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George A. Mann, Recorder
Santa Clara County, Official Records

MISSION GROVE

ENDORSED COPY

ENABLING DECLARATION

ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP

THIS DECLARATION, made on the date hereinafter set forth by Mission Grove Condominiums, Inc., a California corporation, hereinafter referred to as "Declarant," is made with reference to the following facts:

A. Declarant is the owner of certain property located in the City of San Jose, County of Santa Clara, State of California, more particularly described as all of Lot 1 as shown on that certain Subdivision Map, Tract No. 7452, which was filed for record in the Office of the Recorder of Santa Clara County, California, on February 29, 1981, in Book 525, of Maps, pages 18 - 35.

B. There exists on said property a Three Hundred Eighty (380) unit residential project. Declarant intends to establish a condominium under the provisions of the California Condominium Act, providing for separate title to each unit within said project, each unit to have an undivided interest in all of the remaining property.

C. The development shall be referred to as the "project" as defined in Section 1.26.

D. Declarant intends by this document to impose upon the property mutually beneficial restrictions under a general plan of improvements for the benefit of all of the said condominiums and the owners thereof.

E. Declarant hereby establishes by this Declaration a plan for the individual ownership of the real property estates, consisting of the area of space contained in each unit as well as the co-ownership by the individual owners, as tenants in common and as hereinafter set forth, of all of the remaining portions of

the project which are hereinafter defined and referred to as the "common area".

NOW THEREFORE, Declarant hereby declares that the hereinafter described property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declaration, limitations, covenants, conditions, restrictions and easements, all of which are imposed as equitable servitudes pursuant to a general plan for the development of the property for the purpose of enhancing and protecting the value and attractiveness of the property, and the Project, and every part thereof, in accordance with the plan for the improvements of the property and the division thereof into condominiums. All of the limitations, covenants, conditions, restrictions and easements shall be binding upon Declarant and its successors and assigns, and all parties having or acquiring any right, title or interest in or to any part of the property of the Project.

ARTICLE I

1.1 "Articles" shall mean and refer to the Articles of Incorporation of the Association as amended from time to time.

1.2 "Assessment" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the property which is to be paid by each unit owner as determined by the Association in accordance with this Declaration.

1.3 "Association" shall mean and refer to the Mission Grove Homeowners Association, a California nonprofit mutual benefit corporation, the members of which shall be the owners of condominiums in the project.

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

1.5 "Bylaws" shall mean and refer to the Bylaws of the Association as amended from time to time.

1.6 "Common Area" shall mean and refer to all of the property (except the individual condominium units which are shown on the Condominium Plan as Units "A101 to A194," "A201 to A294," "B101 to B196," and "B201 to B296") title to which is held by all of the owners in common. The Common Area includes, without limitation: recreation building; pool and other amenities, parking and driveway areas; trash enclosures; carports, exterior stairs, decks, fences and patios; bearing walls, columns, girders, subfloors, unfinished floors, roofs, and foundations; reservoirs, tanks, pumps, motors, ducts, flues and

chutes; conduits, pipes, plumbing, wires and other utility installations except the outlets thereof when located within the unit, and excepting utility installations located entirely within a unit, required to provide heat, air conditioning, power, light, telephone, gas, water, sewage, and drainage; exterior sprinklers and sprinkler pipes, and television antennas or Cable Television installations.

1.7 "Common Expenses" means and includes the actual and established expenses of operating the common area and any reasonable reserve for such purposes as found and determined by the Board to be reasonable and all sums designated common expenses by or pursuant to the condominium documents.

1.8 "Common interest" means the proportionate undivided interest in the common area which is appurtenant to each unit as set forth in this Declaration.

1.9 "Condominium" shall mean an estate in real property as defined in California Civil Code Section 783, consisting of title to a unit and an undivided interest in a common area. The ownership of each condominium shall include the ownership of a unit, an undivided interest in the Common Area, and membership in the Association. Each condominium shall also include the "restricted common area" rights, if any, assigned to the unit in this Declaration and/or in the Condominium Plan. Each unit shall be a separate free hold estate consisting of the space described and defined in Section 2.2A. Each unit includes the portions of the structure so described and the airspace so encompassed.

1.10 "Condominium building" shall mean a residential structure containing condominium units.

1.11 "Condominium documents" means and includes this Declaration as it may be amended from time to time, the exhibits, if any, attached thereto, the Articles, the Bylaws of the Association, the Regulatory Agreement, and the Condominium Plan.

1.12 "Condominium plan" shall mean and refer to the recorded diagrammatic floor plan of the units located on the property which identifies each unit and shows its dimensions pursuant to Civil Code Section 1351. Said plan is included in and is part of the Subdivision Map as defined in Section 1.19 herein.

1.13 "Declarant" shall mean and refer to Mission Grove Condominiums, Inc., a California corporation, its successors and assigns.

1.14 "Declaration" shall mean and refer to this enabling Declaration, as amended or supplemented from time to time.

1.15 "Eligible holder mortgages" shall mean mortgages held by "eligible mortgage holders".

1.16 "Eligible mortgage holder" shall mean a first lender who has requested notice of certain matters from the Association in accordance with Section 8.6c.

1.17 "Eligible insurer or guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with Section 8.6c.

1.18 "First lender" shall mean any person, entity, bank, savings and loan association, insurance company, or financial institution holding a recorded first mortgage on any condominium unit.

1.19 "Map" shall mean and refer to that Subdivision Map, Tract No. 7452, recorded the 29th day of February, 1984, in Book 525 of Maps at Pages 18 - 35 in the official records of Santa Clara County.

1.20 "Member" shall mean and refer to a person entitled to membership in the Association as provided herein.

1.21 "Mortgage" shall include a deed of trust as well as a mortgage.

1.22 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as as mortgagee.

1.23 "Mortgagor" shall include the trustor of a deed of trust as well as a mortgagor.

1.24 "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any condominium and shall include Declarant as to any condominium owned by Declarant and the contract vendee under a recorded contract of sale. "Owner" shall not include any person or entity who holds an interest in a condominium merely as security for the performance of an obligation or as a tenant.

1.25 "Person" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

1.26 "Project" shall mean and refer to the entire real property above described including all structures and improvements erected or to be erected thereon.

1.27 "Property" or "Properties" means and includes the real property above described and all improvements erected thereon and all property, real, personal or mixed, intended for or used in connection with the condominium.

1.28 "Regulatory Agreement" means that agreement which the Association enters into with the Secretary of Housing and Urban Development, attached as Exhibit "A" hereto and incorporated herein.

1.29 "Restricted common area" shall mean and refer to those portions of the common area, set aside for exclusive use of a unit owner or owners, pursuant to Section 2.2C.

1.30 "Share" means the percentages in and to the common area attributed to and appurtenant to each unit as set forth in Section 2.2B.

1.31 "Unit" shall mean and refer to the elements of the condominium, as defined in Section 2.2A, which are not owned in common with the owners of other condominiums in the Project.

1.32 "Unit designation" means the number shown on the Condominium Plan. Each unit is identified by separate number on the Condominium Plan.

1.33 "Singular and Plural": The singular and plural number and masculine, feminine and neuter gender shall each include the other where the context requires.

1.34 "Special Assessment" shall mean and refer to an assessment against all units on the project which is levied pursuant to Section 4.4 of this Declaration.

ARTICLE II

DESCRIPTION OF PROJECT, DIVISION OF PROPERTY, AND CREATION OF PROPERTY RIGHTS

2.1 Description of Project: The project consists of the underlying real property with condominium units and all other improvements located thereon. There exists upon the premises a Three Hundred Eighty (380) unit residential development. Reference is made to the Condominium Plan for further details.

2.2 Division of Property: The property is hereby divided into the following free hold estates:

A. Units: Each of the units as separately shown, numbered and designated in the Condominium Plan consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each unit, each of such spaces being defined and referred to herein as a "unit." Bearing walls located within the interior of a unit are common area, not part of the unit except for the finished surfaces thereof. Each unit includes the utility installations located within its boundaries that the owner has exclusive use of, including, without limitation: appliances, space heaters, air conditioning, and lighting fixtures which are located within the unit they serve. Each unit includes both the portions of the building so described and the airspace so encompassed. The unit does not include those areas and those things which are defined as "common area" in Section 1.6. Each unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in section 8.5. In interpreting deeds and plans, the then existing physical boundaries of a unit, whether in its original state or reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown on the plan or deed, and those of the project.

