collect assessments in accordance with the provisions of Article VI hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Condominium documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, rights to the use of recreational facilities or other appropriate discipline, provided that the accused Member is given notice and the opportunity to be heard with respect to the alleged violations before a decision to impose discipline is made.

(g) **Enforcement.** The Association shall have the authority to enforce this Declaration as per Article XV hereof.

(h) **Acquisition and Disposition of Property.** The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal



property in connection with the affairs of the Association. Any transfer of real property shall be by document signed or approved by two-thirds (2/3) of the Members.

(i) Loans. The Association shall have the power to borrow money, and only with the assent (by vote or written consent) of a majority of the total voting power of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred. Borrowing of money by the Association shall require the assent (by vote or written consent) of a majority of the total voting power of the Association except as authorized by Article IX, Section 9.03(e) of the Bylaws.

(j) Contracts. The Association shall have the power to contract for goods and/or services for the Common Area(s), facilities and interests or for the Association, subject to limitations elsewhere set forth in the Condominium documents. The Association shall not enter into any contract with an independent contractor until the independent contractor submits proof to the Association that it has procured worker's compensation insurance as required by law and the Association receives adequate proof of licensure if required by law, and such liability insurance as the Board deems appropriate.

(k) Delegation. The Association, the Board, and the officers of the Association shall have the power to delegate their authority and powers to committees, officers or employees of the Association, or to a manager employed by the Association, provided that the Board shall not delegate its responsibility:

- (1) To make expenditures for capital additions or improvements chargeable against the reserve funds;
- (2) To conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board;
- (3) To make a decision to levy monetary fines, impose Special Assessments against individual Condominiums, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;
- (4) To make a decision to levy Regular or Special Assessments; or

(5) To make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of assessments.

(l) Use of Recreational Facilities. The Board shall have the power to limit the number of an Owner's tenants or guests who may use the recreational facilities, provided that all limitations apply equally to all Owners, unless imposed for disciplinary reasons, after notice and hearing, as provided in the Bylaws.

(m) Security. The Association shall have the power to contract for security service for the Common Area.

(n) Appointment of Trustee. The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as provided in Section 6.09(a) and California Civil Code Section 1367(b).

(o) Other Powers. In addition to the powers contained herein, the Board may exercise the powers granted to a nonprofit mutual benefit corporation under California Corporations Code Section 7140.

## **ARTICLE VIII**

### **Maintenance**

#### **Section 8.01. Association Maintenance and Repair.**

(a) Maintenance. Except as otherwise provided in this Declaration, the Association shall maintain, repair, replace, restore, operate and manage all of the Common Area and Common Facilities as more particularly set forth in this Section 8.01. Maintenance shall include (without limitation): Painting, maintaining, cleaning, repairing and replacing of all Common Areas, including landscaping (except in Exclusive Use Common Areas), parking areas and recreational facilities. Without limitation, the Association shall be responsible for all plumbing and electrical lines located within the Common Area, including those located in the exterior and bearing walls, but the Association shall not be responsible for outlets or fixtures located within the Unit.

(c) Termites. The Association shall have the Common Area periodically inspected for termites and shall take appropriate corrective measures therefor. The Association shall be responsible for repair and maintenance of the Common Area

occasioned by the presence of wood-destroying pests or organisms. The cost of temporary relocation during the repair and maintenance of the Common Area shall be borne by the Owner of the Unit or Units affected by such repair and maintenance. The Association may cause the temporary, summary removal of any occupant of a Unit, for such periods and at such times as may be necessary for prompt, effective treatment of wood-destroying pests or organisms, as more particularly provided in Civil Code Section 1364(d).

(d) **Owner Damage.** The financial responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner, or the Owner's guests, tenants or invitees, the cost of which is not covered by insurance. The cost of such repair or replacement shall be the responsibility of such Owner. The cost thereof shall constitute a Special Assessment chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium as a Special Individual Assessment, as provided in Article VI, Section 6.04(a)(2) of this Declaration.

(e) **Exclusive Use Common Areas.** The Association shall be solely responsible for repair and replacement of garages, including garage doors, and shall be solely responsible for painting of exterior surfaces of garages, including side garage doors. The Association shall not be responsible for maintenance, repair or replacement of exterior glass surfaces. The Association shall be responsible for replacement of the residence front door and the exterior finish of the front door.

## **Section 8.02. Owner Maintenance and Repair**

(a) **Interior Unit and Garage Maintenance and Improvements.** Except for the maintenance and repair of certain components of the Properties which the Association is required to provide under Section 8.01, each Unit Owner shall, at the Owner's sole cost and expense, maintain and repair the Owner's Unit and garage airspace, keeping the same in good condition. Without limiting the foregoing:

- (1) **Interior Finishes.** Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding the Owner's Unit and garage airspace.
- (2) **Windows.** Each Owner shall also be responsible for repair, replacement and cleaning of the following building components: interior and exterior glass and window screens.

- (3) Doors. Each Owner shall be solely responsible for all Unit doors save and except the front entry door. Each Owner shall be solely responsible for all door hardware, locks and garage door openers.
- (4) Interior Components. Each Owner shall bear the cost of maintenance, repair and replacement of the following items within or serving such Owner's Unit and garage airspace: sheetrock on nonbearing walls; interior surfaces of all perimeter and interior walls (except bearing walls to the unfinished surfaces thereof), ceilings and floors (including carpeting, tile, wallpaper, paint or other covering); garbage disposals, hot water heaters solely serving such Unit, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, and any and all other appliances of any nature whatsoever; heating, ventilating and air-conditioning equipment servicing such Unit (although such equipment may be located in part outside such Unit); interior doors, including all hardware thereon; light bulbs; smoke detectors; "built-in" features; and decorative features, fireboxes, flue, fireplace flue cleaning (but not repair or replacement), and any furniture and any furnishings. However, no Owner may install any appliance which requires a change in the electrical, mechanical or plumbing systems of the Condominium project, without written application to and written approval by the Board of Directors in accordance with Article IX of this Declaration.
- (5) In the event an Owner fails to maintain the interior of the Owners' Unit, garage airspace or the Owner's Exclusive Use Common Area in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify Owner of the work required and request it be done within thirty (30) days from the giving of such notice. In the event Owner fails to carry out such maintenance within said period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary impose a Special Individual Assessment against the Owner's Condominium for the amount thereof.
- (6) No Condominium Owner shall undertake any action or work that will impair the structural soundness or integrity of the Owner's or another Unit or impair any easement or estate, or do any act or allow any

condition to exist which will adversely affect the other Condominiums or their Owners.

(b) Exclusive Use Common Area. Each Owner, at the Owner's sole cost and expense, shall provide the following maintenance with regard to the Exclusive Use Common Area:

- (1) Each Unit Owner shall keep those portions of the Exclusive Use Common Area to which the Owner has exclusive easement rights, clean, free of debris and in a neat and orderly condition. Each Owner is entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone wiring designed to serve that Owner's Unit, subject to the consent of the Association, which may include the imposition of reasonable conditions, which consent shall not be unreasonably withheld.
- (2) Landscaping and stored personal property in fenced yard areas shall be maintained in a neat and orderly condition by the Owner. Landscaping and personal property visible above fences are subject to the Association Rules.
- (3) Each Owner shall be responsible for the cleaning of all vents serving only the Owner's Unit.
- (4) Each Owner shall be responsible for maintaining, repairing and replacing the doorbell and wiring for the doorbell of the Owner's Unit.
- (5) All wiring for utilities which service the Owner's Unit including, but not limited to, telephone wiring, shall be maintained, repaired and replaced by the Owner.

(c) Alterations for the Handicapped. A Unit may be modified by an Owner, at the Owner's sole expense, to facilitate access for persons who are blind, visually handicapped, deaf, or physically disabled, or to alter conditions which may be hazardous to such persons, subject to the limitations and requirements set forth in Section 1360 of the California Civil Code as that statute may be amended, revised or altered and of this Declaration, the Bylaws and the Rules.

(d) The Association shall not be liable for damage to any Condominium in the Properties resulting from water which may leak or flow from outside of any Condominium or from any part of the Properties, unless caused by the gross negligence of the Association, its Board, officers, or the Association manager, if any.

## ARTICLE IX

### Architectural Control

#### Section 9.01. Improvements in General; Establishment of Architectural Committee.

(a) Architectural Committee Approval. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties or any portion thereof, nor shall any exterior addition to or change or structural alteration of the Common Area or Exclusive Use Common Area be made until a written application for approval of the proposed work, supported by plans and specifications showing the nature, color, kind, shape, height, materials, and location of the same, has been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors or its designated Architectural Committee (which shall be composed of three (3) or more representatives appointed by the Board). Said plans and specifications shall be submitted to the Board by personal delivery or certified mail to the Secretary of the Association or the Chairman of the Architectural Committee. Members of the Board of Directors shall be eligible to serve as members of the Architectural Committee.

(b) Additional Information. The Board or Committee shall have the right to request additional information regarding the work of improvement if the request is delivered to the applicant in writing within thirty (30) days following the date the initial application was filed. The Board also may determine if there is opposition to the application by one or more neighbors in which case the Board may request written comment from the affected neighbor(s). If appointed, the Board or Committee shall make its determinations and recommendations to the Board within forty-five (45) days following the date of the initial application or, in the event that additional information has been requested of the applicant, within forty-five (45) days after such additional information is received. If the Board or Committee fails to disapprove an application within forty-five (45) days of the completion of the application the same shall be deemed to be unconditionally approved.

(c) **Architectural Standards.** The Board may, from time to time, adopt and promulgate Architectural Standards which may include, among other things, limitations and restrictions regulating the placement, kind, shape, height, materials, species and location of any improvement; a description of the improvements which, if completed in conformity with the Architectural Standards, do not require a recommendation of the Architectural Committee; and time limitations for the completion of improvements for which approval is required pursuant to the Architectural Standards.

(d) **Owner Responsibility.** By approving plans and specifications, the Board and the Architectural Committee, do not assume any liability or responsibility for compliance with building or zoning ordinances, which compliance shall be the sole responsibility of the applicant. Neither the Architectural Committee, nor any member thereof, nor the Board of Directors shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any portion of the Properties. The Owner whose plans are approved shall defend, indemnify and hold the Committee and the Board, and the Members thereof, harmless from any and all liability arising out of such approval. No Owner may make or cause any alteration which would adversely affect the structural integrity of any building or which would impair the effectiveness of sound control between Condominiums.

