

**1600 Hamilton Place  
Community Association**

**Restated Declaration of Covenants, Conditions, and Restrictions**

**NOTICE REGARDING  
DISCRIMINATORY RESTRICTIONS**

**(California Government Code § 12956.1)**

**In accordance with California Government Code § 12956.1 the Association includes with this governing document the following information:**

**“If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”**

UCS

FILED

2009 FEB 19 PM 2:22

David H. Yamasaki, Clerk of the Superior Court  
County of Santa Clara, California  
By: M Deputy Clerk

M. Rosales

SHARON GLENN PRATT (SBN 121947)  
ROSALIA BURGUEÑO TAPIA (SBN 174198)  
PRATT & ASSOCIATES  
The Pruneyard Tower I  
1901 S. Bascom Avenue, Suite 350  
Campbell, CA 95008  
Telephone: (408) 369-0800  
Facsimile: (408) 369-0752

Attorneys for Petitioner  
1600 HAMILTON PLACE  
COMMUNITY ASSOCIATION, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA  
UNLIMITED JURISDICTION

In the Matter of  
  
1600 HAMILTON PLACE COMMUNITY  
ASSOCIATION, INC.,  
  
a California nonprofit  
mutual benefit corporation,  
  
Petitioner.

No. **109CV132085**  
  
[PROPOSED] ORDER GRANTING  
PETITION TO REDUCE REQUIRED  
VOTING PERCENTAGE  
  
(CIVIL CODE §1356)

Petitioner 1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC.'s ("the Association" or "Petitioner") Petition to Reduce the Required Voting Percentage to approve the First Restated Declaration of Covenants, Conditions, and Restrictions under Civil Code §1356 came on regularly for hearing on Feb 17, in Department 19 of the above-entitled Court at 9:00 a.m. Petitioner appeared by and through its counsel, Sharon Glenn Pratt.

no one [name] appeared on behalf of  
objectors \_\_\_\_\_ [names].

Pratt & Associates  
THE PRUNEYARD TOWER I  
1901 S. BASCOM AVENUE, SUITE 350  
CAMPBELL, CA 95008  
TELEPHONE (408) 369-0800  
FACSIMILE (408) 369-0752

1 Having considered the Petition, the declarations filed herein, the briefs submitted by the  
2 parties, the records on file herein, and the oral and documentary evidence adduced at the hearings in  
3 this matter, the Court finds:

4 1. The allegations of Petitioner's Petition to Reduce Required Voting Percentage to be  
5 true and accurate.

6 2. Petitioner gave at least 15 days' written notice of the hearing to all association  
7 members and to all others entitled to such notice.

8 3. The balloting on the proposed First Restated Declaration was conducted in  
9 accordance with all applicable provisions of the governing documents and California Civil Code.

10 4. Petitioner made a reasonably diligent effort to permit all eligible members to vote on  
11 the First Restated Declaration.

12 5. Owners with more than 50 percent of the votes voted in favor of approving the First  
13 Restated Declaration.

14 6. Of Petitioner's total membership of 298 members, 193 ballots were cast, comprising  
15 64 percent of Petitioner's total membership. 166 members voted in favor of adopting the First  
16 Restated Declaration, while 27 members voted in opposition. A total of 152 affirmative votes were  
17 required to satisfy the majority approval requirement of California Civil Code §1356.

18 7. Petitioner's First Restated Declaration is reasonable.

19 8. The granting of the within Petition is not improper for any reason stated in  
20 California Civil Code §1356(e).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 Good cause appearing,

2 IT IS ORDERED that:

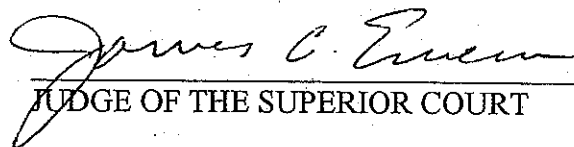
3 1. Petitioner's Petition to Reduce the Required Voting Percentage for approval of the  
4 First Restated Declaration of Covenants, Conditions, and Restrictions of 1600 HAMILTON  
5 PLACE COMMUNITY ASSOCIATION, INC. is granted.

6 2. The objections filed with respect to the Petition are overruled.

7 3. Before recordation, true and correct copies of all exhibits to the First Restated  
8 Declaration shall be attached.


9 4. The First Restated Declaration shall not be effective until recorded in the Official  
10 Records of the Santa Clara County, together with a copy of this order. Within 60 days after its  
11 recordation, Petitioner shall mail a copy of the First Restated Declaration to each member of the  
12 Association, together with a statement that the First Restated Declaration has been recorded. On  
13 such recordation, the First Restated Declaration shall have the same force and effect as if it had  
14 been adopted in compliance with every requirement for amendment imposed by the governing  
15 documents of the 1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC. common  
16 interest development.

17  
18 Date: Feb 17, 2009

19  
20   
21 JUDGE OF THE SUPERIOR COURT

22  
23 THE FOREGOING INSTRUMENT IS  
24 A CORRECT COPY OF THE ORIGINAL  
25 ON FILE IN THIS OFFICE  
26 ATTEST: DAVID H. YAMASAKI

27 FEB 19 2009

28 CHIEF EXECUTIVE OFFICER/CLERK  
SUPERIOR COURT OF CA COUNTY OF SANTA CLARA  
IN AND FOR THE COUNTY OF SANTA CLARA  
BY  DEPUTY



M. Rosales



Fees.....	255.00
Taxes.....	
Copies.....	
AMT PAID	255.00

**Recording Requested By:****1600 Hamilton Place Community Association****When Recorded Mail To:**

**1600 Hamilton Place Community Association  
c/o Sharon Glenn Pratt  
The Pruneyard Tower I  
1901 South Bascom Avenue, Suite 350  
Campbell, California 95008**

REGINA ALCOMENDRAS  
SANTA CLARA COUNTY RECORDER  
Recorded at the request of  
Attorney

RDE # 003  
5/01/2009  
2:43 PM

**FIRST RESTATED DECLARATION  
OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC.**

# FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF 1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC.

## INDEX

ARTICLE & SECTION	TITLE	PAGE
<b>COVER PAGE AND INTRODUCTION</b>		
<b>RECITALS</b>		<b>1-2</b>
<b>ARTICLE I – DEFINITIONS</b>		<b>2-8</b>
• Section 1.01	Additional Property	2
• Section 1.02	Architectural Standards	2
• Section 1.03	Articles	2
• Section 1.04	Assessment	3
• Section 1.05	Association	3
• Section 1.06	Association Management Documents	3
• Section 1.07	Association Manager	3
• Section 1.08	Balconies and Decks	3
• Section 1.09	Beneficiary	3
• Section 1.10	Board of Directors or Board	3
• Section 1.11	Bylaws	3
• Section 1.12	Carport	3
• Section 1.13	CC&R's	3
• Section 1.14	Common Area	3
• Section 1.15	Common Expense	3-4
• Section 1.16	Common Facilities	4
• Section 1.17	Common Funds	4
• Section 1.18	Condominium	4
• Section 1.19	County	4
• Section 1.20	Declarant	4
• Section 1.21	Declaration	4
• Section 1.22	Development	4
• Section 1.23	Director	4
• Section 1.24	First Mortgage or First Mortgagee	5
• Section 1.25	Garage	5

• Section 1.26	Governing Documents	5
• Section 1.27	Household	5
• Section 1.28	Lease	5
• Section 1.29	Map	5
• Section 1.30	Member	5
• Section 1.31	Member in good standing	5
• Section 1.32	Mortgage	5
• Section 1.33	Office of Recorder	5
• Section 1.34	Owner	6
• Section 1.35	Owner of Record and Member of Association	6
• Section 1.36	Parking Space	6
• Section 1.37	Patio Gardens	6
• Section 1.38	Person	6
• Section 1.39	Project	6
• Section 1.40	Properties	6-7
• Section 1.41	Regular Assessment	7
• Section 1.42	Residence	7
• Section 1.43	Residence Area	7
• Section 1.44	Residential Use	7
• Section 1.45	Restricted Common Area	7
• Section 1.46	Rules	7
• Section 1.47	Special Assessment	7
• Section 1.48	Special Individual Assessment	7
• Section 1.49	Tenant	7
• Section 1.50	Unit	7-8
• Section 1.51	Unit Owner	8
• Section 1.52	Voting Power	8
<b>ARTICLE II - PROPERTY RIGHTS</b>		<b>8-11</b>
• Section 2.01	Owners' Non-Exclusive Easements of Enjoyment	8-9
• Section 2.02	Delegation of Use/Rights and Obligations of Landlords and Tenants	9-10
• Section 2.03	Notification Regarding CC&Rs	10
• Section 2.04	Easements to Accompany Conveyance of Unit	10
• Section 2.05	Rights and Easements for Utilities	10-11
<b>ARTICLE III - HOMEOWNERS ASSOCIATION</b>		<b>11-15</b>
• Section 3.01	Association Membership	11
• Section 3.02	Single Class of Membership	11

• Section 3.03	Voting Rights of Memberships	12
• Section 3.04	Assessments	12
• Section 3.05	Transfer of Membership	12
• Section 3.06	Rights and Duties of the Association Board of Directors	12
• Section 3.07	Powers and Authority of the Association	12
• Section 3.08	Association Rules	13-14
• Section 3.09	Breach of Rules or Restrictions	14
• Section 3.10	Limitation on Liability of the Association and the Association's Directors and Officers	15
<b>ARTICLE IV – ASSESSMENTS</b>		<b>15-28</b>
• Section 4.01	Assessments Generally	15-16
• Section 4.02	Regular Assessment	16-18
• Section 4.03	Special Assessments	19-20
• Section 4.04	Special Individual Assessments	20-21
• Section 4.05	Purpose and Reasonableness of Assessments	21
• Section 4.06	Exemption of Certain of the Properties from Assessments	22
• Section 4.07	Notice and Procedure for any Action Authorized Under Sections 4.02 and 4.03	22
• Section 4.08	Maintenance of Assessment Funds	22-23
• Section 4.09	Effect of Non-Payment of Assessments; Enforcement of Liens	23-25
• Section 4.10	Collection of Debts for Assessments Less Than \$1,800	25-26
• Section 4.11	Transfer of Unit by Sale or Foreclosure	27
• Section 4.12	Priorities	27
• Section 4.13	Unallocated Taxes	27
• Section 4.14	Assignment of Rents	28
• Section 4.15	Waiver of Exemptions	28
• Section 4.16	Statement of Default	28
<b>ARTICLE V - ACCESS TO BOOKS AND RECORDS</b>		<b>28-31</b>
• Section 5.01	Review by Member or Designated Person	28-29
• Section 5.02	Place of Inspection	29
• Section 5.03	Costs	29
• Section 5.04	Withholding of Certain Information	29-30
• Section 5.05	Use of Information	31
• Section 5.06	Legal Action By Member	31



<b>ARTICLE VI – MAINTENANCE</b>	<b>31-33</b>
• <b>Section 6.01</b> Association Maintenance and Repair	<b>31-32</b>
• <b>Section 6.02</b> Owner Maintenance and Repair	<b>32-33</b>
• <b>Section 6.03</b> Repair for Owners	<b>33</b>
• <b>Section 6.04</b> No Rubbish	<b>33</b>
<b>ARTICLE VII - DUTIES AND POWERS OF THE ASSOCIATION</b>	<b>33-36</b>
• <b>Section 7.01</b> Duties	<b>33-34</b>
• <b>Section 7.02</b> Powers	<b>34-36</b>
<b>ARTICLE VIII - ARCHITECTURAL CONTROL</b>	<b>36-38</b>
• <b>Section 8.01</b> Improvements in General; Establishment of Architectural Committee	<b>36-37</b>
• <b>Section 8.02</b> Common Area	<b>37</b>
• <b>Section 8.03</b> Enforcement of Architectural Restrictions	<b>37-38</b>
• <b>Section 8.04</b> Variances	<b>38</b>
<b>ARTICLE IX - USE OF PROPERTIES AND RESTRICTIONS</b>	<b>38-43</b>
• <b>Section 9.01</b> Residential Use	<b>38-39</b>
• <b>Section 9.02</b> Units	<b>39</b>
• <b>Section 9.03</b> Common Area	<b>39</b>
• <b>Section 9.04</b> Use of the Properties	<b>39</b>
• <b>Section 9.05</b> Prohibition of Noxious Activities	<b>39</b>
• <b>Section 9.06</b> Temporary Structures	<b>39</b>
• <b>Section 9.07</b> Household Pets	<b>40</b>
• <b>Section 9.08</b> Signs	<b>40</b>
• <b>Section 9.09</b> Business Activities	<b>40</b>
• <b>Section 9.10</b> Garbage and Storage	<b>40-41</b>
• <b>Section 9.11</b> Exterior Storage and Clotheslines	<b>41</b>
• <b>Section 9.12</b> Landscaping Maintenance Outside of Units	<b>41</b>
• <b>Section 9.13</b> No Alterations or Antennas	<b>42</b>
• <b>Section 9.14</b> Parking and Vehicle Restrictions	<b>42-43</b>
• <b>Section 9.15</b> Machinery and Equipment	<b>43</b>
• <b>Section 9.16</b> Visitors	<b>43</b>
• <b>Section 9.17</b> Compliance with Local Laws and Activities Affecting Insurance	<b>43</b>
• <b>Section 9.18</b> Restriction on Further Subdivision and Severability	<b>43</b>
• <b>Section 9.19</b> Window Coverings	<b>43</b>

<b>ARTICLE X – EASEMENTS</b>	<b>44</b>
• Section 10.01 Maintenance Easements	44
• Section 10.02 Blanket Utility Easement	44
• Section 10.03 Other Easements	44
<b>ARTICLE XI – INSURANCE</b>	<b>44-48</b>
• Section 11.01 Liability Insurance	44
• Section 11.02 Copies of Policies	45
• Section 11.03 Fire and Casualty Insurance	45
• Section 11.04 Worker’s Compensation	45
• Section 11.05 Fidelity Bonds	45
• Section 11.06 Director and Officer Liability Insurance	45
• Section 11.07 Other Insurance	45-46
• Section 11.08 Deductible	46
• Section 11.09 Owner’s Insurance	46
• Section 11.10 Adjustment of Losses	46
• Section 11.11 Annual Insurance Review	46-47
• Section 11.12 Insurance Disclosures	47-48
<b>ARTICLE XII - DAMAGE OR DESTRUCTION</b>	<b>48-50</b>
• Section 12.01 Partial Damage or Destruction	48
• Section 12.02 Total Damage or Destruction	48-50
• Section 12.03 Repair and Reconstruction of Units	50
<b>ARTICLE XIII – CONDEMNATION</b>	<b>50</b>
• Section 13.01 Sale by Consent	50
• Section 13.02 Distribution of Proceeds of Sale	50
• Section 13.03 Distribution of Condemnation Award	50
<b>ARTICLE XIV – BREACH AND DEFAULT</b>	<b>51-54</b>
• Section 14.01 Remedy at Law Inadequate	51
• Section 14.02 Nuisance	51
• Section 14.03 Costs and Attorneys’ Fees	51
• Section 14.04 Cumulative Remedy	51
• Section 14.05 Failure Not a Waiver	51
• Section 14.06 Suspension, Fines and Enforcement	52-53
• Section 14.07 Violation of Law	53
• Section 14.08 Alternative Dispute Resolution	54

