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SECOND AMENDED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION

JUL 18 1994

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION

This Second Amended Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION, a California Nonprofit Mutual Benefit Corporation (hereinafter referred to as the "Association") in accordance with Articles of Incorporation filed August 10, 1971 in the office of the Secretary of State of the State of California.

RECITALS:

WHEREAS, the Association is the successor in interest of Castilleja Del Arroyo, a limited partnership, which as Declarant executed that certain Declarations of Conditions, and Restrictions, dated September 1, 1971, and recorded September 1, 1971 at Book 2939, Page 889 Alameda County Official Records; and

WHEREAS, the aforesaid Declaration establishes certain limitations, restrictions, easements, covenants, conditions, liens, and charges which run with the land, and are binding upon and inure to the benefit of, all parties and their successors in interest having or acquiring any right, title or interest in that certain parcel of real property located in the City of Livermore, County of Alameda, State of California, more particularly described as:

All units of that certain Condominium designated as Tract 3285, as shown upon the final map of "Tract 3285, City of Livermore, Alameda County, California" filed September 1971, in Map Book 70, pages 75 - 85, in the office of the County Recorder of Alameda County; and

WHEREAS, the Members of CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION, constituting at least seventy-five percent (75%) of the voting power of the Association, desire to amend, modify, and otherwise change the aforesaid Declaration; and

WHEREAS, an Amended Declaration of Covenants, Conditions and Restrictions was approved by a vote of the membership on April 4, 1994, however, due to inadvertence, the document that was recorded on April 28, 1994 varied in certain critical aspects from the document approved by the membership; and

NOW, THEREFORE, pursuant to Article X, of the aforesaid September 1, 1971 Declaration of Covenants, Conditions and Restrictions, the Members of CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION, constituting at least seventy-five percent (75%) of the voting power of the Association, do hereby declare that the aforesaid Declaration of Covenants, Conditions and Restrictions dated September 1, 1971, and recorded be, and hereby

are, REPEALED in their entirety and in the place and stead thereof is hereby substituted the within SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION; and

IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a Condominium Project within the meaning of Section 1351(f) of the California Civil Code and is subject to the provisions of the Davis-Stirling Common Interest Development Act, Sections 1350 and following of the California Civil Code.

IT IS FURTHER HEREBY DECLARED that all of the real property described herein is held and shall be held, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting and preserving the value and desirability of the said real property and every part thereof, and of fostering the development, improvement, enjoyment and sale of the said real property and any part thereof; and

IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in Section 1354 of the California Civil Code, shall run with the said real property, and shall be binding upon and inure to the benefit of, each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

ARTICLE I

DEFINITIONS

1.1 **ARTICLES:** The term "Articles" shall mean the Articles of Incorporation of CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION, filed on August 10, 1971 with the Office of the California Secretary of State, and any Amendments thereto.

1.2 **ASSOCIATION:** The term "Association" shall mean CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION, its successors and assigns.

1.3 **BOARD OF DIRECTORS:** The term "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

1.4 **BYLAWS:** The term "Bylaws" shall mean the Bylaws of CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION, as they shall be adopted by the Board of Directors and the Members, and any duly-adopted Amendments thereof.

1.5 **CAPITAL IMPROVEMENTS:** The term "Capital Improvements" shall mean permanent additions to or upgrading of the Common Area. Capital Improvements do not include repairs to existing Common Area property.

1.6 **COMMON AREA:** The term "Common Area" shall mean all of the Development, except for the individual Units, as defined in this Declaration and shown on the Condominium Plan. The Common Area shall include, without limitation, each multi-family

structure (except for the Units), including the bearing walls, columns, floors, roofs, slabs, foundations, storage spaces, service and equipment areas, outside perimeter walls, fences, driveways, pumps, other central services, pipes, ducts, chutes, conduits, wires and other utility installations of the multi-family structures, wherever located, except when located within a Unit; landscaped areas; parking spaces; open spaces; recreational facilities; community facilities; and all other facilities and improvements located within the Development.

1.7 **CONDOMINIUM:** The term "Condominium" shall mean an estate in real property, as defined in California Civil Code Sections 783 and 1351(f), consisting of an undivided interest in common in that portion of the Development constituting the Common Area and a separate interest in a Unit.

1.8 **DECLARATION:** The term "Declaration" shall mean this Second Amended Declaration of Covenants, Conditions and Restrictions of CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION, and as said Second Amended Declaration may, from time to time, be amended and recorded in the Office of the Recorder of Alameda County, State of California.

1.9 **DEVELOPMENT:** The term "Development" shall mean all of the real property described in the Recitals herein, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.10 **ELIGIBLE HOLDER:** The term "Eligible Holder" shall mean a Mortgagee under a first Mortgage encumbering a Unit, or a beneficiary under a first Deed of Trust encumbering a Unit, who has made a written request to the Association to be named on the records of the Association in the book entitled "Mortgagees of Condominiums" and has submitted a current address and a request to be noticed of matters upon which Eligible Holders may vote or of delinquent assessments on a Unit securing a loan made by said Mortgagee.

1.11 **EXCLUSIVE USE COMMON AREA:** The term "Exclusive Use Common Area" shall mean those portions of the Common Area which are set aside and allocated for the exclusive use of the Owner of the Unit to which they are attached or assigned by Unit number on the Condominium Plan or assigned by the Board. The term shall include without limitation, patios, patio gardens, balconies, parking spaces and carports. Landscaping planted in the ground within the Exclusive Use Common Area shall become a part thereof and may not be removed by any Owner.

1.12 **GOVERNING DOCUMENTS:** The term "Governing Documents" shall mean the Articles, Bylaws, Declaration and Rules of CASTILLEJA DEL ARROYO HOMEOWNERS ASSOCIATION.

1.13 **MAINTENANCE:** The terms "maintenance" or "maintain" shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning and minor, non-structural upkeep.

1.14 **MEMBER:** The term "Member" shall mean every person or entity who holds membership in the Association, as provided in the Bylaws and Article IV of this Declaration.

1.15 **MORTGAGE**: The term "Mortgage" shall mean and include a Deed of Trust, as well as a Mortgage, recorded with respect to any Condominium or other portion of the Development.

1.16 **MORTGAGEE**: The term "Mortgagee" shall mean and include a beneficiary under or holder of a Deed of Trust, as well as a Mortgagee.

1.17 **OWNER**: The term "Owner" shall mean the record Owner, whether one or more persons or entities, of a fee title in or to any Condominium which is a part of the Development, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation or as contract purchaser.

1.18 **REPAIR**: The term "repair" shall mean the minor restoration of property that is torn, broken or otherwise damaged, or has sustained wear, tear or deterioration such that minor restoration is necessary.

1.19 **REPLACEMENT**: The terms "replacement" or "replace" shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.

1.20 **RULES**: The term "Rules" shall mean the rules and regulations governing the use, occupancy and operation of the Development, or any part thereof, as adopted and published by the Board of Directors from time to time.

1.21 **UNIT**: The term "Unit" shall mean the elements of a Condominium as to which an Owner has a separate interest, and which are not owned in common with the other Owners of Condominiums within the Development. The boundaries of a Unit are shown on the Condominium Plan and are the interior unfinished surfaces of the perimeter walls, bearing walls, floors, ceilings, interior beams, columns, windows, window frames, doors, door frames and trim. The Unit includes both the portion of the building so described and the air space so encompassed. Dishwashers, garbage disposals, ranges and ovens shall be deemed to be fixtures and part of a Unit. All other furnishings, furniture, drapes and appliances are personal property of the Owner and shall not, during the term of these restrictions, become a part of the real property. Each Unit includes the utility installations located within its boundaries of which the Owner has exclusive use, including, without limitation, space heaters, lighting fixtures, and air conditioning units which are located entirely within the Unit they serve. In interpreting deeds and the Condominium Plan, the then-existing physical boundaries of a Unit shall be conclusively presumed to be its boundaries, rather than the boundaries expressed in the deed or Condominium Plan, regardless of settling or lateral movement of the building, and regardless of minor variance between the boundaries shown on the plan or deed and those of the building.