**Section 9.02. Common Area.** No improvement, excavation or work which in any way alters any Common Area from its natural or existing state shall be made or done except upon strict compliance with, and within the restrictions and limitations of, the following provisions of this Section.

(a) No person other than the Association or its duly authorized agents shall construct, reconstruct, refinish, alter or maintain any improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation upon the Common Area.

(b) The Association may from time to time:

(1) Reconstruct, replace, or refinish any Common Facility or other improvement or portion thereof upon the Common Area in accordance with the original design, finish or standard of construction

of such improvement of such Common Area which was approved by the governmental entity having jurisdiction.

- (2) Construct, reconstruct, replace and refinish any road improvement or surface upon any portion of Common Area designated on a subdivision map as a private road or parking area.
- (3) Replace trees or other vegetation and plant trees, shrubs and ground cover upon any portion of Common Area.
- (4) Place and maintain upon the Common Area such signs as the Association may deem necessary for the identification of the development and of roads, the regulation of traffic, including parking, the regulation and use of Common Area and Common Facilities and for the health, welfare and safety of Owners, tenants and guests.

(c) If the Board determines that a new capital improvement project should be commenced, the Board shall appoint a Technical Committee to assist in the planning and implementation of the project. The Technical Committee shall consist of two or more Members of the Association. The Technical Committee shall evaluate the feasibility of the proposed project and report to the Board. Following receipt of the report of the Technical Committee, if the Board elects to proceed with the capital improvement project, it shall submit proposed plans for the project to the Architectural Committee. If the proposed capital improvement project is approved by the Architectural Committee, the Board shall then obtain firm bids from two or more licensed contractors, and shall review the bids with the Technical Committee. If the Board then determines to proceed with the capital improvement project, and the cost of the project will exceed ten percent (10%) of the budgeted gross expenses of the Association for that year the Board shall submit the capital improvement project to the membership for approval. For purposes of this Section 9.02(c), "cost of the project" includes costs of design, permits, legal and consulting expenses, costs of construction and other actual and anticipated expenses of the capital improvement project including a reasonable contingency. Capital improvement projects requiring membership approval and Special Assessments to fund such capital improvements must be approved by not less than fifty-one percent (51%) of the entire membership of the Association, excluding those Members whose voting rights have been suspended in accordance with this Declaration. If the capital improvement and Special Assessment are approved by the membership, the Board shall levy a Special Assessment, and may commence construction of the capital improvement after such time as the Board has collected not less than ninety percent (90%) of the principal amount of the Special



Assessment. The Technical Committee shall assist the Board in the management of the construction project. The Board may, but shall not be obligated to, retain one or more consultants such as architects, engineers and/or construction managers to assist in the planning and supervision of the capital improvement project. The disposition of any excess proceeds of the Special Assessment following completion of the capital improvement project shall be determined by vote of the members at the time of the approval of the capital improvement project and Special Assessment. This Section 9.02(c) does not apply to the expenditure of any funds accumulated in a reserve fund for capital replacement of components of existing buildings or structures to be maintained, repaired or replaced by the Association under Article VIII, Section 8.01 of this Declaration.

(d) Masts, towers, poles, television and radio antennas, including satellite dishes, are subject to the provisions of Article X, Section 10.14 of this Declaration.

**Section 9.03. Enforcement of Architectural Restrictions.** If an Owner makes an improvement, addition or change in the Owner's Unit or on the Common Area not authorized by this Declaration without approval from the Board of Directors, the Association may direct that the improvement, addition or change be removed and in the event that the Owner fails to diligently commence action to remove or modify the work within thirty (30) days after receipt of a written demand for removal or modification, the Association may either enter into the Unit to effect removal or commence legal action to compel removal. However, no such entry for removal or modification shall be made unless the affected Owner(s) has been provided notice and an opportunity to be heard in accordance with the procedure set forth in Article XV, Section 15.06 of this Declaration. The Association may also exercise any of its other applicable remedies under this Declaration, the Bylaws or California law. Any costs and expenses incurred by the Association in the discharge of its responsibilities hereunder, including reasonable attorneys' fees and costs, fees of consultants and experts, including but not limited to, architects and engineers, may be recovered from the Owner by means of a Special Individual Assessment.

**Section 9.04. Variances.** The Board of Directors shall be entitled to allow reasonable variances with respect to this Article IX in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided the following conditions are met:

(a) All requests for variances shall be submitted to the Association in writing. If the Board reserves to itself authority to grant variances, requests shall be submitted to the Association Secretary or Association management agent, as the Board may designate.

If variance authority is delegated to the Architectural Committee, submissions shall be made to the Committee Chair.

(b) If the requested variance will necessitate deviation from, or modification of an Architectural Standard that would otherwise apply under this Declaration, the Board or the Architectural Committee must conduct a hearing on the proposed variance after giving at least ten (10) days' prior written notice to all Owners of Units located in the same building structure as the Unit affected by the variance or located within one hundred feet (100) feet of the Unit to which the variance applies. The Owners receiving notice of the proposed variance shall have thirty (30) days in which to submit to the Board or Committee written comments or objections with respect to the variance. No decision shall be made with respect to the proposed variance until the thirty (30)-day comment period has expired.

(c) The Board or Committee must make a good faith determination that: (i) the requested variance, if granted, will not constitute a material deviation from the overall plan and scheme of development within the Properties or from any restriction contained herein (or the Architectural Standards) or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) the variance relates to a requirement hereunder that is unnecessary or burdensome under the circumstances; or (iii) the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Unit, Common Area or Owner within the Property.

**Section 9.05. Solar Installations.** Notwithstanding the provisions of this Declaration, including Article IX, Section 9.01 hereof, the Association shall not impose restrictions on the construction of solar energy systems so as to significantly increase the cost of the system or significantly decrease its efficiency or specified performance. The Association may allow for an alternative system of comparable cost, efficiency and energy conservation benefits. For purposes of this Section 9.05, the terms "significantly" means an amount exceeding twenty percent (20%) of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding twenty percent (20%) as originally specified and proposed. Any solar collectors installed shall meet applicable standards and requirements imposed by California and local permitting authorities. Applications for the installation or use of a solar energy system shall be processed and approved by the Association in the same manner as an application for approval of an architectural modification, and shall not be willfully avoided or delayed. The provisions of this Section 9.05 are based on California Civil Code Section 714. This Declaration

shall be deemed amended to conform with that statute, or any successor statute, as enacted or hereafter modified.

## **ARTICLE X**

### **Use of Properties and Restrictions**

Use of the Units, Common Areas and other portions of the Properties shall be subject to the following rules and restrictions. In the event that the Association is compelled to expend funds to gain compliance with such rules and restrictions, whether for attorneys' fees or otherwise, the same may be recovered from the offending Owner by means of a Special Individual Assessment.

#### **Section 10.01. Residential Use.**

(a) The use of the Units within the Properties is hereby restricted to Residential Use.

(b) No Unit or Units or any portion thereof in the Project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license", "travel club", "extended vacation", or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess the Unit or Units or any portion thereof in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of twenty-five (25) consecutive calendar days or less. Provided, this Section shall not be construed to limit the personal use of any Unit or any portion thereof in the Project by any Unit Owner or the Owner's social or familial guests.

#### **Section 10.02. Common Areas.**

(a) Generally. The landscaped Common Areas shall be preserved as open space and used for those purposes originally planned as Common Facilities by the Declarant or subsequently installed by the Association in accordance with this Declaration. Nothing shall be altered, constructed, placed or stored in such Common Areas except upon the

direction and under the authority of the Association in accordance with Article IX hereof. Use and enjoyment of Common Areas shall at all times be subject to this Declaration, the Bylaws and the Association Rules and other purposes incidental and ancillary to the use of Units.

(b) **Association Common Areas.** In addition to the provisions of Section 10.02(a) hereof, and subject to Article IV, Section 4.01(b), Article V, Section 5.08, and Article XV, Section 15.06, it is further provided that the use of Association Common Areas shall be limited to the private use, for aesthetic and recreational purposes, of the Association's resident Members, their families and guests and of the Lessees of nonresident Members and the families and guests of such Lessees.

**Section 10.03. Use of the Properties.** The use of all Properties shall be limited to those uses, as strictly interpreted, which are specified in this Declaration. Any change in use of the Properties, or any part thereof, shall require the vote or written consent of two-thirds (2/3) of the Members of the Association.

**Section 10.04. Prohibition of Noxious Activities.** No noxious or offensive activities shall be carried on or conducted upon any Unit or the Common Area nor shall anything be done on any Unit or the Common Area that shall be or become an unreasonable annoyance or nuisance to the neighborhood, or which may in any way increase the rate of insurance for the Properties, or cause any insurance policy to be canceled, or to cause a refusal to renew the same, or which will impair the structural integrity of any building. Without limiting any of the foregoing, no Owner or lessee shall permit excessive noise, including, but not limited to, the barking of dogs, the operation of air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from any Unit, or the Common Area, which would unreasonably disturb any other Member's enjoyment of the Member's Unit or the Common Area. Excessive noise levels may be determined according to the ordinances of the City of Sunnyvale or other applicable governmental regulation dealing with such matters. The Board may, in its sole discretion, prohibit maintenance within the Properties of any animal that constitutes a nuisance (whether due to its size, viciousness, unreasonable noise or otherwise) with respect to any other Owner(s).

**Section 10.05. Temporary Structures.** No structure of a temporary character, trailer, mobilehome, camper, motor vehicle, tent, shack, or other outbuilding shall be used on the Common Area at any time as a residence, either temporarily or permanently. Furthermore, no structures shall be built for any purposes on the Common Area except as specifically authorized by this Declaration.

**Section 10.06. Household Pets.** The following restrictions regarding the care and maintenance of pets within the Properties shall be observed by each Owner and resident:

(a) A reasonable number of dogs, cats and other household pets may be kept in Units so long as the same are not kept, bred or maintained for commercial purposes. No other animals, livestock, or poultry of any kind shall be kept, bred or raised in any Unit.

(b) Dogs shall only be allowed on the Common Area when they are leashed and otherwise under the supervision and restraint of their Owners. Pet owners shall be responsible for the prompt removal of pet wastes deposited by their pets on the Properties.