<b>ARTICLE XV – AMENDMENT OF CC&amp;R’s</b>	<b>55</b>
• <b>Section 15.01</b> Amendment	<b>55</b>
• <b>Section 15.02</b> Control if Amendment Provisions Conflict with Mortgagee Protection or Other Provisions	<b>55</b>
• <b>Section 15.03</b> Reliance on Amendments	<b>55</b>
• <b>Section 15.04</b> Provisions that Amendments Conform with Mortgagee Requirements	<b>55</b>
<b>ARTICLE XVI – PROVISIONS TO SATISFY LENDER REQUIREMENTS</b>	<b>56-57</b>
• <b>Section 16.01</b> Mortgage Permitted	<b>56</b>
• <b>Section 16.02</b> Subordination	<b>56</b>
• <b>Section 16.03</b> Restriction of Certain Changes	<b>56-57</b>
• <b>Section 16.04</b> Mortgagee’s Right to Examine Books and Records	<b>57</b>
• <b>Section 16.05</b> Priority in Distribution of Insurance and Condemnation Proceeds	<b>57</b>
• <b>Section 16.06</b> Right to Furnish Information	<b>57</b>
• <b>Section 16.07</b> Limitation on Term of Management Contract	<b>57</b>
<b>ARTICLE XVII – NOTICES</b>	<b>58</b>
• <b>Section 17.01</b> Mailing Addresses	<b>58</b>
• <b>Section 17.02</b> Personal Service Upon Co-Owners and Others	<b>58</b>
• <b>Section 17.03</b> Deposit in U.S. Mails	<b>58</b>
<b>ARTICLE XVIII – GENERAL PROVISIONS</b>	<b>58-60</b>
• <b>Section 18.01</b> Construction and Severability; Singular and Plural; Titles	<b>58-59</b>
• <b>Section 18.02</b> No Discriminatory Practices	<b>59</b>
• <b>Section 18.03</b> Notification of Sale	<b>59</b>
• <b>Section 18.04</b> No Fixed Term	<b>59</b>
• <b>Section 18.05</b> Conflicts Between Documents	<b>59-69</b>
• <b>Section 18.06</b> Amendments to California Law	<b>60</b>
<b>EXHIBIT “A” – LEGAL DESCRIPTION</b>	<b>61</b>
<b>EXHIBIT “B” – 1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC. ASSESSMENTS</b>	<b>62</b>
<b>CERTIFICATION</b>	<b>63</b>

<b>NOTARIAL ACKNOWLEDGMENT</b>	<b>64</b>

**FIRST RESTATED DECLARATION  
OF COVENANTS, CONDITIONS  
AND RESTRICTIONS OF  
1600 HAMILTON PLACE COMMUNITY  
ASSOCIATION, INC.**

# **NOTICE REGARDING DISCRIMINATORY RESTRICTIONS**

(California Government Code § 12956.1)

In accordance with California Government Code § 12956.1, enacted effective January 1, 2000 by Senate Bill 1148, the Association includes with this governing document the following information:

**“If this document contains any restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.”**

**FIRST RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
1600 HAMILTON PLACE COMMUNITY  
ASSOCIATION, INC.**

The Declaration of Covenants, Conditions and Restrictions ("Original Declaration") made the 21st day of October, 1980, by GENSTAR DEVELOPMENT INC., a corporation (BROADMOOR HOMES NORTHERN DIVISION) ("Declarant") and recorded on October 22, 1980, in Book F674, Pages 343 et seq., Instrument No. 6877379 of the Official Records of Santa Clara County, State of California, which Declaration affects all of the Properties described and commonly known as 1600 Hamilton Place, is hereby amended and restated in its entirety to read as follows:

**RECITALS:**

1. The Properties are a condominium development within the meaning of the California Civil Code.

2. Declarant was the owner of a fee interest in certain real property together with the structures and improvements located thereon (the "Subject Property") situated in the City of San Jose, County of Santa Clara, State of California, which is more particularly described as follows:

Lots 2 and 4 as shown on that certain Subdivision Map entitled "Tract 6812" filed in the Office of the Recorder of Santa Clara County, State of California in Book 468 of Maps at Pages 24 through 26.

A. Together with that portion of Lot 3 described as follows: Beginning at the most westerly corner of Lot 3 as said lot is shown on that certain map of Tract No. 6812 Recorded in Book 468 of Maps at Pages 24-26, Santa Clara County Records; thence along the northerly boundary of said Lot 3 North 46°55'19" East 57.93 feet; thence North 1°10'40" East 84.68 feet; thence South 88°49'20" East 75.30 feet; thence South 1°10'40" West 124.00 feet; thence South 70°45'24" West 94.76 feet to a point on the northeasterly line of Hamilton Place (formerly Lloyd Circle); thence from a tangent which bears North 36°59'27" West along a curve to the left through a central angle of 6°05'15" having a radius of 400.00 feet, an arc distance of 42.50 feet to the point of beginning. [Tennis Court]

B. The Subject Property, together with the Additional Property described in Exhibit "A" hereto, was as a Condominium Project within the meaning of California Civil Code Section 1351(f) and is subject to the provisions of the California Davis-Stirling Common Interest Development Act (Title 6, Sections 1350-1378, inclusive). It was the desire and intention of the Declarant to subdivide and develop the Subject Property and Additional Property as a Condominium Project and to impose on the Subject Property and the Additional Property as annexed hereunder mutual beneficial restrictions, easements, assessments and liens under a general plan of improvement for the benefit of all of the Units and of the Common Area within the Project and the future Owners of said Units and Common Area.

C. The Subject Property and the real property described in Exhibit "A" (the "Additional Property") are subject to this Declaration.

NOW, THEREFORE, pursuant to applicable provisions of the California Civil Code, the Subject Property and Additional Property are held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following mutual beneficial limitations, restrictions, covenants, and conditions, and are established and agreed upon for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Subject Property and Additional Property and every part thereof. All of the limitations, easements, uses, obligations, covenants, restrictions and conditions stated herein shall run with the Subject Property and Additional Property, shall be binding on all parties having or acquiring any right, title or interest in the Subject Property and Additional Property or any part thereof, and shall be for the benefit of each Owner of any portion of the Subject Property and Additional Property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the Owner's thereof. Each and all of the limitations, easements, uses, obligations, covenants, conditions and restrictions shall be deemed to be, and shall be construed as equitable servitudes, enforceable by any of the Owners of any of the individual Units against any other owner, tenant or occupant of the Subject Property and Additional Property, or any portion thereof.

3. On the date specified in the Officers' Certification of Amendment attached hereto, a majority of the total voting power of the Members of 1600 Hamilton Place Community Association, Inc. (the successors in interest to the Declarant) voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in Section 11.3 of the Original Declaration. As so amended and restated, these easements, covenants, restrictions, and conditions shall run with the Properties and shall be binding on all parties having or acquiring any right, title or interest in the Properties or any portion thereof and shall inure to the benefit of each thereof.

## ARTICLE I

### Definitions

**Section 1.01. Additonal Property.** "Additional Property" shall mean the real property described in Exhibit "A" hereto, together with the buildings and improvements located thereon.

**Section 1.02. Architectural Standards.** "Architectural Standards" shall mean written specifications, details, plans and/or drawings adopted by the Board pursuant to applicable sections of the CC&R's.

**Section 1.03. Articles.** "Articles" shall mean the Articles of Incorporation of 1600 Hamilton Place Community Association, Inc. which are filed in the Office of the Secretary of State of the State of California.



**Section 1.04. Assessment.** "Assessment" shall mean an assessment made or assessed against an Owner and the Owner's Unit (defined below) in accordance with applicable sections of the CC&R's.

**Section 1.05. Association.** "Association" shall mean and refer to 1600 Hamilton Place Community Association, Inc., a California non-profit mutual benefit corporation, its successors and assigns.

**Section 1.06. Association Management Documents.** "Association Management Documents" shall mean the CC&R's, the Articles, Bylaws, Association Rules and Architectural Standards.

**Section 1.07. Association Manager.** "Association Manager" shall mean the person, persons or firm retained by the Association under contract to perform administrative, financial, managerial and/or other services for the Association.

**Section 1.08. Balconies and Decks.** "Balconies and Decks" shall mean and refer to those portions of the Common Area adjacent to each of the Units. An exclusive appurtenant easement for the use and possession of each Balcony and/or Deck shall be granted to these Units.

**Section 1.09. Beneficiary.** "Beneficiary" shall mean and refer to a mortgagee under a first mortgage or a beneficiary under a first deed of trust which encumber a Unit.

**Section 1.10. Board of Directors or Board.** "Board of Directors" or "Board" shall mean the Board of Directors of the Association as defined in the Bylaws.

**Section 1.11. Bylaws.** "Bylaws" shall mean the Bylaws of the Association as such Bylaws may, from time to time, be amended.

**Section 1.12. Carport.** "Carport" shall mean those covered portions of the Common Area which are to be used for parking a car. An exclusive easement appurtenant for the use and possession of one Carport or one Garage shall be granted to each Unit Owner.

**Section 1.13. CC&R's.** "CC&R's" shall mean all limitations, restrictions, covenants, terms and conditions set forth in this First Restated Declaration of Covenants, Conditions and Restrictions recorded in the Office of the Recorder of the County of Santa Clara with respect to the Properties as defined herein.

**Section 1.14. Common Area.** "Common Area" shall mean all real property and improvements owned by the Association for the common use and enjoyment of the Members and the tenants of non-resident Members.

**Section 1.15. Common Expense.** "Common Expense" means any use of Common Funds authorized by the CC&R's and/or described in Exhibit "B" attached hereto and includes (a) all expenses or charges for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Common Area and Common

Facilities as incurred or as may be estimated from time to time by the Association and/or its Board of Directors, (b) any amounts reasonably necessary for reserves for maintenance and for nonpayment of any assessments, (c) the costs and expenses of the Association in the performance of its functions as provided for in its Articles, the Bylaws, or the CC&R's, and (d) an adequate reserve fund for replacement of Common Area and Common Facilities, which shall be established by the Association and funded by Regular Assessments and Special Assessments, when required.

**Section 1.16. Common Facilities.** "Common Facilities" means the trees, hedges, plantings, lawns, shrubs, landscaping, hardscaping, fences, utilities, berms, drainage swales, pipes, lines, lighting fixtures, swimming pool and club house, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located on the Common Area and owned by the Association.

**Section 1.17. Common Funds.** "Common Funds" means all funds collected and received by the Association (a) for use in the maintenance, management, administration, insurance, operation, replacement, repair, addition to, alteration or reconstruction of, all or any portion of the Common Area and Common Facilities and (b) for use in discharging any and all of its functions as provided for in its Articles, the Bylaws and the CC&R's.

**Section 1.18. Condominium.** "Condominium" shall mean an estate in real property as defined in the California Civil Code consisting of an undivided interest as a tenant-in-common in the Common Area of the Development, together with a fee interest in a Unit (defined below) and separate interests in other real property, if any.

**Section 1.19. County.** "County" means the County of Santa Clara, State of California.

**Section 1.20. Declarant.** "Declarant" shall mean and refer to GENSTAR DEVELOPMENT INC., a corporation (BROADMOOR HOMES NORTHERN DIVISION), its successors and assigns.

**Section 1.21. Declaration.** "Declaration" shall mean this First Restated Declaration of Covenants, Conditions and Restrictions as such Declaration may, from time to time, be amended. The "Original Declaration" shall mean the document referenced in the preamble to these CC&R's.

**Section 1.22. Development.** "Development" shall mean the entire parcel of real property, divided or to be divided into Condominiums, including all structures and improvements on it. The Development is a statutory "condominium project" as defined in California Civil Code Section 1351(f).

**Section 1.23. Director.** "Director" shall mean a Member of the Board of Directors of the Association.

**Section 1.24. First Mortgage or First Mortgagee.** "First Mortgage" or "First Mortgagee" is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Unit or other portions of the Project.

**Section 1.25. Garage.** "Garage" shall mean that portion of the Common Area which is an exclusive easement appurtenant which may be used for the parking and storage of any and all items, vehicles, trailers or boats, provided, however, that such are fully contained within said Garage, not visible from outside of said Garage and in accordance with all laws, rules, ordinances, and regulations.

**Section 1.26. Governing Documents.** "Governing Documents" shall mean the Articles, Bylaws, Declaration, Rules, and the policies and resolutions adopted by the Board and distributed to the Members.

**Section 1.27. Household.** "Household" shall mean the persons residing in a Unit as their principal place of residence.

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

**Section 1.29. Map.** "Map" shall mean and refer to that certain Subdivision Map entitled "Tract No. 6812," filed in Book 468 of Maps at Pages 24 through 26, Santa Clara County Records on July 30, 1980. The term "Map" as to any Additional Property annexed to the Project pursuant to Section 2.5 shall mean the particular Subdivision Map described in the Declaration of Annexation for the Additional Property.

**Section 1.30. Member.** "Member" shall mean and refer to every person or entity who holds a membership (as defined in Article II of the Bylaws) in the Association and whose rights as a Member are not suspended pursuant to Article XIV, hereof.

**Section 1.31. Member in good standing.** "Member in good standing" shall mean a Member of the Association who is current in the payment of all Assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents; is otherwise free from sanctions imposed by the Association; and is in compliance with all provisions of the Governing Documents.

**Section 1.32. Mortgage.** "Mortgage" means a mortgage or deed of trust encumbering a Condominium or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage.

**Section 1.33. Office of Recorder.** "Office of Recorder" shall mean the Office of the Recorder, County of Santa Clara, State of California.

**Section 1.34. Owner.** "Owner" means any person, firm, corporation or other entity which owns a condominium unit which is part of the Properties (including contract sellers, but excluding those having such interest merely as security for the payment of a debt or the performance of an obligation) and includes, unless the context otherwise requires, the household, guests, tenants, and invitees of such Owner.

**Section 1.35. Owner of Record and Member of the Association.** "Owner of Record" and "Member of the Association" include an Owner and means any person, firm, corporation or other entity in which title to a Unit is vested as shown by the official records of the Office of the County Recorder.

**Section 1.36. Parking Space.** "Parking Space" shall mean that portion of the Common Area which is separately designated for parking one vehicle. The Association specifically reserves the right to assign and convey to the Unit Owners by exclusive appurtenant easement the right to use the Parking Spaces within the Project. The Association also has the right to determine the use and designation of all parking spaces not specifically granted or reserved to an owner, and shall cause the spaces to be marked accordingly. The Association shall also have the power to change designations of parking spaces from time to time, as it deems necessary, and to enact appropriate parking rules to control the use of the parking. Enactment and/or amendment of such rules shall not require a vote of the membership.

**Section 1.37. Patio Gardens.** "Patio Gardens" shall mean and refer to those portions of the Common Area adjacent to each of the Units. An exclusive appurtenant easement for the use and possession of each Patio Garden shall be granted to the Unit it adjoins. The boundary lines of each Patio Garden are to the interior finished surface of the walls, fences and/or railings encompassing the same, the interior finished surface floor thereof where finished and, where unfinished, to the surface of the ground thereof, and the interior finished surface extended to the ceiling of the adjoining Unit. The reference in this Declaration to the term "Balcony" and/or "Deck" shall include the term Patio unless the context clearly requires otherwise.

**Section 1.38. Person.** "Person" shall mean and include any individual, corporation, partnership, association or other entity recognized by the laws of the State of California.

**Section 1.39. Project.** "Project" shall mean the entire parcel of real property described in Recitals, above, including all structures thereon. The term "Project" shall also include the Additional Property described in Exhibit "A" hereto, and all structures thereon.

**Section 1.40. Properties.** "Properties" shall mean and refer to that certain real property described in the Recitals to these CC&R's and such additions thereto as may thereafter be brought within the jurisdiction of the Association. The Properties currently consist of 298 Units (defined below) with improvements designated on the recorded Subdivision Map entitled "Tract No. 6812," filed in Book 468 of Maps at Pages 24 through 26, Santa Clara County records on July 30, 1980. The Properties also include the Additional Property described in Exhibit "A" hereto, and all improvements thereon. The Properties are presently comprised of 298 housing units, which consist of dwelling units, Patio Gardens, Balconies and Decks, Carport structures,

Garages, clubhouses, recreational facilities, private streets, and all other Common Area and Common Facilities described herein.

**Section 1.41. Regular Assessment.** "Regular Assessment" means an assessment levied on an Owner and the Owner's Unit in accordance with this Declaration.

**Section 1.42. Residence.** "Residence" means all of those resident and other improvements located in a Unit.

**Section 1.43. Residence Area.** "Residence Area" means that portion of the Properties developed as Residential Units.

**Section 1.44. Residential Use.** "Residential Use" shall mean occupation and use of a Residence for dwelling purposes in conformity with the CC&R's and the requirements imposed by applicable zoning laws or other state or municipal rules and regulations.

**Section 1.45. Restricted Common Area.** "Restricted Common Area" shall mean that portion of the Common Area, the exclusive use of which is set aside, allocated and restricted to a particular Unit or Unit Owner. An exclusive easement to such Restricted Common Area shall be specifically granted in the individual Condominium Grant Deed.

**Section 1.46. Rules.** "Rules" shall mean the rules adopted by the Board of Directors of the Association, as the same may be in effect from time to time.

