

- (2) **Record Date for Voting.** Unless fixed by the Board, the record date for determining those Members entitled to vote at a meeting of Members shall be the day of the meeting, or in the case of an adjourned meeting, the day of the adjourned meeting.
- (3) **Record Date for Action by Written Ballot Without Meeting.** Unless fixed by the Board, the record date for determining those Members entitled to vote by written ballot on proposed corporate actions without a meeting, when no prior action by the Board has been taken, shall be the day on which the first written ballot is mailed or solicited. When prior action of the Board has been taken, it shall be the day on which the Board adopts the resolution relating to that action.
- (4) **Record Date for Other Lawful Action.** Unless fixed by the Board, the record date for determining those Members entitled to exercise any rights in respect to any lawful action shall be Members at the close of business on the day on which the Board adopts the resolution relating thereto, or the sixtieth (60th) day prior to the date of such other action, whichever is later.
- (5) **"Record Date" Means as of Close of Business.** For purposes of this paragraph (b) a person holding a membership as of the close of business on the record date shall be deemed the Member of record.

Section 5.09. Open Forums. In addition to the annual and special meetings discussed in Sections 5.02 and 5.03 of this Article V, the Secretary of the Association shall be entitled to call informal meetings of the membership, to be known as Open Forums, for the purpose of discussing problems common to Members residing in a particular area within the Properties or problems common to all Members. Open Forums shall be called on written notice delivered to all interested Members at least five (5) days before the date of the meeting. The notice shall set forth the date, time and place of the Open Forum and the general nature of each item to be discussed. Although the Members attending the Open Forum may discuss any issue that has been noticed, no formal action may be taken at the meeting, such action being reserved to membership meetings satisfying the requirements of Sections 5.01 through 5.08 of this Article V.

Section 5.10. Meeting Procedure. Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the Association may adopt.

ARTICLE VI

Membership Rights

Subject to the provisions hereof and the provisions of the Covenants, Conditions and Restrictions, the Members shall have the following rights:

Section 6.01. Use and Enjoyment of Common Areas. Each Member shall be entitled to the use and enjoyment of all Common Areas and Common Facilities within the Properties, except as the Common Area is restricted as more particularly set forth in the Covenants, Conditions and Restrictions.

Section 6.02. Use of Common Areas, Etc. by Family Members. Each Member shall have the right to designate members of his family who reside within the Member's Unit with the Member who may use and enjoy the Common Areas and Common Facilities within the Properties.

Section 6.03. Tenants. Subject to the Covenants, Conditions and Restrictions, including but not limited to Article IV, Section 4.02, and Article X, Section 10.02, each Member shall have the right to assign his rights as a Member (other than voting rights) to a tenant residing within said Member's Unit. Such assignment shall only be effective so long as said tenant is so residing in said Member's Condominium and is in compliance with the Covenants, Conditions and Restrictions and the Association Rules, as the same may exist from time to time. At all times the Owner shall remain responsible for compliance by Owner's lessee or tenant with the provisions of these Bylaws, the Covenants, Conditions and Restrictions and the Association Rules. The assignment of an Owner's right to use Common Area recreational facilities to a tenant or lessee shall not be effective until such time as the Owner-Member has given the Secretary written notice thereof setting forth the name of the assignee and the members of his family who will be entitled to the use and enjoyment of the Common Facilities by virtue of said assignment. During the period of any lease or rental of a Unit, the Member shall not be entitled to use the Common Facilities except to the extent reasonably necessary to perform the usual responsibilities of a landlord or to insure or gain compliance by the tenant with the requirements of these Bylaws and the Covenants, Conditions and Restrictions.

Section 6.04. Guests. The guests of a Member or assignee of the Member under Section 6.03 above shall have the right to use and enjoy the Common Areas, recreation facilities and roads within the Properties, subject to the terms of the Covenants, Conditions and Restrictions, and further subject to the Rules and Regulations of the Association.

Section 6.05. Compliance with Association Governing Documents, Rules and Regulations. The right of use and enjoyment hereunder, shall at all times be subject to the rules, limitations and restrictions set forth herein and the Association Rules, as the same are in existence from time to time. The Board shall have the right to impose monetary penalties or to temporarily suspend the use and enjoyment of any Common Facilities, with the exception of the right of use of any roads or driveways, for the failure of a Member to pay any assessments when due under the Covenants, Conditions and Restrictions, or to comply with any other rule or regulation imposed upon such Member, his tenants or guests, pursuant to the Articles of Incorporation, these Bylaws or the Covenants, Conditions and Restrictions; provided, however, that any such suspension shall only be imposed after such person has been afforded the notice and hearing rights more particularly described in the Covenants, Conditions and Restrictions.