(c) No household pet shall be left chained or otherwise tethered in front of a Unit or in the Common Area.

(d) Each person bringing or keeping a pet on the Properties shall be solely responsible for the conduct of their pets. The Association, its Board, officers, employees and agents shall have no liability (whether by virtue of this Declaration or otherwise) to any Owners, their household members, guests, invitees, tenants and contract purchasers for any damage or injury to persons or property caused by any pet.

(e) The Board of Directors shall have the right to establish and enforce additional Rules and Regulations imposing standards for the reasonable control and keeping of household pets in, upon and around the Properties to ensure that the same do not interfere with the quiet and peaceful enjoyment of the Properties by the other Owners and residents.

(f) In addition to the foregoing pet restrictions, all pet control codes and ordinances for the State of California, the City of Sunnyvale and the County shall apply at all times within the Properties.

**Section 10.07. Signs.** No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any window or the Common Area, nor shall any Unit be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Unit or any resident thereof. Notwithstanding the foregoing, any Owner of a Unit or the Owner's agent may display or have displayed in a window of the Owner's Unit or in a location on the Common Area approved by the Board, in accordance with Civil Code Section 712, or on another Owners' Unit with that Owners' consent, a sign which is reasonably located, in plain view of the public, and is of reasonable dimensions and design and not adversely affecting public safety, including traffic safety, advertising the property for sale, lease, or exchange, or

advertising directions to the property by the Owner or the Owner's agent. The "for sale" sign shall be promptly removed upon close of escrow and the site restored. Signs permitted hereunder shall not be nailed to the exterior of any Unit or staked in any lawn or green areas in the front of any Condominium. The right to place a "for rent"/"for lease" or "for sale" sign shall be subject to the control of the Board regarding placement, size and content. A temporary political sign may be erected on the Owner's Residence not more than ninety (90) days prior to the day of the election to which it relates, and shall be completely removed not later than twelve (12) days after the date of such election. Notwithstanding the preceding time provision, if the Board of Directors finds that any temporary political sign otherwise permitted is an immediate peril or menace to pedestrian or vehicular traffic, or to the health or safety of any person, the Board may cause it to be summarily removed.

**Section 10.08. Business Activities.** No business activities of any kind whatsoever shall be conducted in any building or in any portion of any Unit except for the activities, signs or the maintenance of buildings by the Association, its successors and assigns, in furtherance of its powers and purposes as set forth herein. Notwithstanding the foregoing, no restrictions contained in this Article X shall be construed in such a manner as to prohibit any Owner from (a) maintaining the Owner's personal library within the Owner's Condominium; (b) keeping the Owner's personal business records or accounts therein; (c) handling the Owner's personal or professional telephone calls or correspondence therefrom; or (d) conducting any other activities in the Owner's Unit otherwise compatible with residential use and the provisions of this Declaration which are permitted under applicable zoning laws or governmental regulations without the necessity of first obtaining a special use permit or similar specific governmental authorization. Such uses are expressly declared to be customarily incident to the principal residential use and not in violation of any provision of this Article X. In no event, however, may any such use result in an increase in vehicle traffic, pedestrian traffic, noise, garbage, fire damage, toxic or pollution hazard or the use of a garage which would result in the reduction of available parking.

**Section 10.09. Garbage and Storage.** No rubbish, trash, or garbage shall be allowed to accumulate on the Common Area and any trash outside the interior walls of a Unit shall be stored entirely within appropriate covered disposal containers maintained in good, clean condition except on collection day. No disposal containers, other than those maintained by the Association, shall be allowed in the Common Area except for the twenty-four (24) hour period surrounding the garbage pickup time. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as is often generated upon vacating of premises or during holidays, including Christmas trees) shall be removed from the

Properties to a public dump or trash collection area by the Owner or tenant at the Owner's expense.

No toxic or hazardous material shall be disposed of within the project by dumping in the garbage containers or down the drains, or otherwise. Toxic or hazardous material disposal must be performed outside the Properties in accordance with all applicable statutes, ordinances and regulations.

The Association shall be entitled to impose reasonable fines and penalties for collection of garbage, refuse or material which is disposed of in any manner inconsistent with this Section. Each Owner shall defend, indemnify and hold harmless the Association, its officers and directors against any liability, loss, damage, cost or penalty, including attorneys fees, arising from or relating to the unlawful disposal of hazardous or toxic materials.

Nothing in this section shall be interpreted so as to preclude the Association from establishing and maintaining within the Properties appropriate storage yards and storage buildings for the maintenance and retention of materials and equipment needed for planting, building, repair, maintenance and preservation of the structures, gardens and other improvements of the Common Areas.

**Section 10.10. Exterior Storage and Clotheslines.** No exterior clothesline shall be erected or maintained and there shall be no drying or laundering of clothes on the balconies, patios, porches or other areas in any manner which is visible from any neighboring Unit or the Common Area. Further, no clothes washers, clothes dryers, furniture (other than patio furniture), refrigerators, freezers or other appliances may be kept, stored or operated on any patio, porch or other exterior area.

**Section 10.11. No Common Area Maintenance by Owners.** Without the prior written approval of the Board, there shall be no exterior painting of residential structures by Owners, or occupants, nor repair or replacing of original roofs or utility laterals by Owners or occupants, it being the intention hereunder that such items be maintained and replaced by the Association in conjunction with the Association's maintenance of the Common Area in order to preserve the external harmony of the Properties, as provided in Article IX hereof. No Owner, or occupant, may interfere with or damage the structural integrity of any building or the Common Area.

**Section 10.12. Cooperative Maintenance Obligations.** Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Areas,

including but not limited to, recreation and parking areas and walks, shall be undertaken by the Board of Directors or by its duly delegated representatives and, to the extent necessary or desirable to accomplish such maintenance, individual Owners shall cooperate with the Association and its agents in the prosecution of its work.

**Section 10.13. No Structural Alterations.** No Condominium Owner shall undertake any action or work that will impair the structural soundness or integrity of the Owner's or another Unit or impair any easement or estate, or do any act or allow any condition to exist which will adversely affect the other Condominiums or their Owners.

**Section 10.14. No Alterations or Antennas.** In order to insure adequate aesthetic controls and to maintain the general attractive appearance of the Properties, no Owner, resident or lessee shall, at the Owner's expense or otherwise, perform plumbing or electrical work within any bearing or common walls, construct fences, walls, or make any alterations, additions or modifications to or on any part or portion of the Common Areas or exterior surfaces of any residential structure (including, without limitation, windows, the erection of awnings, exterior window coverings, hangings and the like, or the installation of any type of air conditioner), or place or maintain any objects, such as masts, towers, poles, or television and radio antennas, or satellite dishes, on or about the exterior of any building within the Properties, except as authorized by the Board. No construction or alteration of improvements may be undertaken on the Common Area without approval of the Board pursuant to Article IX hereof. Notwithstanding Article IX, Section 9.01 of this Declaration and this Section 10.14, the Board shall authorize the installation of antennas as required by applicable California and federal laws and regulations. Standard height television antennas and satellite dishes of one meter or less do not require approval by the Board. However, such installations are subject to such reasonable safety rules as may be adopted by the Board.

**Section 10.15. Parking and Vehicle Restrictions.** The following parking and vehicle restrictions shall apply within the Properties:

(a) All private concrete driveways and garages shall be maintained in a neat and orderly condition and garage doors shall be maintained in a closed position except as necessary to permit ingress and egress of vehicles or to provide ventilation when the resident is in the garage area.

(b) Garages are to be used for the parking of standard passenger vehicles and non-commercial trucks. Garages shall not be converted to living quarters or workshops or used for the storage of boats, trailers, campers or recreation vehicles, except with the



written consent of the Board. In no event shall the garage area be used in a way which will preclude the parking of two of the Owner's or occupant's customary four-wheeled vehicles within the garage.

(c) All Common Area parking is subject to the Association Rules.

(d) Designated guest parking areas within the Common Area are not to be used, either permanently or temporarily, for the storage of boats, trailers or similar items of personal property, except as provided in Subsection (f) of this Section 10.15. No vehicle may be parked in a Common Area space for more than seventy-two (72) consecutive hours. No vehicle shall be parked or left in the street areas in front of the garages, or along any curb areas, unless the area is specifically marked as a designated parking space. Use of the guest parking areas is subject to the Association Rules.

(e) No motor vehicle shall be constructed, reconstructed or repaired within the Properties and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored on the Properties; provided, however that the provisions of this Section shall not apply to emergency vehicle repairs not to exceed twenty-four (24) hours. No unlicensed or unregistered vehicles may be kept on the Properties.

(f) Campers, boats, trailers, mobilehome, motor home and commercial vehicles are not to be parked within the Properties, except for periods not to exceed four (4) hours for the purpose of loading and unloading, except with the written consent of the Association. Personal property, other than authorized vehicles, shall not be stored in garages if such storage will necessitate or result in the parking of vehicles on streets within the Properties. No unlicensed motor vehicles shall be operated on the Properties.

(g) The Board shall have the authority to tow or restrain by use of devices such as the "Denver Boot", at the Owner's expense, any vehicle parked or stored in violation of this Section. The Board shall post such notices or signs within the Common Area as may be required by law to effectuate this towing provision.

(h) The Association Rules may regulate vehicle size, weight and type.

(i) Signage. The Association may install a sign at each vehicular entrance to the Project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the Properties will be removed at the Owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one inch in height.

**Section 10.16. Use of Private Streets in Common Area.**

(a) Private streets within the Properties shall not be used for "joy riding" or racing. Motorcycles, mopeds, and cars shall be allowed on such private streets only for ingress and egress.

(b) All operators of motor vehicles, including motorcycles, within the Properties subdivision must possess a valid driver's license.

(c) All provisions of the California Vehicle Code must be honored at all times when operating any motor vehicle within the Properties.

(d) Although all roads within the Properties are subject to the California Vehicle Code, the Association shall have the right to adopt reasonable rules regarding the control and use of roads within the subdivision, vehicles operated thereon and the speed and parking of such vehicles, and is further authorized to delegate the discharge of its rights hereunder to a municipality or other governmental entity or to contract with a private security patrol company for such purposes so long as the private character of the subdivisions roads is not jeopardized by such action.