ARTICLE II

PROPERTY RIGHTS

2.1 **COMMON AREA OWNERSHIP**: There shall be conveyed with each respective Unit an undivided tenancy-in-common interest in the Common Area. The undivided

interest in the Common Area established hereunder and to be conveyed with the respective Units cannot be changed, and all grantees covenant and agree that the undivided interests in the Common Area, and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

2.2 **OWNERS' EASEMENTS OF ENJOYMENT**: Every Owner shall have a right and easement of use and enjoyment in and to the Common Area, including, without limitation, the right of ingress, egress and support, which shall be appurtenant to and shall pass with the title to every Condominium, subject to the following provisions:

- A. **Establish Reasonable Rules**: The right of the Board of Directors to establish and enforce reasonable Rules governing the use of the Common Area and all facilities located thereon;
- B. **Fees for Recreational Facilities**: The right of the Association to charge reasonable admission or other fees for the use of any recreational facilities situated upon the Common Area and to limit the number of an Owner's guests or tenants who may use such facilities;
- C. **Penalties; Suspension**: The right of the Association to suspend an Owner's right to vote or right to use of the recreational facilities for any period not to exceed thirty (30) days for any infraction of the Governing Documents, and the right of the Association to suspend an Owner's right to use the recreational facilities for any period during which any assessment against such Owner's Unit remains unpaid, and the right of the Association to impose a monetary penalty against an Owner for an infraction of the Governing Documents of the Association, such penalty not to exceed fifty dollars (\$50.00) per infraction; provided, however, that an Owner's right shall not be suspended nor any monetary penalty imposed until after a hearing before the Board of Directors of the Association, as more fully set forth in the Bylaws;
- D. **Dedicate Common Area**: 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 to by the Members; provided, however, that no such dedication or transfer shall be effective unless an instrument, approved by the affirmative vote or written consent of at least two-thirds (2/3) of the Members, agreeing to such dedication or transfer, has been recorded;
- E. **Borrow Money**: The right of the Association, in accordance with the Articles and Bylaws, to borrow money for the purpose of

improving the Common Area and facilities, and in aid thereof to mortgage, pledge, deed in trust, or hypothecate said property;

- F. **Exclusive Use Common Area:** The rights of particular Owners to exclusive use and enjoyment of designated Exclusive Use Common Area.
- G. **Assign Parking and Storage:** The right of the Association to assign, rent, license, or otherwise designate and control use of unassigned parking and storage spaces within the Common Area (other than Exclusive Use Common Area);
- H. **Right of Entry:** The right of the Association or its authorized agents, as provided in this Declaration, to enter any Unit to perform its obligations under this Declaration, including obligations with respect to construction, maintenance or repair for the benefit of the Common Area or the Owners in common, or to make necessary repairs which the Owner has failed to perform; provided, however that such right shall not be exercised until notice and an opportunity to be heard is afforded the Owner prior to entry into the Unit.

2.3 **ENCROACHMENT EASEMENTS:** If any portion of the Common Area encroaches upon any Unit, or any portion of a Unit encroaches upon the Common Area, regardless of the cause, a valid easement exists for such encroachment and for the maintenance of it so long as it remains, and all Units and the Common Area are made subject to such easement. If any structure containing a Unit is partially or totally destroyed and then rebuilt, and any encroachment results, a valid easement exists for such encroachment and for the maintenance of it so long as it remains, and all Units and the Common Area are made subject to such easements.

2.4 **EASEMENTS FOR INGRESS, EGRESS AND SUPPORT:** Each Unit shall have, as dominant tenement, a non-exclusive easement appurtenant to such Unit for ingress and egress over, through, and across the Common Area, as servient tenement, and for support, over, upon, and through the Common Area and each other Unit. Each Unit shall have, as dominant tenement, a non-exclusive easement appurtenant to such Unit for ingress and egress from and to the fire escape and other emergency exits over, across and through the Common Area and each other Unit, jointly, as the servient tenement, to be used only on an emergency basis.

2.5 **EASEMENTS FOR MAINTENANCE AND REPAIR:** The Association is hereby granted an easement over, through and upon the Exclusive Use Common Area and each Unit for the purpose of accomplishing maintenance and repair of property as provided in Article VIII of this Declaration; provided, however, that the Association shall not enter a Unit or Exclusive Use Common Area other than at reasonable times and pursuant to prior written notice to the Owner and/or occupants thereof, except in the case of a bona fide emergency.

2.6 UTILITY EASEMENTS: The Association shall have the power to grant and convey to any third party easements and rights-of-way in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and each purchaser, in accepting a deed to a Condominium, expressly consents to such easement. However, no such easements can be granted if it would interfere with the use, occupancy or enjoyment by an Owner of his/her Unit, any exclusive easements over any Common Area appurtenant to the Units, or the recreational facilities of the Development.

2.7 USE OF COMMON AREA: The Common Area shall be held, maintained, and used to meet the common interests of the Members of the Association and their families, tenants, invitees and guests as provided in this Declaration and the Rules. There shall be no obstruction of any part of the Common Area. Nothing shall be stored upon, kept, parked or removed from the Common Area, except upon the prior written consent of the Association.

2.8 COMMON AREA CONSTRUCTION: Except as may be authorized by the Board of Directors pursuant to Article VII of this Declaration, no Owner, person or entity, other than the Association or its duly authorized agents, shall construct, reconstruct, refinish, alter or maintain any building, storage closet, locker, wall, fence or any other structure upon the Common Area, or shall make structural modifications to any building in the Development, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall destroy or remove any tree, shrub or other vegetation upon the Common Area. A proposal for any such work may be made at any regular or special meeting of the Board. Such proposal may be adopted by a majority vote of the Board, subject to the limitations of section 6.5 of this Declaration. The approval procedures required for Owners, as set forth in Article VII, are not applicable to the Board, but the design criteria established for the Development shall be applicable.

Improvements, alterations or maintenance upon the Exclusive Use Common Area may be made by the Owner thereof only upon prior written consent of the Architectural Committee or Board of Directors, in accordance with Article VII of this Declaration,

2.9 DELEGATION OF USE: Any Owner may delegate, in accordance with the Bylaws, his right of use and enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers who reside in the Development. A nonresident Owner may not use the Common Area or facilities thereon except as an occasional guest of a resident.

2.10 DAMAGE TO COMMON AREA: Each Owner shall avoid causing any damage to the Common Area and shall be liable to the Association and shall reimburse to the Association all costs incurred by reason of any damage to the Common Area and any improvements thereon, including landscaping, which is caused by an Owner or by such Owner's family, pets, tenants, guests, invitees, agents or representatives, or which is caused by any work performed by or landscaping planted by such Owner.

2.11 RESPONSIBILITY FOR DAMAGE: If any damage results to any portion of the Development from the negligent or intentional conduct of an Owner or occupant of any Unit, a member of an Owner's family, or an Owner's contract purchasers, tenants or guests, or from the utilities located within such Unit, or from vegetation placed or planted in the Development by any such person, the cost of making any necessary repairs shall be the responsibility of the Owner of the particular Unit involved. If the Owner of such Unit does not promptly repair such damage to the satisfaction of the Board, the Board may have the damage repaired and charge the cost thereof to the Owner as a reimbursement assessment, as provided in Article VI herein.

2.12 DAMAGE OR DESTRUCTION:

A. Damage to Single Unit: If there is a total or partial destruction of a single Unit within the Development, the insurance proceeds shall be paid to the Owner thereof, or the Eligible Holder thereof as their respective interests appear, and such Owner or Eligible Holder shall use said proceeds to rebuild or repair such Unit. In the event the insurance proceeds are insufficient to complete the work, the Owner shall pay and advance such additional sums as may be necessary to complete such rebuilding and repair. If the Owner fails or refuses to advance the additional sums, the Board may levy a Special Assessment for the shortfall against all Members in accordance with Article VI herein.

B. Damage to Two or More Units or Common Area: If such damage extends to two (2) or more Units or to any part of the Common Area, then and in that event:

- 1) If the amount of available insurance proceeds is sufficient to cover at least eighty-five percent (85%) of the cost of repairing or rebuilding, the improvements shall be promptly rebuilt, unless within ninety (90) days from the date of destruction, at least fifty-one percent (51%) of the Eligible Holders, in writing, and seventy-five (75%) of the total voting power of the Members present and entitled to vote in person or by proxy at a duly constituted meeting, determine that such repair and reconstruction shall not take place. If repair and reconstruction is to take place, the Board shall be required to execute, acknowledge and record in the office of the Alameda County Recorder, not later than one hundred and twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild; and
- 2) If the amount of available insurance proceeds is less than eighty-five percent (85%) of the cost of repairing or rebuilding, repair and reconstruction may, nevertheless, take place, if within ninety (90) days from the date of

destruction Members then holding at least fifty-one percent (51%) of the total voting power of the Association, present and entitled to vote in person or by proxy, at a duly constituted meeting, determine that such repair and reconstruction is to take place. In such event, the Board shall be required to execute, acknowledge and record in the office of the Alameda County Recorder, not later than one hundred twenty (120) days from the date of such destruction, a certificate declaring the intention of the Members to rebuild.

- C. **Contribution from Owners:** If the Members and/or Eligible Holders determine to rebuild, pursuant to sections (1) or (2) above, the Owner of each Unit located within a structure which has been totally or partially destroyed shall be obligated to contribute his or her proportionate share of the cost of reconstruction or restoration of the structure containing such Unit, over and above the available insurance proceeds. All Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area not comprising the structure within which a Unit is located and the proportionate share of each Owner shall be equal to a fraction, the numerator of which is one (1) and the denominator of which is the number of Condominiums then comprising the Development.

If any Owner fails or refuses to pay his or her proportionate 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 of this Declaration. If any Owner disputes the amount of his or her proportionate liability under this section, such Owner may contest the amount of such liability by submitting to the Board, within ten (10) days after notice to the Owner of his or her proportionate share of the cost, written objections supported by cost estimates or other information which the Owner deems material. Such Owner may request a hearing before the Board, at which the Owner may be represented by counsel. Following such hearing, the Board shall give written notice of its decision to all Owners, including any recommendation that adjustments be made with respect to the liability of any Owners. If such adjustments are recommended, the Board shall schedule a Special Meeting of Members for the purpose of acting upon the Board's recommendation, including making further adjustments, if deemed by the Members to be necessary or appropriate. All adjustments shall be affirmed or modified by a majority of the total voting power of the Association. If no adjustments are recommended by the Board, the decision of the Board shall be final and binding on all Owners, including any Owner filing objections.