ARTICLE VII

Board of Directors

Section 7.01. General Corporate Powers. Subject to the provisions of the California Non-Profit Corporation Law, the Covenants, Conditions and Restrictions, and any limitations in the Articles and these Bylaws relating to action requiring approval by the Members, the business and affairs of the Association shall be vested in and exercised by, the Association's Board of Directors consisting of five (5) persons who shall be Members, provided, however, that no persons owning the same Unit may serve as director at the same time. Subject to the limitations expressed in Article X, Section 10.01, the Board may delegate the management of the activities of the Association to any person or persons, management company or committee, provided that notwithstanding any such delegation, the activities and affairs of the Association shall continue to be exercised under the ultimate direction of the Board.

Section 7.02. Term of Office. Each Director elected at the annual meeting shall hold office for a term of two (2) years and until a successor Director has been elected and qualified. A Member elected to fill an unexpired Board vacancy shall serve for the unexpired term of his predecessor. At the annual meeting of members conducted in 1996, three (3) directors shall be elected for a term of one year and two (2) Directors shall be elected for a term of two (2) years. Thereafter, two (2) Directors shall be elected in each even number year and three (3) Directors shall be elected in each odd numbered year.

Section 7.03. Nominations of Directors.

(a) **Candidates Selected by Nomination Committee.** At least sixty (60) days prior to the date of any election of Directors, the President shall appoint a Nominating Committee to select qualified candidates for election to those positions on the Board of Directors held by Directors whose terms are then expiring. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association who may or may not be Board members. Committee members shall serve from the close of such annual meeting until their successors are appointed and such appointment shall be announced at each annual meeting. The Nominating Committee shall make its report at least thirty (30) days before the date of the election, and the Secretary shall forward to each Member, with the notice of meeting required by Article V, Section 5.04, a list of candidates nominated. The Nominating Committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but not less than the number of vacancies on the Board to be filled. Members in good standing may be nominated as candidates for election to the Board.

(b) **Nominations From the Floor.** If there is a meeting to elect Directors, any Member present at the meeting, in person or by proxy, may place the names of additional candidates in nomination.

(c) **Candidate Communications.** The Board shall adopt procedures that provide for a reasonable opportunity for nominees to communicate their qualifications and reasons for candidacy to the Members and to solicit votes, and for a reasonable opportunity for all Members to choose among the nominees.

(d) **Petition Procedure.** A Member can become a candidate for election to the Board by filing with the Secretary a petition in support of his or her candidacy signed by at least two percent (2%) of the Voting Power of the Association who are, themselves, in good standing with all Assessments paid. The Member circulating the petition shall append his or her written certification to the petition attesting to the validity of the signatures. Candidate petitions must be filed with the Secretary no later than thirty (30) calendar days and no earlier than fifty (50) calendar days prior to the annual election.

(e) **Good Standing Requirement for Candidacy.** In order to be eligible for nomination and election to the Board, the Association Secretary must certify that the candidate-Member is in good standing with the Association and is current in the payment of his or her assessments.

Section 7.04. Election of Directors.

(a) At each annual meeting of the Members, the Members shall elect persons to those positions on the Board of Directors held by Directors whose terms are then expiring. The persons thus elected shall be selected from among those persons nominated pursuant to Section 7.03 above; however, if for any reason an annual meeting is not held or the Directors are not elected at any annual meeting, the Directors may be elected at any special meeting held for that purpose. The Directors thus elected shall take office on the first day of the month next following their election.

(b) Every Member entitled to vote at any election of Directors shall have the right to cumulate the Member's votes and give one candidate a number of votes equal to the number of Directors to be elected multiplied by the number of votes to which he is entitled, or to distribute his votes on the same principle among as many candidates as he shall think fit, if the Member has given notice at the meeting, prior to the voting, of his or her intention to cumulate votes. Voting for directors shall be by secret written ballot, and the candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be elected.