**Section 1.47. Special Assessment.** "Special Assessment" means an assessment levied against an Owner and the Owner's Unit.

**Section 1.48. Special Individual Assessment.** "Special Individual Assessment" means an assessment made against an Owner.

**Section 1.49. Tenant.** "Tenant" means and includes any renter of a Residence.

**Section 1.50. Unit.** "Unit" shall mean that portion of a Condominium in the Properties which is not owned in common with the Owners of other Condominiums in the Properties or by the Association. The boundaries of each Unit shall include the following: the interior unfinished surfaces of the floors, ceilings, interior beams and columns, perimeter walls, windows, doors, door frames and trim, and the interior unfinished and/or exposed surfaces of the fireplaces, if any, of said Unit, and excluding, however, all load bearing walls, and all walls containing any utility conduit or plumbing wherever located to the unfinished surfaces of any such walls.

Each Unit specifically includes the oven, garbage disposal unit, dishwasher, dryer vents, range and fans, hot water heaters, furnaces, air conditioners, showers, vanity cabinets, interior partitions and plumbing fixtures installed therein. In interpreting the Deeds and this Declaration, the existing physical boundaries of the Unit, shall be conclusively presumed to be its boundaries rather than the metes and bounds (or other description) expressed in this Declaration, or the Deed

regardless of settling or lateral movement of the buildings and regardless of variants between boundaries shown on the Deeds and this Declaration and those of the buildings.

**Section 1.51. Unit Owner.** "Unit Owner" shall mean the holder or holders of record fee title to a Condominium, including Declarant with respect to each Condominium owned by Declarant. The term "Owner" shall also include a contract purchaser (Vendee) under an installment land contract but shall exclude those persons having an interest in a Condominium merely as security for performance of an obligation. Every Unit Owner shall be a Member of the Association.

**Section 1.52. Voting Power.** "Voting Power" shall mean the total membership of the Association eligible to vote, that is, all memberships, except those suspended for default in payment of assessments or otherwise.

## **ARTICLE II**

### **Property Rights**

#### **Section 2.01. Owners' Non-Exclusive Easements of Enjoyment.**

Every Owner shall have a right and easement of enjoyment in and to the Common Area, including ingress and egress to and from the Owner's Unit, which shall be appurtenant to and shall pass with the title to every Unit, which easement and Unit are subject to the following provisions:

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

(b) The right of the Association to adopt rules and regulations as provided in these CC&R's.

(c) The right of the Association, to the extent reasonably necessary to protect the rights, privileges, benefits, uses and enjoyment of the Members in common, to limit the number of guests of Members who may use Common Area facilities and to adopt uniform rules and regulations regulating use and enjoyment of the Properties.

(d) The right of the Association to maintain and repair any Unit, if such maintenance or repair is reasonably necessary, in the discretion of the Association to protect the Common Area or preserve the appearance and value of the Properties, in the event an Owner has failed to perform said maintenance or repairs within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said Owner. In the event of an emergency, the Association shall have the immediate right of entry into the subject Unit(s). In all non-emergency situations the Association, or its agents, shall furnish the Owner with at least twenty-four (24) hours written notice of its intent to enter the Unit, specifying the purpose of

such entry. The Association shall have the right to levy a special assessment against such Member for the cost of said maintenance or repair.

(e) The right of the Association, subject to the CC&R's, its Articles and the Bylaws, to borrow money for the purpose of improving the Common Area and facilities, and in aid thereof to mortgage said property and grant a security interest in Association property including assessments; provided, the rights of any such mortgagee in the Common Area and facilities shall be subordinate to the rights of the Owners hereunder.

(f) The right of the Association to sell, dedicate or transfer all or any part of the Common Area to any person(s) and/or to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Owners. No such sale, dedication or transfer shall be effective unless approved by at least seventy-five percent (75%) of the voting power of the Owners.

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

## **Section 2.02. Delegation of Use/Rights and Obligations of Landlords and Tenants.**

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

- (1) Each lease must be in writing, if required by the Board.
- (2) No lease shall be for an initial term of less than one hundred eighty (180) days unless specifically approved in writing by the Board.
- (3) Leases shall provide that they are subject in all respects to provisions of the CC&R's, the Bylaws, and all Association Rules.
- (4) The Owner shall supply to each of its tenants a copy of the CC&R's and the Rules, at the Owner's expense. Any failure of the tenant to comply with these CC&R's, the Bylaws or the Rules shall be a default under the lease, regardless of whether the lease so provides. The Owner shall at all times be responsible for compliance of Owner's tenant with all of the provisions of the CC&R's, the Bylaws and Articles and the Rules during the tenant's occupancy and use of the Residence.

- (5) In the event that any tenant fails to honor the provisions of the CC&R's, the Bylaws or the Rules, the Owner immediately shall take all action to cure the default including, if necessary, eviction of the tenant. The Association may maintain an eviction action against the tenant in the event that the Owner has not taken action to prevent and/or correct the actions of the Owner's tenant giving rise to the Common Area or Common Facility damage or nuisance after receiving written notice from the Association, or an authorized committee of the Board, detailing the nature of the violation and having a reasonable opportunity to either take appropriate corrective action on a voluntary basis or appear before the Board or committee to present arguments as to why such action is not necessary. The remedy provided by this subparagraph is not exclusive and is in addition to any other remedy or remedies of the Association

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

#### **Section 2.03. Notification Regarding CC&Rs.**

As more particularly provided in applicable provisions of the California Civil Code, the Owner of the Unit, as soon as practicable before transfer of title or execution of a real property sales contract therefore, shall provide the following to the prospective purchaser: (1) a copy of the governing documents of the Association including the CC&R's, the Articles, the Bylaws, and any operating rules, and all amendments thereto; (2) a copy of the most recent financial statement distributed pursuant to applicable provisions of the California Civil Code; (3) a true statement in writing from an authorized representative of the Association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the property sold which are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement shall also include true information on late charges, interest and costs of collection, which, as of the date of such statement are, or may be, a lien upon the property sold; and all other required documents and information as more fully set forth in the applicable provisions of the California Civil Code.

#### **Section 2.04. Easements to Accompany Conveyance of Unit.**

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

#### **Section 2.05. Rights and Easements for Utilities.**

The rights and duties of the Owners of Units within the Properties with respect to sanitary sewer, drainage, water, electricity, gas, pipes, vents, television receiving, telephone equipment,



cables and lines, exhaust flues, and heating and air conditioning facilities, if any, (hereinafter referred to, collectively, as "utility facilities") shall be as, follows:

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

(b) Whenever utility facilities are installed within the Properties which utility facilities serve more than one (1) Unit, the Owner of each Unit served by the utility facilities shall be entitled to the full use and enjoyment of such portions of the utility facility as service the Unit.

(c) Notwithstanding the foregoing, the Association shall also have easement rights for the purposes of repairing any utility facilities.

### **ARTICLE III**

#### **Owners' Association**

##### **Section 3.01. Association Membership.**

Every Owner of a Unit shall be a Member of the Association which shall have the responsibility of owning, managing and maintaining the Common Area and discharging the other duties and responsibilities described in the CC&R's, the Articles and the Bylaws. Such membership is appurtenant to and may not be separated from ownership of any Unit within the Properties.

Each Owner, tenant or occupant of a Unit shall comply with the provisions of the CC&R's, and (to the extent they are not in conflict with the CC&R's) the Articles and Bylaws, the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such decisions, or resolutions shall be grounds for an action (i) to recover sums due, (ii) for damages, (iii) for injunctive relief, or (iv) to enforce such provisions, decisions or resolutions. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the CC&R's or in the Articles or the Bylaws, shall be deemed to be binding on all Owners of Units, their successors and assigns.

##### **Section 3.02. Single Class of Membership.**

As more particularly provided in the Bylaws, the Association shall have one class of membership in which each member has equal rights, duties, obligations, and privileges as set forth in the Articles, the Bylaws, the CC&R's, and the Association Rules.

### **Section 3.03. Voting Rights of Memberships.**

Each Member of the Association shall be entitled to one vote for each Unit owned by said Member. When more than one person holds an interest in any Unit, all such persons shall be members, although in no event shall more than one vote be cast with respect to any Unit.

### **Section 3.04. Assessments.**

Members of the Association shall be obligated to pay the assessments imposed pursuant to this Declaration, with respect to each Unit owned by said Member. Any assessments levied by the Association on its Members shall be levied in accordance with and pursuant to the provisions of the CC&R's.

### **Section 3.05. Transfer of Membership.**

Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the Unit to which it is appurtenant. In the case of a sale, membership passes automatically to the purchaser upon transfer of title to the Unit. In the case of an encumbrance of such Unit, a mortgagee does not have membership rights until the mortgagee becomes an Owner by foreclosure or deed in lieu thereof. Tenants who are delegated rights of use pursuant to this Declaration do not thereby become Members, although the tenant and members of the tenant's household shall, at all times, be subject to the provisions of the CC&R's, the Articles, Bylaws, and the Association Rules.

Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in the Owner's name to the purchaser of the Unit, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

### **Section 3.06. Rights and Duties of the Association Board of Directors.**

The rights, duties and obligations of the Board of Directors of the Association shall be as set forth in the CC&R's, the Articles, the Bylaws and the Association Rules.

### **Section 3.07. Powers and Authority of the Association.**

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

### **Section 3.08. Association Rules.**

(a) Rulemaking Power. The Board may, from time to time, and subject to the provisions of the CC&R's and California Law, propose, enact and amend Rules of general application to the Owners of Units within the Properties. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Areas and Common Facilities, signs, collection and disposal of refuse, minimum standards of maintenance of or other improvements on any Unit, the keeping of household pets in Units, and any other subject or matter within the jurisdiction of the Association as provided in the CC&R's and the Bylaws of the Association. Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with, or materially alter, any provision of, or the rights, preferences and privileges of Members as set forth in the Articles or Bylaws of the Association or the CC&R's. In the event of any material conflict between any Association Rule and any provision of the Articles, Bylaws or CC&R's, the provision contained in the Articles, Bylaws or CC&R's (as the case may be) shall prevail.

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

(c) Amendment of Rules. The Association Rules may be amended from time to time by majority vote of the entire Board. The process for Amendment shall be as follows:

- (1) The board of directors shall provide written notice of a proposed rule change to the members at least 30 days before making the rule change. The notice shall include the text of the proposed rule change and a description of the purpose and effect of the proposed rule change. Notice is not required under this subparagraph if the board of directors determines that an immediate rule change is necessary to address an imminent threat to public health or safety or imminent risk of substantial economic loss to the association.
- (2) A decision on a proposed rule change shall be made at a meeting of the board of directors, after consideration of any comments made by association members.
- (3) As soon as possible after making a rule change, but not more than 15 days after making the rule change, the board of directors shall deliver notice of the rule change to every association member. If the rule change was an emergency rule change, the notice shall include the text of the rule change, a description of the purpose and effect of the rule change, and the date that rule change expires.
- (4) If the board of directors determines that an immediate rule change is required to address an imminent threat to public health or safety, or an imminent risk of substantial economic loss to the association, it may make an emergency rule change; and no notice is required, as specified in

subparagraph (c) (1). An emergency rule change is effective for 120 days, unless the rule change provides for a shorter effective period. A rule change made under this subparagraph may not be readopted under this subparagraph.

(d) In accordance with the applicable provisions of the California Civil Code, Members of the Association owning 5 percent or more of the separate interests may call a special meeting of the Members to reverse a rule change. However, this does not apply to an emergency rule change outlined in Section 3.08 (c)(4) above.

### **Section 3.09. Breach of Rules or Restrictions.**

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

(b) In addition to the other remedies set forth, the Board, by vote of a majority of a quorum, may levy a fine against such Owner, after appropriate notice and opportunity for a hearing as hereinafter provided, and the payment of such fine may be enforced as a Special Individual Assessment in the manner set forth in this Declaration. The Board shall implement schedules of reasonable fines and penalties as part of its general rulemaking power. A violation shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board shall include one component for the violation and a per diem component for so long as the detrimental effect continues, according to the Board's discretion. Similar violations on different days shall justify cumulative imposition of discipline. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance in the Common Area at the cost of the responsible Owner; however no discipline may be founded upon continuance of a violation beyond a date when the Association should reasonably have commenced action to end it.

(c) Prior to imposing any penalty provided herein for breach of any Rules enacted herein or restrictions contained in the CC&R's (other than late charges, interest and collection expenses, including attorney's fees incurred for non-payment of assessments), the Board shall comply with the procedures and requirements for notice and hearing contained in this Declaration and the California Civil Code.

**Section 3.10. Limitation on Liability of the Association and the Association's Directors and Officers.**

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

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

(c) Each Owner, on behalf of the Owner, the Owner's heirs, successors, and assigns, agrees not to make any claim against the Association or any member of its Board, or any of its officers, committee members, agents or employees, for or on account of any loss, damage or conduct coming within the limitations on liability referred to in this Section, and agrees to indemnify each of them against, and hold each of them harmless from, any such claim made by Owner, any member of the Owner's household, any of the Owner's guests, servants, employees, licensees or invitees or the heirs, successors or assigns of any such person.

**ARTICLE IV**

**Assessments**

**Section 4.01. Assessments Generally.**

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

(b) Each installment payment of any Regular Assessment and each lump sum or installment payment of any Special Assessment or Special Individual Assessment, together with any interest charge provided for in subparagraph (e) hereof, late charges, and reasonable costs of

collection, including reasonable attorney's fees, as assessed in accordance with applicable provisions of the California Civil Code Section, attributable thereto or incurred in the collection thereof, shall be a separate debt of the Owner against whom the same has been assessed at the time the assessment or other sums are levied. Furthermore, each Regular Assessment and certain Special Assessments are hereby declared and agreed to be a lien upon and against the Unit so assessed in the nature of a mortgage with a power of sale in accordance with applicable provisions of the California Civil Code (or a comparable superseding statute), all as more particularly described herein. Special Individual Assessments may be imposed as a lien against the Owner's Unit only in those instances specifically identified in this Article.

(c) Each Owner who acquires title to a Unit (whether at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Units so purchased which become due and payable after the date of purchase by such Owner; provided that any unpaid Assessment of previous Owner shall remain the debt of such previous Owner against whom assessed and any lien created pursuant to the provision of Article IV hereof, by reason of such unpaid assessment shall remain in force and effect as a lien on the Unit sold and may be subject to foreclosure as provided herein.

(d) If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment or Special Individual Assessment to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof shall be subject to a late charge not exceeding ten percent (10%) of the delinquent assessment or Ten Dollars (\$10.00) whichever is greater, pursuant to the applicable provisions of California Civil Code, or such larger sum as may hereafter be allowed by such statute or any successor statute thereto.

(e) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed 12 percent (12%), commencing 30 days after the assessment becomes due, or at such higher interest rate as may hereafter be permitted by applicable provisions of the California Civil Code or any successor statute thereto.

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

#### **Section 4.02. Regular Assessment.**

(a) Estimate. Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of each fiscal year of the Association, the Board shall estimate the anticipated Common Expenses (including prudent contributions to the capital reserve fund for replacement of Common Facilities) for the next succeeding fiscal year and shall deduct therefrom the amount of any estimated surplus which will remain from current year's Assessment. In preparing its annual estimates of Common Expenses and the appropriate deductions therefrom on account of

surplus, the Board shall consider the Common Expenses all as more particularly provided in Exhibit "B" attached hereto. Association assessments or charges shall include an adequate reserve fund for maintenance repair and replacement of those improvements which the Association is obligated to maintain and that must be replaced on a periodic basis, and the assessments therefore shall be payable in regular installments rather than by Special Assessments. The total expenses (less deductions) thus estimated shall be allocated among all the Units within the Properties in the manner described in subparagraph (b) of Section 4.02 hereof as the Regular Assessment for such Unit; notwithstanding any other provision in the CC&R's to the contrary, the Board may not impose a Regular Assessment for any fiscal year more than twenty percent (20%) above the Regular Assessment for the Association's preceding fiscal year without the approval of a majority of the votes at a meeting of the Members of the Association at which a quorum is present. For purposes of this Section, a quorum means more than fifty percent (50%) of the Owners of the Association, and the meeting must be conducted in accordance with applicable provisions of the California Corporations Code.