- D. **Contract for Repair and Reconstruction:** If the Members and/or Eligible Holders determine to rebuild, the Board or its authorized representative shall obtain bids from at least three (3) reputable contractors and shall award the repair and reconstruction work to the best qualified bidder. The Board shall have the authority to enter into a written contract with the contractor for such repair and reconstruction, and any insurance proceeds of insurance carried pursuant to Article V herein shall be disbursed to the contractor pursuant to the terms of the written contract. It shall be the obligation of the Board to take all steps necessary to assure the commencement and completion of authorized repair and reconstruction at the earliest possible date.
- E. **Decision Not to Rebuild:** If the Members and/or Eligible Holders determine not to rebuild, then, subject to any rights of mortgagees, any insurance proceeds then available for such rebuilding shall be distributed to the Owner of each Condominium in proportion to his or her respective undivided interest in the Common Area. The Board shall have the duty within one hundred and twenty (120) days from the date of such destruction, to execute, acknowledge and record in the office of the Alameda County Recorder, a certificate declaring the intention of the Members not to rebuild.
- F. **Partial Destruction Not Exceeding \$20,000:** In any case, the Board shall have the duty to repair and reconstruct improvements within the Common Area, without the consent of Members 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 Twenty Thousand Dollars (\$20,000). The Board is expressly 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 section C above (but without the consent or approval of Members despite any contrary provisions); provided, however, that any such Special Assessment which exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year must be approved by a vote of a majority of a quorum of Members.

2.13 **RENTAL OF CONDOMINIUMS:**

- A. **No Leasing for Transient Purposes:** The respective Condominiums shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (i) rentals for any period less than thirty days; or (ii) any rental if the occupants of the Condominium are provided customary hotel services, such as room service for food and beverage, maid service, furnishing

laundry, linen, or towel service, or concierge or bellboy service. Other than the foregoing obligations, the Owners of the respective Condominiums shall have the right to lease their Condominiums, subject to the provisions contained in this Declaration.

- B. **Leases in Writing:** Each lease shall be in writing and shall provide that such lease is subject to the provisions of the Governing Documents and that the violation of any of the provisions thereof shall constitute a default under the lease. The Owner of such Unit shall provide to the lessee a copy of the Governing Documents. Each Owner leasing a Condominium pursuant to this section shall be strictly responsible and liable to the Association for the actions of such Owner's tenants in or about all Units and the Common Area and for the tenant's compliance with the provisions of the Governing Documents. A copy of the lease shall be forwarded to the Board within ten (10) working days.

2.14 **PARTITION:** The Common Area shall remain undivided as set forth above. Except as provided by California Civil Code Section 1359, no Owner shall bring any action for partition of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Development. If a single Condominium is owned by two (2) or more persons as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-owners. Whenever partition may be had pursuant to California Civil Code Section 1359 or this Declaration, each Owner, his successors and assigns, does hereby grant to the Association an irrevocable Power of Attorney to sell the property covered hereby for the benefit of all of the Owners thereof.

2.15 **CONDEMNATION:** The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements or agreement with the condemning authority for acquisition of the Common Area, or any portion thereof. In the event of a taking or acquisition of part or all of the Common Area by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee appointed by the Association, for the use and benefit of the Owners and their Mortgagees as their interests may appear. In the event of an award for the taking of any Condominium in the Development by eminent domain, the Owner of such Condominium shall be entitled to receive the award for such taking, and after acceptance thereof the Owner and his or her Mortgagee shall be divested of all interest in the Development, if such Owner shall vacate his/her Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Development, or take other action. The remaining portion of the Development shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Development. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the Court. Proceeds of condemnation shall be distributed among

Owners and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation.

If the taking of the property within the Development is more than fifty percent (50%), the remaining Owners may terminate the legal status of the Development, and, if necessary, bring a partition action under Civil Code Section 1359, or any successor statute, on the election to terminate by fifty-one percent (51%) of the total remaining voting power of the Association. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums.

ARTICLE III

PERMITTED USES AND RESTRICTIONS

3.1 **SINGLE FAMILY USE:** Each Unit shall be used as a single family residence and for no other purpose. Single family shall mean a group of people, not to exceed two (2) persons per bedroom, plus one person per unit, who regularly live together as a bona fide housekeeping unit. Members may not add a bedroom and increase the number of persons inhabiting a Unit.

3.2 **NO COMMERCIAL USE:** No business or commercial activities of any kind whatsoever which have any affect outside the Unit in the Common Area shall, at any time, be established, maintained, operated, carried on, permitted or conducted within any Unit.

3.3 **NOXIOUS ACTIVITY:** No noxious or offensive activity shall be carried on within any Unit or upon the Common Area, nor shall anything be done, placed, or kept thereon which may be or become a nuisance or cause embarrassment, disturbance, or annoyance to other Owners or interfere in their enjoyment of their property or the Common Area. No waste shall be committed upon the Common Area.

3.4 **HAZARDS:** Nothing shall be done, placed, or kept within the Development which will increase the rate of insurance or result in the cancellation of insurance under any insurance policy obtained by the Association, or which will be in violation of any governmental statute, ordinance, rule or regulation.

3.5 **GARBAGE; WASTE PLANT MATERIALS:** All garbage, rubbish, trash and refuse shall be placed and kept in covered sanitary containers of a type and style approved by the Board, which shall be located only in places specifically designated for such purpose, except on the days scheduled for trash pickup.

There shall be no maintenance of accumulated waste plant materials within the Development, except in areas designated therefor by the Board.

3.6 **OPEN FIRES:** There shall be no exterior fires whatsoever within the Development, except barbecue fires contained within receptacles manufactured for that purpose.

3.7 **OIL DRILLING:** No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted on or in the

Development, and no oil wells, tanks, tunnels, or mineral excavations or shafts shall be permitted on the surface of the Development or within five hundred (500) feet below the surface of the Development. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted on the Development.

3.8 **STRUCTURAL INTEGRITY:** Nothing shall be done in any Unit or in, on or to the Common Area which will impair the structural integrity of, or structurally alter, any building located within the Development. No construction shall be permitted in the airspace above any Unit or above the Common Area.

3.9 **EXTERIOR MODIFICATIONS:** No Owner, resident or lessee shall install wiring for electrical or telephone installation, television antennas, machines, air conditioning units, pipes, chutes, chimneys, or anything else on the exterior of the buildings of the Development, or which protrude through the walls or roofs of the buildings, except as authorized by the Architectural Committee or the Board of Directors pursuant to Article VII hereof.

3.10 **TEMPORARY SHELTERS:** No tent, shack, shelter or structure of a temporary character shall be permitted upon the Development.

3.11 **SIGNS:** No sign of any kind shall be displayed to the public view from any portion of the Development except that this limitation shall not apply to:

- A. **Legally Required:** Such signs as may be required by legal proceedings or the prohibition of which is precluded by law;
- B. **Identifying Development:** A single sign which has been approved by the Association located at or near the entrance to the Development, identifying the Development;
- C. **For Sale or Rent:** A single sign of customary and reasonable dimensions advertising such Unit for sale or for rent and located in a Unit window or in an area designated by the Board.
- D. **Traffic Control:** Such signs as may be required for traffic control and regulation of open areas within the Development.

All signs shall be attractive and compatible with the design of the Development and shall comply with any applicable local ordinances.

3.12 **VEHICLE RESTRICTIONS:**

- A. **Adopt and Enforce Rules:** The Board of Directors shall have the power to adopt, promulgate and enforce vehicle traffic and parking rules and regulations, including provisions permitting the towing of vehicles, at the expense of the owner thereof, from any portion of the Development for violation of such rules and regulations.

- B. **Vehicle Parking:** Except as expressly permitted by the Rules, no vehicle shall be parked on any property within the Development except within a carport or a designated parking space or stall.
- C. **Temporary Parking of Large Vehicles:** No boat, trailer, recreational vehicle, mobile home, commercial vehicle, dilapidated vehicle, camper, truck exceeding one ton or truck under one ton (excluding a non-commercial vehicle which is used only for personal transportation) shall be parked or left on any part of the Development except in a parking area designated by the Board for the parking and/or keeping of such vehicles; provided, however, that the temporary parking of the aforesaid vehicles not customarily used for means of general transportation for periods of short duration, but not to exceed four hours (up to eight (8) hours with prior approval of the Board) within any consecutive 48-hour period as an incident to loading or unloading therefrom, shall not be deemed a violation hereof.
- D. **Commercial Vehicles:** Temporary parking of commercial vehicles solely for the purpose of making deliveries and furnishing goods and services to the Association, or to Owners or occupants of Condominiums, shall be permitted in accordance with the Rules.
- E. **Compliance by Owner:** The Owner of each Condominium shall be responsible for the compliance by such Owner, his or her family Members, tenants and guests, with the provisions of this section.

3.13 **PARKING ENFORCEMENT:** The Board shall have the power to impose fines for violations of the provisions of the Vehicle Restrictions set forth in this Declaration, and to cause the towing of vehicles, at the expense of the owner thereof, which are parked within the Development in violation of the provisions of this Declaration or the Rules, provided that such towing shall be subject to the provisions of applicable law.

3.14 **SOUND DEVICES:** No horns, whistles, bells, or other sound devices, except security devices used exclusively to protect the security of a Unit, shall be placed or used in any Unit or improvements located thereon; provided, however, that the provisions of this section shall not preclude the use of speakers for hi-fi players, stereos, radios, or similar equipment, where the sound level is maintained at a reasonable level with respect to the Owners or occupants of neighboring Units.