(c) Prior to the date of election, the Board shall appoint one or three (3) eligible Members who are not nominees, to act as official inspectors of the election. The Board may also appoint other Members to assist the three inspectors. The inspectors shall discharge their duties impartially, in good faith, to the best of their ability, and as expeditiously as possible. All decisions, acts and the certification of any election must be made by at least a majority of the three (3) official inspectors. Before the election, the inspectors shall determine the number of memberships outstanding and the eligible Voting Power of each as of the Record Date established in accordance with Article V, Section 5.08 hereof.

At the election, the inspectors shall: (1) determine the existence of a quorum at the meeting by counting the number of eligible voters present, in person and by proxy; (2) hear and determine all challenges and questions in any way arising in connection with the right to vote or the conduct of the election; (3) establish the authenticity, validity and effect of the proxies and collect the proxy votes and the ballots; (4) decide when the polls are closed; (5) count and tabulate all votes; and (6) determine the result of the election. Any report or certificate made by the inspectors shall be prima facie evidence of the facts recited therein.

Section 7.05. Vacancies on Board of Directors.

(a) A vacancy or vacancies in the Board of Directors shall be deemed to exist on the occurrence of any of the following: (1) the death or resignation of any Director or the removal of a Director pursuant to subparagraph (d) hereof; (2) the failure of the Members, at any meeting of Members at which any Director or Directors are to be elected, to elect the number of Directors to be elected at such meeting.

(b) Except as provided in this paragraph, any Director may resign, which resignation shall be effective on giving written notice to the President, the Secretary, or the Board of Directors, unless the notice specifies a later time for the resignation to become effective. If the resignation of a Director is effective at a future time, the Board of Directors may elect a successor to take office when the resignation becomes effective.

(c) Vacancies on the Board shall be filled by a majority vote of the remaining Directors, though less than a quorum, or by a sole remaining Director. The successor Director shall serve for the unexpired term of his predecessor. The Members may elect a Director or Directors at any time to fill any vacancy or vacancies not filled by the Directors, but any such election or written ballot shall require the approval of a majority of the Voting Power. A vacancy created by the removal of a Director can be filled only by election of the Members.

(d) The Board of Directors shall have the power and authority to remove a Director and declare his office vacant if he has (1) been declared of unsound mind by a final order of court, (2) been convicted of a felony; (3) been found by a final order or judgment of any court to have breached any duty under Sections 5230-5236 of the California Non-Profit Corporation Law (relating to the standards of conduct of directors); or (4) if the Director fails to attend three (3) consecutive regular meetings of the Board which have been duly noticed in accordance with California Law. Except as otherwise provided in the immediately preceding sentence and in subparagraph (e) hereof, a Director may only be removed from office prior to expiration of his term by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by written ballot in conformity with Article IV, Section 4.06 hereof.

(e) Unless the entire Board is removed from office by the vote of the Members, no individual Director shall be removed from office prior to the expiration of his term if the number of votes cast against his removal would be sufficient to elect the Director if voted cumulatively at an election at which the same total number of votes were cast and

the entire number of Directors authorized at the time of the most recent election of the Directors were then being elected.

(f) No reduction of the authorized number of Directors shall have the effect of removing any Director before that director's term of office expires.

ARTICLE VIII

Board Meeting

Section 8.01. Place of Meetings. Regular meetings of the Board of Directors may be held at any place within the Properties that has been designated from time to time by resolution of the Board, except that the Board may, by resolution, move the place of meetings to another location in the County as near and convenient to the Properties as possible. In the absence of such designation, regular meetings shall be held on the Properties. Special meetings of the Board shall be held at any place within the County that has been designated in the notice of the meeting or, if not stated in the notice, at the principal office of the Association. Notwithstanding the above provisions of this Section 8.01, a regular or special meeting of the Board may be held at any place consented to in writing by all the Board members, either before or after the meeting. If consents are given, they shall be filed with the minutes of the meeting.

Section 8.02. Annual Meeting of Directors. Immediately following each annual meeting of Members, the Board of Directors shall hold a regular meeting for the purpose of organization, election of officers, and the transaction of other business. Reasonable notice of this meeting shall be given to the members.