B. Common Areas: The remainder of the property constitutes and shall be referred to herein as "common area" or "common areas", and includes, without limitation, all of the elements set forth in Section 1.6. Each unit owner shall have, as appurtenant to his unit, a one-three hundred eightieth (1/380) fractional undivided interest in the common area. The ownership of each condominium shall include a unit, such undivided interest in the common area, and a membership in the Association. Each unit shall have appurtenant to it a nonexclusive easement for ingress, egress and support through the common area. The common interest appurtenant to each unit is declared to be permanent in character and cannot be altered without the consent of all the unit owners or as otherwise provided in this Declaration. Each unit owner may use the common areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other unit owners.

C. Restricted Common Areas: The following described portions of the common area, referred to as "restricted common areas", are hereby set aside and allocated for the exclusive use of the owner of the unit to which they are attached or assigned on the condominium plan: Carport space designated "CP"; patio designated "P"; and deck designated "D".

D. No Separate Conveyance of Undivided Interests: The foregoing interests are hereby established and are to be conveyed with the respective units as indicated above, cannot be changed, except as herein set forth, and Declarant, its successors, assigns and grantees covenant and agree that the interest in the common areas and the fee title to the respective units conveyed therewith shall not be separated or separately conveyed, and each such interest shall be deemed to be conveyed or encumbered with its respective unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the unit.

E. Unassigned Parking: In addition to the carports assigned to units on the condominium plan (restricted common area) there are unassigned parking spaces. These may be used by all owners, their tenants and guests. The Board may from time to time adopt rules and regulations for the use of these parking spaces, or assign the exclusive right to use said spaces to particular units. Reassignment of said spaces shall be based upon mutual consent of unit owners whose assignments are to be changed, and failing such consent, shall be after notice to such owners and hearing before the Board.

2.3 Partition Prohibited: The common areas shall remain undivided as set forth above. Except as provided by California Civil Code §1354, no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the project. Judicial partition by sale of a single unit owned by two or more persons and division of the sale proceeds is not prohibited. No unit may be partitioned or subdivided without the prior written approval of at least the holder of any first mortgage lien on such unit.

2.4 Annexation of Additional Parcels: Additional property may be annexed to the Project upon the vote or written assent of 66-2/3 percent of each class of Members of the Association, or if Class B membership no longer exists, upon the vote or written assent of 66-2/3 percent of the total votes residing in Association Members other than Declarant.

ARTICLE III

ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Association to Manage Common Areas: The management of the common area shall be vested in the Association in accordance with its bylaws. The owners of all the condominiums covenant and agree that the administration of the project shall be in accordance with the provisions of this Declaration, the Articles, Bylaws, and Regulatory Agreement.

3.2 Membership: The owner of a unit shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be held in accordance with the Articles and Bylaws of the Association.

3.3 Transferred Membership: Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the sale or encumbrance of the unit to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such unit. Upon death of a member his membership passes automatically along with title to his unit. A mortgagee does not have membership rights until he becomes an owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No member may resign his membership. In the event the owners of any unit should fail or refuse to transfer the membership registered in his name to the purchaser of his unit, the Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

3.4 Membership Classes and Voting Rights: The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all owners with the exception of the Declarant and shall be entitled to one (1) vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members. The vote for such units shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any unit.

Class B. Class B member(s) shall be the Declarant and shall be entitled to vote as follows: voting shall be the same as for Class A memberships, except that Class B members may triple their votes for each unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes (tripled as stated above) outstanding in the Class B membership; or

(b) On the second anniversary date of the original issuance of the final subdivision public report for the project.

If the Articles of Incorporation, Bylaws or Declaration specifically require "the vote of each class of members" or "the vote of members other than Declarant" for a specific action, such vote shall be as follows:

As long as there are two classes of membership, the vote or written assent of the prescribed percentage of the Class B voting power as well as the vote or written assent of the prescribed percentage of the Class A voting power shall be required.

After the conversion of Class B to Class A membership, the vote or written assent of the prescribed percentage of the total voting power of the Association as well as the vote or written assent of the prescribed percentage of the total voting power of members other than the Declarant shall be required.

The previous two paragraphs shall not apply to Section 8.14, which section shall exclude the vote of the Declarant.

ARTICLE IV

MAINTENANCE AND ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each unit owned within the project, hereby covenants, and each owner of any unit by acceptance of deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for purposes permitted herein, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, penalties, fines and reasonable attorneys' fees, shall be a charge on the condominium and shall be a continuing lien upon the condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs, penalties, fines and reasonable attorneys' fees, shall also be their personal obligation of the person who was the owner

of such condominium at the time when the assessment fell due. No owner of a condominium may exempt himself from liability for his contribution towards the common expenses by waiver of the use of enjoyment of any of the common areas or by the abandonment of his condominium.

4.2 Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of all the residents in the entire project and for the improvement and maintenance of the common area for the common good of the project.

4.3 Annual Assessment:

A. The regular annual assessment for the first assessment year shall be based on the initial operating expense budget as approved by the California Department of Real Estate. Said budget shall be based on the estimated operating expense to be paid during the initial assessment year by the Association in the performance of its duties.

B. The Board may not, without the vote or written consent of a majority of the voting power of the Association residing in members other than the Declarant, impose a regular annual assessment which is more than twenty percent (20%) greater than the regular annual assessment for the immediately preceding fiscal year.

C. The annual assessment may not be decreased either by the Board or by the members by more than ten percent (10%) in any one year without the approval of a majority of the total voting power of the Association residing in members other than the Declarant. Failure by the Board to set assessments shall not be deemed a waiver of the assessments but rather the prior year's assessment shall continue.

D. Subject to the limitation on the maximum and minimum amount of assessments herein provided, if at any time during the course of any year the Board shall deem the amount of the annual assessment to be inadequate or excessive the Board shall have the power, at a regular or special meeting, to revise the assessment for the balance of the assessment year, effective on the first day of the month next following the date of the revision.

4.4 Special Assessments for Capital Improvements or Extraordinary Expenses; Reserves for Replacement; Trust Funds: The Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement

upon the common area, including fixtures and personal property related thereto, or for extraordinary expenses incurred by the Association, provided that in the event special assessment(s) exceed in the aggregate five percent (5%) of the budgeted gross expenses of the Association for the fiscal year, the vote or written consent of a majority of the voting power of the Association residing in members other than the Declarant shall be required to approve such assessment(s). Special assessments shall be levied on the same basis as regular assessments, except where the special assessment against a member is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the member and his unit into compliance with the provisions of the Condominium Documents, or is the result of a fine imposed by the Board; and provided that a special assessment against owners to raise funds for the rebuilding or major repair of the structural common area housing units of the project shall be levied upon the basis of the ratio of square footage of the floor area of the unit to be assessed to the total square footage of floor area of all units.

As part of the regular annual assessments for maintenance authorized above, the Board of Directors shall annually fix the amount to be contributed pro rata by each member to reserve funds as required by the Regulatory Agreement for the purpose of defraying, in whole or in part, the cost or estimated cost of any reconstruction, repair or replacement of improvements, including fixtures and personal property related thereto. Such determination shall be made after consideration of the need for additional funds and of the Association's capital position. The Board shall maintain a separate account for those funds. Separate records shall be maintained for all funds deposited to the said account.

Pursuant to the Regulatory Agreement, the assessments collected by the Association shall be properly deposited into three separate bank accounts selected by the Board, which accounts shall be clearly designated as the CURRENT MAINTENANCE AND OPERATION ACCOUNT, the FUND FOR REPLACEMENT ACCOUNT and the GENERAL OPERATION RESERVE ACCOUNT. The assessments collected by the Association shall be held in trust by the Association for and on behalf of each Unit Owner and shall be used solely for the operation, care and maintenance of the Project as provided in this Declaration. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Project as specified in the annual budget and the Board shall allocate a portion of said funds as collected as reserves for contingencies, replacement and deferred maintenance of the capital improvements of the Project as specified in the annual budget. Said funds shall be deposited, as allocated, into the appropriate bank accounts and said accounts shall be separately maintained by the Association.

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

4.5 Notice and Quorum for any Action Authorized Under Sections 4.3 and 4.4: Any action authorized under Sections 4.3 and 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) nor more than ninety (90) days in advance of the meeting 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. If a quorum is present and the proposed action is favored by a majority vote of the members present at such meeting, but such vote is less than a majority of the voting power of the Association, including a majority of members other than the Declarant, members who were not present in person or by proxy may give their assent in writing, provided the same is obtained by the appropriate officers of the Association not later than thirty (30) days from the date of such meeting.