3.15 **RECEIVING OR TRANSMITTING DEVICES:** No outside radio or television aerial, antenna, pole, wire, tower, or other receiving or transmitting device shall be erected, installed, placed, or maintained within the Development by anyone other than the Association.

3.16 **WINDOW COVERINGS:** No portion of any drapes, blinds, curtains, or other window coverings which are installed in any Unit, and which may be seen from the

outside, shall be of a color, texture, or material which, in the reasonable opinion of the Board or Architectural Committee, is inharmonious with the exterior appearance and design of the Development and the structures thereon, and no windows shall be painted or covered by foil, cardboard or similar materials.

3.17 **CLOTHESLINES:** No exterior clotheslines or clothes being dried shall be visible above a patio fence to one standing on ground level.

3.18 **PETS:** Dogs, cats or other household pets may be kept in any Unit, in reasonable numbers, for the pleasure of the occupants of the Unit, but not for any commercial use or purpose. The Board shall have the right to adopt reasonable rules regarding the keeping of household pets, including a determination of what is a reasonable number of such pets, and including provisions for the removal to a pound of any pet found on the Common Area not being held on a leash or otherwise found to be in violation of provisions of this Declaration or the Rules.

3.19 **LEASE AND RENTAL OF UNITS:** Owners of Units shall have the right to lease, or to rent, his or her Unit for a period not less than ninety (90) days. Any Owner desiring to rent, or lease, his or her Unit shall submit a copy of the proposed lease or rental agreement, and of the proposed terms therein, to the Board of Directors. All proposed leases or Rental Agreement shall contain the following information:

- A. Maximum number of occupants. Not to exceed two (2) per bedroom plus one per Unit;
- B. Proposed restriction on pets. An Owner, as a landlord, may restrict pets in any manner, but if pets are to be allowed, the number of pets must be reasonable;
- C. Terms whereby the tenant agrees to abide by the Governing Documents and Published Rules of the Association. A term is also required whereunder any violation of the provisions of the Governing Documents or published rules shall constitute a default by the tenant under the terms of the lease.

Owners are responsible for providing tenants, at the beginning of tenancy, with the Governing Documents and Rules of the Association.

Each Owner who leases or rents their Unit to a tenant pursuant to this section is responsible and liable to the Association for the actions of that Owner's tenants on the Common Area and in or about all Units. The Owner is additionally liable for his or her tenants compliance with the provisions of the Governing Documents and of the rules.

ARTICLE IV

HOMEOWNERS ASSOCIATION

4.1 **MANAGEMENT AND OPERATION**: The Association shall manage and operate the Development in accordance with the provisions of the Governing Documents of the Association. The Association shall have all of the powers set forth in this Declaration, and in the Articles, Bylaws, and Rules of the Association, together with general power to do any and all things which a non-profit mutual benefit corporation may lawfully do, under the laws of the State of California, in operating the Development for the benefit of the Members, subject only to the limitation upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws.

4.2 **MEMBERSHIP**: Every Owner of a Condominium within the Development shall be a Member of the Association and shall remain a Member thereof until such time as his or her Condominium ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.

4.3 **VOTING**: Only one vote shall be cast for each Condominium. In the event more than one person owns a given Condominium, the vote for such Condominium shall be exercised as the Owners among themselves shall determine, but in no event shall more than one vote be cast with respect to any Condominium. If the joint Owners are unable to agree among themselves as to how their vote or votes are to be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Condominium, it will thereafter be conclusively presumed for all purposes that he, she, or they were acting with the authority and consent of the other Owners of that Condominium.

4.4 **PROXIES**: Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent authorized by a written proxy. Such proxy shall be executed by such person or by such person's duly authorized agent and filed with the Secretary of the Association. Any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it or a duly executed proxy bearing a later date is filed with the Secretary of the Association; provided that no such proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specified therein the length of time for which such proxy is to continue in force, which in no case shall exceed three (3) years from the date of its execution. The proxy shall identify the person or persons authorized to exercise the proxy.

4.5 **BOARD OF DIRECTORS**: The affairs of the Association shall be managed by or under the direction of a Board of Directors. The number of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws.

4.6 **GOOD FAITH ACTIONS AND INDEMNIFICATION**: The members of the Board of Directors, and of any committee appointed by the Board, or any employee of the Association, shall not be held liable for any error or omission or any action taken, provided

that he or she has acted in good faith. The Association shall indemnify and hold harmless, to the maximum extent permitted by California law, each person who shall at any time serve as Director or Officer of the Association, as a member of any committee appointed by the Board, or as an employee, from and against any and all claims and liabilities to which such person shall become subject by reason of his or her being a Director or Officer of the Association, a member of a committee, or an employee, or by reason of any action alleged to have been taken or omitted by him or her in such capacity. The Association shall reimburse each such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided, however, that no such person shall be indemnified with respect to, or reimbursed for any expense incurred in connection with, any claim or liability arising out of actions or omissions not taken in good faith.

ARTICLE V

POWERS AND DUTIES OF THE ASSOCIATION

5.1 **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. **Association Rules:** The Board of Directors shall have the power and the authority to establish, promulgate, amend and repeal such Rules as the Board deems necessary for the management and operation of the Development. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, signs, collection and disposal of garbage, minimum standards for maintenance of Condominiums and the Common Area, parking and traffic regulations, rental or leasing of Condominiums within the Development, and any other subject matter within the jurisdiction of the Association as provided in this Declaration.

A copy of the Rules so adopted shall be furnished to each Owner, his family members, guests, employees, invitees, contract purchasers, licensees and tenants, and such persons shall comply with the Rules.

- B. **Committees:** The Board of Directors shall have the power to establish committees as it deems necessary and to appoint and remove members of any such committees, as provided in the Bylaws.
- C. **Enforcement of Governing Documents:** In the event of a breach or infraction of any provision of the Governing Documents by an Owner, such Owner's family, tenants, contract purchasers or guests, the Board, for and on behalf of all other Condominium Owners, shall enforce the obligation of each Owner and such Owner's family, tenants, contract purchasers and guests to obey such provision, in any manner provided by law or equity. Failure

to enforce any provision, at any time, shall not be deemed a waiver of the right to do so thereafter. In the event any legal action or arbitration is taken or instituted by the Association, or if legal counsel is retained, to enforce any such provision, the Association shall be entitled to recover any costs incurred, including reasonable attorneys' fees. In addition to any and all remedies allowed by law, the Board also shall have the power to:

- 1) Impose a monetary penalty against an Owner for an infraction of any provision of the Governing Documents. Any such monetary penalty imposed pursuant to this section shall not exceed \$50.00 for each violation. The payment of any such fine may be enforced as provided in this Article or by law;
- 2) Suspend an Owner's voting rights for a period not to exceed thirty (30) days for an infraction of any provision of the Governing documents; and
- 3) Suspend an Owner's right to use of the recreational facilities for a period not to exceed thirty (30) days for an infraction of any provision of the Governing Documents, or for any period during which any assessment against such Owner's Unit remains unpaid.

The Board of Directors shall adopt and distribute to each Member, by first-class mail or personal delivery, a schedule of these monetary penalties.

Imposition of a monetary penalty or suspension of rights shall be effective only after notice and an opportunity for hearing as provided in the Bylaws.

Any monetary penalty imposed by the Association as a disciplinary measure for failure of a Member to comply with the Governing Documents or as a means of reimbursing the Association for the repair of damage to the Common Area or facilities located thereon for which the Member is responsible, or in bringing the Member and his or her Unit into compliance with the Governing Documents, may not be characterized or treated as an assessment which may become a lien against the Member's Unit.

- D. Contracts: The Association shall have the power to contract for goods and/or services for the Common Area or for the Association, subject to any limitations as set forth in the Bylaws or elsewhere in the Governing Documents;

- E. **Manager**: The Board of Directors shall have the power and authority to employ the services of a Manager, Management Company, or other employee to manage and carry out the affairs of the Association, subject to the direction and control of the Board of Directors, and, to the extent not inconsistent with the laws of the State of California and upon such conditions as are otherwise deemed advisable by the Board, to delegate to such Manager, Management Company or other employee, any of its power and authority; provided, however, that the Board may not delegate its responsibility or authority to levy monetary penalties, hold hearings, or impose discipline;
- F. **Maintenance Personnel**: The Board of Directors may provide for or engage the services of third-parties, including grounds keepers, painters, plumbers, and other maintenance personnel, to provide for the maintenance, protection and preservation of the Common Area and improvements as may in the Board's judgment be required;
- G. **Professional Advisors**: The Board of Directors shall have the power and authority to consult with, seek the advice of, and reasonably rely on the advice of attorneys, accountants, and other professionals, and to pay for such professional services in carrying out its authority and responsibility under the Articles, Bylaws, Declaration, and the law;
- H. **Easements**: The Association shall have the power to grant and convey easements, licenses for use, and rights-of-way in, on, over or under the Common Area, or any portion thereof; provided, however, that such easements, licenses or rights-of-way shall not be inconsistent with the purposes of the Association, and shall not unreasonably interfere with the rights of any Owners;
- I. **Capital Improvements**: The Board of Directors shall have the power and authority to provide for the construction, installation, or acquisition of capital improvements upon the Common Area provided, however, that the Board shall not incur aggregate expenditures for capital improvements in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the affirmative vote or written consent of at least fifty-one percent (51%) of the total Membership; and
- J. **Dedication**: The Board of Directors shall have the power and authority to dedicate, sell, or transfer any interest in or to all or any part of the Common Area to any public agency, authority, or utility, to be used for such purposes and subject to such conditions as shall be deemed necessary or beneficial to the Association;

provided, however, that no such dedication, sale, or transfer shall be effective unless an instrument, approved by the affirmative vote or written consent of at least two-thirds (2/3) of the Members agreeing to such dedication or transfer, has been recorded.