The foregoing restrictions on assessment increases do not apply to increases necessary for emergency situations. For purposes of this Section 4.02 an emergency situation is any one of the following:

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

However, the Board may not increase the Regular Assessment for a fiscal year as provided herein unless the Board has complied with applicable provisions of the California Civil Code with respect to that fiscal year, or has obtained the approval of Owners, constituting a quorum, casting a majority of the votes at a meeting or election of the Association conducted in accordance with the applicable provisions of the Corporations Code. "Quorum" for purposes of such a vote means more than fifty percent (50%) of the Owners of the Association.

This Section incorporates the statutory requirements of applicable provisions of the California Civil Code. If said applicable provisions of the California Civil Code are amended in

any way, this Section shall be amended in the same manner without the necessity of amending the CC&R's.

(b) Allocation of Regular Assessments Among the Owners. The Board shall assess the total of all charges in the Budget to all Condominiums in the Project. Those items in the Budget designated as insurance premiums and painting and roof reserves shall be allocated to and assessed among the Condominiums and the Unit Owners in a ratio equal to the square footage of each Unit Owner's Unit compared to the total square footage of all Units in the project. All other items in the Project Budget shall be allocated to and assessed among all Unit Owners equally.

In the event the Board shall determine at any time that the Regular Assessments levied for a current fiscal year are, or will become, inadequate to meet all of the expenses for such Assessments for any reason, it shall immediately determine the approximate amount of such inadequacy, issue a supplemental estimate of the total expenses applicable thereto and revise and fix the amount of Regular Assessments against each Owner liable for such Assessment. Such Assessments shall not be so supplemented in any fiscal year in excess of five percent (5%) of the original fixed amount for that year, per Condominium, unless prior to such additional increase the vote or written approval of fifty-one percent (51%) of Owners has been obtained. Such supplements shall be effective, due and payable as fixed by the Board.

(c) Mailing. The Board of Directors shall cause to be mailed to each Owner at the Street address of the Owner's Unit, or at such other address as such Owner may from time to time designate to the Association in writing, a statement of the amount of the Regular Assessment assessed against the Owner's Unit for the next succeeding fiscal year after determination thereof in accordance with Section 4.02(a) hereof. The Association shall provide notice by first-class mail to the Owners of any increase in the Regular Assessments of the Association, not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

(d) Failure to Make Estimate. If, for any fiscal year, the Board of Directors shall fail to make an estimate of the Common Expenses, the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to this Declaration for that year, shall be assessed against each Owner and the Owner's Unit on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic assessment shall be payable on the regular payment dates established by the Association.

(e) Installment Payment. The Regular Assessment made against each Owner shall be due and payable in advance to the Association in equal monthly installments on the first day of each month or such other date or dates as may be established from time to time by the Board. Monthly installment of Regular Assessments shall be delinquent if not paid by the fifteenth (15th) day of the month.



#### **Section 4.03. Special Assessments.**

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

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

(c) Assessment Increases Requiring Membership Approval. As more particularly provided in applicable provisions of the California Civil Code, no Special Assessment described in subparagraphs (a) or (b) hereof shall be made by the Board of Directors whereby the Special Assessments in the aggregate exceed five percent (5 %) of the budgeted gross expenses of the Association for that fiscal year without the approval of Owners, constituting a quorum, casting the majority of the votes at a meeting or election of the Association conducted in accordance with applicable provisions of the Corporations Code. Written notice of any such meeting shall be given by first class, registered or certified mail not less than ten (10) nor more than ninety (90) days in advance of the meeting specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to applicable provisions of the California Corporations Code. For purposes of this Section (4.03(c)), the term "quorum" means more than fifty percent (50%) of the Members. The provisions of this subparagraph do not limit assessment increases for emergency situations, such as those outlined above in Section 4.02.

This Section 4.03(c) incorporates the statutory requirements of applicable provisions of the California Civil Code. If said applicable provisions of the California Civil Code are amended in any way, this Section shall be amended in the same manner without the necessity of amending the CC&R's.

(d) Allocation and Payment of Special Assessments. In addition to the Regular Assessments authorized by Section 4.02 hereof, the Board may levy, in any fiscal year, a Special Assessment applicable to that year only for the purposes of defraying, in whole or in part, the cost of any construction, reconstruction, unexpected repair or replacement of improvements in the Common Areas including the necessary fixtures or personal property related thereto; provided, however, that any fiscal year the aggregate of such special assessments shall not exceed five percent (5%) of the budgeted gross expenses for said fiscal year without the assent of a majority of the voting power of Members, voting in person or by proxy, at a meeting duly called for that purpose. Any such Special Assessment shall be based upon the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all Units to be assessed. Written notice of such meeting shall be given to all Members at least

thirty (30) days in advance and shall set forth the purpose of the meeting. No such Special Assessment shall be levied prior to the commencement of the Regular Assessments provided for herein. The provisions of this Section shall not apply in connection with the levy by the Board of an assessment against an Owner under Section 4.04 for costs incurred in bringing the Owner and his Unit into compliance with provisions of this Declaration or the Rules.

(e) The Association shall provide notice by first-class mail to the Owners of any Special Assessments described in subparagraphs (a) or (b) of this Section not less than thirty (30) nor more than sixty 60 days prior to the Special Assessment becoming due.

#### **Section 4.04. Special Individual Assessments.**

(a) In addition to the Special Assessments provided for in Section 4.03 hereof, the Association may also impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (1) through (3) below.

- (1) Damage to Common Area. In the event the Association incurs costs in the repair of damage to Common Areas and Common Facilities, for which an Owner or the Owner's guests or tenants are responsible, the Association may impose a monetary penalty against the Owner for such costs. Such costs shall be assessed and charged, solely to and against such Owner and the Owner's Unit as a Special Individual Assessment. Nothing in this Subparagraph (1) shall require the Board to make a claim on any insurance carrier issuing a policy relating to the Common Area in the event of any such damage or destruction.
- (2) Act Increasing Insurance Premiums. In the event that any act or omission of any Owner, any member of the Owner's household, or any of the Owner's tenants, guests, servants, employees, licensees or invitees, shall in any way cause or be responsible for any increase in the premiums for any insurance purchased or obtained by the Association in accordance with the provisions of this Declaration, the amount of such increase may, in the discretion of the Board, be assessed and charged solely to and against such Owner as a Special Individual Assessment but without right to record a lien.
- (3) Expenses Incurred in Gaining Member Compliance. In the event that the Association incurs any costs or expenses, including reasonable title company, accounting, management fees, legal fees, or fees or costs of experts or consultants, to accomplish (i) any repair under the CC&R's, the Bylaws or the Association Rules, (ii) to prevent the continued maintenance of a nuisance (iii) to defend the Association in a lawsuit, including small claims court lawsuits, in which the Association is the prevailing party, (iv) or to otherwise bring the Owner and/or the Owner's Unit into compliance with the provisions of the CC&R's, the Bylaws or the Association Rules, the amount incurred by the Association or any

monetary penalties and interest thereon duly imposed hereunder shall be assessed and charged solely to and against such Owner as Special Individual Assessment but without right to record a lien; provided that Special Individual Assessments of the kind described in this Subparagraph may only be imposed after the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article XIV, hereof, and has been given a reasonable opportunity to comply voluntarily with the Association's governing documents before the assessment is imposed.

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described, and subject to the conditions imposed in subparagraph (a) of this Section 4.04, such Special Individual Assessments shall be entered on the Association assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner.

Special Individual Assessments imposed pursuant to Section 4.04(a)(2), or (3), may not be characterized nor treated as an assessment which may become a lien against the Member's Unit interest. Special Individual Assessments imposed pursuant to Section 4.04(a)(1) may become a lien against the Member's Unit as provided in Section 4.09 of this Article IV. However this Section 4.04(b) shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent Assessments.

Special Individual Assessments imposed pursuant to either Section 4.04(a)(1), or 4.04(a)(3) shall be payable in full to the Association within thirty (30) days after the mailing of notice of the assessment, and Special Individual Assessments imposed pursuant to Section 4.04(a)(2) shall be payable in full to the Association at least ten (10) days in advance of the date or dates for the payment of the increased insurance premium giving rise to the assessment.

#### **Section 4.05. Purpose and Reasonableness of Assessments.**

Each Assessment, whether it be a Regular, Special or Special Individual Assessment, made in accordance with the provisions of the CC&R's, is hereby declared and agreed (a) to be for use exclusively to promote the recreation, health, safety and welfare of the Residents of the Properties by the Owners and their families, tenants, invitees, licensees, guests and employees, or for the repair, maintenance, replacement and protection of the Common Areas and Common Facilities within the Properties and other portions of the Properties that the Association is obligated to maintain and repair under Article VI of the CC&R's, (b) to be a reasonable assessment and (c) to constitute a separate, distinct personal obligation (with respect to which a separate lien may be created to the extent provided in Section 4.04 above) of the Owner of the Unit against which the Assessment is made and shall bind the Owner's heirs, successors and assigns, provided that the personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

#### **Section 4.06. Exemption of Certain of the Properties from Assessments.**

Common Area and Common Facilities unless devoted to use as a residential dwelling, shall be exempt from the Assessments and the lien thereof provided herein.

#### **Section 4.07. Notice and Procedure for any Action Authorized Under Sections 4.02 and 4.03.**

Any action authorized under Sections 4.02 or 4.03 of this Article IV requiring the vote of the Association Members shall be taken either by secret ballot or at a meeting of the Members called for that purpose, written notice of which shall be sent to all Members not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting or return date of the secret ballots. An election with regard to assessments shall be held by secret ballot in accordance with applicable provisions of the California Civil Code.

#### **Section 4.08. Maintenance of Assessment Funds.**

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

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

(b) Separate Accounts; Commingling of Funds. Except as provided below, the proceeds of each Assessment shall be used only for the purpose for which such Assessment was made, and such funds shall be received and held in trust by the Association for such purpose. Notwithstanding the foregoing, the Board, in its discretion, may make appropriate adjustments among the various line items in the Board's approved general operating budget if the Board determines that it is prudent and in the best interest of the Association and its Members to make such adjustments. If the proceeds of any Special Assessment exceed the requirement of which

such assessment was levied, such surplus, in the Board's discretion, may be (1) returned proportionately to the contributors thereof; (2) reallocated among the Association's reserve accounts if any such account is under-funded, in the Board's opinion; or (3) credited proportionately on account of the owner's future Regular Assessment obligations.

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate account of all funds received by it in payment of each Assessment, and of all disbursement made therefrom. Receipts and disbursements of Special Assessments made pursuant to Section 4.03(a) of this Article IV shall be combined with the receipts and disbursements of the Regular Assessments. Reserve funds and the interest thereon shall be deposited in a separately designated account. The use of reserve funds is restricted as provided in the Restated Bylaws.

#### **Section 4.09. Effect of Non-Payment of Assessments; Enforcement of Liens.**

(a) At least 30 days prior to recording a lien upon the separate interests of an Owner to collect a debt which is past due under this Article IV, the Association shall notify the Owner in writing, by certified mail, of the following:

(1) A general description of the collection and lien enforcement procedures of the Association and the method of calculation of the amount, a statement that the Owner has the right to inspect the Association records, pursuant to the applicable provisions of the Corporations Code, and a statement informing the Owner that if the Owner's interest is placed in foreclosure because he is behind in his assessments, it may be sold without court action;

(2) Provide an itemized statement of the charges owed by the Owner including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any;

(3) A statement that the Owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the Association;

(4) The right to submit a written request to meet with the Board to discuss a payment plan. The Association shall provide the Owners the standards for payment plans, if any exist. The Board shall meet with the Owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled Board meeting within that period, in which case the Board may designate a committee of one or more members to meet with the Owner. Payment plans may incorporate any assessments that accrue during the payment plan period. Payment plans shall not impede the Association's ability to record a lien on the Owner's separate interest to secure payment of delinquent assessments. Additional late fees shall not accrue during the payment plan period if the Owner is in compliance with the terms of the payment plan. In the event of a default on

any payment plan, the Association may resume its efforts to collect the delinquent assessments from the time prior to entering into the payment plan. Any payments towards such delinquent assessments shall first be applied to the principal owed, and only after the principal owed is paid in full, shall such payments be applied to interest or collection expenses.

(5) The right to dispute the assessment debt by submitting a written request for dispute resolution to the Association pursuant to the Association's "meet and confer" program, if any; otherwise, as provided for by the applicable provisions of the Civil Code.

(6) The right to request alternative dispute resolution with a neutral third party pursuant to applicable provisions of the Civil Code before the Association may initiate foreclosure against the Owner's separate interest, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(b) Prior to recording a lien for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program, if any; otherwise, as provided for by the applicable provisions of the Civil Code.

(c) Prior to initiating a foreclosure for delinquent assessments, the Association shall offer the Owner and, if so requested by the Owner, shall participate in dispute resolution pursuant to the Association's "meet and confer" program if any; otherwise, as provided for by the applicable provisions of the Civil Code, with a neutral third party. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(d) The decision to record a lien for delinquent assessments shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an open meeting. The Board shall record the vote in the minutes of that meeting.

(e) Assessment Liens. Subject to California Civil Code Sections 1367.1 and 1367.4, and successor statutes thereto, the amount of the delinquent Regular or Special Assessment, plus any costs of collection (including but not limited to attorneys fees), late charges, and interest assessed in accordance with this Article IV, shall become a lien upon the Residence and Lot of the Owner. Said assessment lien shall be assessed from and after the time the Association causes to be recorded with the County Recorder a Notice of Delinquent Assessment which shall state the amount of the assessment and other sums imposed in accordance with this Declaration and consistent with the applicable provisions of the California Civil Code, a legal description of the Owner's interest against which the assessment or other sums are levied, and the name of the record Owner of the Owner's interest against which the lien is to be imposed. The itemized statement of the charges owed by the Owner shall be recorded together with the Notice of Delinquent Assessment. In order for the lien to be enforced by non-judicial foreclosure as

provided in the applicable provisions of the California Civil Code, the Notice of Delinquent Assessment shall state the name and address of the trustee authorized by the Association to enforce the lien by sale. The Notice of Delinquent Assessment shall be mailed by certified mail to every person whose name is shown as an Owner of the separate interest in the Association's records, and the notice shall be mailed no later than ten (10) calendar days after recordation. The notice shall be signed by the person designated in the Declaration or by the Association for that purpose, or if no one is designated, by the President of the Association.

(f) Action to Foreclose Lien. The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment, or foreclose its lien against the Owner's Residence and Lot in any manner permitted by law. Provided, however, that lien enforcement proceedings shall not be undertaken until the expiration of thirty (30) days following the recording of the Notice of Delinquent Assessment. Furthermore, the right of foreclosure in the case of Special Individual Assessments described in Section 4.04(a)(1), (3) or (4) hereof shall exist only to the extent specifically provided in Section 4.04(b) of this Article IV.

#### **Section 4.10. Collection of Debts for Assessments Less Than \$1,800.00.**

(a) If the Association seeks to collect delinquent regular or special assessments of an amount less than one thousand eight hundred dollars (\$1,800), not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, it may not collect that debt through judicial or nonjudicial foreclosure, but may attempt to collect or secure that debt in any of the following ways:

(1) By a civil action in small claims court, pursuant to those provisions of the California Code of Civil Procedure applicable to small claims court actions. If the Association chooses to proceed by an action in small claims court, and prevails, it may enforce the judgment as permitted under those provisions of the California Code of Civil Procedure applicable to small claims court actions. The amount that may be recovered in small claims court to collect upon a debt for delinquent assessments may not exceed the jurisdictional limits of the small claims court and shall be the sum of the following:

(A) The amount owed as of the date of filing the complaint in the small claims court proceeding.

(B) In the discretion of the court, an additional amount to that described in 4.10 (a) (1) (A) equal to the amount owed for the period from the date the complaint is filed until satisfaction of the judgment, which total amount may include accruing unpaid assessments and any reasonable late charges, fees and costs of collection, attorney's fees, and interest, up to the jurisdictional limits of the small claims court.

(2) By recording a lien on the Owner's separate interest upon which the Association may not foreclose until the amount of the delinquent assessments secured by the lien, exclusive of any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, equals or exceeds one thousand eight hundred

dollars (\$ 1,800) or the assessments are more than 12 months delinquent. If the Association chooses to record a lien under these provisions, prior to recording the lien, it shall offer the Owner and, if so requested by the Owner, participate in dispute resolution as set forth in the applicable provisions of the California Civil Code.