4.6 Division of Assessments: Except as provided in Section 4.4, all assessments, both annual and special, shall be charged to and divided among the unit owners equally. Assessments shall be collected on a monthly basis.

4.7 Date of Commencement of Annual Assessment:
Due Dates: The regular assessments provided for herein shall commence as to all units covered by this Declaration on the first day of the month following the closing of the first sale on the conveyance of the first condominium to an individual owner.

Subject to the provisions of Section 4.3 hereof, the Board of Directors shall determine and fix the amount of the annual assessment against each unit and send written notice thereof to every owner at least sixty (60) days in advance of each annual assessment period. Annual assessments shall be paid to the Association in equal monthly installments on or before the tenth day of each month during such year, or in such other reasonable manner as the Board shall designate. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified unit have been paid. Such a certificate shall be conclusive evidence of such payment.

4.8 Effect of Nonpayment of Assessments: Any assessment not paid within thirty (30) days after the due date shall be delinquent and shall bear interest at the rate of fifteen percent (15%) per annum or the highest legally permitted rate, whichever is less, from the due date until the date paid. The Association may bring an action at law against the owner

personally obligated to pay the same or record a notice of assessment pursuant to Civil Code Section 1356 and foreclose the lien against the unit, and interest, cost and reasonable attorneys' fees for any such action shall be added to the amount of such assessment. In the event any monthly installment of an annual assessment against a unit is not paid within ten (10) days after the date upon which it becomes due, the Board may thereafter declare the entire unpaid balance of such annual assessment immediately due and payable in its entirety.

4.9 Transfer of Unit by Sale or Foreclosure: Sale or transfer of any unit shall not affect the assessment lien. However, the sale of any unit pursuant to mortgage foreclosure of a first mortgage shall extinguish the lien of such assessments including fees, late charges, fines or interests levied in connection therewith as to payments which became due prior to such sale or transfer. 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 a first mortgage of record or other purchaser of a condominium obtains title to the same as a result of foreclosure of any such first mortgage, such acquirer of title, his successor and assigns, shall not be liable for the share of the common expenses or assessment by the Association chargeable to such condominium which became due prior to the acquisition of title to such condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the condominiums including such acquirer, his successors or assigns.

In a voluntary conveyance of a condominium the grantee and the grantor shall be jointly and severally liable to the Association for all unpaid assessments against the condominium for the grantor's share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association, setting forth the amount of the unpaid assessments against the grantor due the association and such grantee shall not be liable for, nor shall the condominium conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such assessment becoming due after the date of any such statement.

4.10 Priorities; Enforcement; Remedies: When a Notice of assessment has been recorded, such assessment shall constitute a lien on each respective condominium prior and superior to all other liens except (1) all taxes, bonds,

assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deeds of trust with first priority over other mortgages or deed of trust) made in good faith and for value.

Each and every lien, charge and assessment, together with any costs, penalties, or interest, established, reserved, or imposed under the authority of this Declaration shall be prior and superior to the rights created by any Declaration of Homestead, whether declared and recorded prior to or subsequent to the creation of such lien, charge or assessment. Every owner or occupant of any unit located on the subject property shall be deemed to have subordinated any such Declaration of Homestead to this Declaration and to the charges of any such lien, charge or assessment.

Such lien, when delinquent, may be enforced by sale by the Association, its attorney or other person authorized to make the sale, after failure of the owner to pay such assessment in accordance with its terms, such sale to be conducted in accordance with the provisions of Sections 2924-2924H of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

The Association, acting on behalf of the condominium owners, shall have the power to bid for the condominium at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period a unit is owned by the Association, following foreclosure: (1) No right to vote shall be exercised on behalf of the unit; (2) No assessment shall be assessed or levied on the unit; and (3) Each other unit shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such unit had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid common expenses, rent and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The Board may temporarily suspend the voting rights of a member who is in default in payment of any assessment, provided that at least fifteen (15) days prior notice of any discipline or fine and the reasons therefor are given to the member affected, and that an opportunity is provided for the member to be heard, orally or in writing, not less than five (5) days before the Board. Notice shall be given as required by California Corporations Code Section 7341.

4.11 Unallocated Taxes: In the event that any taxes are assessed against the common area or the personal property of

the Association, rather than against the units, said taxes shall be included in the assessments made under the provisions of Section 4.1 and, if necessary, a special assessment may be levied against the units in an amount equal to said taxes, to be paid in two installments, thirty (30) days prior to the due date of each tax installment.

4.12 Enforcement of Assessment by Suit: The Association may, in its own name, commence and maintain a suit at law against any unit owner or owners personally obligated to pay assessments for such delinquent assessments as to which they are personally obligated. Any judgment rendered in any such action shall include the amount of the delinquency, together with the processing fee, interest thereon, cost of collection, court costs and reasonable attorneys' fees in such amount as the court may deem proper. Suit to recover judgment for unpaid assessments shall be maintained without foreclosing or waiving any lien for such assessment created pursuant to this Declaration.

ARTICLE V

DUTIES AND POWERS OF THE ASSOCIATION

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

A. Maintenance: The Association shall maintain, repair, replace, restore, operate and manage all of the common area and all facilities, improvements, furnishings, equipment and landscaping thereon, and all property that may be acquired by the Association. Maintenance shall include (without limitation): Painting, maintaining, cleaning, repairing and replacing of all common areas, (except for areas which are to be maintained by owners as per Section 8.7) private streets, parking areas, patio fences, and decks. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an owner, or his guests, tenants or invitees, the costs of which is not covered by insurance. The cost of repair or replacement resulting from such excluded items shall be the responsibility of each owner; provided, however, that if an owner shall fail to make the repairs or replacements which are the responsibility of such owner, as provided above, then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to the owner and a public hearing, the Association shall have the right (but not the obligation) to enter the condominium (if necessary) and make such repairs or replacements, and the cost thereof shall constitute a special

assessment chargeable to such condominium and shall be payable to the Association by the owner of such condominium.

B. Insurance: The association shall maintain such policy or policies of insurance as are required by Section 8.8 of this Declaration.

C. Discharge of Liens: The Association shall discharge by payment, if necessary, any lien against the common area, and assess the cost thereof to the member of members responsible for the existence of said lien, after notice and hearing as provided by Section 4.10.

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 this Declaration.

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

A. Utility Service: The Association shall have the authority to obtain, for the benefit of all of the condominiums, all water and refuse collection.

B. Easements: The association shall have authority, by document signed or approved by three-fourths (3/4) of the total voting power of the Association including three-fourths (3/4) of the members other than Declarant, to grant easements in addition to those shown on the Map, where necessary for utilities and sewer facilities over the common area to serve the common and open space areas and the condominium units.

C. Manager: The Association shall have the authority to employ a 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. Such duties shall not include the responsibility to levy fines, impose discipline, hold hearings, file suit, record or foreclose liens, or make capital expenditures. Any contract with a firm or person appointed as a manager or managing agent shall not exceed

a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the members of the Association, and to terminate the same for cause on thirty (30) days' written notice, or without cause or payment of a termination fee on ninety (90) days written notice. Notwithstanding the foregoing, so long as any mortgage or deed of trust which is a lien on a Unit is insured or guaranteed by the Federal Housing Administration the Association shall not employ a management agent nor enter into a management contract nor undertake "self-management" until such time as the Federal Housing Commissioner has approved in writing the proposed management agent, form of management agreement or other management arrangement, as required in the Regulatory Agreement.

D. Adoption of Rules: The Board may adopt reasonable rules not inconsistent with this Declaration relating to the use of the common area and all facilities thereon, and the conduct of owners and their tenants and guests with respect to the property and other owners.

E. Access: For the purpose of performing the construction, maintenance or emergency repair for the benefit of the common area or the owners in common, the Association's agents or employees shall have the right, after reasonable notice (not less than 24 hours except in emergencies) to the owner thereof, to enter any unit or to enter any portion of the common area at reasonable hours. Such entry shall be made with as little inconvenience to the owner as practicable and any damage caused thereby shall be repaired by the Board at the expense of the Association.