Section 8.03. Other Regular Meetings. Other regular meetings of the Board shall be held without call at such time as shall from time to time be fixed by the Board of Directors and communicated to the Board members and reasonable notice of the date, time and location of Board meetings shall also be given to the members. Ordinarily, regular meetings shall be conducted at least monthly; provided, however, that regular meetings can be held as infrequently as every three (3) months if the Board's business does not justify more frequent meetings. Notice of the time and place of regular meetings shall be posted in a prominent place within the Common Area.

Section 8.04. Special Meetings of the Board.

(a) Special meetings of the Board of Directors for any purpose may be called at any time by the President, or the Vice President, the Secretary, or any two (2) Directors.

(b) Notice of Special Meetings.

- (1) **Manner of Giving.** Notice of the time and place of special meetings of the Board shall be given to each Director by one of the following methods: (i) By personal delivery of written notice; (ii) by first-class mail, postage prepaid; (iii) by telephone communication, either directly to the Director or to a person at the director's office who would reasonably be expected to communicate such notice promptly to the Director; or (iv) by telegram, charges prepaid. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notice of a meeting need not be given to any Director who signed a written waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at commencement of the meeting, the lack of notice to such Director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes. Reasonable advance notice of any special meeting of the Board also shall be given to the members, by mailing and/or by posting in a prominent place within the Common Area.
- (2) **Time Requirements.** Notices sent by first-class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least forty-eight (48) hours before the time set for the meeting.
- (3) **Notice Contents.** The notice shall state the date, time and place for the meeting.

Section 8.05. Attendance by Members and Association Manager.

(a) With the exception of executive sessions of the Board (see subparagraph (b), below) and any meetings conducted by conference telephone, all meetings of the Board shall be open to Members of the Association provided that non-Director Members may only participate in deliberations or discussions of the Board when expressly authorized by a vote of a majority of a quorum of the Board. If the Association has retained the services of a manager, such person may, in the Board's discretion, attend regular and special meetings.

(b) The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon litigation, matters that relate to the formation of contracts with third parties, or personnel matters. The nature of any and all business to be discussed in executive session shall first be announced in open session. Any matters discussed in executive session shall be generally noted in the minutes of the Board of Directors. In any matter relating to the discipline of an Association member, the Board of Directors shall meet in executive session if requested by that member, and the member shall be entitled to attend the executive session. Nothing provided herein shall be construed to obligate the Board to first call an open meeting before meeting in executive session with respect to the matters described above.

Section 8.06. Quorum Requirements. A majority of the authorized number of Directors shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 8.08 of this Article VIII. Every act done or decision made by a majority of the Directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors, subject to the provisions of the California Non-Profit Corporation law, especially those provisions relating to (1) approval of contracts or transactions in which a Director has a direct or indirect material financial interest, (2) appointment of committees, and (3) indemnification of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors below a quorum, if any action taken is approved by at least a majority of the required quorum for that meeting.

Section 8.07. Waiver of Notice. The transaction of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the Directors not present, individually or collectively, signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of

the meeting. All waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting and shall have the same force and effect as a unanimous vote of the Board. The requirement of notice of a meeting also shall be deemed to have been waived by any Director who attends the meeting without protesting before or at its commencement about the lack of notice.

Section 8.08. Adjournment. A majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of adjournment to any other time or place shall be given prior to the time of the adjourned meeting to the directors who are not present at the time of the adjournment. Except as hereinabove provided, notice of adjournment need not be given.

Section 8.09. Compensation. Unless approved by vote or written assent of a majority of the members, directors, officers and members of committees shall not be entitled to compensation for their services as such, although they may be reimbursed for such actual expenses as may be determined by resolution of the Board of Directors to be just and reasonable.

Section 8.10. Minutes. The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the Board of Directors, other than an executive session, shall be available to members within thirty (30) days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the Association upon request and upon reimbursement of the Association's costs in making that distribution. Members of the Association shall be notified in writing at the time that the pro forma budget required in California Civil Code Section 1365 is distributed, or at the time of any general mailing to the entire membership of the Association, of their right to have copies of the minutes of meetings of the Board of Directors and how and where those minutes may be obtained.

ARTICLE IX

Duties and Powers of the Board

Section 9.01. Standard of Care. Each Director shall perform his duties as a Director, including the duties as a member of any committee of the Board on which the director serves, in good faith, in a manner such Director believes to be in the best interests

of the Association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Section 9.02. Specific Powers and Duties. Without prejudice to the general powers of the Board of Directors set forth in Article VII, Section 7.01, the Directors shall have the power to:

(a) Exercise all powers vested in the Board under the Articles of Incorporation, these Bylaws, the Covenants, Conditions and Restrictions, and under the laws of the State of California.