(3) Any other manner provided by law, except for judicial or nonjudicial foreclosure.

(b) If the Association seeks to collect delinquent regular or special assessments of an amount of one thousand eight hundred dollars (\$1,800) (or the lowest amount permitted by statute), or more, not including any accelerated assessments, late charges, fees and costs of collection, attorney's fees, or interest, or any assessments that are more than 12 months delinquent, it may use judicial or nonjudicial foreclosure subject to the following conditions:

(1) Prior to initiating a foreclosure on an Owner's separate interest, the Association shall offer the Owner and, if so requested by the Owner, participate in dispute resolution pursuant to the Association's "meet and confer" program, if any; otherwise, as provided for by the applicable provisions of the Civil Code. The decision to pursue dispute resolution or a particular type of alternative dispute resolution shall be the choice of the Owner, except that binding arbitration shall not be available if the Association intends to initiate a judicial foreclosure.

(2) The decision to initiate foreclosure of a lien for delinquent assessments that has been validly recorded shall be made only by the Board of Directors of the Association and may not be delegated to an agent of the Association. The Board shall approve the decision by a majority vote of the Board members in an executive session. The Board shall record the vote in the minutes of the next meeting of the Board open to all members. The Board shall maintain the confidentiality of the Owner or Owners of the separate interest by identifying the matter in the minutes by the parcel number of the property, rather than the name of the Owner or Owners. A Board vote to approve foreclosure of a lien shall take place at least 30 days prior to any public sale.

(3) The Board shall provide notice by personal service to an Owner of a separate interest who occupies the separate interest or to the Owner's legal representative, if the Board votes to foreclose upon the separate interest. The Board shall provide written notice to an Owner of a separate interest who does not occupy the separate interest by first-class mail, postage prepaid, at the most current address shown on the books of the Association. In the absence of written notification by the Owner to the Association, the address of the Owner's separate interest may be treated as the Owner's mailing address.

(4) A nonjudicial foreclosure by the Association to collect upon a debt for delinquent assessments shall be subject to a right of redemption. The redemption period within which the separate interest may be redeemed from a foreclosure sale under this paragraph ends 90 days after the sale.



#### **Section 4.11. Transfer of Unit by Sale or Foreclosure.**

Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any unit pursuant to mortgage foreclosure by the mortgagee of the first mortgage of record shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Where the mortgagee of the first or other purchaser of a Unit obtains title to the same as the result of foreclosure of any such first mortgage, the person acquiring title, the Owner's successors and assigns, shall not be solely liable for the share of the common expenses or assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from Owners of all of the Units including such acquirer, the Owner's successors and assigns.

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

#### **Section 4.12. Priorities.**

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

#### **Section 4.13. Unallocated Taxes.**

In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than being assessed to the Units, such taxes shall be included in the Regular Assessments made under the provisions of Section 4.02 of this Article IV and, if necessary, a Special Assessment may be levied against the Units in an amount equal to such taxes to be paid in installments as determined by the Board.

#### **Section 4.14. Assignment of Rents.**

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

#### **Section 4.15. Waiver of Exemptions.**

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

#### **Section 4.16. Statement of Default.**

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

### **ARTICLE V**

#### **Access to Books and Records**

##### **Section 5.01. Review by Member or Designated Person.**

(a) The Association shall make available Association records and enhanced Association records for the time periods and within the timeframes provided in the applicable provisions of the California Civil Code (which take effect on July 1, 2006) for inspection and copying by a member of the Association, or the member's designated representative. The Association may bill the requesting member for the direct and actual cost of copying requested documents. The Association shall inform the member of the amount of the copying costs before copying the requested documents.

(b) A Member of the Association may designate another person to inspect and copy the specified Association records on the Member's behalf. The member shall make this designation in writing.

#### **Section 5.02. Place of Inspection.**

(a) The Association shall make the specified Association records available for inspection and copying in the Association's business office within Santa Clara County. If the Association does not have a business office within the development, the Association shall make the specified Association records available for inspection and copying at a place that the requesting member and the Association agree upon.

(b) If the Association and the requesting member cannot agree upon a place for inspection and copying pursuant to paragraph 5.02(a), or if the requesting member submits a written request directly to the Association for copies of specifically identified records, the Association may satisfy the requirement to make the Association records available for inspection and copying by mailing copies of the specifically identified records to the member by first-class mail within the timeframes set forth in the applicable provisions of the California Civil Code. The Association may bill the requesting member for the direct and actual cost of copying and mailing requested documents. The Association shall inform the member of the amount of the copying and mailing costs, and the member shall agree to pay those costs, before copying and sending the requested documents.

#### **Section 5.03. Costs.**

In addition to the direct and actual costs of copying and mailing, the Association may bill the requesting member an amount not in excess of ten dollars (\$10) per hour, and not to exceed two hundred dollars (\$200) total per written request, for the time actually and reasonably involved in redacting the enhanced Association records. The Association shall inform the member of the estimated costs, and the member shall agree to pay those costs, before retrieving the requested documents.

#### **Section 5.04. Withholding of Certain Information.**

(a) Except as provided in paragraph 5.04 (b), the Association may withhold or redact information from the Association records for any of the following reasons:

- (1) The release of the information is reasonably likely to lead to identity theft. For the purposes of this section, "identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property. Examples of information that may be withheld or redacted pursuant to this paragraph include bank account numbers of members or vendors, social security or tax identification numbers, and check, stock, and credit card numbers.

- (2) The release of the information is reasonably likely to lead to fraud in connection with the Association.
- (3) The information is privileged under law. Examples include documents subject to attorney-client privilege or relating to litigation in which the Association is or may become involved, and confidential settlement agreements.
- (4) The release of the information is reasonably likely to compromise the privacy of an individual member of the Association.
- (5) The information contains any of the following:
  - (i) Records of a-la-carte goods or services provided to individual members of the Association for which the Association received monetary consideration other than assessments.
  - (ii) Records of disciplinary actions, collection activities, or payment plans of homeowners other than the homeowner requesting the records.
  - (iii) Any person's personal identification information, including, without limitation, social security number, tax identification number, driver's license number, credit card account numbers, bank account number, and bank routing number.
  - (iv) Agenda, minutes, and other information from executive sessions of the board of directors as described in the applicable provisions of the California Civil Code, or its successor statute except for executed contracts not otherwise privileged. Privileged contracts shall not include contracts for maintenance, management, or legal services.
  - (v) Personnel records other than the payroll records required to be provided under paragraph 5.04 (b).
  - (vi) Interior architectural plans, including security features, for individual homes.

(b) Except as provided by the attorney-client privilege, the Association may not withhold or redact information concerning the compensation paid to employees, vendors, or contractors. Compensation information for individual employees shall be set forth by job classification or title, not by the employee's name, social security number, or other personal information.

#### **Section 5.05. Use of Information.**

(a) The Association records, and any information from them, may not be sold, used for a commercial purpose, or used for any other purpose not reasonably related to a member's interest as a member. An Association may bring an action against any person who violates this section for injunctive relief and for actual damages to the Association caused by the violation.

(b) This section may not be construed to limit the right of an Association to damages for misuse of information obtained from the Association records pursuant to this section or to limit the right of an Association to injunctive relief to stop the misuse of this information.

(c) An Association shall be entitled to recover reasonable costs and expenses, including reasonable attorney's fees, in a successful action to enforce its rights under this Article.

#### **Section 5.06. Legal Action By Member.**

A member of an Association may bring an action to enforce the member's right to inspect and copy the Association records. If a court finds that the Association unreasonably withheld access to the Association records, the court shall award the member reasonable costs and expenses, including reasonable attorney's fees, and may assess a civil penalty of up to five hundred dollars (\$500) for the denial of each separate written request. A cause of action under this section may be brought in small claims court if the amount of the demand does not exceed the jurisdiction of that court. A prevailing Association may recover any costs if the court finds the action to be frivolous, unreasonable, or without foundation.

### **ARTICLE VI**

#### **Maintenance**

#### **Section 6.01. Association Maintenance and Repair.**

(a) Common Area. The Association shall maintain, repair, replace, restore, operate and manage all of the Common Area and Common Facilities. Maintenance shall include (without limitation): Painting, maintaining, cleaning, repairing and replacing of all Common Area property.

(b) Common Area Termites. The Association shall have the Common Area periodically inspected for termites and shall take appropriate corrective measures therefor. The Association shall be responsible for repair and maintenance of the Common Area occasioned by the presence of wood-destroying pests or organisms.

(c) Negligent Damage. The financial responsibility of the Association for maintenance and repair under this Section 6.01 shall not extend to repairs or replacement arising out of or caused by the willful or negligent act or negligence of an Owner, or the Owner's household member guests, tenants or invitees. The cost of repair or replacement resulting from such willful or negligent acts shall be the responsibility of the Owner who caused or whose

household members, guests, tenants or invitees caused such damage. The cost thereof shall constitute a Special Assessment chargeable to such Unit and shall be payable to the Association by the Owner of such Unit. Said Special Assessment may become a lien against the member's separate interest enforceable by the sale of the interest under the applicable provisions of the California Civil Code.

(d) Residences and Units. The Association shall perform maintenance on and repair and replace the following components of Common Area property as follows:

- (1) Repair, replace and care for roofs, gutters, chimneys and downspouts.
- (2) Paint, caulk, maintain, repair and replace exterior stucco and wood siding and trim.
- (3) Repair, replace, paint or stain fences and balconies.
- (4) Paint or stain exterior side of all exterior doors and garage doors.
- (5) Repair, replace and maintain sewer, water, gas and electric lines connecting individual Residences and main service lines to the point that such underground sewer, water or electric lines reach the foundation of the Residences.
- (6) Maintain and repair balconies, patios, and fences; however, the Association is not responsible for maintaining or repairing patio and balcony improvements, such as floor coverings, concrete (other than concrete as originally built), all hardscape including walkways, curbs, planters, and bricks, landscape, hot tubs/spas, and décor, etc., that have been added as an upgrade by the Owner.
- (7) Maintain, repair, and replace drainage facilities.
- (8) Trees, shrubs, grass and walks, except where located within fenced patio or yard areas of an individual unit.

(e) The Association shall not be responsible for paying for the temporary dislocation of owners which may result from any maintenance and/or repair work.

#### **Section 6.02. Owner Maintenance and Repair.**

(a) Except for the limited maintenance and repair of certain Common Area property which the Association is required to maintain and repair as provided in Section 6.01(d) of this Declaration, each Unit Owner shall, at the Owner's sole cost and expense, maintain and repair the Owner's Unit. Such maintenance and repair shall be performed by the Owner so as to keep the Owner's Unit in a condition of good order and repair, and in accordance with the Association Rules.

(b) Each Owner is responsible for the glass surfaces, glass doors, windows, window frames, screens and screen doors, doorbell and intercom devices, and any hardware on doors.

(c) Each Owner is responsible for private patios and external patio and stairway lighting, except as provided in Section 6.01(d).

(d) Each Owner is responsible for the interior of the Owner's Residence and the telephone, cable, plumbing, electrical, heating, ventilation and air conditioning systems servicing the Owner's Residence, which are located within the Residence and extending to the edge of the foundation.

(e) Landscape planting, irrigation and landscape maintenance within enclosed patio or yard areas or balconies and decks, subject to the provisions of Sections 8.01(a) and 9.12 of this Declaration.

#### **Section 6.03. Repair for Owners.**

In the event an Owner fails to maintain the Residence or Unit in a manner which the Board deems necessary to preserve the appearance and value of the property, the Board may notify Owner of the work required and request it be done within thirty (30) days from the giving of such notice. In the event Owner fails to carry out such maintenance within said period, the Board may cause such work to be done and may specially assess the cost to such Owner.

#### **Section 6.04. No Rubbish.**

All Units, whether occupied or unoccupied, shall at all times be maintained in such a manner as to prevent their becoming unsightly by the reason of the accumulation of rubbish, debris or unsightly growth thereon.

### **ARTICLE VII**

#### **Duties and Powers of the Association**

##### **Section 7.01. Duties.**

In addition to the duties enumerated in its Bylaws, or elsewhere provided for in the CC&R's, and without limiting the generality thereof, the Association shall perform the following duties:

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

(b) Insurance. The Association shall maintain such policy or policies of insurance as are required by Article XI, hereof.

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

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

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

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

#### **Section 7.02. Powers.**

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

(a) Utility Service. The Association shall have the authority (but not the duty) to obtain, for the benefit of all of the Residences, water, gas and electric service and refuse collection.

(b) Easement. The Association shall have authority, by document signed or approved by at least two-thirds majority of the total voting power of the Association, to grant or convey to any third person permits, licenses, rights of way and easements in addition to those shown on the Map, in, on, over or under the Common Areas for the purpose of constructing, erecting, operating or maintaining thereon, therein or thereunder, roads, utilities, overhead or underground 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, satellite television, and any similar public or quasi-public improvements or facilities, and each purchaser in accepting a Deed to a Unit, expressly consents hereto.

(c) Manager. The Association shall have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, except for the responsibility to levy



finances, impose discipline, hold hearings, file suit, or make capital expenditures. The term of the management contract shall be limited as provided in Section 16.07 herein.

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

(e) Assessment, Liens and Fines. The Association shall have the power to levy and collect assessments in accordance with the provisions of Article IV hereof. The Association may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the CC&R's, Bylaws and/or the Rules. Penalties may include but are not limited to: fines, temporary suspension of voting rights, rights to the use of Common Facilities or other appropriate discipline, provided that the accused Member is given notice and the opportunity to be heard with respect to the alleged violation before a decision to impose discipline is made.

(f) Enforcement. The Association shall have the authority to enforce the CC&R's as provided in Article XIV hereof.

(g) Acquisition and Disposition of Property. The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of Association. Any transfer of real property shall be by document signed or approved by two-thirds (2/3) of the Members.

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

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

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

- (1) To make expenditures for capital additions or improvements chargeable against the reserve funds;
  - (2) To conduct hearings concerning compliance by an Owner or the Owner's tenant, guest or invitee with the CC&R's, Bylaws or Rules promulgated by the Board;
  - (3) To make a decision to levy monetary fines, impose special assessments against individual Units, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;
  - (4) To make a decision to levy Regular or Special Assessments; or
  - (5) To make a decision to bring suit, record a claim of lien or institute foreclosure proceedings for default in payment of assessments.
- (k) Security. The Association shall have the power to contract for security service for the Common Area.

(l) Appointment of Trustee. The Association, or the Board acting on behalf of the Association, has the power to appoint or designate a trustee to enforce assessment liens by sale as permitted under California law.

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

## ARTICLE VIII

### Architectural Control

#### Section 8.01. Improvements in General; Establishment of Architectural Committee.

(a) Architectural Committee Approval. No building, fence, gate, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, garage, carport, carport cover, improvements or other structure shall be commenced, erected or maintained upon the Properties or any portion thereof, nor shall any exterior addition to or change or alteration of the Common Area or Exclusive Use Common Area be made, until a written application for approval of the proposed work supported by plans and specifications showing the nature, color, kind, shape, height, materials, and location of the same, has been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors or its designated Architectural Committee (which shall be composed of representatives appointed by the Board). Said plans and specifications shall be submitted to the Board by personal delivery or first class mail to the

Secretary of the Association, Manager of the Association, or the Chairperson of the Architectural committee.

(b) Additional Information. The Board or Architectural Committee shall have the right to request additional information regarding the work of improvement if the request is delivered to the applicant in writing within thirty (30) days following the date the initial application was filed. The Board also may determine if there is opposition to the application by one or more neighbors in which case the Board may request written comment from the affected neighbor(s).

(c) The Board shall make its decision and recommendations within sixty (60) days following the date of receipt of the application or, in the event that such additional information has been requested of the applicant, within sixty (60) days after such additional information is received. If the Board fails to approve, deny, or make a request for additional information in writing within sixty (60) days of the completion of the application, the same shall be deemed to be unconditionally approved.

(d) Architectural Standards. The Board may, from time to time, adopt and promulgate Architectural Standards.