F. Assessments, Liens and Fines: The Association shall have the power to fix, 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 assessment or for violation of any provisions of the condominium documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, or other appropriate discipline, provided that the accused member is given notice and the opportunity to be heard with respect to the alleged violations before a decision to impose fines or discipline is made, as provided in Section 4.10. Notwithstanding the powers as set forth in this paragraph, the Association cannot be empowered to cause a forfeiture or abridgment of an owner's right to the full use and enjoyment of his or her condominium unit on account of a failure by the owner to comply with provisions of this Declaration, the Articles, or the Bylaws, or of duly-enacted rules of operation for common areas and facilities except by judgment of a court, a decision arising out of arbitration, or a

foreclosure or sale under power of sale for failure of the owner to pay assessments levied by the Association.

Any fine and/or special assessment imposed by the Association (1) as a disciplinary measure for failure of a member to comply with the provisions of this Declaration, the Articles, or the Bylaws, (2) as a means of reimbursing the Association for costs incurred by the Association to bring the member and his condominium unit into compliance with this Declaration, the Articles, or the Bylaws, may not be characterized or treated in this Declaration, the Articles, or the Bylaws as an assessment which may become a lien against the member's condominium unit enforceable by a sale of said unit in accordance with the provisions of Section 2924, 2924(b) and 2924(c) of the California Civil Code. The provisions of this paragraph, however, do not apply to charges imposed against an owner for (1) reasonable late payment penalties for delinquent assessments, and/or (2) reimbursement of the Association for the loss of interest and costs reasonably incurred (including attorney's fees) in its efforts to collect delinquent assessments.

G. Enforcement: The Association shall have the authority to enforce this Declaration per Article VIII hereof.

H. Acquisition and Disposition of Property: The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of property shall be by document signed or approved by three-fourths (3/4) of the total voting power of the Association and three-fourths (3/4) of the members other than Declarant, or where the two class voting structure is still in effect, shall include the three-fourths (3/4) of the voting power of each class of members.

I. Loans: The Association shall have the power to borrow money, and only with the assent (by vote or written consent of three-fourths (3/4) of the total voting power of the Association and three-fourths (3/4) of the members other than Declarant, 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.

J. Dedication: The Association shall have the power to dedicate all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication shall be effective unless an instrument has been signed by three-fourths (3/4) of the total voting power of the Association and three-fourths (3/4) of the members other than

Declarant, or where the two class voting structure is still in effect, shall include three-fourths (3/4) of the voting power of each class of members, agreeing to such dedication.

K. Contracts: The Association shall have the power to contract for goods and/or services for the common area(s), facilities and interests or for the Association, subject to limitations elsewhere set forth in the condominium documents.

L. 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 for hearings required to be given by the Board.

M. Security: The Association shall have the power to contract for security service for the common area.

ARTICLE VI

UTILITIES

6.1 Owner's Rights and Duties: The rights and duties of the owners of condominiums within the project with respect to sanitary sewer, water, electricity, gas and television receiving, telephone lines and facilities, and heating facilities shall be as follows:

A. Whenever storm or sanitary sewer, drainage, plumbing, water, electricity, gas, television receiving, telephone lines or connections, heating conduits, ducts, or flues are installed within the property, which connections or any portion thereof lie in or upon condominiums owned by other than the owner of a condominium served by said connections, the owners of any condominium served by said connections shall have the right of reasonable access for themselves or for utility companies to repair, replace and generally maintain said connections as and when necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

B. Whenever storm or sanitary sewer, drainage, plumbing, water, electricity, gas, television receiving or telephone lines or connections, heating conduits, ducts, or flues are installed within the property which connections serve more than one condominium, the owner of each condominium served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his condominium.

C. In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties.

6.2 Easements for Utilities and Maintenance: Easements over and under the property for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded map of the property, and as may be hereafter required or needed to service the property, are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

6.3 Association's Duties: The Association shall maintain all utility installations located in the common area except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the project except those metered or charged separately to the units.

ARTICLE VII

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the property and each condominium therein is subject to the following:

7.1 Condominium Use: No condominium shall be occupied and used except for single family residential purposes by the owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns, may use any unit or units in the project owned by Declarant for a model home site or sites and display and sales office, and except further that Unit A116 may, in addition to its residential use, be used as a real estate sales and management office. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently. The number of permanent residents in any unit shall be limited to two (2) per bedroom. Owners may have a reasonable number of additional persons as guests as long as the period such guests occupy the unit does not exceed ninety (90) consecutive days in

see revised page at end of Document

duration nor more than one hundred and twenty (120) days in any calendar year.

7.2 Nuisances: No noxious, illegal, or seriously offensive activities shall be carried on upon any condominium, or in any part of the property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of his respective unit, or which shall in any way increase the rate of insurance for the project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

7.3 Vehicle Restrictions: No trailer, camper, mobile home, motor home, house car, commercial vehicle, truck (other than standard size pickup truck or standard size van), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the property. Commercial vehicles shall not include sedans or standard size vans and pickup trucks which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the property. No vehicles shall be operated upon the property which emit extraordinary and/or offensive levels of exhaust or noise as such levels may be determined by the Board.

7.4 Signs: No signs shall be displayed to the public view on any units or on any portion of the property except such signs as are approved by the Board or committee appointed by the Board which advertise a unit for sale, and except such signs maintained by Declarant in connection with its sales activities.

7.5 Animals: No animals, reptiles, insects or birds of any kind shall be raised, bred, or kept in any condominium, or on any portion of the property, except that no more than a total of one (1) usual and ordinary household pet such as a dog, cat, bird, etc., may be kept provided that the animals are not kept, bred, or maintained for any commercial purposes and are kept under reasonable control at all times. No pet shall be allowed in the common area except as may be permitted by rules of the Board. No dog shall enter the common area except while on a leash which is held by a person capable of controlling it. After making a reasonable attempt to notify the owner, Declarant or any owner may cause any unleashed dog found within the common area to be removed by Declarant (or any owner) to a pound or animal shelter under the jurisdiction of the City of San Jose or the County of Santa Clara, by calling the appropriate authorities, whereupon the owner may, upon payment of all expenses connected therewith, repossess the dog. Owners shall prevent their pets

architectural control committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. Nothing contained herein shall be construed to limit the right of any owner to paint the interior of his unit any color desired. No alteration or modification to the type or extent of the floor covering in the unit may be undertaken without the prior review and written approval of the Board or Architectural Control Committee appointed by the Board.

No landscaping of patios visible from the street or from the common area not involving the use of natural plants, grass, trees, or shrubs and which does involve the use of synthetic materials, or of concrete, rock or similar materials, shall be undertaken by any owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Board or by an architectural control committee appointed by the Board.

The architectural control committee shall consist of not less than three (3) nor more than five (5) members. Declarant may appoint all of the original members of the committee and all replacements until the first anniversary of the issuance of the original final Public Report for the project. The Declarant reserves to itself the power to appoint a majority of all members to the committee until ninety percent (90%) of all the units in the project have been sold or until the fifth anniversary of the issuance of the final Public Report for the project, whichever occurs first. After one (1) year from the date of issuance of the original Public Report for the project, the Board shall have the power to appoint one (1) member to the architectural control committee until ninety percent (90%) of all the units in the project have been sold or until the fifth anniversary date of the issuance of the final Public Report for the project, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the members of the architectural control committee. Members appointed to the architectural control committee by the Board shall be from the membership of the Association. Members appointed to the architectural control committee by the Declarant need not be members of the Association. A majority of the architectural control committee may designate a representative to act for it. In the event of death or resignation of any member of the committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the committee, and thereafter the Board shall appoint such a successor. Neither the members of the committee nor its designated representatives shall be entitled to any compensation for services performed pursuant hereto. In the event the committee fails to approve or disapprove plans and

from soiling all portions of the common area and shall promptly clean up any messes left by their pets. Notwithstanding the foregoing, the keeping and control of each type of pet shall be expressly subject to such controls or prohibition as may be adopted by the Board from time to time and no pets may be kept on the property which would be obnoxious to a person of ordinary sensitivities living within a unit in the project.

7.6 Garbage and Refuse Disposal: All rubbish, trash and garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All equipment, garbage cans, woodpiles, or storage piles shall be kept screened and concealed from view of other units, streets and common areas.

7.7 Right to Lease: No owner shall be permitted to lease his unit for transient or hotel purposes which shall be defined as (1) rental for any period less than thirty (30) days, or (2) any rental if the occupants of the unit are provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen and bellboy service.