(e) The sidewalks shall only be used for walking purposes. Roller blades, roller skates, skateboards, bicycles, or similar vehicles are not permitted on the sidewalks.

**Section 10.17. Barbecues.** There shall be no exterior fires whatsoever except barbecue fires located only upon Exclusive Use Common Areas and contained within receptacles designed for such purpose.

**Section 10.18. Basketball Standards.** No portable or fixed basketball standards or fixed sports apparatus shall be attached to the Common Area.

**Section 10.19. Machinery and Equipment.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit except such machinery or equipment as is usual or customary in connection with the use or maintenance of a Condominium or appurtenant structures within the Properties. No appliances, machinery or equipment may be maintained, stored or used outside a Unit.

**Section 10.20. Visitors.** Each Owner shall be accountable to the remaining Owners, their families, visitors, guests and invitees, for the conduct and behavior of the

household members and guests residing in or visiting the Owner's Condominium and for any property damage caused by such persons.

**Section 10.21. Compliance With Local Laws And Activities Affecting Insurance.** Subject to rights of reasonable contest, nothing shall be done or kept in any Unit or within the Common Area which will increase the rate of insurance relating thereto without the prior written consent of the Association and no Owner shall permit anything to be done or kept in the Owner's Unit or the Common Area which would result in the cancellation of insurance on any Condominium or any part of the Common Area or which would be in violation of any applicable statute, ordinance, law or administrative ruling or regulation.

**Section 10.22. Restriction on Further Subdivision and Severability.** No Condominium shall be further subdivided nor shall less than all of any such Condominium be conveyed by an Owner thereof. No Owner of a Unit within the Properties shall be entitled to sever that Unit from the Common Area portions of the Properties. No easement or other interest in a Unit shall be given without the prior written approval of the Board.

**Section 10.23. Diseases and Insects.** No Owner shall permit any thing or condition to exist in the Owner's Unit which shall induce, breed, or harbor infectious plant diseases or noxious insects.

**Section 10.24. Window Coverings.** Windows can be covered only by drapes, blinds, shutters, or shades and cannot be painted or covered by foil, cardboard, reflective films, bed sheets, towels or other similar materials. The use and the covering of the interior surfaces of the glass doors and windows appurtenant to any Unit in the Properties, whether by draperies, blinds, shades or other items visible from the exterior of the building, shall be subject to the Rules and Regulations of the Association; provided, however, that the exterior lining or surface of the draperies, shades or other covering items visible from the exterior shall be white or other neutral color approved by the Board.

**Section 10.25. Variances.** Upon application by any Owner, the Board of Directors shall be authorized and empowered to grant reasonable variances from the property use restrictions set forth in this Article X, if specific application of the restriction will, in the sole discretion of the Board, either cause an undue hardship to the affected Owner or fail to further or preserve the common plan and scheme of development contemplated by this Declaration.

## ARTICLE XI

### Easements

**Section 11.01. Encroachment Easements.** Each Unit is hereby declared to have an easement over adjoining Units and Common Area for the purpose of accommodating any encroachment due to roof overhangs, chimneys and fences or walls which are built in accordance with the original design, plans and specifications, and due to engineering errors in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of each Owner shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurs due to the willful misconduct of said Owner or Owners. In the event any Condominium is partially or totally destroyed, and is repaired or rebuilt, the Owners of each adjoining Condominium agree that minor encroachments over adjoining Condominiums shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

**Section 11.02. Maintenance Easements.** An easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the Association to enter in or to cross over the Common Area, Exclusive Use Common Area and any Unit to perform the duties of maintenance and repair of the Common Areas provided for herein.

**Section 11.03. Blanket Utility Easement.** There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all utilities on the Properties, including but not limited to water, sewers, gas, telephones, drainage and electricity, cable television and a master television antenna system, if any. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Properties. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as initially constructed or thereafter approved by the Association's Board of Directors, subject to approval of the Members as provided in this Declaration. The easements provided for in this Section 11.03 shall in no way affect any other recorded easement on the Properties.

## ARTICLE XII

### Insurance

**Section 12.01. Liability Insurance.** The Association shall obtain and maintain comprehensive general liability insurance insuring the Association, any manager, and the Owners and occupants of Condominiums, and their respective household members, guests, invitees, and the agents and employees of each, against any liability incident to the ownership or use of the Common Area or any other Association-owned or maintained real or personal property and including, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Two Million Dollars (\$2,000,000) covering all claims for death, personal injury, and property damage arising out of a single occurrence. Such insurance shall include coverage against liability or risk customarily covered with respect to projects similar in construction, location and use.

### **Section 12.02. Fire and Extended Coverage Insurance.**

(a) **Association Fire Insurance.** The Association shall obtain and maintain a master or blanket policy of hazard insurance coverage covering the full insurable replacement value of all of the insurable property of the Properties (i.e., including all the Common Area and all the Units and fixtures, to the extent they are part of the common elements of the Condominium, building service equipment and supplies, and other common personal property belonging to the Association), and against loss or damage from all other perils which are customarily covered with respect to condominium development similar in construction, location and use. The form, content, and term of the policy and its endorsements and the issuing company must be satisfactory to all institutional first mortgagees. If more than one institutional first mortgagee has a loan of record against a Condominium in the Project, the policy and endorsements shall meet the maximum standards of the various institutional first mortgagees represented in the Project. To the extent available the policy shall contain an agreed amount endorsement or its equivalent; an increased cost of construction endorsement or a contingent liability from operation of building laws endorsement or their equivalent; an extended coverage endorsement; vandalism, malicious mischief coverage; a special form endorsement; and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The policy shall provide amounts of coverage as shall be determined by the Board. The policy shall name as insured the Association, the Owners and all mortgagees as their respective

interests may appear, and may contain a loss payable endorsement in favor of the trustee described in the following paragraph of this Section 12.02.

All fire and casualty insurance proceeds payable under this Section 12.02 for losses to real property and improvements, may be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. The trustee shall be a commercial bank or other financial institution with trust powers in the County in which the Project is located that agrees in writing to accept such trust. If repair or reconstruction is authorized, the Association shall have the duty to contract for such work as provided for in this Declaration.

(b) The Association shall obtain and maintain flood insurance if the Properties are in an area designated by an appropriate governmental agency as a special flood hazard area.

(c) Individual Fire and Casualty Insurance Provisions. Except as provided in this clause no Owner shall separately insure the Unit against loss by fire or other casualty covered by any insurance carried under Section 12.02 of this Article XII. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in Section 12.02 that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance, and such Owner will be liable to the Association to the extent of any such diminution. Insurance maintained by the Association does not cover the Owner's or occupant's personal property and does not cover personal liability for damages or injuries occurring within the Unit. An Owner can insure the Owner's personal property against loss. In addition, any improvements made by an Owner within the Owner's Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements." A policy may be carried by an Owner which insures against losses not covered by the Association's policy by virtue of deductible or other reason.

**Section 12.03. Demolition, Workers' Compensation, Fidelity Bond and Other Insurance.** The Association may purchase and maintain demolition insurance in adequate amounts to cover demolition, in case of total or partial destruction of the Project and a decision not to rebuild. The Association shall purchase and maintain workers' compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association. The Association also shall purchase and maintain fidelity bonds or insurance sufficient to meet the reasonable requirements of any mortgagee. The Association shall purchase and maintain such insurance on personal property owned by the Association, and any other insurance, that it deems necessary.

**Section 12.04. Provision To Adjust Losses.** The Association is authorized to negotiate and agree on the value and extent of any loss under any policy carried pursuant to Sections 12.01-12.03 of this Article XII. The Association is granted full right and authority to compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

**Section 12.05. Distribution to Mortgagees.** Subject to the provisions of Article XVII, Section 17.05, any Mortgagee has the option to apply insurance proceeds payable on account of a Condominium in reduction of the obligation secured by the Mortgage of such Mortgagee.

**Section 12.06. Director and Officer Liability Insurance.** To the extent insurance is available, the Association shall purchase and maintain insurance in an amount not less than Two Million Dollars (\$2,000,000) on behalf of any Director, Officer, or Member of a Committee of the Association (collectively the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, regardless of whether the Association would have the power to indemnify the agent against such liability under applicable law.

**Section 12.07. Earthquake and Other Insurance.** The Board may, in its discretion, purchase earthquake insurance and/or other insurance with such coverages and in such amounts as the Board may deem prudent from time to time, including, by way of example and not of limitation, insurance on personal property owned by the Association.

**Section 12.08. Deductible.** Policies purchased by the Board may provide for a reasonable deductible amount from the coverage thereof, as determined by the Board in its reasonable discretion. In the event of any loss which relates in part to insurable portions of a Unit and in part to the Common Area, the Board shall apportion the deductible amount directly proportional to the amount of such loss related to such Unit and the amount of the loss related to the Common Areas and Facilities. Where such loss is solely to a Unit, the deductible amount shall be borne solely by the Unit Owner thereof. Where such loss is solely to the Common Area, the deductible amount shall be borne from the common funds. However, if any event of loss is caused by the intentional or negligent act of any Owner, or the Owner's agents, tenants or guests, such Owner shall be solely responsible for the amount of the deductible. In the event of loss caused by earthquake or other occurrence covered under a policy of earthquake insurance carried by the Association, this Section 12.08 shall not apply. Rather, the financial responsibility for the deductible amount of any such earthquake insurance policy carried by the Association shall be addressed as an uninsured loss under Article XIII of this Declaration.

**Section 12.09. Owner's Liability Insurance.** An Owner may carry whatever personal liability and personal property insurance with respect to the Condominium that he desires.

**Section 12.10. Adjustment of Insurance Specifications.** Should the Board, despite its reasonable efforts to do so, be unable to obtain insurance coverage meeting all the specifications set forth above, it shall observe such specifications as closely as possible, and where forms of coverage or insuring agreements specified above are unavailable, the Board shall substitute available forms of coverage and insuring agreements which in its judgment are the nearest equivalent to those specified.

**Section 12.11. Annual Insurance Review.** The Board shall at least annually determine whether the amounts and types of insurance obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Properties are located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under the existing policies are necessary or desirable to protect the interests of the Owners and of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

**Section 12.12. Insurance Disclosures.** The Association shall provide the following insurance disclosures to the Members.