(e) Owner Responsibility. By approving plans and specifications, the Board and the Architectural Committee do not assume any liability or responsibility for compliance with building or zoning ordinances, which compliance shall be the sole responsibility of the applicant. No Owner may make or cause any alteration which would adversely affect the structural integrity of any building or which would impair the effectiveness of sound control between residences.

#### **Section 8.02. Common Area.**

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

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

(b) Masts, towers, poles, television and radio antennas, including satellite dishes, are subject to the provisions of Article IX of this Declaration.

#### **Section 8.03. Enforcement of Architectural Restrictions.**

Any modifications made by the Owner which are subject to Section 8.01 herein must be done in compliance with the Architectural Standards adopted by the Board. If an Owner makes

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

#### **Section 8.04. Variances.**

(a) The Board of Directors or Architectural Committee shall be entitled to allow reasonable variances with respect to this Article VIII in order to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardships.

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

### **ARTICLE IX**

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

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

#### **Section 9.01. Residential Use.**

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

No Unit or Units or any portion thereof in the project shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license", "travel club", "extended vacation" or other membership or time interval ownership arrangement.

#### **Section 9.02. Units.**

Each Unit shall be conveyed as a separately designated and legally described fee simple estate subject to the CC&R's.

#### **Section 9.03. Common Area.**

Nothing shall be altered, constructed, placed or stored in the Common Area except upon the direction and under the authority of the Association in accordance with Article VIII hereof. Use and enjoyment of Common Areas shall at all times be subject to the CC&R's, the Bylaws and Rules and other purposes incidental and ancillary to the use of Units.

#### **Section 9.04. Use of the Properties.**

The use of all Properties shall be limited to those uses, as strictly interpreted, which are specified in the CC&R's. Any change in use of the Properties, or any part thereof, shall require the vote or written consent of two-thirds (2/3) majority of the Members.

#### **Section 9.05. Prohibition of Noxious Activities.**

No noxious or offensive activities shall be carried on or conducted upon any Unit or the Common Areas, nor shall anything be done on any Unit or the Common Areas that shall be or become an unreasonable annoyance or nuisance to the neighborhood, or which may in any way increase the rate of insurance for the Properties, or cause any insurance policy to be canceled, or to cause a refusal to renew the same, or which will impair the structural integrity of any building. Without limiting any of the foregoing, no Owner or tenant shall permit excessive noise, including, but not limited to, the barking of dogs, the operation of air conditioners, stereo amplifier systems, television systems, motor vehicles or power tools, to emanate from any Unit, Garage, Carport, or the Common Areas, which would unreasonably disturb any other Member's enjoyment of the Owner's Unit or the Common Area. Excessive noise levels may be determined according to the ordinances of the City of San Jose or other applicable governmental regulation dealing with such matters.

#### **Section 9.06. Temporary Structures.**

No structure of a temporary character, trailer, mobilehome, camper, motor vehicle, tent, shack, or other outbuilding shall be used on the Common Area at any time as a residence, either temporarily or permanently. Furthermore, no structures shall be built for any purposes in a Unit or the Common Area (other than the original condominium structure) which are visible from neighboring Units or above the fences between adjoining Units.

#### **Section 9.07. Household Pets.**

(a) A maximum of two domestic pets, defined as domesticated dogs, domesticated cats, domesticated birds, or other animal as agreed upon with the Board of Directors, and as defined in the applicable provisions of the California Civil Code or any successor statute thereto, are permitted.

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

#### **Section 9.08. Signs.**

Subject to the permitted restrictions of the applicable provisions of the California Civil Code, an Owner of a Unit may display or have displayed on the Owners' Unit, a noncommercial sign, poster, flag, or banner. An Owner is permitted to display a "For Sale" or "For Lease" sign so long as the sign is free standing (not attached to the fence). Any "For Sale" or "For Lease" sign must be removed within 24 hours after the sale or lease has been effectuated.

#### **Section 9.09. Business Activities.**

No business activities of any kind whatsoever shall be conducted in any building or in any portion of any Unit except for activities of the Association or the maintenance of buildings by the Association, its successors and assigns, in furtherance of its powers and purposes as set forth herein. Notwithstanding the foregoing, no restrictions contained in this Article IX shall be construed in such a manner as to prohibit any Owner from (a) maintaining a personal library within the Residence; (b) keeping personal business records or accounts therein; (c) handling personal or business telephone calls or correspondence therefrom; or (d) conducting any other activities in the Owner's Unit such as a home office, otherwise compatible with residential use and the provisions of the CC&R's which are permitted under applicable zoning laws or governmental regulations without the necessity of first obtaining a special use permit or similar specific governmental authorization. Such uses are expressly declared to be customarily incident to the principal residential use and not in violation of any provision of this Article IX. In no event may any business activities be conducted on the Properties which increase vehicular traffic, or create unreasonable noise or nuisances to residents of other Residences or which cause or threaten to cause the increase in any insurance premiums paid by the Association or reduce the availability of any insurance maintained by the Association. There shall be no garage sales without prior Board approval.

#### **Section 9.10. Garbage and Storage.**

No rubbish, trash, or garbage shall be allowed to accumulate in or around Units and any trash outside the interior walls of a Residence shall be stored entirely within appropriate covered disposal containers maintained in good, clean condition. No disposal containers, other than those

maintained by the Association, shall be allowed in the Common Area. Any extraordinary accumulation of rubbish, trash, garbage or debris (such as is often generated upon vacating of premises or during holidays, including Christmas trees) shall be removed from the Properties to a public dump or trash collection area by the Owner or tenant at the Owner's expense.

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

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

#### **Section 9.11. Exterior Storage and Clotheslines.**

There shall be no drying or laundering of clothes on the balconies, patios, porches, or other areas in any manner which is visible from any neighboring Unit. Further, no clothes washers, clothes dryers, furniture (other than furniture made expressly for outdoor use) refrigerators, freezers or other appliances may be kept, stored or operated on any balcony, patio, porch or other exterior area.

#### **Section 9.12. Landscaping Maintenance Outside of Units.**

In addition to the maintenance upon the Common Area, the Association shall provide for the care, maintenance and replacement of trees, shrubs, and other landscaping located outside of private fenced or walled areas. Each Owner shall allow the Association reasonable access to these portions of the Unit for the care and maintenance to be provided by the Association. Any tree, shrub, or other landscaping on Units, including such landscaping in entryways and enclosed patio areas which is visible from another Unit or from the Common Area is subject to the Rules and Architectural Standards. Owners shall not allow trees, shrubs or other landscaping in enclosed patio or yard areas to damage or interfere with any building or Common Area component maintained by the Association.

In the event that the need for replacement of trees, shrubs, or other landscaping is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the household, guests or invitees of the Owner of the Unit needing such replacement, the cost of such exterior maintenance may be collected as a Special Individual Assessment. Such an Assessment shall be added, however, only after reasonable notice to the Owner and opportunity for a hearing by the board.

### **Section 9.13. No Alterations or Antennas.**

In order to insure adequate aesthetic controls and to maintain the general attractive appearance of the Properties, no Owner, resident or tenant shall, at the Owner's expense or otherwise, construct fences, walls, or make any alterations, additions or modifications to or on any part or portion of the Common Areas or exterior surfaces of any Residence (including, without limitation, the erection of awnings, exterior window coverings, hangings and the like), or place or maintain any objects, such as masts, towers, poles, or television and radio antennas, or satellite dishes, on or about the exterior of any building within the Properties, except as authorized by federal law. No construction or alteration of improvements may be undertaken on any Lot without approval of the Board pursuant to Article VIII hereof.

### **Section 9.14. Parking and Vehicle Restrictions.**

The following parking and vehicle restrictions shall apply within the Properties:

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

(b) Garages are to be used for the parking and storage of items, vehicles, trailers or boats, provided, however, that such are fully contained within said Garage, not visible from outside of said Garage and in accordance with all laws, rules, ordinances, and regulations. Garage doors shall be kept closed at all times except for reasonable removal of vehicles and items stored therein.

(c) The Common Area is not to be used, either permanently or temporarily, for the storage of boats, trailers or similar items of personal property, except as provided in Subparagraph (f) of this Section. No vehicle shall be parked or left in the street areas in front of the garages, or along any curb areas, unless the area is specifically marked as a designated parking space.

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

(e) No unlicensed or unregistered vehicles may be kept or operated on the Properties. All vehicles kept on the Properties must display current DMV tags.

(f) Campers, trailers, housetrainers, mobilehomes, motor homes, recreational vehicles, boats, boat trailers, commercial vehicles and trucks in excess of three-quarter ton capacity are not to be parked within the Properties, except for periods not to exceed four (4) hours for the purpose of loading and unloading. Personal property, other than authorized vehicles, shall not be stored in garages if such storage will necessitate or result in the parking of



vehicles on streets within the Properties. No unlicensed motor vehicles shall be operated on the Properties.

#### **Section 9.15. Machinery and Equipment.**

No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Unit except such machinery or equipment as is usual or customary in connection with the use, maintenance or construction of a Residence or appurtenant structures within the Properties or authorized maintenance of the Common Area. No appliances, machinery or equipment may be maintained, stored or used in the Common Area.

#### **Section 9.16. Visitors.**

Each Owner shall be accountable to the remaining Owners, their families, visitors, guests and invitees, for the conduct and behavior of the household members and guests residing in or visiting the Owner's Residence and for any property damage caused by such persons.

#### **Section 9.17. Compliance With Local Laws And Activities Affecting Insurance.**

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

#### **Section 9.18. Restriction on Further Subdivision and Severability.**

No Unit shall be further subdivided nor shall less than all of any such Unit be conveyed by an Owner thereof. No Owner of a Unit within the Properties shall be entitled to sever that Unit from the Common Area portions of the Properties. No easement or other interest in a Unit shall be given without the prior written approval of the Board of Directors.

#### **Section 9.19. Window Coverings.**

Windows can be covered only by drapes, shutters, blinds or shades and cannot be painted or covered by foil, cardboard, reflective films, bed sheets, towels or other similar materials. The use and the covering of the interior surfaces of the glass doors and windows appurtenant to any Unit in the Properties, whether by draperies, shades or other items visible from the exterior of the building, shall be subject to the Rules; provided, however, that the exterior lining or surface of the draperies, shades or other covering items visible from the exterior shall be consistent with the Architectural Standards.

## **ARTICLE X**

### **Easements**

#### **Section 10.01. Maintenance Easements.**

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

#### **Section 10.02. Blanket Utility Easement.**

There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress, egress, installation, replacing, repairing and maintaining all on the Unit including but not limited to water, sewers, gas, telephones, drainage and electricity, and cable television. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment and underground facilities on the Properties. Notwithstanding the foregoing, no sewer, electrical lines, water lines, or other utilities may be installed or relocated on said Properties except as initially constructed or thereafter approved by the Association's Board of Directors.

#### **Section 10.03. Other Easements.**

Each Unit and its Owner and the Association, as the case may be, is declared to be subject to all easements, dedications, and rights granted or reserved in, on, or over, and under the Property and each Unit as shown on the Subdivision Map.

## **ARTICLE XI**

### **Insurance**

#### **Section 11.01. Liability Insurance.**

To the extent such insurance is reasonably obtainable, the Association shall obtain and maintain comprehensive liability insurance insuring the Association, and the Owners and occupants of Units, and their respective household members, guests, invitees, and the agents and employees of each other, against any liability incident to the ownership or use of the Common Area and any other Association owned and maintained real or personal property, and including, if obtainable, a cross-liability or severability of interests endorsement insuring each insured against liability to each other insured. The limits of such insurance shall not be less than Three Million Dollars (\$3,000,000) covering all claims for death, personal injury and property damage arising out of a single occurrence. In addition, the Association shall obtain and continue in effect additional umbrella coverage of One Million Dollars (\$1,000,000).

#### **Section 11.02. Copies of Policies.**

Copies of all Association insurance policies (or certificates showing the premium thereon to have been paid) shall be retained by the Association and shall be available for inspection by Owners at any reasonable time.

#### **Section 11.03. Fire and Casualty Insurance.**

The Association shall carry property (fire and casualty) insurance equal to the full replacement value (that is, 100% of current replacement cost) of all improvements including each Owner's Unit. The Association recommends that Owners continuously maintain personal liability insurance. As the Association insurance does not insure the Owner's household furniture and other personal property nor untenability of premises nor damage assessments, the Association recommends that Owners secure adequate insurance coverage therefor. The Association further recommends that Owners continuously maintain loss assessment coverage including earthquake loss assessment coverage.

#### **Section 11.04. Worker's Compensation.**

The Board shall purchase and maintain worker's compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association.

#### **Section 11.05. Fidelity Bonds.**

The Board shall purchase and maintain fidelity bonds or insurance covering all officers and employees of the Association handling or responsible for Association funds.

#### **Section 11.06. Director and Officer Liability Insurance.**

To the extent insurance is available, the Association shall purchase and maintain insurance in an amount not less than One Million Dollars (\$1,000,000) on behalf of any Director, Officer, or Member of a Committee of the Association (collectively the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, regardless of whether the Association would have the power to indemnify the agent against such liability under applicable law.

#### **Section 11.07. Other Insurance.**

(a) Generally. The Board may, in its discretion, purchase other insurance with such coverages and in such amounts as the Board may deem prudent from time to time, including, by way of example and not of limitation, insurance on personal property owned by the Association.

(b) Earthquake Insurance. The Association is not required to procure earthquake insurance. However, the Board, in its discretion, may decide to be self-insured for earthquake related damage. In the event that there is self-insurance for earthquake related damage, the

Board shall have the absolute duty to repair and reconstruct damaged improvements, without the consent of Members, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed 5 percent of the budgeted gross expenses of the Association for that fiscal year when aggregated with any other Special Assessments for the same fiscal year. Such reconstruction shall first be paid by the self-insurance proceeds and any shortfall shall be assessed to the Owners in accordance with the proportionate share of cost of reconstruction or restoration of the Unit, over and above the available self-insurance proceeds. Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area based upon the ratio the square footage of the floor area of his or her Unit bears to the total square footage of the floor area of all affected Units.

#### **Section 11.08. Deductible.**

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

#### **Section 11.09. Owner's Insurance.**

The Association is not responsible for procuring personal liability and property damage with respect to the Owner's Condominium. Owners are encouraged to procure their own personal liability and property damage insurance with the coverages they deem appropriate.

#### **Section 11.10. Adjustment of Losses.**

The Board is appointed attorney-in-fact by each Owner to negotiate and agree on the value and extent of any loss in any policy carried pursuant to Sections 11.01 and 11.06 of this Article XI. The Board is granted full right and authority to compromise and settle any claims or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer.

#### **Section 11.11. Annual Insurance Review.**

The Board shall at least annually determine whether the amounts and types of insurance obtained provide adequate coverage in light of increased construction costs, inflation, practice in the area in which the Properties are located, or any other factor which tends to indicate that either additional insurance policies or increased coverage under the existing policies are necessary or

desirable to protect the interests of the Association. If the Board determines that increased coverage or additional insurance is appropriate, it shall obtain the same.

#### **Section 11.12. Insurance Disclosures.**

The Association shall provide the following insurance disclosures to the Members.

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

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

(b) The Association shall, as soon as reasonably practical, notify its Members by first-class mail if any of the policies described in Subparagraph (a) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits, or an increase in deductible, for any of those policies. If the Association receives any notice of nonrenewal of a policy described in Subparagraph (a), the Association shall immediately notify its Members if replacement coverage will not be in effect by the date the existing cover will lapse.

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

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

"This summary of the association's policies of insurance provides only certain information, as required by subparagraph (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property, or real property improvements to or around your dwelling, or personal injuries or other

losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with their individual insurance broker or agent for appropriate additional coverage."

## **ARTICLE XII**

### **Damage or Destruction**

#### **Section 12.01. Partial Damage or Destruction.**

(a) Insurance Available.

If there is partial damage or destruction to one (1) or more Units and/or any part of the Common Area caused by fire or other casualty for which insurance is available (including self-insurance funds), the Board shall have the absolute duty to repair and reconstruct the damaged improvements, without the consent of Members. Such reconstruction shall first be paid by the insurance proceeds, and any shortfall shall be assessed to all Owners. Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area based upon the ratio the square footage of the floor area of his or her Unit bears to the total square footage of the floor area of all affected Units. The repair or rebuild of the damaged property shall be done in conformance with its original design and specifications, unless the Board deems otherwise. The Owners shall not be assessed for or share the cost of rebuilding or replacing any property that is not Common Area or Restricted Common Area.