Any lease agreement shall be required to provide that the term of the lease shall be subject in all respects to the provisions of the Declaration, the Regulatory Agreement, the Bylaws and Articles and any rules or regulations which may be adopted by the Board, and that any failure of the lessee to comply with the terms of such documents shall be a default under the lease. All owners leasing or renting their units shall promptly notify the Association in writing of the names of all tenants and members of tenant's family occupying such unit and of the address and telephone number where such owner can be reached. All leases shall be required to be in writing. Other than the foregoing, there is no restriction on the right of any owner to lease his condominium.

7.8 Architectural Control: No building, fence, wall, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, improvement or structure of any kind shall be commenced, installed, erected, painted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto until the same has been approved in writing by the Board, or by an architectural control committee appointed by the Board.

Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the

specifications within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

7.9 Clothes Lines: There shall be no exterior clothesline erected or maintained and no clothes shall be laundered or dried in any place which is visible from any part of the common area, any public or private street, or from any unit.

7.10 Power Equipment and Car Maintenance: No power equipment, hobby shops, or car maintenance (other than emergency work) shall be permitted on the property except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.

7.11 Liability of Owners for Damage to Common Area: The owner of each unit shall be liable to the Association for all damages to the common area or improvements thereon caused by such owner or any occupant of his unit or guest, except for that portion of said damage, if any, fully covered by insurance. Liability of an owner shall be established only after notice to the owner and hearing before the Board. In the event an owner disagrees with a decision of the Board on the question of liability, the owner may petition a court of law or submit the matter to arbitration under the rules of the American Arbitration Association.

7.12 Radio and Television Antennas: No owner shall be permitted to install, use or operate his own external radio or television antenna without the prior written consent of the Board.

7.13 Administration of the Project: All owners covenant and agree that the administration of the Project shall be in accordance with the provision of this Declaration, the Regulatory Agreement, the Articles and Bylaws of the Association, and any duly promulgated rules and regulations of the Association. In the event that any of the matters in the Articles and Bylaws are in any way inconsistent with any matters in this Declaration, then any such matters in this Declaration shall prevail.

7.14 Drapes: All drapes, curtains, window coverings, shutters or blinds visible from the street or common areas shall be beige, white or off-white in color, or such other colors, materials and patterns which are approved by the Board or its authorized committee.

ARTICLE VIII

GENERAL PROVISIONS

8.1 Enforcement: The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Articles and the Bylaws. Failure by the Association, or by any owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

8.2 Invalidity of any Provision: Should any provision or portion hereof be declared invalid or in conflict with any law of the jurisdiction where this project is situated, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

8.3 Term: The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless an instrument in writing, signed by a majority of the then owners of the condominiums, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

8.4 Amendments: Prior to close of escrow on the sale of the first unit, Declarant may amend this Declaration (with the consent of the Department of Real Estate as to any amendment constituting a material change). After sale of the first unit, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of the total voting power of the Association and a majority of the affirmative votes or written consent of members other than the Declarant or, where the two (2) class voting structure is still in effect, a majority of each class of membership.

However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded and shall become effective upon being recorded in the Recorder's Office of the County of Santa Clara. With respect to any action to be

taken which is governed by the provisions in paragraphs 8.6 which requires specified votes of owners and/or mortgagees for amending the Declaration, those paragraphs shall prevail in amending the Declaration.

8.5 Encroachment Easements: Each unit within the property is hereby declared to have an easement over all adjoining units and the common area, and the common area is hereby declared to have easements over the units for the purpose of accommodating any encroachment due to minor engineering errors, minor errors in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement or shifting provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the intentional conduct of said owner or owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the owners of each condominium agree that minor encroachments over adjoining condominiums or common area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist.

8.6 Rights of First Lenders: No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any unit made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provisions in the condominium documents to the contrary, first lenders shall have the following rights:

A. Copies of Project Documents: The Association shall make available to unit owners and lenders, and to holders, insurers or guarantors of any first mortgage, current copies of the Declaration, Bylaws, Articles or other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

B. Audited Statement: Any holder, insurer or guarantor of a first mortgage shall be entitled, upon written request, to an audited financial statement for the immediately preceding fiscal year, free of charge to the party so requesting.

C. Notice of Action: Upon written request to the Association, identifying the name and address of the eligible mortgage holder or eligible insurer, guarantor, or first lender and the unit number or address, such eligible mortgage holder or eligible insurer or guarantor or first lender will be entitled to timely written notice of: (1) condemnation loss or any casualty loss which affects a material portion of the project or any unit on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable; (2) any default in performance of obligations under the project documents or delinquency in the payment of assessments or charges owed by an owner of a unit subject to a first mortgage held, insured or guaranteed by such eligible mortgage holder, first lender or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (4) any proposed action which would require the consent of a specified percentage of eligible mortgage holders or first lenders as specified in Section 8.6(D)(1)(a) and Section 8.6(D)(1)(b).

The Association shall discharge its obligation to notify eligible holders or eligible insurers or guarantors or first lenders by sending written notices required herein to such parties at the address given on the current request for notice, in the manner prescribed by Section 8.13.

D. Consent to Action:

(1) Except as provided by statute in case of substantial destruction or condemnation of the project:

(a) The consent of owners of units to which at least sixty-seven percent (67%) of the votes in the Association and the consent of first lenders holding sixty-seven percent (67%) votes based upon one vote for each mortgage held shall be required to abandon or terminate the legal status of the project as a condominium project except for abandonment or termination resulting from substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain.

(b) The consent of owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on units which have at least fifty-one percent (51%) of the votes of the units subject to eligible holder mortgages, shall be required to add or amend any material provisions of the project documents which establish, provide for, govern or regulate any of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens;

(iii) reserves for maintenance, repair and replacement of the common area(s); (iv) insurance or fidelity bond; (v) rights to use of common areas; (vi) responsibility for maintenance and repair of the several portions of the project; (vii) expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project (except as provided in paragraph D(1) above); (viii) boundaries of any unit; (ix) the interests in the general or restricted common areas; (x) convertibility of units into common areas or of common areas into units; (xi) leasing of units; (xii) imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey his or her unit; (xiii) any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insurers or guarantors of first mortgages on units.

(c) An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

(2) Except as provided by statute in case of condemnation or substantial loss to the units and/or common areas of the condominium project, unless the holder(s) of at least sixty-seven percent (67%) of the first mortgages (based upon one vote for each first mortgage owned), or sixty-seven percent (67%) of owners other than Declarant of the individual condominium units have given their prior written approval, the Association and/or the owners shall not be entitled to:

(a) Change the pro rata interest or obligations of any individual condominium unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each condominium unit in the common area.

(b) Partition or subdivide any condominium unit.

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

(d) Use hazard insurance proceeds for losses to any condominium property (whether to units or to common area) for other than the repair, replacement or reconstruction of such condominium property.

If there is a question between the applicability of paragraphs 8.6(D)(1)(b) or 8.6(D)(2), then the requirements of both paragraphs must be met.

E. Right of First Refusal: The right of a unit owner to sell, transfer, or otherwise convey his or her unit shall not be subject to any right of first refusal or similar restriction.

F. Contracts: Any agreement for professional management of the condominium project, or lease or any other contract providing for services of the developer, sponsor, or builder, may not exceed one (1) year. Any agreement, contract, or lease, including a management contract entered into prior to passage of control of the Board of Directors of the Association to unit purchasers, must provide for termination by either party for cause on thirty (30) days written notice, or without cause and without payment of a termination fee or penalty on ninety (90) days or less written notice.

G. Reserves: Condominium dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those common area improvements (and restricted common area improvements which the Association is obligated to maintain) that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

H. Working Capital: A working capital fund must be established for the initial months of the project operation equal to at least two (2) months' estimated common expenses for each unit. Each unit's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each unit and maintained in a segregated account for the use and benefit of the Association. The contribution to the working capital fund for each unsold unit shall be paid to the Association within sixty (60) days after the date of conveyance of the first unit in the project. The purpose of the fund is to insure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of regular assessments. Any time after the close of escrow on the sale of the last unit the Board, at its discretion, may eliminate the requirement for keeping the working capital fund. Declarant may require buyers of units to reimburse

Declarant at the close of escrow for such payments, along with payment for prorated assessments.

I. Priority of Liens: Each holder of a first mortgage lien on a unit who obtains title to a unit by virtue of foreclosure of the mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the unit free of any claims for unpaid assessments and fees, late charges, fines or interest levied in connection therewith against the unit which accrue prior to the time such holder obtains title to the unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all project units including the mortgaged unit.