5.2 **DUTIES:** In addition to the duties enumerated in its Articles of Incorporation and Bylaws, or elsewhere provided for in this Declaration, and without limiting the generality thereof, the Association shall perform the following duties:

- A. **Maintenance Obligation:** The Association shall maintain and, as necessary, repair and replace the Common Area, excluding Exclusive Use Common Area, and shall keep it in good condition and repair;
- B. **Taxes:** The Association shall have the authority and duty to pay all real property taxes and assessments levied upon any property within the Development to the extent not separately assessed to the Owners. Such taxes and assessments may be contested or compromised by the Association; provided, however, that any such taxes are paid or that a bond insuring the payment is posted, prior to the sale or other disposition of any property to satisfy the payment of such taxes;
- C. **Payment of Expenses:** The Association shall pay all expenses and obligations incurred by the Association in the conduct of its business;
- D. **Assessments:** The Association shall fix, levy, collect and enforce assessments as set forth in Article VI hereof;
- E. **Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Area and charge the cost thereof to the Member or Members responsible for the existence of the lien, after notice and hearing as provided in the Bylaws;
- F. **Insurance:** The Association shall have the authority and duty to obtain and maintain in force, the following policies of insurance:
 - 1) **Liability Insurance:** The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, the Board, any manager, the Architectural Committee, the Owners and occupants of Condominiums, and their respective family members, guests, tenants, invitees, and the agents and employees of each, against any liability incident to the maintenance, ownership or use of the Common Area or any property under the jurisdiction of the Association. The limits of such insurance shall not be

less than One Million Dollars (\$1,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. Such insurance shall include coverage against water damage liability, liability for non-owned and hired automobiles, liability for property of others and any other liability or risk customarily covered with respect to projects similar in construction, location and use. The policy or policies provided for in this section shall protect each of the insureds as if each were separately insured under separate policies; provided, however, that such policy or policies shall not require the insurers to pay any amount in excess of the maximum limits stated herein.

- 2) **Fire and Extended Coverage Insurance:** The Association also shall obtain and maintain a master or blanket policy of fire and property damage and extended coverage insurance for the full insurable value of all of the improvements within the Development. The form, content, and term of the policy and its endorsements shall be such as are customary for condominium projects which are similar in construction, location and use. The policy shall be in the amounts as shall be determined by the Board in consultation with insurance professionals. The policy shall name as insured the Association and the Owners, as their respective interests may appear, and the proceeds shall be payable to the Association for the purposes as set forth in this Declaration. The Association shall also insure any property, whether real or personal, owned by the Association against loss or damage by fire or such other hazards as the Board may deem desirable.

- 3) **Owner's Separate Insurance:** Except as provided in this section, no Owner may separately insure his or her Unit or any part of it, except for insurance on personal property within the Unit, against loss by fire or other casualty covered by any insurance pursuant to the provisions of section 5.2 F. herein. If an Owner violates this provision, any diminution in insurance proceeds otherwise payable pursuant to section 5.2 F. herein which result from the existence of such other insurance will be chargeable to the Owner who acquired such other insurance, and the Owner will be liable to the Association to the extent of any such diminution. An Owner may insure his or her personal property against loss and may insure for liability incident to the maintenance, ownership or use of such Owner's Unit. In addition, any improvements made by an Owner to the real property within his or her Unit may be separately insured by the Owner, but the insurance is to be

limited to the type and nature of coverage commonly known as tenant's improvements. All such insurance which is individually carried must contain a waiver of subrogation rights by the carrier as to other Owners and the Association.

- 4) **Fidelity Bonds:** The Association shall obtain Fidelity Bonds to insure the Association against any loss from malfeasance or dishonesty of any employee, agent or other person charged with the management or the possession of funds or other property of the Association.
- 5) **Other Insurance:** The Association may obtain any other types of insurance, including Worker's Compensation and Errors and Omissions Insurance, and Indemnity or other Bonds as the Board deems necessary or expedient in order to carry out its functions as set forth in this Declaration, the Articles and the Bylaws.
- 6) **Premiums:** Premiums for all of the foregoing insurance carried by the Association shall be a common expense and shall be included in the Assessments or charges levied by the Association pursuant to Article VI of this Declaration; provided, however, that the Owners shall be responsible for any deductibles. The Board shall review the limits of all insurance policies of the Association at least once a year and shall increase said limits as the Board deems necessary or appropriate in the best interests of the Association and its Members.

G. **ANNUAL REPORT:** The Board of Directors shall cause to be prepared and distributed to the Members the following documents:

- 1) A Pro Forma Operating Statement ("Budget"), a copy of which shall be distributed to all Lot Owners at least forty-five (45) days but not more than sixty (60) days prior to the beginning of each fiscal year. The budget shall include the following information:
 - a) An estimate of revenue and expenses on an accrual basis;
 - b) Identification of total cash reserves;
 - c) A summary of the Association's reserves based upon the most recent review, which shall be printed in bold type and include:

- (1) The correct estimated replacement cost, estimated remaining life, and estimated useful life of each major improvement.
 - (2) As of the end of the fiscal year for which the study is prepared:
 - (a) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components.
 - (b) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components.
 - (3) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more Special Assessments will be required to repair, replace or restore any major component or to provide adequate reserves therefor.
- d) A general Statement setting forth the procedures used to calculate and establish reserves.
- 2) A review of the Association's Financial Statements, or an audit of the Financial Statements shall be performed each year, with the audit being necessary at least each alternate year. The Review or audit shall be distributed to all Lot Owners within one hundred twenty (120) days after the close of each fiscal year, consisting of the following:
- a) A Balance Sheet as of the end of the fiscal year;
 - b) An Operating (Income) Statement for the fiscal year;
 - c) A Statement of changes in financial position for the fiscal year; and
 - d) Any information required to be reported under Section 8322 of the California Corporations Code.

The Review of the Annual Financial Statement shall be prepared by an independent accountant for any fiscal year

in which the gross income to the Association exceeds Seventy Five Thousand Dollars (\$75,000.00). If the Review is not prepared by an independent accountant, it shall be accompanied by a certificate of an authorized officer of the Association that the Review was prepared without audit from the books and records of the Association.

- 3) A written statement of the policies and practices of the Association in enforcing lien rights and other legal remedies for default in the payment of assessments, which shall be delivered to the membership within sixty (60) days prior to the beginning of each fiscal year.

ARTICLE VI

FUNDS AND ASSESSMENTS

6.1 **COVENANT OF OWNER**: Each Owner of a Condominium within the Development, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to covenant and agree to pay to the Association: (a) regular assessments; and (b) special assessments, levied by the Association as hereinafter provided, together with interest, late charges, costs of suit and/or collection, and reasonable attorneys' fees, and shall thereby be deemed to vest in the Association the right and power to initiate all actions and procedures for the collection of such assessments and charges and for the enforcement of the liens hereinafter provided for. Each assessment levied by the Association under this Article, together with interest, late charges, costs of suit and/or collection, and reasonable attorneys' fees, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors and assigns. Such obligations and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of Record of any Condominium within the Development shall, in turn, become liable to pay all such charges assessed during the time he or she is Record Owner of such Condominium. After a Record Owner transfers, of record, any Condominium he or she owns, he or she shall not be liable for any assessments payable thereafter with respect to such Condominium. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with applicable charges accruing until time of collection. A contract seller of any Condominium shall continue to be liable for all assessments and charges until a conveyance by deed of such Condominium is recorded in the Office of the Alameda County Recorder.

6.2 **CREATION OF LIEN**: Each assessment levied by the Association pursuant to this Article, together with interest, late charges, costs of suit and/or collection, and reasonable attorneys' fees, shall be a charge upon the land, and shall be a continuing lien upon the property against which such assessment is made. The Association shall have a separate lien and a separate lien is hereby created upon each Condominium against which an assessment is levied to secure the payment of any such assessments and charges levied under this Article. The priority of all such liens on each Condominium shall be inverse order, so that, upon the

foreclosure of the lien for any particular month's charge on any Condominium, any sale of such Condominium, pursuant to foreclosure of the lien, will be made subject to all liens securing the respective monthly assessments and charges on such Condominium for succeeding months.

This section means the Association has the power to record a lien against a Unit for delinquent assessments, late charges, interest, costs and reasonable attorney's fees and to foreclose and sell the Unit to obtain all said funds.