(b) No Insurance Available.

If there is partial damage or destruction to any part of the Common Area or Restricted Common Area caused by fire or other casualty for which no insurance is available, the Board shall have the absolute duty to repair and reconstruct the damaged improvements, without the consent of Members. Such reconstruction shall be assessed to all Owners. Owners shall contribute their proportionate share of the cost of the reconstruction or restoration based upon the ratio the square footage of the floor area of his or her Unit bears to the total square footage of the floor area of all affected Units. The repair or rebuild of the damaged property shall be done in conformance with its original design and specifications, unless the Board deems otherwise. The Owners shall not be assessed for or share the cost of rebuilding or replacing any property that is not Common Area or Restricted Common Area.

#### **Section 12.02. Total Damage or Destruction.**

If there is total damage to the Properties (which is defined as damages exceeding the fair market value of the Properties) then and in that event, the following shall apply:

(a) Minor Deficiency. If the amount of available insurance proceeds is at least eighty-five percent (85%) of the cost of repairing or rebuilding the damaged property to its original design and specifications, the insurance proceeds shall be paid to the Association, and the Board shall thereupon contract to repair or rebuild the damaged portions of the Project, including all Units, and the Common Area so damaged. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding, the Board shall levy a Special Assessment against all Unit Owners pursuant to Section 4.03 hereof. Owners shall contribute their proportionate share of the cost of reconstruction or restoration of any portion of the Common Area based upon the ratio the square footage of the floor area of his or her Unit bears to the total square footage of the floor area of all affected Units. The repair or rebuild of the damaged property shall be done in conformance with its original design and specifications, unless the Board deems otherwise.

(b) Major Deficiency. In the event that there is total damage or destruction, and the amount available from such insurance proceeds is less than eighty-five (85%) percent of the cost of repairing or rebuilding, then such insurance proceeds shall be paid to a bank, savings and loan association or trust company designated by the Board. Said funds shall be held for the benefit of all Unit Owners and their mortgagees, as their respective interests shall appear, pursuant to an insurance trust agreement consistent with the provision of this Declaration, approved and executed by the Board. The Board shall obtain bids from two or more responsible licensed contractors to rebuild the Project, including all damaged Units and all damaged Common Area, to its condition immediately prior to such damage or destruction and shall, as soon as possible, call a special meeting of the Association Members and all first mortgagees of record to consider such bids. At such special meeting, the Members shall accept or reject such bids by a vote of not less than sixty percent (60%) of Members and seventy-five percent (75%) of the first mortgagees attending such meeting.

In the event a bid is accepted (which bid need not be the lowest bid), the Board shall levy a special assessment against all Unit Owners pursuant to Section 4.03 and in the proportionate shares as set forth in 12.02 (a) to make up the deficiency, if any, between the total insurance proceeds and the contract price for such repair or rebuilding. All insurance proceeds, including any subject to liens of mortgagees or beneficiaries of deeds of trust, shall be used for such rebuilding or repair. If any bid shall be accepted to repair or rebuild, the contractor shall provide a completion bond naming the Association and each Unit Owner as Beneficiaries.

In the event all bids are rejected, the Board shall recommend such alternative reconstruction of the damaged or destroyed improvements at a lesser cost as it deems reasonable or adequate, which alternatives shall be placed to bid and voted upon as previously provided. In the event that no such alternatives are accepted by the Unit Owners and first mortgagees, the Board is hereby empowered, as the agent for all Unit Owners, to sell the entire Project, including all Units and the Common Area in its then present condition, on terms satisfactory to the Board. In the event of the sale of all Units and the Common Area, proceeds from such sale and insurance proceeds received by the Association on account of the destruction of the Common Area shall be distributed by the Association among Unit Owners and their respective mortgagees

according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal.

### **Section 12.03. Repair and Reconstruction of Units.**

Each Owner shall be obligated to repair the Owner's Unit to the extent required under Article VI, Section 6.02, irrespective of the amount of available insurance proceeds. All such repairs shall be completed in a reasonable time which shall not exceed, in any case, twelve (12) months after the loss. The Association shall repair all items set forth in Article VI, Section 6.01 (d), of these CC&R's.

## **ARTICLE XIII**

### **Condemnation**

#### **Section 13.01. Sale by Consent.**

If an action for condemnation of all or a portion of the Common Area is proposed or threatened by any governmental agency having the right of eminent domain, then, after approval by vote or written consent of at least fifty-one percent (51%) of all of the Owners, the Common Area, or a portion of it may be sold and conveyed to the condemning authority by the Association or its designees acting as the attorney-in-fact of all Owners under an irrevocable power of attorney, which each Owner by accepting a deed to a Unit in the Development grants to the Board and which shall be coupled with the interest of all other Owners, for a price deemed fair and equitable by the Board.

#### **Section 13.02. Distribution of Proceeds of Sale.**

On a sale occurring under Section 13.01 of this Article XIII the proceeds shall be distributed among the affected owners of Units and their respective mortgagees according to the relative values of the Units affected by the condemnation as determined by an independent appraiser.

#### **Section 13.03. Distribution of Condemnation Award.**

If the Common Area, or a portion of it, is not sold but is instead taken, the award shall be apportioned among the Owners and their respective Mortgagee by the terms of the judgment of condemnation, and if not so apportioned, after that the award shall be distributed equally to each Owner and their Mortgagees as their respective interests may appear.



## **ARTICLE XIV**

### **Breach and Default**

#### **Section 14.01. Remedy at Law Inadequate.**

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

#### **Section 14.02. Nuisance.**

Without limiting the generality of the foregoing, the result of every act or omission whereby a covenant contained in the CC&R's, the Bylaws or Rules is violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy against nuisance, either public or private, shall be applicable against every such act or omission.

#### **Section 14.03. Costs and Attorneys' Fees.**

In any action brought because of any alleged breach or default of any Owner or other party hereto under the CC&R's, the Court shall award to the prevailing party in such action such attorneys' fees and other costs as it may deem just and reasonable.

#### **Section 14.04. Cumulative Remedies.**

The respective rights and remedies provided by the CC&R's or by law shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude or affect the exercise at the same or at different times, of any other such rights or remedies for the same or any different default or breach or for the same or any different failure of any Owner or others to perform or observe any provision of the CC&R's.

#### **Section 14.05. Failure Not a Waiver.**

The failure of any Owner, the Board of Directors or the Association or its officers or agents to enforce any of the covenants, conditions, restrictions, limitations, reservations, grants of easements, rights, rights-of-way, liens, charges or equitable servitudes contained in the CC&R's shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

#### **Section 14.06. Suspension, Fines and Enforcement.**

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

(b) Complaint. Upon a finding by the Board of a violation of a provision of the Association Management Documents, the Board shall deliver a complaint to the Owner who is alleged to have violated, or whose household member(s), tenant(s), guest(s), invitee(s) or agents(s) are alleged to have violated, any such provision. The complaint shall be delivered in the manner prescribed for the delivery of notices in Article XVII entitled "Notices" of the CC&R's and shall contain the following information:

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

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

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

(e) Corrective Work. If a violation requiring corrective work continues to exist after the expiration of the time limitation established by the Board for the completion of such corrective work, the Board shall have the right, but not the obligation, to enter upon such Owner's Unit as necessary to accomplish such corrective work. Entry for such purpose may be made after 48 hours notice to the Owner.

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

(g) Exceptions. The provisions of this Section 14.06 shall not apply to the imposition of late charges or interest for the late payment of any assessment nor to the recordation of a lien or foreclosure of a lien in the case of delinquent assessments. Further, nothing in this Section 14.06 shall limit the power of the Board to take immediate action that may be necessary to alleviate an emergency situation.

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

#### **Section 14.07. Violation of Law.**

Any violation of any state, municipal or local law, or ordinance or regulation pertaining to the ownership, occupation or use of any Unit within the Properties is hereby declared to be a violation of the CC&R's and subject to any or all of the enforcement procedures set forth herein.

#### **Section 14.08. Alternative Dispute Resolution.**

(a) ADR Procedure. Unless the applicable time limitation for commencing the action would run within one hundred twenty (120) days, prior to the filing of a civil action by either the Association or an Owner solely for declaratory, injunctive, or writ relief, or for that relief in conjunction with a claim for monetary damages, other than assessments, not in excess of five thousand dollars (\$5,000), related to the enforcement of the Association Management Documents, the parties shall endeavor, as provided herein, to submit their dispute to a form of alternative dispute resolution, such as mediation or arbitration. This section does not apply to a small claims action, nor to an assessment dispute. The form of alternative dispute resolution chosen may be binding or nonbinding at the option of the parties. Any party to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include (1) a brief description of the dispute between the parties, (2) a request for alternative dispute resolution, and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be by personal delivery, first-class mail, express mail, facsimile transmission, or other means reasonably calculated to provide the party on whom the request is served actual notice of the request. Parties receiving a Request for Resolution shall have thirty (30) days from service of the Request for Resolution to accept or reject alternative dispute resolution and, if not accepted within thirty (30) day period by a party, shall be deemed reject by that party. If alternative dispute resolution is accepted by the party upon whom the request for Resolution is served, the alternative dispute resolution shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the alternative dispute resolution shall be borne by the parties. Any Request for Resolution sent to the Owner shall include a copy of Civil Code Section 1369.520.

(b) Notice of ADR Procedure. The Board of Directors annually shall provide to the Members of the Association a summary of the provisions of California Civil Code Section 1369.590, which summary shall include the following language:

“Failure of a member of the Association to comply with the alternative dispute resolution requirements of Section 1369.520 of the California Civil Code may result in the loss of your right to sue the association or another member of the association regarding enforcement of the governing documents or the applicable law.”

The summary shall be provided either at the time the pro forma budget required by applicable provisions of the California Civil Code is distributed or in the manner specified in the applicable provisions of the Corporations Code, covering written notices as part of a newsletter regularly sent to the Members.

## **ARTICLE XV**

### **Amendment of CC&R's**

#### **Section 15.01. Amendment.**

(a) Amendment In General. Except as otherwise provided in Section 16.03 of Article XVI of the CC&R's, the CC&R's may be amended or revoked in any respect by the affirmative vote or assent or by written, ballot of the holders of not less than fifty-one percent (51%) of the voting power of the Association. An amendment to these CC&R's shall be done in accordance with the applicable provisions of Civil Code Section 1363.03.

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

#### **Section 15.02. Control if Amendment Provisions Conflict With Mortgagee Protection or Other Provisions.**

To the extent any provisions of this Article XV conflict with the provisions of Article XVI or any other provisions of the CC&R's, the provisions of Article XVI or the other provisions shall control.

#### **Section 15.03. Reliance on Amendments.**

Any amendments made in accordance with the terms of the CC&R's shall be presumed valid by anyone relying on them in good faith.

#### **Section 15.04. Provision That Amendments Conform With Mortgagee Requirements.**

It is the intent of the Association that the CC&R's and the Articles and Bylaws of the Association, and the Properties in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any mortgage of a Unit in the Properties by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Veterans Administration. The Association and each Owner shall take any action or shall adopt any resolutions required by any Mortgagee to conform the CC&R's or the Properties to the requirements of any of these entities or agencies.

## **ARTICLE XVI**

### **Provisions to Satisfy Lender Requirements**

#### **Section 16.01. Mortgage Permitted.**

Any Owner may encumber the Owner's Unit with a Mortgage.

#### **Section 16.02. Subordination.**

Any lien created or claimed under the provisions of the CC&R's is expressly made subject and subordinate to the rights of any first Mortgage that encumbers all or a portion of the Development, or any Unit, 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 first Mortgage unless the Mortgagee expressly subordinate its interest, in writing, to such lien. If any Unit is encumbered by a first Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in the CC&R's for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the first Mortgage, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Unit free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale.

#### **Section 16.03. Restriction on Certain Changes.**

Unless at least sixty-seven percent (67%) of the total voting power or at least sixty-seven percent (67%) of all first Mortgagees of Units have given their prior written approval, neither the Association nor the Owners shall be entitled:

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

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

(c) By act or omission to change, waive, or abandon the provisions of the CC&R's, or the enforcement of them, pertaining to architectural design or control of the exterior appearance of Unit structures, the exterior maintenance of Unit structures, the maintenance of the Common Area walks or common fences and drives or the upkeep of lawns and plantings within the Property.

(d) To fail to maintain fire and coverage insurance on the Residences insurable Association property, including any Common Area improvements, on a current replacement cost

basis in an amount no less one hundred percent (100%) of the insurable value (based on current replacement cost).

(e) To use hazard insurance proceeds for losses to any Association property, including Common Area improvement for other than the repair, replacement, or reconstruction of such property.

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

#### **Section 16.04. Mortgagee's Right to Examine Books and Records.**

Institutional first Mortgagees shall have the right to examine copies of the CC&R's, Bylaws, Articles or other Rules concerning the Properties, and the books and records of the Association and the right to require the submission of financial data concerning the Association, including annual reports, budgets, and operating statements as furnished to the Owners. Such audit and financial statement shall be furnished to such requesting Mortgagee at the Association's reasonable cost of duplication and shall be furnished within a reasonable amount of time following such requests. Any holder, insurer or guarantor of a first Mortgage shall be entitled, upon written request, to an audited or reviewed financial statement for the immediately preceding fiscal year, at the Association's reasonable cost of duplication. Such statement shall be furnished within a reasonable time following such a request.

#### **Section 16.05. Priority in Distribution of Insurance and Condemnation Proceeds.**

No Owner, or any other party, shall have priority over any right of institutional first Mortgagees of Residences pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Area. Any provision to the contrary in the CC&R's or in the Bylaws or other documents relating to the development is to such extent void.

#### **Section 16.06. Right to Furnish Information.**

Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

#### **Section 16.07. Limitation on Term of Management Contract.**

Any agreement for professional management by a manager shall provide for termination by either party without cause or payment of a termination fee on thirty (30) days' written notice of the same, shall have a maximum contract term of one (1) year, provided that the Association can renew any such contract on a year-to-year basis.

## ARTICLE XVII

### Notices

#### Section 17.01. Mailing Addresses.

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

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

#### Section 17.02. Personal Service Upon Co-Owners and Others.

Personal service of a notice or demand to one of the co-owners of any Unit, to any general partner of a partnership which is the owner of record of the Unit, or to any officer or agent for service of process of corporation which is the owner of record of the Unit, shall be deemed delivered to all such co-owners, to such partnership, or to such corporation, as the case may be.

#### Section 17.03. Deposit in U. S. Mails.

All notices and demands served by mail shall be by first-class mail, with postage prepaid, and shall be deemed delivered three (3) business days after post-marked by the United States Postal Service within Santa Clara County.

## ARTICLE XVIII

### General Provisions

#### Section 18.01. Construction and Severability; Singular and Plural; Titles.

(a) Restrictions Construed Together. All of the covenants, conditions and restrictions of the CC&R's shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Properties as set forth in the Recitals of the CC&R's.



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

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

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

#### **Section 18.02. No Discriminatory Practices.**

No Owner shall execute or cause to be recorded any instrument that is a restriction upon the sale, leasing or occupancy of the Owner's Unit on the basis of age, race, sex, marital status, national ancestry, color, or religion or any other basis which is prohibited by law. No sale, rental or leasing of a Unit shall be prevented directly or indirectly on the basis of age, race, sex, marital status, familial status, national ancestry, color, disability or religion, or any other basis which is prohibited by law.

#### **Section 18.03. Notification of Sale.**

Concurrently with the consummation of the sale of any Unit under circumstances where the transferee becomes a Owner of the Unit, or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee and the Owner's Mortgagee and transferor, the common address of the Unit purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Before the receipt of such notification, any and all communications required or permitted to be given by the Association, the Board or the manager shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor. Mailing addresses may be changed at any time upon written notification to the Association. Notices shall be deemed received in accordance with Section 17.03 after mailing if mailed to the transferee, or to the transferee's transferor if the Association has received no notice of transfer as above provided.

#### **Section 18.04. No Fixed Term.**

The CC&R's and all amendments hereto shall continue in full force and effect until superseded pursuant to the terms of the CC&R's.