J. Distribution of Insurance of Condemnation Proceeds: No provision of the condominium constituent documents gives a condominium owner, or any other party, priority over any rights of first mortgagees of condominium units pursuant to their mortgages in the case of a distribution to condominium unit owners of insurance proceeds or condemnation awards for losses to or taking of condominium units and/or common elements.

K. Restoration or Repair: Any restoration or repair of the project, after a partial condemnation or damage due to an insurable hazard, shall be performed substantially in accordance with the Declaration and the original plans and specifications, unless other action is approved by eligible mortgage holders holding mortgages on units which have at least fifty-one percent (51%) of the votes of units subject to eligible holder mortgages.

L. Termination: Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property must require the approval of first lenders holding sixty-seven percent (67%) votes based upon one vote per each mortgage held.

M. Reallocation of Interests: No reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of the project may be effected without the prior approval of first lenders holding mortgages on all remaining units whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining units subject to eligible holder mortgages.

N. Termination of Professional Management: When professional management has been previously required by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or

eligible insurer or guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of owners of units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on units which have at least fifty-one percent (51%) of the votes of units subject eligible holder mortgages and subject to the provisions of 5.2(C).

8.7 Owner's Right and Obligation to Maintain and Repair: Except for those portions of the project which the Association is required to maintain and repair, each unit owner shall, at his sole cost and expense, maintain and repair his unit (and shall maintain the landscaping within the private patio and balcony areas appurtenant thereto which is part of the restricted common area), keeping the same in good condition. Each owner shall bear the cost of maintenance, repair and replacement of the following items within or serving such owner's unit: patio, interior surfaces of all perimeter and interior walls, ceilings and floors (including carpeting, tile, wallpaper, paint or other covering); garbage disposals, ranges, refrigerators, dishwashers, interior light fixtures, and any and all other appliances of any nature whatsoever; heating, ventilating equipment servicing such unit (although such equipment may be located in part outside such unit); interior and exterior doors, including all hardware thereon, except exterior paint; window panes and light bulbs; plumbing and other fixtures of any nature whatsoever; "built in" features; and decorative features, and any furniture and furnishings. All electric utilities serving individual units shall be separately metered and shall be the expense of each individual unit owner. Electric utilities serving the general common elements shall be a common expense of the Association. Each unit owner shall keep those portions of the restricted common area to which he has exclusive easement rights clean and neat. Each owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his unit. In the event an owner fails to maintain the interior of his unit (or the landscaping within his private patio area) in a manner which the Board deems necessary to preserve the appearance and value of the property, the Board may notify owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event owner fails to carry out such maintenance within said period, the Board may, following notice and hearing, cause such work to be done and may specially assess the cost thereof of such owner.

8.8 Insurance; Damage or Destruction: In the event of damage or destruction of any unit, the same shall be reconstructed as soon as reasonably practicable, and

substantially in accordance with the original plans and specifications therefor.

Each unit owner appoints the Association, or any insurance trustee to be designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining the Association's insurance, including: The collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association or any insurance trustee shall be required to receive, hold, or otherwise properly dispose of any proceeds of insurance in trust for unit owners and their first mortgage holders, as their interests may appear.

The Association shall obtain and continue in effect a master policy of insurance covering all of the personal property and supplies of the Association, and all of the real property and improvements of the project, including the common area and all fixtures and building service equipment therein, and the units and any fixtures, equipment, or property therein covered by a first mortgage on the unit, and protecting the interests of the Association and its members including, without limitation, fire and extended coverage and special form and insuring one hundred percent (100%) of current replacement cost of all improvements in the project, including the units, comprehensive general liability insurance insuring the Association and each owner for his liability for the common area, and a fidelity bond covering officers, directors and employees in an amount to be determined by the Board, but in no event less than a sum equal to three (3) months' aggregate assessments on all units plus reserve funds.

All insurance shall contain "severability of interest provision", "cross liability endorsement" and waiver of subrogation as to the Association officers, directors, members, guests, agents and employees.

The master policy shall be issued in the name of the Association for the use and benefit of the owners.

The minimum limits on the liability insurance policy shall be \$1,000,000 single limit and shall include personal injury, bodily injury, property damage and liability for non-owned automobiles. In addition the Association shall obtain and continue in effect additional umbrella coverage of \$1,000,000 or as an alternative may carry a \$2,000,000 single limit policy. Worker's compensation insurance shall at all times be carried to the extent required to comply with any applicable law. Officers and directors liability insurance shall be carried by the

Association to cover persons serving in such capacities and such coverage shall be extended to cover committee members.

It is the responsibility of each owner to insure his personal property (if he desires) and the improvements and betterments added to his unit since the time of the original sale, together with additional living expense coverage and public liability insurance for the interior of his unit.

In addition to the master liability policy which the Association shall carry, each unit owner may carry public liability insurance covering damage to property or injury to person of others within the project resulting from negligence of the owner or his agents, in amounts not less than \$100,000 for each occurrence.

Insurance premiums for the master policy shall be a common expense to be included in the monthly assessments levied by the Association and the portion of such payment necessary for the insurance premiums shall be held in a separate account of the Association and shall be used solely for the payment of the master insurance policy premiums as such premiums become due.

Each buyer of a unit shall pay the portion of the premium(s) attributable to his unit (prorated to the date of close of escrow) for the policy or policies purchased by Declarant for the Association.

All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs and replacement of the property which may have been damaged or destroyed.

If any of the project improvements are materially damaged or destroyed by fire or other casualty (Materially damaged is defined for the purposes of this section as any damage for which the cost of repair or reconstruction is more than fifty percent (50%) of the full replacement value of the improvements.), the project shall be repaired or reconstructed in accordance with the original as built plans and specifications unless the owners vote not to undertake such repair or reconstruction in a special election held in accordance with the following procedures:

A. In the event any portion of the project improvements are materially damaged (as defined above) or destroyed, a special election shall be held, after not less than thirty (30) days written notice to all owners, and their first mortgagees of record, at a suitable location on the property, or

as close thereto as practicable, which location shall be specified in such notice.

B. The project shall be repaired or reconstructed in accordance with the original as built plans and specifications as hereinafter provided, unless: (1) in such special election at least two-thirds (2/3) of the total voting power of the Association residing in members other than the Declarant votes against such repair or reconstruction; or (2) the available insurance proceeds plus reserves of the Association are inadequate to pay the cost of repair or reconstruction and a special assessment in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year is required to provide such funds, and such assessment fails to pass by majority vote as provided in Article 4, Section 4.4.

C. In the event the requisite number of votes are not cast against such repair or reconstruction, and if a special assessment in excess of five percent (5%) (if required) passes, all of the insurance proceeds payable on account of such damage or destruction shall be made available for such repair or reconstruction and shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "Depository"). The Depository shall be appointed by the Association. Such funds shall be disbursed in accordance with the normal construction loan practices for the Depository, which are reasonably acceptable to the Association. The restoration or reconstruction shall be substantially in accordance with the original as built plans and specifications for the building, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction or in accordance with such other plans and specifications as may be approved by the Association, and the respective first mortgages.

D. The Association shall designate a construction consultant (the "Construction Consultant"), general contractor (the "General Contractor"), and architect (the "Architect") for the repair or reconstruction contemplated by this paragraph. In the event of a dispute regarding the selection of the Construction Consultant, the General Contractor and the Architect, the selection of such individuals or firms shall be submitted to and be subject to the rules of the American Arbitration Association.

E. The insurance proceeds payable on account of such damage or destruction shall be deposited with the Depository and shall be disbursed in accordance with the normal construction loan practices of the Depository and upon the certification of the Construction Consultant, General Contractor and Architect

dated not more than ten (10) days prior to any such request for disbursement, setting forth the following:

(1) That all of the work completed as of the date of such request for disbursement has been done in compliance with the approved plans and specifications;

(2) That such disbursement request represents monies which either have been paid by or on behalf of the Construction Consultant, the General Contractor or the Architect and/or is justly due to contractors, subcontractors, materialmen, engineers or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work, giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

(3) That the sum then requested to be disbursed plus all sums previously disbursed does not exceed the cost of the work insofar as actually accomplished up to the date of such certificate;

(4) That no part of the cost of the services and materials described in the foregoing paragraph (1) has been or is being made the basis for the disbursement of any funds in any previous or then pending application; and

(5) That the amount held by the Depository will, after payment of the amount requested in the pending disbursement request, be sufficient to pay in full the cost of such repair or reconstruction.