6.3 **PURPOSE OF REGULAR ASSESSMENTS:** The Regular Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Development and for the improvement, maintenance and restoration of the Common Area, as hereinafter provided. Said annual assessments shall include, without limitation, and the Association shall acquire and pay for out of the funds derived from said annual assessments, the following:

- A. **Utilities for Common Area:** Water, sewer, garbage, electrical, lighting, telephone, gas and other necessary utility service for the Common Area;
- B. **Storm Drains, Sewers in Common Area:** Maintenance and repair of storm drains and sanitary sewers lying within the Common Area;
- C. **Insurance:** The cost of insurance premiums, exclusive of deductibles, for any insurance policies obtained by the Association as provided in this Declaration;
- D. **Maintaining, Landscaping Common Area:** The cost of painting, maintaining, repairing, restoring, replacing and landscaping the Common Area, and the structures and improvements thereon, and such furnishings and equipment for the Common Area as the Association shall deem necessary and proper, including without limitation, all equipment, furnishings, and personnel as may be necessary or proper for the use and maintenance of the Common Area, and the facilities thereon, provided that the Association shall have the exclusive right and duty to acquire the same;
- E. **All Other Necessary Expenses:** Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes or assessments which the Association is required to secure or pay for pursuant to the terms of this Declaration or by law or which, in the opinion of the Board of Directors, shall be necessary or proper for the operation of the Common Area, or for the benefit of the Owners, or for the enforcement of the Articles, Bylaws, Declaration or Rules.

6.4 **REGULAR ASSESSMENTS:**

- A. **Calculation of Regular Assessments:** Not later than forty-five (45) days prior to the beginning of each fiscal year, the Board shall estimate the net funds ("estimated funds") required by the Association for such fiscal year (including a reasonable reserve for contingencies and replacement) to manage, operate, and maintain the Development and to perform all of its duties in accordance with this Declaration. The Board shall allocate and assess to the Owners the amount of estimated funds according to the square foot area of each Condominium. The amount to be assessed against an individual Owner for that fiscal year shall be determined by dividing the amount of estimated funds by the number of Units, thereby each Owner shall be responsible for 1/124 of the amount to be assessed. All sums levied by the Association as Regular Assessments shall be budgeted, allocated, assessed and collected for current maintenance, operation, management, contingencies, deferred maintenance and replacement of capital improvements in the Development and shall be designated for those specific purposes. The funds collected shall be used solely for the specific purposes for which they have been designated.
- B. **Accounting:** Within one hundred twenty (120) days after the end of each fiscal year, the Board shall send all Owners an accounting of assessment receipts and disbursements for the last ended fiscal year. If such accounting shows that a surplus of cash results in the Association's current maintenance and operation account, such surplus shall be applied to reserves and/or the upcoming fiscal year operation account unless some other disposition of such surplus funds is determined by the vote of fifty-one percent (51%) of the Members.
- C. **Limits:** The Board shall not impose for any fiscal year a Regular Assessment which is more than twenty percent (20%) greater than the Regular Assessment for the preceding fiscal year, without the approval of a majority of those Members, constituting a quorum of at least fifty percent (50%) of the total Members of the Association, who cast votes either in person or by proxy, at a meeting of Members duly called and noticed.
- D. **Equal Monthly Installments:** Regular Assessments shall be paid in equal monthly installments during the fiscal year and each installment shall be due and payable on the first day of each month, unless the Board shall designate otherwise.

6.5 **SPECIAL ASSESSMENTS:** If at any time during any fiscal year the Regular Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement or reconstruction of improvements located

on the Common Area, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost, which amount shall be allocated and assessed in the same manner provided in section 6.4, except as otherwise expressly provided in this Declaration; provided, however, that in any fiscal year the Board may not levy such Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, without the approval of a majority of those Members, constituting a quorum of at least fifty percent (50%) of the total Members of the Association, who cast votes either in person or by proxy at a meeting of Members duly called and noticed. Written notice of such meeting shall be given at least ten (10) and not more than ninety (90) days in advance thereof.

6.6 REIMBURSEMENT ASSESSMENTS: The Board shall levy a reimbursement assessment against any Owner and the Unit owned by such Owner when the failure of such Owner, or such Owner's family, tenants, contract purchasers, guests, invitees, agents, or representatives, to comply with any provision of the Governing Documents has resulted in the expenditure of Association funds to enforce any such provision or to bring such Owner or Unit into compliance with any of such provisions. Such assessment shall be for the purpose of reimbursing the Association for the costs incurred by it and shall be limited to the amount so expended, including any costs and attorneys' fees, and shall be immediately due and payable to the Association when levied.

6.7 EMERGENCIES: Notwithstanding any of the foregoing limitations set forth hereinabove, the Board shall have the power to increase a Regular Assessment or to impose a Special Assessment in an amount necessary to meet an emergency situation, defined as any one or more of the following:

- A. An extraordinary expense required by an order of a court;
- B. An extraordinary expense necessary to maintain, repair or replace a portion of the Development for which the Association is responsible, where a threat to personal safety on the property is discovered; and
- C. An extraordinary expense necessary to maintain, repair or replace a portion of the Development for which the Association is responsible, where such extraordinary expense could not have been reasonably foreseen by the Board in preparing and distributing the Annual Budget for the current fiscal year; provided, that prior to the imposition or collection of a Special Assessment to cover such extraordinary expense, the Board shall pass a resolution containing written findings as to the necessity of such extraordinary expense and as to why such extraordinary expense was not or could not have been reasonably foreseen in the budgeting process, and provided, further, that such resolution shall be distributed to the Members with the Notice of the Special Assessment.

6.8 FAILURE TO FIX ASSESSMENTS: The failure or omission by the Board to fix or levy any Regular Assessment provided for by the terms of this Declaration

before the expiration of any year, for that year or the next year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is levied.

6.9 **OFFSETS:** All assessments levied by the Board shall be payable in the full amount specified, including any additional charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever.

6.10 **DELINQUENT ASSESSMENTS:** Any assessment, including full payment of dues, not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, plus costs of collection, including reasonable attorneys' fees. The Board, on behalf of the Association, may enforce the payment of any delinquent assessment by bringing an action at law against the Owner personally obligated to pay the same, or by foreclosing the Lien against the property. No action shall be initiated to foreclose the Lien securing any assessment levied under this Article until at least thirty (30) days following the mailing of a Notice of Delinquent Assessment, duly signed by a designated officer or agent of the Association, to the Owner or Owners of the subject Condominium, and the recording of such Notice in the Office of the Alameda County Recorder. Said Notice of Delinquent Assessment shall state: a) the amount of the assessment, together with accrued interest, late charges, costs, reasonable attorneys' fees, and other applicable charges; b) a description of the Condominium against which the same has been assessed; c) the name or names and mailing addresses of the Owner or Owners thereof; and d) the name and address of the Trustee authorized by the Association to enforce the Lien by sale. Upon the levying of an assessment and the recording of the Notice referred to above, the Association may, at its option, declare the entire balance of all sums, then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all costs, charges, and attorneys' fees.

6.11 **POWER OF SALE:** Each Owner does hereby appoint the Association as Trustee to enforce and to foreclose any Lien, established pursuant to the terms of this Declaration, by private power of sale as provided in Division III, Part 4, Title 14, Chapter 2, Article 1 of the California Civil Code, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Condominium of such defaulting Owner, or any part thereof, for lawful money of the United States, to the highest bidder, to satisfy said Lien. The Board, as Trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale. The Board may commence any procedure for the collection of delinquent assessments upon its own decision, and it must so proceed upon the written request therefor signed by any five (5) Owners. The remedies provided in this Declaration for collection of delinquent assessments shall be cumulative and not alternative or exclusive. All Members hereby agree that the Association may recover all reasonable attorneys' fees and Trustee's fees incurred during the private sale in accordance with the California Civil Code and that said fees will be conclusively presumed to be reasonable if they do not exceed \$1,500.00 rather than those amounts stated in the Civil Code.

6.12 CERTIFICATE OF SATISFACTION: Upon payment in full of a delinquent assessment, including any charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a Certificate stating the satisfaction thereof, and the release of the Lien. Failure of the Board to record such Certificate and Release of Lien within thirty (30) days after written demand by the Owner shall entitle the Owner to recover a penalty of one hundred dollars (\$100) from the Association, plus actual damages.

6.13 STATUS OF ASSESSMENT LIEN: Upon request by any Owner, the Association shall furnish, for the benefit of any prospective purchaser or present or prospective encumbrancer of such Owner's Condominium, a statement showing all assessment amounts then due which are secured by such lien. A reasonable fee, to be determined by the Board, may be charged for the preparation of such statement.

6.14 SUBORDINATION: The Lien of each of the assessments provided for under this Article shall be subordinate to the Lien of any first mortgage or mortgages, or first deeds of trust, now or hereafter placed upon any property subject to assessment in accordance with the terms of this Declaration; provided, however, that such subordination shall apply only to the assessments 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 a Power of Sale contained in any such mortgage or deed of trust. Such foreclosure sale shall not relieve such property from liability for any assessments and charges thereafter becoming due, nor from the Lien of any such subsequent assessment.

6.15 ASSOCIATION FUNDS: The assessments collected by the Association shall be properly deposited into at least two separate accounts with a bank or other federally insured financial institution, as determined by the Board. The assessments collected by the Association shall be held by the Association for and on behalf of each Owner and shall be used solely for the operation, care, maintenance and restoration of the Development, as provided in this Declaration.