(a) A summary of the Association's property, general liability, and earthquake and flood insurance policies, which shall be distributed within sixty (60) days preceding the beginning of the Association's fiscal year, that includes all of the following information about each policy:

- (1) The name of the insurer.
- (2) The type of insurance.
- (3) The policy limits of the insurance.
- (4) The amount of deductibles, if any.

(b) The Association shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies described in Subparagraph (a) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a



significant change, such as a reduction in coverage or limits, or an increase in deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in Subparagraph (a), the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(c) To the extent that any of the information required to be disclosed pursuant to Subparagraph (a) is specified in the insurance policy declaration page, the Association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its Members.

(d) The summary distributed pursuant to Subparagraph (a) shall contain, in at least 10-point boldface type, the following statement:

“This summary of the association’s policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association’s insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association’s policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage.”

## ARTICLE XIII

### Reconstruction and Insurance Distribution Proceeds

**Section 13.01. Destruction: Proceeds Exceed 85 Percent of Reconstruction Costs.** If there is a total or partial destruction of any of the improvements in the Project, and if the available proceeds of the insurance carried pursuant to Article XII are sufficient to cover not less than eighty-five percent (85%) of the costs of repair and reconstruction,

the improvements shall be promptly rebuilt, unless, within ninety (90) days from the date of destruction, Owners then holding at least seventy-five percent (75%) of the total voting power of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction is to take place, the Association shall be required to execute, acknowledge, and record in the Office of the County Recorder of the County, not later than one hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

**Section 13.02. Destruction: Proceeds Less than 85 Percent of Reconstruction Costs.** If the proceeds of insurance carried pursuant to Article XII are less than eighty-five percent (85%) of the costs of repair and reconstruction, the improvements shall be promptly rebuilt unless, within ninety (90) days from the date of destruction, Owners then holding at least sixty-six and two thirds percent (66 2/3%) of the total voting power of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place. If such a meeting is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall execute, acknowledge, and record in the Office of the County Recorder of the County not later than one hundred twenty (120) days from the date of destruction, a certificate declaring the intention of the Owners to rebuild.

**Section 13.03. Apportionment of Assessments for Reconstruction.** If the improvements are to be rebuilt pursuant to Sections 13.01 or 13.02 of this Article XIII, each Owner shall be obligated to contribute an equal share of the cost of reconstruction or restoration over and above the available insurance proceeds. If any Owner fails or refuses to pay the Owner's share, the Board may levy a Special Assessment against the Condominium of such Owner, which may be enforced under the lien provisions contained in Article VI or in any other manner provided in this Declaration.

**Section 13.04. Rebuilding Contract.** If rebuilding is authorized, the Association or its authorized representative shall, after having obtained bids from at least two reputable contractors as required by Sections 13.01 or 13.02 of this Article XIII, award the repair and reconstruction work to the lowest bidder that otherwise meets the requirements set forth by the Association in soliciting bids. The Association shall have the authority to

enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds shall be disbursed to the contractor according to the terms of the contract. It shall be the obligation of the Association to take all steps necessary to assure the commencement and completion of authorized rebuilding at the earliest possible date.

**Section 13.05. Election Not to Rebuild and Distribution of Proceeds.**

(a) Association Purchase of Uninhabitable Units. If the Owners determine not to rebuild, and if, prior to the expiration of one hundred twenty (120) days from the date of destruction, Owners holding seventy-five percent (75%) of the total voting power of Owners consent in writing or by vote at a duly constituted meeting and seventy-five percent (75%) of institutional first Mortgagees with Mortgages encumbering Condominiums in the Project consent, the Association shall have the right to purchase the Condominium(s) rendered uninhabitable by such damage or destruction at its/their fair market value immediately prior to the damage or destruction, as determined by an appraiser in accordance with the provisions in Section 13.07 of this Article, using the available proceeds of insurance for such purchase. Any shortage of insurance proceeds shall be made up by a Special Assessment levied against all remaining Owners in the manner described in Article XIII, Section 13.03 (but without the consent or approval of Owners, despite any contrary provisions in the Declaration). The Board's decision as to whether a Condominium is uninhabitable shall be final and binding on all parties. Any payment of the purchase price shall be made jointly to the selling Owner and all Mortgagees of that Owner's Condominium, and each Owner by accepting a deed to a Condominium agrees to be bound by these provisions and to sell the Owner's Condominium and to convey it by grant deed to the Association as provided in this clause. Concurrently with such purchase, the Association or individuals authorized by the Board, acting as attorney-in-fact of all Owners, shall amend the Condominium Plan, the Subdivision Map (if necessary), and this Declaration to eliminate from the Project the Condominiums so purchased and to adjust the undivided ownership interest of the remaining Owners to reflect the reduced number of Condominiums in the Project; and the Association shall convey to each remaining Owner a proportionate share of the undivided interests in the Common Area represented by the Condominiums purchased. This proportion shall be in the ratio that each remaining Owner's undivided interest in the Common Area bears to all remaining Owners' undivided interest in the Common Area.

Notwithstanding the determination not to rebuild uninhabitable Units pursuant to Section 13.01 of this Article XIII, if the uninhabitable Units are to be purchased by the Association, then any Units that have not been rendered uninhabitable shall be repaired and restored to a condition as near as possible to their condition immediately before such

damage or destruction. Such repair and restoration shall be paid for first from the insurance proceeds, if any, remaining after the purchase of Condominiums, and second from a Special Assessment levied against all remaining Owners in the manner described in Section 13.03 of this Article XIII (but without the consent or approval of Owners, despite any contrary provisions in this Declaration).

(b) **Apportionment if Purchase Not Authorized.** If the Owners elect not to rebuild, and if the required seventy-five percent (75%) of all Owners and institutional first Mortgagees do not consent to purchase the Condominiums of which the Units were rendered uninhabitable, an appraiser shall determine the relative fair market values of all Condominiums in the Project in accordance with the provisions in Article XIII, Section 13.07 as of a date immediately prior to any damage or destruction and the proceeds of insurance shall be apportioned among all Owners, and their respective Mortgagees, in proportion to such relative values. The Board shall have the duty, within one hundred twenty (120) days from the date of destruction, to execute, acknowledge, and record in the Office of the County Recorder of the County, a certificate declaring the intention of the Owners not to rebuild. On recordation of the certificate, the right of any Owner to partition through legal action as described in Article II, Section 2.03 shall revive immediately.

**Section 13.06. Minor Repair and Reconstruction.** The Association shall have the duty to repair and reconstruct improvements, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed One Hundred Thousand Dollars (\$100,000).

The Association is empowered to levy a Special Assessment for the cost of repairing and reconstructing improvements to the extent insurance proceeds are unavailable, such assessment to be levied as described in Article XIII, Section 13.03 (but without the consent or approval of the Owners, despite any contrary provisions in this Declaration).

**Section 13.07. Fair Market Value as Appraisal Standard.** Wherever in this Article XIII reference is made to a determination of the relative fair market value of one or more Condominiums by an appraiser, this means the relative fair market value of such Condominiums as of a date immediately prior to any damage or destruction, as determined by an appraisal by an independent appraiser selected by the Board, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining

the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale or insurance proceeds, as the case may be.

## ARTICLE XIV

### Condemnation

**Section 14.01. Sale by Unanimous Consent or Taking.** If an action for condemnation of all or a portion of the Project is proposed or threatened by any governmental agency having the right of eminent domain, then, on unanimous written consent of all of the Owners and all institutional Mortgagees, the Project, or a portion of it, may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Condominium in the Project grants to the Association and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board. If the requisite number of Owners or institutional Mortgagees do not consent to a sale of all or a portion of the Project, and the condemning authority institutes condemnation proceedings, the court shall fix and determine the condemnation award. A Mortgagee shall be deemed to have consented to such action if notice is provided by return receipt mail to the Mortgagee's last known address as shown in the Association's records or in the mortgage itself and if the Mortgagee shall fail to object to such action within thirty (30) days thereafter.

### **Section 14.02. Distribution of Sale Proceeds or Condemnation Award.**

(a) **Total Sale or Taking.** If there is a total sale or taking of the Project, meaning a sale or taking (1) that renders more than fifty percent (50%) of the Units uninhabitable (such determination to be made by the Board in the case of a sale and by the court in the case of a taking) or (2) that renders the Project as a whole uneconomical as determined by the vote or written consent of sixty six and two-thirds percent (66 2/3%) of those Owners and their respective institutional Mortgagees whose Units will remain habitable after the taking, the right of any Owner to partition through legal action as described in Article II, Section 2.03 shall revive immediately. However, any determination that a sale or taking is total must be made before the proceeds from any sale or award are distributed. The proceeds of any such total sale or taking of the Project, together with the proceeds of any sale pursuant to a partition action, after payment of all expenses relating to the sale, taking, or partition action, shall be paid to all Owners and to their respective Mortgagees in proportion to the respective fair market value of their Condominiums. The fair market

values of Condominiums shall be determined in the condemnation action, if such be instituted, or by an Appraiser pursuant to Section 14.03 of this Article XIV.

(b) **Partial Sale or Taking.** In case of a partial sale or taking of the Project, meaning a sale or taking that is not a total taking as described in this Section 14.02, the proceeds from the sale or taking shall be paid or applied in the following order of priority, and any judgment of condemnation shall include the following provisions as part of its terms:

- (1) To the payment of expenses of the Association in effecting the sale or to any prevailing party in any condemnation action to whom such expenses are awarded by the Court to be paid from the amount awarded; then
- (2) To Owners and their respective Mortgagees, as their interests may appear, of Condominiums in the Project whose Units have been sold or taken, an amount up to the fair market value of such Condominiums as determined by the Court in the condemnation proceeding or by an appraiser selected by the Board, who meets the qualifications described in Section 14.03 of this Article XIV, less such Owner's share of expenses paid pursuant to the preceding subsection (1) (which share shall be in proportion to each Owner's undivided interest in the Common Area). After such payment, the recipient shall no longer be deemed an Owner, and the Board or individuals authorized by the Board, acting as attorney-in-fact of all Owners shall amend the Condominium Plan, the Subdivision Map (if necessary), and this Declaration to eliminate from the Project the Condominiums so sold or taken and to adjust the undivided ownership interest of the remaining Owners in the Condominium Area based upon the ratio that each remaining Owner's undivided interest bears to all the remaining Owners' undivided interest in the Common Area; then
- (3) To any remaining Owner and to the Owner's Mortgagees, as their interest may appear, whose Condominium has been diminished in fair market value as a result of the sale or taking disproportionately to any diminution in value of all Condominiums, as determined pursuant to Section 14.03, but as of a date immediately after any announcement of condemnation, an amount up to the total diminution in value; then

- (4) To all remaining Owners and to their respective Mortgagees, as their interest may appear, the balance of the sale proceeds or award in proportion to the ratio that the fair market value of each remaining Owner's Condominium bears to the fair market value of all remaining Owners' Condominiums as determined by the Court in the condemnation proceeding or by an appraiser pursuant to Article XIV, Section 14.03.