F. In the event the insurance proceeds available for repair or reconstruction are less than the total cost of such repair or reconstruction the Association may use sums from its account or if necessary from levying special assessments on the members to restore or rebuild the areas affected, provided that any assessment that exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year shall require the vote or written assent of a majority of the voting power of the Association residing in members other than the Declarant, and provided further if such special assessment fails to be approved by the requisite majority, and the project cannot be repaired or reconstructed without the funds from such special assessment, the provisions of paragraph G below shall apply, and if the first lenders are unable or unwilling to supply the necessary funds the provisions of paragraph I below shall apply.

G. In the event any portion of the common area has been damaged or destroyed and that portion of the insurance proceeds applicable to the damage or destruction is insufficient to reconstruct or repair the damaged or destroyed portion, the Association shall supply the excess funds required to restore or rebuild the affected area, as provided in F above, provided, however, that in the event the Association and the members refuse or are unable to supply such excess funds, the first lenders of the units affected shall have the option of supplying such excess funds or of applying that portion of the insurance proceeds allowable to that damaged or destroyed area to the debt secured by such mortgagee's mortgages or deeds of trust, as provided in paragraph I below.

H. All such funds to be supplied by the Association, or individual owners, shall be deposited with the depository and shall be disbursed pursuant to the provisions of this section. In the event that there is any dispute over the allocation of insurance proceeds or the amount of funds in excess of the insurance proceeds which any party must deposit with the Depository such dispute shall be submitted to and be subject to the rules of the American Arbitration Association.

I. In the event the owners elect not to repair or reconstruct a building or elect not to approve a special assessment to provide funds for rebuilding as provided in B and F above, the provisions of Civil Code §1354 (regarding partition and sale) shall be deemed satisfied, and the insurance proceeds payable on account of such damage or destruction shall be disbursed as follows and in the event of partitions and sale under any conditions stated in Civil Code Section 1354, the proceeds of sale shall be disbursed as follows:

First, to the first mortgagees of the owners as their interest appear to the extent of monies owed such first mortgagees which are secured by first mortgages or deeds of trust on the project improvements;

Second, to the cost of removing any remaining or destroyed portions of the project improvements and complying with all other applicable requirements of governmental agencies;

Third, to the owners in proportion to the respective fair market values of their units and their interests in the common area at the time of the destruction as determined by the Association, provided, however, that if any owner or mortgagee protests the proposed distribution based upon said fair market values as so determined, a licensed independent appraiser acceptable to the Association and to the protesting members or mortgagees shall be appointed by the Association to make the determination of the respective fair market values of the units

at the time of the destruction. In the event of a failure to agree upon an appraiser, the appraiser shall be appointed by the then President of the Santa Clara County Bar Association.

J. In the event there is any damage or destruction to the project improvements which is not material, as that term is defined above, the damaged improvements shall be repaired and reconstructed (without the necessity of any special election) in accordance with the applicable provisions of this section.

Rights of first lenders in the case of loss due to damage or condemnation are provided for in Section 8.6.

Any election to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property shall require the approval of first lenders holding sixty-seven percent (67%) votes based upon one vote for each mortgage held.

8.9 Condemnation: The Association shall represent the unit owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common areas, or part thereof. In the event of a taking or acquisition of part or all of the common areas by a condemning authority, the award or proceeds of settlement shall be payable to the Association, or any trustee, for the use and benefit of the unit owners and their mortgagees as their interests may appear. In the event of an award for the taking of any unit in the project by eminent domain, the owner of such unit shall be entitled to receive the award for such taking and after acceptance thereof he and his mortgagee shall be divested of all interest in the project if such owner shall vacate his unit as a result of such taking. The remaining owners shall decide by majority vote whether to rebuild or repair the project, or take other action. The remaining portion of the project shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining owners in the project. In the event of a taking by eminent domain of any part of the common area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where units are not valued separately by the condemning authority by the court. Proceeds of condemnation shall be distributed among owners of units and their respective mortgagees according to the relative values of the units affected by the condemnation, said values to be determined by the method provided in Section 8.8.

8.10 Limitation of Restrictions on Declarant:
Declarant is undertaking the work of creating residential

condominium dwellings and incidental improvements upon the subject property. The completion of that work and the sale, rental, and other disposal of said condominium units is essential to the establishment and welfare of said property as a residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

A. Prevent Declarant, its contractors, or subcontractors from doing on the unfinished property or any unfinished unit whatever is reasonably necessary or advisable in connection with the completion of said work; or

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on any part or parts of the property such structures as may be reasonable and necessary for the conduct of its business of completing said work and establishing said property as a residential community and disposing of the same in parcels by sale, lease or otherwise; or

C. Prevent Declarant from conducting on any part of the property its business of completing said work and of establishing a plan of condominium ownership and of disposing of said property in condominium units by sale, lease or otherwise, including use of one or more units as a sales office; or

D. Prevent Declarant from maintaining such sign or signs on any of the property as may be necessary for the sale, lease or disposition thereof.

The foregoing limitations of the application of the restrictions to Declarant shall terminate upon sale of Declarant's entire interest in the project or fifteen (15) years after the date of recordation of the deed of the first unit to be sold in the project.

So long as Declarant, its successors and assigns, owns one or more of the condominiums established and described herein, Declarant, its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make every effort to avoid disturbing the use and enjoyment of their units (and the common area) by owners, while completing any work necessary to said units or common area.

8.11 Termination of any Responsibility of Declarant:
In the event Declarant shall convey all of its right, title and interest in and to the property to any partnership, individual or individuals, corporation or corporations, then and in such event Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or

individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

8.12 Owners' Compliance: Each owner, tenant or occupant of a condominium shall comply with the provisions of this Declaration, and to the extent they are not in conflict with the Declaration, the Articles and Bylaws, decisions and resolutions of the Association or its duly authorized representative, and the Regulatory Agreement as lawfully amended from time to time and failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action to recover sums due, for damages or for injunctive relief.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in this Declaration or in the Articles or the Bylaws shall be deemed to be binding on all owners of condominiums, their successors and assigns.

8.13 Notices: Any notice permitted or required by the Declaration, Articles or Bylaws may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first-class or registered, postage prepaid, addressed to each person at the current address given by such person to the Secretary of the Board or addressed to the unit of such person if no address has been given to the Secretary.

8.14 Regulatory Agreement: All owners, tenants, or their employees, are subject to the Regulatory Agreement. Acquisition, rental, or occupancy of any unit shall constitute acceptance and ratification of the provisions of the Regulatory Agreement and this Declaration.

8.15 FHA/VA Approval: As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties or dedication of common area.

8.16 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: Where the project includes common area improvements which have not been completed prior to the issuance of the public report, and where the Association is obligee under a bond or other arrangement to secure performance of the commitment of Declarant to complete said improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60)

days after the completion date specified for that improvement in the planned construction statement appended to the bond. If the Association has given an extension in writing for the completion of any common area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by members representing five percent (5%) of the total voting power of the Association. At such special meeting a vote of a majority of members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

8.17 Inspection of Improvements:

A. Declarant shall notify the Board when the Common Area improvements (including landscaping) of the Development or some portion thereof have been completed. Within thirty (30) days after the later to occur of (1) Declarant's giving of such notice or (2) the date on which members other than representatives of Declarant constitute a majority of the Board, Declarant and the Board shall jointly request that a qualified engineer or architect employed by the City of San Jose inspect the Common Area improvements as to which Declarant has given such notice. If the City of San Jose is unwilling or unable to provide an engineer or architect to make such inspection, Declarant and the Board shall jointly select an independent and qualified engineer or architect to perform the inspection. If Declarant and the Board are unable or fail to agree on the selection within thirty (30) days after joint selection is requested by either, then Declarant and the Board, within the next thirty (30) days, shall each select a licensed engineer or architect and the persons so selected, within fifteen (15) days after both are selected, shall jointly select a third engineer or architect. If either Declarant or the Board fails to select an engineer or architect within the time provided, then that party shall be deemed to have irrevocably waived its right to select, and the inspection shall be performed by the engineer or architect selected by the other party. If the engineers or architects selected by Declarant and the Board shall fail to select a third person within the time provided, then either Declarant or the Board may petition any court of competent

jurisdiction for appointment of such a third person. Each person selected or appointed pursuant to this paragraph is referred to collectively as the "Expert." Declarant shall pay the reasonable compensation to the Expert.