The Board shall allocate a portion of the funds collected for the annual maintenance and operation of the Development, as specified in the Annual Budget, and shall deposit said funds in an account designated as Current Maintenance and Operation Account. Another portion of the funds collected shall be allocated as reserves for contingencies, replacement and deferred maintenance of the capital improvements of the Development, as specified in the Annual Budget, and these funds shall be deposited in an account designated as Reserves: Deferred Capital Maintenance and Replacement Account. The signature of two (2) Officers or Directors shall be required for withdrawal of funds from this reserve bank account.

Upon sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held by the Association shall be deemed automatically transferred to the successor - transferee of such Owner.

6.16 PROPERTY EXEMPT FROM ASSESSMENTS: All property dedicated to and accepted by the County or other local public authority and devoted to public use, and all Common Area, shall be exempt from the assessments, charges and liens created herein.

ARCHITECTURAL CONTROL

7.1 **ARCHITECTURAL COMMITTEE:** The Board shall serve as an Architectural Committee, or, alternatively, the Board may appoint an Architectural Committee consisting of at least three (3) persons who shall be Members of the Association. As used in this Article the term "Committee" shall refer to the Board serving in that capacity or to a separate committee expressly appointed to serve in that capacity. The Board may also appoint one (1) alternate member who may be designated by the Committee to act as substitute on the Committee in the event of absence or disability of any Committee member.

7.2 **DUTIES:** It shall be the duty of the Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Control Rules, to perform other duties delegated to it by the Association and to carry out all other duties imposed upon it by this Declaration.

7.3 **MEETINGS:** The Committee shall meet as necessary to properly perform its duties hereunder. The vote or written consent of any two (2) members shall constitute an act by the Committee unless the unanimous decision of its members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Committee and its members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Committee function.

7.4 **RULES:** The Committee shall, from time to time, and subject to the Board's approval, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Control Rules." Said rules shall interpret and implement the provisions hereof by setting forth the standards and procedures for Committee review and guidelines for architectural design, placement of buildings and other structures, landscaping in the Common Area, color schemes, exterior finishes and materials and similar features which are recommended for use in the Development; provided, however, that said rules shall not be in derogation of the minimum standards required by this Declaration. The Committee annually shall distribute a copy of the most current Architectural Control Rules to each member of the Association.

7.5 **WORK BY OWNER REQUIRING APPROVAL:**

- A. **Exclusive Use Common Area:** No exterior addition to, or change, alteration, repair, replacement or maintenance of, the Exclusive Use Common Area shall be made by any Owner, unless and until the plans and specifications for the same have been approved in writing by the Committee.
- B. **Exterior of Unit:** In addition to the limitations set forth in section 3.9 herein, no addition to or alteration, repair, replacement or maintenance of, the exterior of any Unit, shall be made by any Owner, unless and until the plans and specifications for the same

have been approved in writing by the Committee; except that an Owner may install, without Committee approval and at such Owner's sole cost and expense, French doors and screen doors, the type and color of which have been determined in advance by the Board and set forth in the Architectural Control Rules or by resolution.

- C. **Interior of Unit:** No structural modification to the interior of any Unit shall be made by any Owner, unless and until the plans and specifications for the same have been approved in writing by the Committee.

7.6 **WORK BY OWNER NOT REQUIRING APPROVAL:**

Each Owner shall have the exclusive right, at his or her sole cost and expense and without prior Board approval, a) to determine the furniture, furnishings and interior decorating of the interior of such Owner's Unit; b) to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors and doors bounding such Owner's Unit; c) to paint, finish, alter, substitute, add or remove any fixture attached to the ceilings, floors or walls of such Owner's Unit; and d) to landscape the balcony, patio or patio garden to which said Owner has an exclusive easement.

7.7 **APPLICATION TO PERFORM WORK:** An Owner who proposes to perform any work of any kind whatsoever, which work requires the prior approval of the Committee as defined in section 7.5 above, shall apply to the Committee for approval as follows:

- A. **Application:** The Owner shall notify the Committee in writing, on such forms as the Committee deems appropriate (herein "Application"), of the nature of the proposed work;
- B. **Two (2) Sets of Plans:** The Owner shall submit to the Committee two (2) sets of the plans and specifications showing the nature, kind, shape, color, size, height, materials and location of the proposed work; and
- C. **Other Information:** The Owner shall furnish such other information to the Committee as the Committee may require.

7.8 **APPROVAL CRITERIA:** The Committee shall approve the proposed work only if:

- A. **Compliance:** The Owner has complied with the provisions of section 7.7 above;
- B. **Conformance with Rules:** The Committee finds that the plans and specifications conform to this Declaration and to the

Architectural Control Rules in effect at the time such plans and specifications are submitted to the Committee;

- C. **Consistent with Standards:** The Committee determines that the proposed work would be consistent with the standards of the Development and the purposes of this Declaration as to quality of workmanship and materials, as to harmony of exterior design with the existing structures and as to location in relation to surrounding structures, topography and finished grade elevations; and
- D. **No Violation of Law:** The proposed work would not violate state or local law or ordinance, nor conflict with any contractual agreement between the Association and any third party.

The Committee's decision shall be final.

7.9 **ISSUANCE OF DECISION:** All approvals and rejections of requests for approval shall be in writing; provided, however, that any request for approval which has not been rejected within forty-five (45) days from the date of submission thereof to the Association shall be deemed approved.

7.10 **COMMENCEMENT OF WORK:** Upon receipt of approval, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to said approval, said commencement to occur, in all cases, within ninety (90) days from the date of such approval. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

7.11 **COMPLETION OF WORK:** The Owner shall, in any event, complete the construction, reconstruction, refinishing or alteration of any such improvement within one (1) year after commencing construction thereof or such time as stated in the Committee's written approval, except and for so long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If the Owner fails to comply with this section, the Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of section 6.11 below and treat the failure to complete the work as a non-compliance with approved plans.

7.12 **INSPECTION OF WORK:** Inspection of work and correction of defects therein shall proceed as follows:

- A. **Notice of Completion:** Upon the completion of any work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Committee;

- B. **Inspection:** Within sixty (60) days thereafter, the Committee, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans. If the Committee finds that such construction, reconstruction, alteration or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying the particulars of non-compliance, and shall require the Owner to remedy such non-compliance;
- C. **Hearing Before Board:** If the Owner fails to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Board shall set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after expiration of the time for remedying the non-compliance. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Committee (if different than the Board) and, in the discretion of the Board, to any other interested party;
- D. **Ruling, Enforcement:** At the hearing, the Owner, the Committee and, in the Board's discretion, any other interested person may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. Within ten (10) days after the hearing, the Board shall issue and deliver to Owner, either personally or by first-class mail, postage pre-paid, a written ruling. The ruling of the Board shall be final. If the Board rules that a non-compliance exists, the Board shall require the Owner to remedy or remove the same within forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may take any action authorized to it by law or in equity, or pursuant to the provisions of the Governing Documents; and
- E. **Failure to Notify of Non-Compliance:** If, for any reason, the Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of the notice of completion from the Owner, the improvement work shall be deemed to be in accordance with the approved plans.

7.13 **PRELIMINARY APPROVAL:** Any Owner proposing to construct improvements requiring the prior approval of the Committee may apply to the Committee for

preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Architectural Control Rules. The purpose of the preliminary approval procedure is to allow an Owner, proposing to make substantial improvements, an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans, specifications and other exhibits required to apply for final approval. Application for preliminary approval shall be considered and disposed of as follows:

- A. **Committee Action:** Within forty-five (45) days after application for preliminary approval, the Committee shall consider and act upon such request. The Committee's failure to act within such thirty (30) day period shall not be deemed an approval of the improvements. The Committee shall grant the approval only if the proposed improvements, to the extent their nature and characteristics are shown by the application, would be entitled to a final approval on the basis of a full and complete application. In granting or denying approval, the Committee may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant;
- B. **Preliminary Approval:** Any preliminary approval granted by the Committee shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Committee; and
- C. **Not Deemed Final Approval:** In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

7.14 **NON-WAIVER:** The approval by the Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

7.15 **ESTOPPEL CERTIFICATE:** Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an Estoppel Certificate certifying (with respect to any Condominium of said Owner) that based on the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) such improvements or work do not so comply, in which event the Estoppel Certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in said Condominium through said Owner, shall be entitled to rely on said Estoppel Certificate with respect to the matters therein set forth, such

matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

7.16 **LIABILITY**: Neither the Committee nor any member thereof 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 property within the Development; or (d) the execution and filing of an Estoppel Certificate, whether or not the facts therein are correct; provided, however, that such member has acted in good faith on the basis of such information as may be possessed by him or her. Without in any way limiting the generality of the foregoing, the Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications or any other proposal submitted to the Committee.

7.17 **COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS**: The application to the Association and the review and approval of any proposals, plans or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which shall lie solely with the respective Owner.

ARTICLE VIII

MAINTENANCE, REPAIR & REPLACEMENT

8.1 **ASSOCIATION RESPONSIBILITY**: The Association shall provide maintenance, repair and replacement of the Common Area and all facilities, improvements and landscaping thereon, including private driveways and utility facilities (except for those utility facilities which are maintained by public or private utility companies or agencies), and all other real and/or personal property which may be acquired by the Association, keeping such property in first-class condition and good repair; and shall provide painting and structural repair or replacement of Exclusive Use Common Area; provided, however, that the Association shall not be responsible for cleaning or repair of Exclusive Use Common Area the responsibility for which is expressly assigned to the Owners, as set forth in section 8.2 of this Article.