**Section 14.03. Fair Market Value as Appraisal Standard.** Wherever in this Article XIV reference is made to a determination of the value or fair market value of one or more Condominiums, it shall mean the relative fair market value of each such Condominium as of a date immediately prior to the announcement of condemnation, as determined by an appraisal by an independent appraiser selected by the Association, who shall be a member of the Society of Real Estate Appraisers or other nationally recognized appraiser organization and who shall apply its or such other organization's standards in determining the value or fair market value of each Condominium. The costs of such appraisals shall be paid from the sale proceeds.

## **ARTICLE XV**

### **Breach and Default**

**Section 15.01. Remedy at Law Inadequate.** Except for the non-payment of any Assessment, it is hereby expressly declared and agreed that the remedy at law to recover damages for the breach, default or violation of any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration is inadequate and that the failure of any Owner, tenant, occupant or user of any Unit, or any portion of the Common Area or Common Facilities, to comply with any provision of this Declaration or any rule, regulation, decision or resolution of the Board of Directors or Bylaws or Articles of Incorporation of the Association, all as may be amended from time to time, may be enjoined by appropriate legal proceedings instituted by any Owner, the Association, its officers or Board of Directors, or by their respective successors in interest.

**Section 15.02. Nuisance.** Without limiting the generality of the foregoing, the result of every act or omission whereby any covenant contained in this Declaration is violated in whole or in part is hereby declared to be and constitutes a nuisance, and every

remedy against nuisance, either public or private, shall be applicable against every such act or omission.

**Section 15.03. Costs and Attorney's Fees.** In any action brought because of any alleged breach or default of any Owner or other party hereto under this Declaration, the Court may award to any party to such action such attorney's fees and other costs as it may deem just and reasonable.

**Section 15.04. Cumulative Remedies.** The respective rights and remedies provided by this Declaration or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise, at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of this Declaration.

**Section 15.05. Failure Not a Waiver.** The failure of any Owner, the Board of Directors or the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

**Section 15.06. Suspension, Fines and Enforcement.**

(a) **Limitations.** The Association shall have no power to cause a forfeiture or abridgment of an Owner's right to the full use and enjoyment of the Owner's Unit on account of a failure by the Owner to comply with the provisions of the Articles or Bylaws of the Association or this Declaration or of duly-enacted Association Rules except (1) where the loss or forfeiture is the result of the judgment of a foreclosure or sale under a power of sale for failure of the Owner to pay assessments levied by the Association, or (2) where the loss or forfeiture is limited to a temporary suspension of an Owner's rights as a Member of the Association (including, without limitation, voting rights) or other appropriate discipline (including, without limitation, the imposition of monetary penalties pursuant to Rules and Regulations of the Association as adopted and published by the Board) for failure to comply with the Association Management Documents. However, voting rights may be suspended as provided in Article III, Section 3.01 of the Bylaws.

(b) **Complaint.** Upon a finding by the Board of a violation of a provision of the Association Management Documents, the Board shall deliver a complaint to the Owner



who is alleged to have violated, or whose household member(s), tenant(s), guest(s), invitee(s) or agent(s) are alleged to have violated, any such provision. The complaint shall be delivered in the manner prescribed for the delivery of notices in Article XVIII entitled "Notices" of the Declaration and shall contain the following information:

- (1) A brief description of the alleged violation and, in the event the correction of the alleged violation requires actions, such as the installation, removal, repair, replacement, reconstruction or maintenance of improvements, the date by which such violation is to be corrected.
- (2) The disciplinary and/or corrective action and/or penalties, such as the levying of a Special Individual Assessment or the suspension of voting and other membership rights, which have been imposed by the Board and become effective in the event the hearing is waived. A suspension of voting or other privileges may be imposed for a period of not more than sixty (60) days unless the violation (including the nonpayment of Assessments) continues beyond such period of time, in which event such suspension may be imposed for as long as the violation continues.
- (3) Notification that, unless a written request for a hearing signed by the Owner is delivered to the Board within fifteen (15) days after the postmarked mailing of such complaint, such Owner shall be deemed to have accepted the findings of the Board, including without limitation, the date established by the Board for the completion of any corrective work that is required to cure the violation, and has waived the Owner's right to a hearing and the Owner's right to object to the findings of the Board and the disciplinary and/or corrective actions and/or penalties imposed by the Board.

(c) Request for Hearing. Upon timely delivery of a request for hearing from the Owner named in the complaint, the Board shall set a date for a hearing before the Board and shall deliver notice of such hearing to the Owner and to any witnesses designated by the Board or the Owner who are to be present for the purpose of presenting any relevant evidence. Such hearing shall be held not less than thirty (30) days nor more than sixty (60) days from the date of said written notice to the Owner. Such hearing shall be conducted according to such reasonable rules and procedures as the Board shall adopt which shall

provide the Owner with the right to present oral and written evidence and to confront and cross-examine any person offering at such hearing evidence adverse to the Owner.

(d) Decision of Board. The Board shall deliver its decision and the reasons therefor to the Owner within seven (7) days after the hearing. The disciplinary and/or corrective action and/or penalties determined by the Board shall become effective five (5) days after delivery of the decision and the reasons therefor to the Owner.

(e) Corrective Work. If a violation requiring corrective work continues to exist after the expiration of the time limitation established by the Board for the completion of such corrective work, the Board shall have the right, but not the obligation, to enter upon such Owner's Unit or Exclusive Use Common Area as necessary to accomplish such corrective work. Entry for such purpose may be made after notice to the Owner of not less than fifteen (15) days unless such Owner has agreed to permit earlier entry for such purposes. Unless Owner and the Board otherwise agree, such entry upon such residence to perform such corrective work shall take place only during daylight hours on any day, Monday through Friday, excluding holidays.

(f) Reimbursement. If the Association pays for all or any portion of any corrective work required to correct a violation, such amount shall be reimbursed by the Owner. Notwithstanding the foregoing, as provided in the Declaration, notice and an opportunity to be heard must be initiated before any item of construction can be altered or demolished.

(g) Exceptions. The provisions of this Section 15.06 shall not apply to the imposition of late charges or interest for the late payment of any assessment nor to the recordation of a lien or foreclosure of a lien in the case of delinquent assessments. Further, nothing in this Section 15.06 shall limit the power of the Board to take immediate action that may be necessary to alleviate an emergency situation.

(h) Schedule of Penalties. The Board shall adopt and distribute to each Member, by personal delivery or first-class mail, a schedule of the monetary penalties that may be assessed. The Board of Directors shall distribute, in like manner, additional schedules of monetary penalties whenever changes to the schedule are adopted.

**Section 15.07. Violation of Law.** Any violation of any state, municipal or local law, or ordinance or regulation pertaining to the ownership, occupation or use of any property within the Properties is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

## **Section 15.08. Alternative Dispute Resolution.**

(a) **ADR Procedure.** Unless the applicable time limitation for commencing the action would run within one hundred twenty (120) days, prior to the filing of a civil action by either the Association or an Owner solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages, other than assessments, not in excess of five thousand dollars (\$5,000), related to the enforcement of the Association Management Documents, the parties shall endeavor as provided herein, to submit their dispute to a form of alternative dispute resolution, such as mediation or arbitration. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by servicing on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be in the same manner as prescribed for service in a small claims action as provided in Section 116.340 of the California Code of Civil Procedure. Parties receiving a Request for Resolution shall have thirty (30) days following service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within the thirty (30) day period by a party, shall be deemed rejected by that party. If alternative dispute resolution is accepted by the party upon whom the Request for Resolution is served, the alternative dispute resolution shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulations signed by both parties. The costs of the alternative dispute resolution shall be borne by both parties. Any Request for Resolution sent to the Owner shall include a copy of Civil Code Section 1354.

(b) **Notice of ADR Procedure.** The Board of Directors annually shall provide the Members a summary of the provisions of California Civil Code Section 1354, which summary shall include the following language:

"Failure by any member of the association to comply with the prefiling requirements of Section 1354 of the Civil Code may result in the loss of your rights to sue the association or another member of the association regarding enforcement of the governing documents."

The summary shall be provided either at the time the pro forma budget required by Civil Code Section 1365 is distributed or in the manner specified in Section 5016 of the

Corporations Code, covering written notices as part of a newsletter, or other organ regularly sent to the members.

(c) The exception for disputes related to Association assessments in Section 15.08(a) shall not apply if, in a dispute between the Owner of a Condominium and the Association regarding the assessments imposed by the Association, the Owner of the Condominium chooses to pay in full to the Association all of the charges listed in Subsections (1) to (4), inclusive, below, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than thirty (30) days from the recording of a notice of delinquent assessment in accordance with Section 1367; and in those instances, the Association shall inform the Owner that the Owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the Association. The sums required to be so paid are:

- (1) The amount of the assessment in dispute.
- (2) Late charges.
- (3) Interest.
- (4) All fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including attorney's fees not to exceed four hundred twenty-five dollars (\$425).

The right of any Owner of a separate interest to utilize alternative dispute resolution under this Section may not be exercised more than two (2) times in any single calendar year, and not more than three (3) times within any five (5) calendar years. Nothing in this Section shall preclude any Owner of a Condominium and the Association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this Section. The Owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the Association on the total amount paid under Subsections (1) to (4), inclusive, of this Section 15.08(c) if it is determined through alternative dispute resolution that the assessment levied by the Association was not correctly levied.

(d) Conformance with Statute. The provisions of this Section 15.08 conform with California Civil Code Sections 135 and 1366.3. In the event said statute is amended, such amendments and any successor statute or statutes relating to the enforcement of

covenants and restrictions in the Declaration shall be deemed incorporated by reference into this Declaration.