B. Promptly upon the selection of the Expert as provided in subsection A, the Expert shall inspect the Common Area improvements as to which Declarant has given notice of completion and requested inspection. Declarant and the Board may accompany the Expert during the inspection. The inspection shall be limited to a visual inspection, and under no circumstances shall improvements be uncovered. The Expert shall not be responsible for identifying latent defects. Promptly after the inspection is completed, the Expert shall submit a written report (the "Report") to Declarant and the Board specifying the respects, if any, in which the improvements do not conform to the plans and specifications therefor and are defective, and if there are no such defects, the Report shall state that the improvements conform to the plans and specifications therefor. The Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent defects, if any, the improvements have been constructed in accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any defects specified in the Report and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

C. Declarant shall correct any defects specified in the Report, and Expert shall reinspect such improvements with thirty (30) days after Declarant's request. Such reinspection shall be performed in the same manner as provided for the first inspection and shall be limited only to those items contained in the Report. Promptly after the reinspection is completed, the Expert shall submit another written report (the "Reinspection Report") to Declarant and the Board specifying the defects specified in the Report which have not been corrected, if any, and if all such defects have been corrected, the Reinspection Report shall state that the improvements conform to the plans and specifications therefor. The Reinspection Report shall constitute conclusive and binding evidence that, except as otherwise provided therein and except for latent defects, if any, the improvements have been constructed in accordance with the plans and specifications therefor, and thereafter Declarant shall have no further liability, duty or obligation with respect to such improvements, except to remedy any defects specified in the Reinspection Report, and except with respect to latent defects, if any, and the separate repair obligations of Declarant under express written warranty, if any.

D. Additional inspections and Reinspection Reports shall be made, if necessary, all in accordance with the same effect as provided hereinabove.

E. If the improvements to be inspected are landscaping improvements, then notwithstanding anything to the contrary contained herein, the Expert shall be a horticulturalist or landscape architect. In all other respects, the provisions of this paragraph shall apply to the inspection of landscaping improvements.

F. Within ten (10) days after all defects have been corrected, as evidenced by a Report or Reinspection Report, the Board shall accept the improvements, or the portion thereof covered by that Report, in writing and shall release in writing any and all rights under any and all payment and performance, labor and material, and completion bonds, or other security arrangements, pertaining to the improvements or portion thereof.

8.18 Fair Housing: No owner shall, either directly or indirectly, forbid or restrict the conveyance, encumbrance, leasing, mortgaging or occupancy of his unit to any person of a specified race, sex, marital status, color, religion, ancestry, physical handicap or national origin.

8.19 Litigation: In addition to the duties and powers enumerated in the Articles and Bylaws of the Association, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall defend, prosecute, and settle, as deemed necessary, all lawsuits involving the Association provided, however, the Association and/or the Board shall not undertake to prosecute any claim, complaint, counterclaim or cross-complaint in excess of One Hundred Thousand Dollars (\$100,000.00) without the vote or written consent of sixty percent (60%) of the entire voting power of Members of the Association other than Declarant and other than the proposed defendants or cross-defendants, given during or after a special homeowners' meeting called and held pursuant to the procedures set forth in the By-Laws, and in which at the time of notice of said meeting being given the following information shall be presented to each Member in writing:

- A. Proposed causes of action or claims for relief;
- B. Proposed defendants or cross-defendants;
- C. Underlying facts supporting such causes of action or claims for relief;
- D. Names and addresses of proposed legal counsel;

- E. Proposed fee arrangement with counsel;
- F. Anticipated court and other costs and expert fees, if any;
- G. Availability of Association funds to cover anticipated legal fees, court and other costs, and expert fees;
- H. Counsel's opinion of likelihood of success; and
- I. Counsel's opinion of anticipated time for final resolution of the matter.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration this 1st day of March, 1984.

MISSION GROVE CONDOMINIUMS, INC.,
a California corporation,
Declarant

BY:

K. Walter Haake
K. Walter Haake, President

Acknowledgment - Corporation

State of California,

County of San Francisco

} ss.

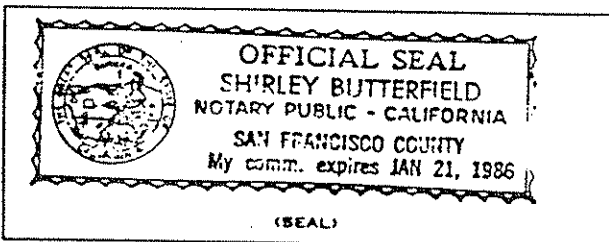
On March 1, 1984

before me, the undersigned, a Notary Public for California, personally appeared *K. Walter Haake*

known to me (~~or proved to me on the oath of~~), to be the President

of the corporation described in and that executed the within instrument,

and also known to me to be the person... who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the within instrument.



Shirley Butterfield
Notary Public for California

DOCUMENT: 15645551

Titles: 1 / Pages: 1

Doc#: 15645551
4/20/2001 3:02 PM



Fees....	13.00
Taxes...	
Copies..	4.00
AMT PAID	17.00

Recording Requested By and
When Recorded Return To:

MISSION GROVE HOMEOWNERS ASSOCIA
c/o Russell & Mallett, LLP
2930 Camino Diablo, Suite 300
Walnut Creek, CA 94596-3912
Tel: 925/947-4915
Fax: 925/947-4920

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
Homeowners' Association

RDE # 011
4/20/2001
3:02 PM

ENDORSED COPY

**Amendment to Declaration of Covenants, Conditions and
Restrictions Of The Mission Grove Homeowners Association**

**Page 20 of the Declaration of Covenants, Conditions and Restrictions
is hereby amended to read as per the attached, restated page 20.**

Please note that this document is being recorded to remove provisions in compliance with Civil Code Section 1352.5 and Government Code Sections 12955 and 12956.1.

C. In the event of a dispute between owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration pursuant to the rules of the American Arbitration Association, and the decision of the arbitrator(s) shall be final and conclusive on the parties.

6.2 Easements for Utilities and Maintenance: Easements over and under the property for the installation, repair, and maintenance of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the recorded map of the property, and as may be hereafter required or needed to service the property, are hereby reserved by Declarant and its successors and assigns, including the Association, together with the right to grant and transfer the same.

6.3 Association's Duties: The Association shall maintain all utility installations located in the common area except for those installations maintained by utility companies, public, private, or municipal. The Association shall pay all charges for utilities supplied to the project except those metered or charged separately to the units.

ARTICLE VII

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the property and each condominium therein is subject to the following:

7.1 Condominium Use: No condominium shall be occupied and used except for residential purposes by the owners, their tenants, and social guests, and no trade or business shall be conducted therein, except that Declarant, its successors or assigns, may use any unit or units in the project owned by Declarant for a model home site or sites and display and sales office, and except further that Unit A116 may, in addition to its residential use, be used as a real estate sales and management office. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

Owners may have a reasonable number of additional persons as guests as long as the period such guests occupy the unit does not exceed ninety (90) consecutive days in

INSTRUMENT
NUMBER 7992979

CERTIFICATION

We, the undersigned, on behalf of the Mission Grove Homeowners Association, do hereby certify, under penalty of perjury pursuant to the laws of the State of California, that the Mission Grove Enabling Declaration Establishing A Plan For Condominium Ownership, recorded on March 2, 1984, was re-adopted as modified according to the requirements of Civil Code Section 1352.5 and Government Code Sections 12955 and 12956.1, and duly approved by the Board of Directors of the Mission Grove Homeowners Association.

Mission Grove Homeowners Association

Dated: 12/12/10

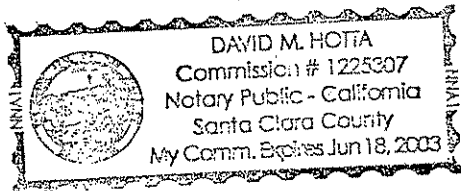
State of California)
County of Santa Clara) ss.

By: Lori Kim Burtal
Name: Lori Kim Burtal
Association President

On 12-12-2010 before me, DAVID M. HOTA, Notary Public, personally appeared Lori Kim Burtal, personally known to me / proved to me on the basis of satisfactory evidence to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC



Mission Grove Homeowners Association

Dated: 12-11-00

State of California)
County of Santa Clara) ss.

By: Sandra Lucienne Jackson
Name: SANDRA LUCIENNE JACKSON
Association Secretary

On 12-11-00 before me, RUBEN RAMIREZ, Notary Public, personally appeared SANDRA LUCIENNE JACKSON, personally known to me / proved to me on the basis of satisfactory evidence to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

NOTARY PUBLIC