#### **Section 18.05. Conflicts Between Documents.**

The terms set forth in the CC&R's are not exclusive, as Owners are also subject to the terms and provisions of other Association Management Documents, including the Articles of

Incorporation, Bylaws, Rules, and Architectural Standards. In the event of a conflict between any provisions of any of said Association Management Documents with the provisions of any other Association Management Documents, the order of superiority of such documents shall be (a) Articles of Incorporation, (b) Declaration of Covenant Conditions and Restrictions, (c) Bylaws, (d) Architectural Standards, and (e) Association Rules, and the provisions of any such documents shall be superseded by the provisions of the document shown above to be superior to such document to the extent of such conflict.

**Section 18.06. Amendments to California Law.**

Should any applicable provisions of California law, including but not limited to the Davis-Stirling Common Interest Development Act which is enumerated in the California Civil Code, be amended in any way, the provisions contained herein shall be amended in the same manner without the necessity of amending the CC&R's.

**1600 Hamilton Place Community  
Association, Inc.**

Dated: Apr 9<sup>th</sup>, 2009

By Conrad B. Burdette  
Conrad Burdette (President)

Dated: Apr 9<sup>th</sup>, 2009

By Kenneth Sweezey  
Kenneth Sweezey (Secretary)

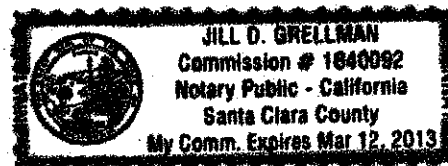
State of California                    )  
  )ss  
County of Santa Clara                )

On Apr. 9th, 2009 before me, Jill D. Grellman <sup>Notary Public</sup> (insert here name and title of the officer), personally appeared Conrad Burdette who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jill D. Grellman (Seal)  
Signature - Jill D. Grellman



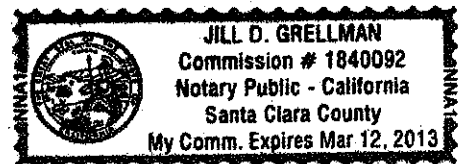
State of California )  
 )ss  
County of Santa Clara )

On Apr. 9th, 2009 before me, Jill D. Grellman Notary Public  
(insert here name and title of the officer), personally appeared Kenneth Swozey who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jill D. Grellman (Seal)  
Signature Jill D. Grellman



**EXHIBIT “A”**

See attached legal description.

DESCRIPTION OF 1600 HAMILTON PLACE - VILLAGES  
EXCEPTING TRACT NO. 6812

Beginning at the most northeasterly corner of Parcel 3 as said parcel is shown on that certain Parcel Map Recorded in Book 451 of Maps at Pages 52-54, Santa Clara County Records, said corner being a point on the westerly line of Leigh Avenue; thence along said westerly line the following courses and distances:

South 0°11'19" East 272.81 feet,  
South 3°14'42" West 200.36 feet, and  
South 0°11'19" East 81.82 feet,

to the most northeasterly corner of Tract No. 6812 as said tract is Recorded in Book 468 of Maps at Pages 24-26; thence along the northerly and westerly boundary of said Tract No. 6812 the following courses and distances:

North 88°49'20" West 103.83 feet,  
North 1°10'40" East 90.03 feet,  
North 88°49'20" West 154.00 feet,  
North 1°10'40" East 115.00 feet,  
North 88°49'20" West 75.30 feet,  
South 1°10'40" West 84.68 feet,  
South 46°55'19" West 127.93 feet,

to a point on a curve; thence from a tangent which bears South 43°04'41" East along a curve to the right through a central angle of 14°45'29" having a radius of 330.00, an arc distance of 85.00 feet; thence:

South 26°43'33" West 147.62 feet,  
South 39°20'20" East 80.00 feet,  
South 50°39'40" West 104.00 feet,  
South 39°20'20" East 148.30 feet,

to a point on a curve; thence from a tangent which bears South 22°41'43" West along a curve to the right through a central angle of 9°06'13" having a radius of 540.00

DESCRIPTION OF 1600 HAMILTON PLACE - VILLAGES  
EXCEPTING TRACT NO. 6812

feet, an arc distance of 85.80 feet to a point of compound curvature; thence along a curve to the right through a central angle of  $30^{\circ}32'50''$  having a radius of 485.00 feet, an arc 258.58 feet to a point of compound curvature; thence along a curve to the right through a central angle of  $5^{\circ}35'20''$  having a radius of 565.00 feet, an arc distance of 55.11 feet; thence South  $22^{\circ}03'54''$  East 35.00 feet to a point on the southerly boundary of Parcel 4 as shown on said parcel map; thence leaving said boundary of Tract No. 6812 and continuing along said boundary of Parcel 4 from a tangent which bears South  $67^{\circ}56'06''$  West along a curve to the right through a central angle of  $36^{\circ}03'22''$  having a radius of 600.00 feet, an arc distance of 377.58 feet to a point of compound curvature; thence along a curve to the right through a central angle of  $58^{\circ}36'41''$  having a radius of 320.00 feet, an arc distance of 327.35 feet to the southwesterly boundary of said Parcel 3; thence along the southwesterly, westerly and northerly boundary of said Parcel 3 South  $89^{\circ}40'00''$  West 161.97 feet to the beginning of a tangent curve; thence along a curve to the left through a central angle of  $19^{\circ}10'44''$  having a radius of 200.00 feet, an arc distance of 66.95 feet; thence South  $70^{\circ}29'16''$  West 110.38 feet to the beginning of a tangent curve; thence along a curve to the left through a central angle of  $34^{\circ}59'02''$  having a radius of 174.00 feet, an arc distance of 106.24 feet; thence North  $54^{\circ}29'46''$  West 69.89 feet; thence South  $89^{\circ}48'42''$  West 135.00 feet; thence North  $0^{\circ}11'18''$  West 328.26 feet to the most northwesterly corner thereof; thence from a tangent which bears North  $69^{\circ}11'57''$  East along a curve to the left through a central angle of  $33^{\circ}22'04''$  having a radius of 480.00 feet, an arc distance of 279.54 feet to a point of reverse curvature; thence along a curve to the right through a central angle of  $19^{\circ}13'44''$  having a radius of 480.00 feet, an arc distance of 161.09 feet; thence North  $55^{\circ}03'37''$  East 591.11 feet to the beginning of a tangent curve; thence along a curve to the right through a central angle of  $35^{\circ}03'30''$  having a radius of 800.00 feet, an arc distance of 489.51 feet; thence South  $89^{\circ}52'53''$  East 70.50 feet to the beginning of a tangent curve; thence along a curve to the right through a central angle of  $16^{\circ}26'47''$  having a radius of 800.00 feet, an arc distance of 229.64 feet to a point of reverse curvature; thence along a curve to the left through a central angle of  $46^{\circ}04'46''$  having a radius of 200.00 feet, an arc 160.85 feet; thence North  $60^{\circ}29'08''$  East 145.72 feet to the point of beginning.

Containing 32.088 acres, more or less.  
(Phases II thru VIII)

EXHIBIT "A"

DESCRIPTION OF PARCEL B - MODELS AREA FOR  
1600 HAMILTON PLACE - VILLAGES

Beginning at the most northeasterly corner of Lot 3 as said lot is shown on that certain map of Tract No. 6812 Recorded in Book 468 of Maps at Pages 24-26, Santa Clara County Records, said corner being a point on the westerly line of Leigh Avenue; thence along the easterly, southerly, and southwesterly boundary of said lot South  $0^{\circ}11'19''$  East 74.18 feet to the beginning of a tangent curve; thence along a curve to the right through a central angle of  $90^{\circ}00'00''$  having a radius of 24.00 feet, an arc distance of 37.70 feet; thence South  $89^{\circ}48'41''$  West 231.99 feet to the beginning of a tangent curve, thence along a curve to the right through a central angle of  $75^{\circ}04'23''$  having a radius of 24.00 feet, an arc distance of 37.24 feet to a point of reverse curvature; thence along a curve to the left through a central angle of  $21^{\circ}52'31''$  having a radius of 400.00 feet, an arc distance of 152.72 feet; thence North  $70^{\circ}45'24''$  East 94.76 feet; thence North  $1^{\circ}10'40''$  East 9.00 feet; thence South  $88^{\circ}49'20''$  East 154.00 feet; thence South  $1^{\circ}10'40''$  West 90.03 feet; thence South  $88^{\circ}49'20''$  East 103.83 feet to the point of beginning.

Containing 1.107 acres, more or less.

(Model Area, Phase IX)

EXHIBIT "A"



## **EXHIBIT "B"**

### **1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC. ASSESSMENTS**

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

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

**Officer's Certification of Adoption of  
First Restated Declaration of Covenants,  
Conditions and Restrictions of  
1600 Hamilton Place Community  
Association, Inc.**

We, the undersigned, say:

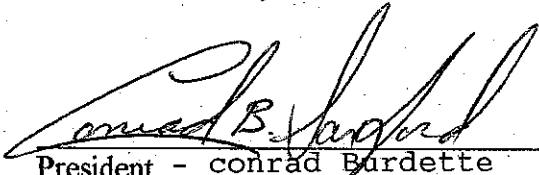
That we are the duly elected and President and Secretary, respectively, of **1600 Hamilton Place Community Association, Inc.**, a California non-profit mutual benefit corporation; that the Declaration, executed by GENSTAR DEVELOPMENT INC., a corporation (BROADMOOR HOMES NORTHERN DIVISION) ("Declarant") and recorded on October 22, 1980, in Book F674, Pages 343 et seq., Instrument No. 6877379 of the Official Records of Santa Clara County, State of California, which Declaration affects all of the Properties described and commonly known as 1600 Hamilton Place, was amended by the document entitled "First Restated Declaration of Covenants, Conditions and Restrictions of 1600 Hamilton Place Community Association, Inc.," by way of court order dated February 17, 2009, a copy of which is attached hereto.

That this Certification is made pursuant to Section 1355 of the Civil Code of the State of California, and is to be recorded together with the First Restated Declaration of Covenants, Conditions and Restrictions of 1600 Hamilton Place Community Association, Inc. in the records of the County Recorder of Santa Clara County, the County in which said common interest subdivision is located.

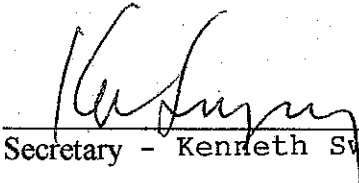
We declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct.

1600 HAMILTON PLACE COMMUNITY  
ASSOCIATION, INC.

Dated: Apr 9<sup>th</sup>, 2009

  
\_\_\_\_\_  
President - Conrad Burdette

Dated: Apr 9<sup>th</sup>, 2009

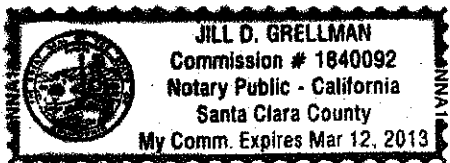
  
\_\_\_\_\_  
Secretary - Kenneth Sweezey

State of California                    )  
  )ss  
County of Santa Clara                )

On April 9<sup>th</sup>, 2009 before me, Jill D. Grellman <sup>Notary Public</sup> (insert here name and title of the officer), personally appeared Conrad Burdette who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Jill D. Grellman (Seal)  
Signature - Jill D. Grellman

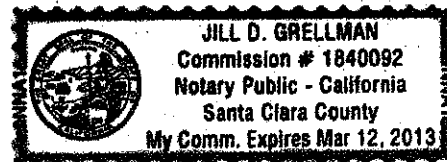
State of California            )  
  )ss  
County of Santa Clara        )

On April 9<sup>th</sup>, 2009 before me, Jill D. Grellman <sup>Notary Public</sup> (insert here name and title of the officer), personally appeared Kenneth Swezey who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jill D. Grellman (Seal)  
Signature - Jill d. Grellman



UCS

FILED

2009 FEB 19 PM 2:22

David H. Yamashita, Clerk of the Superior Court  
County of Santa Clara, California

By: M Deputy Clerk

M. Rosales

SHARON GLENN PRATT (SBN 121947)  
ROSALIA BURGUEÑO TAPIA (SBN 174198)  
PRATT & ASSOCIATES  
The Pruneyard Tower I  
1901 S. Bascom Avenue, Suite 350  
Campbell, CA 95008  
Telephone: (408) 369-0800  
Facsimile: (408) 369-0752

Attorneys for Petitioner  
1600 HAMILTON PLACE  
COMMUNITY ASSOCIATION, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA  
UNLIMITED JURISDICTION

In the Matter of  
  
1600 HAMILTON PLACE COMMUNITY  
ASSOCIATION, INC.,  
  
a California nonprofit  
mutual benefit corporation,  
  
Petitioner.

No. **109CV132085**  
  
[PROPOSED] ORDER GRANTING  
PETITION TO REDUCE REQUIRED  
VOTING PERCENTAGE  
  
(CIVIL CODE §1356)

Petitioner 1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC.'s ("the  
Association" or "Petitioner") Petition to Reduce the Required Voting Percentage to approve the  
First Restated Declaration of Covenants, Conditions, and Restrictions under Civil Code §1356  
came on regularly for hearing on Feb 17, in Department 19 of the above-entitled  
Court at 9:00 a.m. Petitioner appeared by and through its counsel, Sharon Glenn Pratt.  
  
no one [name] appeared on behalf of  
objectors \_\_\_\_\_ [names].

Pratt & Associates

THE PRUNEYARD TOWER I  
1901 S. BASCOM AVENUE, SUITE 350  
CAMPBELL, CA 95008  
TELEPHONE (408) 369-0800  
FACSIMILE (408) 369-0752

1 Having considered the Petition, the declarations filed herein, the briefs submitted by the  
2 parties, the records on file herein, and the oral and documentary evidence adduced at the hearings in  
3 this matter, the Court finds:

4 1. The allegations of Petitioner's Petition to Reduce Required Voting Percentage to be  
5 true and accurate.

6 2. Petitioner gave at least 15 days' written notice of the hearing to all association  
7 members and to all others entitled to such notice.

8 3. The balloting on the proposed First Restated Declaration was conducted in  
9 accordance with all applicable provisions of the governing documents and California Civil Code.

10 4. Petitioner made a reasonably diligent effort to permit all eligible members to vote on  
11 the First Restated Declaration.

12 5. Owners with more than 50 percent of the votes voted in favor of approving the First  
13 Restated Declaration.

14 6. Of Petitioner's total membership of 298 members, 193 ballots were cast, comprising  
15 64 percent of Petitioner's total membership. 166 members voted in favor of adopting the First  
16 Restated Declaration, while 27 members voted in opposition. A total of 152 affirmative votes were  
17 required to satisfy the majority approval requirement of California Civil Code §1356.

18 7. Petitioner's First Restated Declaration is reasonable.

19 8. The granting of the within Petition is not improper for any reason stated in  
20 California Civil Code §1356(e).

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

Good cause appearing,

IT IS ORDERED that:

1. Petitioner's Petition to Reduce the Required Voting Percentage for approval of the First Restated Declaration of Covenants, Conditions, and Restrictions of 1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC. is granted.
2. The objections filed with respect to the Petition are overruled.
3. Before recordation, true and correct copies of all exhibits to the First Restated Declaration shall be attached.
4. The First Restated Declaration shall not be effective until recorded in the Official Records of the Santa Clara County, together with a copy of this order. Within 60 days after its recordation, Petitioner shall mail a copy of the First Restated Declaration to each member of the Association, together with a statement that the First Restated Declaration has been recorded. On such recordation, the First Restated Declaration shall have the same force and effect as if it had been adopted in compliance with every requirement for amendment imposed by the governing documents of the 1600 HAMILTON PLACE COMMUNITY ASSOCIATION, INC. common interest development.

Date: Feb 17, 2009

*James C. Eusem*  
JUDGE OF THE SUPERIOR COURT

THE FOREGOING INSTRUMENT IS  
A CORRECT COPY OF THE ORIGINAL  
ON FILE IN THIS OFFICE  
ATTEST: DAVID H. YAMASAKI

FEB 19 2009

CHIEF EXECUTIVE OFFICER/CLERK  
SUPERIOR COURT OF CA COUNTY OF SANTA CLARA  
IN AND FOR THE COUNTY OF SANTA CLARA  
BY *M. Rosales* DEPUTY



M. Rosales