## ARTICLE XVI

### Amendment of Declaration

#### Section 16.01. Amendment.

(a) **Amendment In General.** This Declaration may be amended or revoked in any respect by the vote or assent or by written ballot of the holders of not less than a majority of the voting power of the Members.

(b) **Effective Date of Amendment.** The amendment shall be effective upon the recordation in the Office of the Recorder of Santa Clara County of an instrument setting forth the terms thereof duly certified and executed by the President and Secretary of the Association. Notwithstanding anything to the contrary herein contained, no such amendment shall affect the rights of the holder of any first deed of trust or mortgage recorded prior to the recordation of such amendment.

**Section 16.02. Control if Amendment Provisions Conflict With Mortgagee Protection or Other Provisions.** To the extent any provisions of this Article XVI conflict with the provisions of Article XVII or any other provisions of this Declaration, the provisions of Article XVII or the other provisions shall control.

**Section 16.03. Reliance on Amendments.** Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

**Section 16.04. Provision That Amendments Conform With Mortgagee Requirements.** It is the intent of the Association that this Declaration and the Articles and Bylaws of the Association, and the Properties in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure or subsidize any mortgage of a Condominium in the Properties by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Veterans Administration. The Association and each Owner shall take any action or shall adopt any resolutions required by the Association or any Mortgagee to conform this Declaration or the Properties to the requirements of any of these entities or agencies.

## ARTICLE XVII

### Provisions to Satisfy Lender Requirements

**Section 17.01. Mortgage Permitted.** Any Owner may encumber the Owner's Condominium with a Mortgage.

**Section 17.02. Subordination.** Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any first Mortgage that encumbers all or a portion of the Project, or any Condominium, made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. If any Condominium is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in the Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale. On taking title to the Condominium the foreclosure-purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Association that became due or payable on or after the date the foreclosure-purchaser acquired title to the Condominium. The subsequently levied assessments or other charges may include previously unpaid assessments, provided all Owners including the foreclosure purchaser and the foreclosure purchaser's successors and assigns are required to pay their proportionate share as provided in this clause.

**Section 17.03. Restriction on Certain Changes.** In addition to the requirements of Article XVI, unless two-thirds (2/3) of the holders of first mortgages (based upon one vote for each mortgage or deed of trust owned), or two-thirds (2/3) of the Owners of the individual Units in the project, have given their prior written approval, neither the Association nor the Owners shall be entitled:

(a) By act or omission to seek to abandon or terminate the Condominium project, except for abandonment provided by statute in case of substantial loss to the Units and Common Area.

(b) To change the method of determining the obligations, assessments, dues, or other charges that may be levied against an Owner, or to change the pro rata interest or

obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Owner in the Common Area provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.

(c) To partition or subdivide any Unit.

(d) By act or omission to seek to abandon, partition, subdivide, encumber, sell or transfer the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area by the Association or the Owners shall not be deemed to be a transfer within the meaning of this clause.

(e) To use hazard insurance proceeds for losses to Units or Common Area improvements in the development or to any other Association property, for other purposes than the repair, replacement, or reconstruction of such improvements or property, except as provided by statute in case of substantial loss to the Units or Common Area of the Project.

(f) By act or omission to change, waive, or abandon the provisions of this Declaration, or the enforcement of any of them, pertaining to architectural design or control of the exterior appearance of structures in the development, the maintenance of the Common Area, walks, fences, and driveways, or the upkeep of lawns and plantings in the Project.

(g) To fail to maintain fire and extended coverage insurance on insurable Association property, including any Common Area improvements, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost).

A Mortgagee shall be deemed to have consented to such action if notice is provided by return receipt mail to the Mortgagee's last known address as shown in the Association's records or in the mortgage itself and if the Mortgagee shall fail to object to such action within thirty (30) days thereafter.

**Section 17.04. Mortgagee's Right to Examine Books and Records.** Institutional first Mortgagees shall have the right to examine the books and records of the Association and the right to require the submission of financial data concerning the Association, including annual reports, budgets, and operating statements as furnished to the Owners.

Such audits and financial statements shall be furnished upon payment of reasonable costs to such requesting Mortgagee and shall be furnished within a reasonable amount of time following such request. Any holder, insurer or guarantor of a first Mortgage shall be entitled, upon written request, to an audited or reviewed financial statement for the immediately preceding fiscal year, at the Association's reasonable cost of duplication. Such statement shall be furnished within a reasonable time following such request.

**Section 17.05. Priority in Distribution of Insurance and Condemnation Proceeds.** No Owner, or any other party, shall have priority over any right of institutional first Mortgagees of the Owner's Condominium pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Area. Any provision to the contrary in this Declaration or in the Bylaws or other documents relating to the development is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected institutional first Mortgagees, naming the Mortgagees as their interests may appear in the Official Records of the Santa Clara County Recorder prior to the related loss.

**Section 17.06. Status of Amenities.** All amenities (such as parking, recreation, and service areas) and Common Area shall be available for use by Owners, their tenants and guests as set forth in this Declaration, and all such amenities with respect to which Regular or Special Assessments for maintenance or other uses may be levied shall constitute Common Area. All such amenities shall be owned by the Association free of encumbrances except for any easements granted for public utilities or for other public purposes consistent with the intended use of such property by the Owners, their tenants and guests or by the Association.

**Section 17.07. Payments by Mortgagees.** Mortgagees of Condominiums may, jointly or severally, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for Common Area improvements or other insured property of the Association and, upon making any such payments such Mortgagees shall be owed immediate reimbursement from the Association, provided that said lender(s) have given notice to the Association prior to the making of such payment(s) and the Association has failed to pay the same. This provision shall constitute an agreement by the Association for the express benefit of all Mortgagees and, upon request of any Mortgagee, the Association shall execute and deliver to such Mortgagee a separate written agreement embodying this provision.



**Section 17.08. Effect of Breach of Declaration on Mortgagee.**

(a) **Lien Not Invalidated.** No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

(b) **Mortgagee Need Not Cure Breach.** Any Mortgagee who acquires title to a Condominium by foreclosure or by deed in lieu of foreclosure or assignment in lieu of foreclosure shall not be obligated to cure any breach of this Declaration that is noncurable or of a type that is not practical or feasible to cure.

**Section 17.09. Status of Loan to Facilitate Resale.** Any first mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed in lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and entitled to all of the rights and protections of mortgages under this Declaration.

**Section 17.10. Right to Appear at Meetings.** Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) at meetings of Owners and the Board (except the Mortgagee may not attend executive Board meetings) to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

**Section 17.11. Right to Furnish Information.** Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

**Section 17.12. Right to First Refusal Inapplicable to Mortgagee.** No right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey the Owner's Condominium shall be granted to the Association without the written consent of any Mortgagee of the Condominium. Any right of first refusal or option to purchase a Condominium that may be granted to the Association (or other person, firm, or entity) shall not impair the rights of a first Mortgagee (a) to foreclose or take title to a Condominium pursuant to the remedies provided in the mortgage; or (b) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the mortgage; or (c) to sell or lease a Condominium acquired by the Mortgagee.

**Section 17.13. Notice of Action.** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder or Eligible Insurer or

Guarantor, and the Unit number or address, such Eligible Mortgage Holder or Eligible Insurer or Guarantor will be entitled to timely written notice of: (a) Any condemnation loss or any casualty loss which affects a material portion of the project or any Condominium on which there is a first mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, as applicable; and (b) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

**Section 17.14. Limitation on Term of Management Contract.** Any agreement for professional management by a manager shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days' written notice and shall have a maximum contract term of one year, provided that the Association can renew any such contract on a year-to-year basis.

**Section 17.15. Control if Mortgagee Protections Conflict With Other Provisions.** In the event of any conflict between any of the provisions of this Article XVII and any other provisions of this Declaration, the provisions of this Article XVII shall control.

## ARTICLE XVIII

### Notices

**Section 18.01. Mailing Addresses.** Any communication or notice of any kind permitted or required herein shall be in writing and may be served, as an alternative to personal service, by mailing the same as follows:

- |                        |   |
|------------------------|---|
| If to any Owner:       | To the street address of the Condominium or to such other address as he may from time to time designate in writing to the Association.  |
| If to the Association: | At such address as the Association may from time to time designate by resolution.   |
| If to a Mortgagee:     | To the last known address of the Mortgagee as shown in the Official Records of Santa Clara County or as specifically designated by the Mortgagee, in written notice to the Association. |

**Section 18.02. Personal Service Upon Co-Owners and Others.** Personal service of a notice or demand to one of the co-owners of any Condominium, to any general partner of a partnership which is the Owner of record of the Unit, or to any officer or agent for service of process of a corporation which is the Owner of record of the Unit, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

**Section 18.03. Deposit in U. S. Mails.** All notices and demands served by mail shall be by first class mail, with postage prepaid, and shall be deemed delivered seventy-two (72) hours after deposit in the United States mail in Santa Clara County, California.

## **ARTICLE XIX**

### **General Provisions**

#### **Section 19.01. Construction and Severability; Singular and Plural; Titles.**

(a) **Restrictions Construed Together.** All of the covenants, conditions and restrictions of this Declaration shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of this Declaration. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce that provision in a subsequent application or any other provision hereof.

(b) **Restrictions Severable.** Notwithstanding the provisions of subparagraph (a) above, the covenants, conditions and restrictions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

(c) **Singular Includes Plural.** The singular shall include the plural and the plural the singular unless the context requires the contrary; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter, as the context requires.

(d) **Captions.** All captions or titles used in this Declaration are intended solely for convenience of reference and shall not affect the interpretation or application of that which is set forth in any of the terms or provisions of the Declaration.

(e) **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose. Failure to enforce any provision of the Declaration shall not constitute a waiver of the right to enforce the provision thereafter.

**Section 19.02. No Discriminatory Practices.** No Owner shall execute or cause to be recorded any instrument that imposes a restriction upon the sale, leasing, or occupancy of the Owner's Unit on the basis of age, race, sex, marital status, national ancestry, color, disability or religion. No sale, rental or leasing of a Unit shall be prevented directly or indirectly by reason of race, marital status, color, religion, ancestry, physical handicap, sex, or national origin or age.