8.2 **OWNER RESPONSIBILITY**: Each Owner shall be responsible at such Owner's sole cost and expense, for the maintenance, repair and replacement, as these terms are defined herein, of equipment, utility facilities, fixtures, the interior walls, floors, ceilings, windows, glass and interior doors of such Owner's Unit, and shall further be responsible for the cleaning and repair of such Owner's Exclusive Use Common Area, and for the maintenance of any landscaping located therein. Each Owner shall further be responsible for the maintenance, repair and replacement of appliances, toilets, sinks, showers, bathtubs and other features servicing his or her Unit, even though located partly outside of such Unit, including, without limitation, water, gas, power, sewage, telephones, garbage disposals, ranges, ovens, refrigerators, freezers, dishwashers, light fixtures and light bulbs, heating, ventilating and air conditioning equipment.

Each Owner shall be responsible for informing the Board of any needed repairs or maintenance to the Common Area.

8.3 OWNER LIABILITY:

- A. **Board Determines Need for Maintenance:** The Board shall have the absolute discretion to determine whether any cleaning, maintenance, repair or replacement, which is the responsibility of an Owner, is necessary in order to protect the Common Area or preserve the appearance and value of the property within the Development or any portion thereof, and may notify an Owner of the work which the Board deems necessary. In the event an Owner fails or refuses to perform such work within sixty (60) days after written notification by the Board to the Owner, the Board may, after written notice to the Owner and the right to a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner; and
- B. **Willful, Negligent Act by Owner:** In the event the need for any maintenance, repair or replacement is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenants, contract purchasers, guests or invitees, the cost of such maintenance, repair or replacement, including the cost of materials, labor, supplies, and services, shall be charged to, and paid by, such Owner.

8.4 **RIGHT OF ENTRY:** For the purposes of inspecting for hazardous conditions or performing any maintenance, repair or replacement in the Development which the Association is obligated or authorized to perform, the Association, through its duly authorized agents or employees, shall have the right, after reasonable written notice to the Owner and/or occupants (except in the case of a bona fide emergency) to enter upon any Unit or Exclusive Use Common Area, during reasonable hours on any day, to the extent required in order to accomplish such inspection, maintenance, repair or replacement.

8.5 **APPEAL TO THE BOARD:** An Owner who receives from the Architectural Committee or Board a notice requiring such Owner to perform any cleaning, maintenance, or repair work pursuant to section 8.3 of this Article may, within thirty (30) days after the date of delivery of the notice, appeal to the Board by submitting objections in writing to the mailing address of the Association. The Board shall set a date on which a hearing before the Board shall be held regarding the objections. The hearing date shall be not more than sixty (60) nor less than thirty (30) days after submission of the Appeal. Notice of the hearing date shall be given at least fifteen (15) days in advance if personally delivered, and notice shall be given to the Owner, and, in the discretion of the Board, to any other interested party. At the hearing, the Owner, and, in the Board's discretion, any other interested person may present information relevant to maintenance or repair work. Within ten (10) days after the hearing, the Board shall issue and deliver to Owner, either personally or by first-class a written ruling. The ruling of the Board shall be final.

PROTECTION OF ELIGIBLE HOLDERS

9.1 **MORTGAGE PERMITTED:** Any Owner may encumber his or her Condominium with a mortgage or deed of trust.

9.2 **SUBORDINATION:** Any lien created or claimed under the provisions of the Declaration is expressly made subject and subordinate to the rights of any first mortgagee or holder of a first deed of trust that encumbers all or a portion of the Development, or any Condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such mortgage or deed of trust, unless the mortgagee or holder of such deed of trust expressly subordinates his or her interest in writing to such lien.

9.3 **RESTRICTIONS ON CERTAIN CHANGES:** Neither the Association nor the Owners shall do any of the following without the consent of at least seventy-five percent (75%) of the Eligible Holders of first deeds of trust encumbering the Condominiums:

- A. **Abandon or Terminate Development:** By act or omission seek to abandon or terminate the Development (except for abandonment in case of substantial loss to the Units and the Common Area, as provided by statute) or in case of taking by condemnation;
- B. **Change Interest of Condominium:** Change the pro rata interest or obligations of any Condominium for purposes of levying assessments or allocating distributions of hazard insurance proceeds or condemnation awards, or for determining the pro rata share of ownership of each Owner in the Common Area;
- C. **Partition Unit:** Partition or subdivide any Unit;
- D. **Partition Common Area:** By act or omission 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 a transfer within the meaning of this clause;
- E. **Use of Insurance Proceeds:** Use hazard insurance proceeds for losses to Units or Common Area in the Development for other than the repair, replacement or reconstruction of improvements, except as provided by statute in case of substantial loss to the Units or Common Area of the Development;
- F. **Purpose of Development:** Vary the fundamental purposes for which the Development was created (such as change from a residential use to a commercial or industrial use);

- G. **Voting Rights:** Change the voting rights to which an Owner is entitled;
- H. **Assessments:** Change provisions relating to assessments, assessment liens or the subordination thereof;
- I. **Common Area Reserves:** Change provisions relating to the reserve for or replacement and repair of the Common Area or improvements thereon;
- J. **Maintenance:** Change provisions relating to the maintenance of the Common Area or Units in the Development;
- K. **Insurance:** Change provisions relating to casualty and liability insurance coverage hereunder;
- L. **Damage or Destruction:** Change provisions relating to reconstruction of property in the event of damage or destruction thereto;
- M. **Use of Common Area:** Change provisions relating to the use of the Common Area by the Owners; and
- N. **Annexation:** Change provisions, if any, relating to the annexation to the Development of additional property.

9.4 **RIGHT TO EXAMINE BOOKS AND RECORDS:** Eligible Holders may examine the books and records of the Association and may require the submission of financial data concerning the Association, including annual reports and operating statements, as furnished to the Owners.

9.5 **DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS:** No Owner shall have priority over any right of an Eligible Holder in the 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 Governing Documents is to such extent void.

9.6 **AMENITIES:** All amenities (such as parking, recreation and service areas) shall be available for use by Owners. All such amenities with respect to which Regular or Special Assessments for maintenance or other purposes may be levied shall constitute Common Area.

9.7 **NOTICE OF UNPAID ASSESSMENTS:** The Association shall, at the request of an Eligible Holder, report any assessments overdue in excess of 45 days from the Owner of the Unit secured by the Mortgage or deed of trust the beneficiary of which is an Eligible Holder.

ARTICLE X

GENERAL PROVISIONS

10.1 **ENFORCEMENT:** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions and restrictions, now or hereafter imposed, pursuant to the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Association shall institute any proceeding to enforce any of the provisions of the Governing Documents of the Association, it shall be entitled to recover its costs and reasonable attorneys' fees incurred in such enforcement action.

10.2 **NUISANCE:** Every act or omission whereby any provision of the Governing Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by the Association or by any Member, whether the relief sought is prohibitive or mandatory.

10.3 **AMENDMENT:** This Declaration may be amended in any respect by affirmative vote or written consent of the holders of greater than fifty (50%) of the voting power of the Members. However, if any provision of this Declaration requires a greater or lesser percentage of the voting rights of Members in order to take affirmative or negative action under such provision, the same percentage of such Members shall be required to amend such provision. Any amendment of this Declaration shall be evidenced by an instrument certified by the secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the office of the Alameda County Recorder.

10.4 **TERM:** The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of, and shall be enforceable by, the Association and/or the Owners, their respective legal representatives, heirs, successors and assigns, until April 16, 2034, after which time these covenants, conditions and restrictions shall automatically be extended for successive periods of ten (10) years, unless an instrument in writing, signed by sixty-six percent (66%) of the then Unit Owners, has been recorded agreeing to terminate the same.

10.5 **CONSTRUCTION; SEVERABILITY; GENDER; NUMBER; CAPTIONS:**

- 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 Association, as set forth in the Recitals of this Declaration;
- B. **Restrictions Severable:** Notwithstanding the provisions of subparagraph A. above, the provisions 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. In the case of any conflict between the Declaration and Articles, the Declaration shall control;

- C. **Singular Includes Plural:** As used herein, 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; and
- D. **Captions:** All captions or titles used herein are intended solely for convenience of reference and shall not affect that which is set forth in any of the terms or provisions of this Declaration.

DATED: June 7, 1994

CASTILLEJA DEL ARROYO HOMEOWNERS
ASSOCIATION

By Phillip Linton
PHILLIP LINTON, President

By Yvonne Jacobson
, Secretary

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On this 7th day of June, in the year 1994, before me,
Toni L. Guttry, a Notary Public, State of California, duly licensed and sworn,
personally appeared Phillip Linton,
personally known to me to be the President of the corporation that executed the within
instrument, and also known to be to be the person who executed the within instrument on behalf
of the corporation therein named, and acknowledged to me that such corporation executed it.

WITNESS my hand and official seal.



Toni L. Guttry
NOTARY PUBLIC
Toni L. Guttry

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On this 7th day of June, in the year 1994, before me,
Toni L. Guttry, a Notary Public, State of California, duly licensed and sworn,
personally appeared Heidi Jacobson,
personally known to me to be the Secretary of the corporation that executed the within
instrument, and also known to be to be the person who executed the within instrument on behalf
of the corporation therein named, and acknowledged to me that such corporation executed it.

WITNESS my hand and official seal.



Toni L. Guttry
NOTARY PUBLIC
Toni L. Guttry