**Section 19.03. Notification of Sale.** Concurrently with the consummation of sale of any Condominium under circumstances where the transferee becomes an Owner of the Condominium, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee and the transferee's Mortgagee and transferor, the common address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board, or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed received seventy-two (72) hours after mailing if mailed to the transferee, or to the transferee's transferor if the Association has received no notice of transfer as above provided.

**Section 19.04. Easements Reserved and Granted.** Any easements referred to in this Declaration shall be deemed reserved or granted, or both reserved and granted, whether or not this Declaration is referred to in the deed to a Unit.

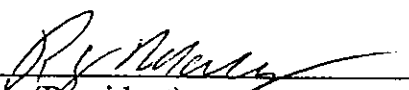
**Section 19.05. No Fixed Term.** This Declaration shall continue in full force and effect until the Project is partitioned as authorized in Article II, Section 2.03, or until this Declaration is amended or revoked pursuant to Article XVI.


**Section 19.06. Conflicts Between Documents.** The terms and provisions set forth in this Declaration are not exclusive, as Owners are also subject to the terms and provisions of other Association Management Documents, including the Articles of Incorporation, Bylaws, Rules and Regulations, and Architectural Standards. In the event of a conflict between any provisions of any of said Association Management Documents with the provisions of any other Association Management Documents, the order of

superiority of such documents shall be (a) Articles of Incorporation, (b) Declaration of Covenants, Conditions and Restrictions, (c) Bylaws, (d) Architectural Standards, and (e) Association Rules and Regulations, and the provisions of any such documents shall be superseded by the provisions of the document shown above to be superior to such document to the extent of such conflict.

Dated: November 16, 2001

Camino del Prado  
Homeowners Association

By   
(President)

By   
(Secretary)

o:\users\kathy\govinst\caminodl.ccr\August 31, 2001

## **EXHIBIT "A"**

All that property situated in the City of Sunnyvale, County of Santa Clara, California described as all of Lots 37, 38, 39 and 40 as shown on the Subdivision Map of Tract No. 5295, filed in the Office of the County Recorder of Santa Clara County, California on April 27, 1973, in Book 322 of Maps, Pages 10 and 11, as amended by a Certificate of Correction filed April 27, 1973 in Book 322 of Maps at Pages 10 and 11, Santa Clara County Records, as further amended by a Certificate of Correction recorded July 22, 1974 in Book B604, Page 226, Instrument No. 4813682, Santa Clara County Records.

## **EXHIBIT "B"**

### **Camino del Prado Homeowners Association Assessments**

All Condominiums of residing and nonresiding Owners shall be assessed each year for the estimated costs attributable to the operation and maintenance of the Association Common Areas and Expenses, including but not limited to the following:

1. Maintenance, Management, Operation, Repair and Replacement of all real property and the improvements thereon which the Association is obligated to maintain pursuant to the provisions of this Declaration.
2. Unpaid assessments.
3. Management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees.
4. To the extent not metered or billed to Owners, utilities and services which generally benefit and enhance the value and desirability of the Properties.
5. Premiums on all insurance and fidelity bonds maintained by the Association pursuant to the Declaration (except for fidelity bonds obtained by a management agent for its officers, employees and agents).
6. Reserves for the periodic maintenance, repair and replacement of the improvements maintained by the Association pursuant to this Declaration.
7. Taxes paid by the Association.
8. Discharge of any lien or encumbrance levied against Association property or portions thereof.
9. Security systems or services, if any, installed or maintained by the Association.
10. Other expenses incurred by the Association in connection with the Common Area or the cost of any other item or items designated by the Declaration or Bylaws, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

**Officers' Certification of Adoption  
of  
Restated Declaration of  
Covenants, Conditions and Restrictions**

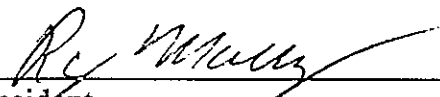
We, the undersigned, say:

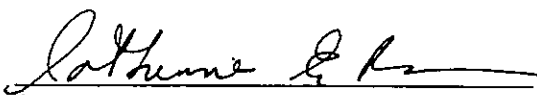
That we are the duly elected and acting President and Secretary, respectively, of Camino del Prado Homeowners Association, a California non-profit mutual benefit corporation; that the Restated Declaration of Covenants, Conditions and Restrictions to which this Certification is attached, which amends that certain Declaration of Covenants, Conditions and Restrictions recorded September 21, 1973, in Volume 0574, Page 49, *et seq.*, File No. 4611112 of the Official Records of Santa Clara County, California, as amended by that certain Amendment to Declaration of Covenants, Conditions and Restrictions recorded March 6, 1978 in Book D507, Page 10, *et seq.*, has been duly approved by vote of not less than seventy-five percent (75%) of the total voting power of Camino del Prado Homeowners Association pursuant to and as required by Article W of said Declaration.

That this Certification is made pursuant to Section 1355 of the Civil Code of the State of California, and is to be recorded together with said Restated Declaration of Covenants, Conditions and Restrictions in the records of the County Recorder of Santa Clara County, the County in which said common interest subdivision is located.

We declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Camino del Prado  
Homeowners Association

  
\_\_\_\_\_  
President

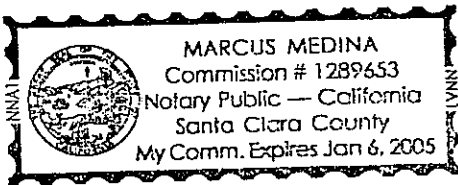
  
\_\_\_\_\_  
Secretary



State of California )  
 ) ss  
County of Santa Clara )

On the 16<sup>th</sup> of November, 2001, before me, the undersigned Notary Public, in and for said State, personally appeared - Roy Massey - and <sup>W.N.</sup> and - Catherine E. Barrier - personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



[seal]

Marcus Medina  
Notary Public  
State of California

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| Road                          | -47-   |
| Roof                          | -59-   |
| Rules                         | -3-, -4-, -7-, -11-, -14---16-, -19---22-, -30-, -37-, -39-, -40-, -44-, -50---52-,<br>-55---58-, -71-, -72-, -83-, -84-                               |
| Safety                        | -20-, -25-, -28-, -31-, -47-, -52-, -53-, -55-   |
| Savings                       | -6-, -32-  |
| Secretary                     | -3-, -15-, -16-, -26-, -45-, -48-, -76-, -84-, -87-  |
| Security                      | -6-, -7-, -15-, -40-, -41-, -57-, -86-   |
| Servitudes                    | -2-, -70-, -71-  |
| Sewer                         | -17-, -18-, -39-, -59-   |
| Sewers                        | -59-   |
| Sheetrock                     | -43-   |
| Signature                     | -32-, -88-   |
| Solar                         | -49-   |
| Special Assessment            | -7-, -23-, -24-, -26---28-, -32-, -33-, -36-, -42-, -47-, -48-, -65--<br>-67-  |
| Special Individual Assessment | -7-, -14-, -21-, -23-, -24-, -29---31-, -42-, -43-, -48-,<br>-50-, -72-  |
| Structure                     | -4-, -45-, -49-, -51-, -55-  |



|                            |   |
|----------------------------|---|
| Sublet . . . . .           | -50-  |
| Suspension . . . . .       | -13-, -21-, -39-, -71-, -72-  |
| Tax . . . . .              | -33-, -36-  |
| Taxes . . . . .            | -33-, -36-, -38-, -79-, -86-  |
| Telephone . . . . .        | -10-, -16--18-, -44-, -53-, -57-  |
| Telephone wiring . . . . . | -44-  |
| Telephones . . . . .       | -59-  |
| Television . . . . .       | -10-, -17-, -18-, -38-, -39-, -48-, -51-, -55-, -59-  |
| Tenant . . . . .           | -7-, -16-, -40-, -54-, -70-, -72-   |
| Tenant's . . . . .         | -16-, -61-  |
| Tenants . . . . .          | -2-, -7-, -14-, -15-, -21-, -29-, -31-, -39-, -41-, -42-, -47-, -52-, -62-, -79-  |
| Termites . . . . .         | -41-  |
| Towing . . . . .           | -15-, -56-  |
| Toxic . . . . .            | -53-, -54-  |
| Traffic . . . . .          | -20-, -47-, -52-, -53-, -57-  |
| Transfer . . . . .         | -15-, -17--19-, -35-, -36-, -39-, -40-, -78-, -80-, -83-  |
| Trash . . . . .            | -53-, -54-  |
| Trim . . . . .             | -8-   |
| Trust . . . . .            | -6-, -32--34-, -36-, -40-, -61-, -76-, -77-   |
| Uninhabitable . . . . .    | -66--68-  |
| Unit . . . . .             | -1-, -2-, -4--9-, -11--14-, -16--20-, -22-, -23-, -39-, -41--44-, -48--55-, -57--<br>-59-, -61-, -62-, -70-, -71-, -73-, -78-, -81--83- |
| Unit Owner . . . . .       | -9-, -11-, -42-, -44-, -50-, -62-   |
| Utilities . . . . .        | -4-, -11-, -17-, -18-, -39-, -44-, -59-, -78-, -79-, -86-   |
| Utility . . . . .          | -8-, -10-, -15-, -17-, -18-, -38-, -54-, -59-   |
| Vehicle . . . . .          | -15-, -16-, -22-, -51-, -53-, -55--57-  |
| Vehicles . . . . .         | -15-, -51-, -55--57-  |
| Vehicular . . . . .        | -20-, -53-, -56-  |
| Ventilating . . . . .      | -43-  |
| Ventilation . . . . .      | -55-  |
| Vents . . . . .            | -17-, -44-  |
| Vote . . . . .             | -8-   |
| Voting . . . . .           | -2-, -8-, -14-, -15-, -19-, -21-, -38--40-, -47-, -65-, -66-, -71-, -72-, -76-,<br>-87-   |
| Waiver . . . . .           | -37-, -71-, -82-, -83-  |
| Walls . . . . .            | -8--10-, -41--43-, -53-, -55-, -59-   |
| Wastes . . . . .           | -52-  |
| Water . . . . .            | -8-, -10-, -17-, -18-, -38-, -43-, -45-, -59-   |
| Windows . . . . .          | -8-, -11-, -42-, -55-, -58-   |

|                  |                 |
|------------------|-----------------|
| Yard . . . . .   | -11-, -44-      |
| Zoning . . . . . | -7-, -46-, -53- |