(b) Appoint and remove all officers of the Association, the general manager of the Association, if any, and other Association employees; prescribe any powers and duties for such persons that are consistent with law, the Articles, the Covenants, Conditions and Restrictions and these Bylaws; and fix their compensation.

(c) Appoint such agents and employ such other employees, including attorneys and accountants, as it sees fit to assist in the operation of the Association, and to fix their duties and to establish their compensation.

(d) Subject to the provisions of the Covenants, Conditions and Restrictions, to adopt, establish and distribute upon adoption, rules and regulations governing the use of the Common Areas, the Common Facilities, and the personal conduct of the Members, their lessees or tenants, and their guests thereon, and to take such steps as it deems necessary for the enforcement of the Association Rules, including the imposition of monetary penalties and/or the suspension of voting rights and the right to use any Common Facilities; provided notice and a hearing are provided as more particularly set forth in the Covenants, Conditions and Restrictions. Rules and regulations adopted by the Board may contain reasonable variations and distinctions as between Owners and tenants.

(e) Enforce all applicable provisions of the Covenants, Conditions and Restrictions, these Bylaws and all other regulations relating to the control, management, and use of the Units within the Properties and the Common Areas and Common Facilities; provided that at least fifteen (15) days' prior notice of any charges (other than assessments) or potential discipline or fine and the reasons therefore are given to the Member affected, and that an opportunity provided for the Member to be heard, orally or in writing, not less than five (5) days before the imposition of the discipline or fine, said hearing to be before the Board. Any notice required herein shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be given by first class or

registered mail sent to the last address of the Member as shown on the Association's records.

(f) Contract and pay premiums for fire, casualty, liability and other insurance and bonds (including fidelity bonds) which may be required from time to time in relation to the Properties.

(g) Contract for and pay for maintenance, landscaping, utilities, materials, supplies, labor and services that may be required from time to time in relation to the Properties.

(h) Pay all taxes, special assessments and other assessments and charges which are or would become a lien on any portion of the Properties, and complete and file all tax-related reports and returns.

(i) Contract for and pay for construction or reconstruction of any portion or portions of the Properties which have been damaged or destroyed and which are to be rebuilt as provided in the Declaration of Covenants, Conditions and Restrictions.

(j) If and when the Board deems it appropriate and subject to the limitations expressed in Article X, Section 10.01 hereof, to delegate its duties and power hereunder to the officers of the Association or to committees established by the Board or a property manager or property management company retained by the Board.

(k) Establish and levy assessments on the Members of the Association and to collect the same, in accordance with the Covenants, Conditions and Restrictions, and to establish and collect reasonable use charges for any or all of the Common Facilities as the Board may deem necessary or desirable from time to time for the purpose of equitably allocating among the users the cost of maintenance and operation thereof.

(l) Perform all acts required of the Board under the Covenants, Conditions and Restrictions.

(m) Prepare budgets and maintain a full set of books and records showing the financial condition of the affairs of the Association in a manner consistent with generally accepted accounting principles, and at no greater than annual intervals prepare an annual financial report, a copy of which shall be delivered to each Member as provided in Article XII, Section 12.09 hereof.

(n) Appoint a Nominating Committee for the nomination of persons to be elected to the Board, and to prescribe rules under which said Nominating Committee is to act, all as more particularly described in Section 7.03 of Article VII hereof.

(o) Appoint or serve as an Architectural Committee and to prescribe rules under which said committee is to act in order to discharge its responsibilities under the Covenants, Conditions and Restrictions.

(p) Appoint such other committees as it deems necessary, from time to time, in connection with the affairs of the Association, in accordance with Article X hereof, and to prescribe the duties, powers and rules of such committees.

(q) Fill vacancies on the Board of Directors or in any committee.

(r) Open bank accounts and borrow money on behalf of the Association and to designate the signatories to Association bank accounts.

(s) Bring and defend actions by or against one or more Members of the Association to protect the interests of the Members or the Association, as such, so long as the action is pertinent to the operation of the Association, and to assess the Members for the cost of such litigation.

(t) Subject to the Covenants, Conditions and Restrictions, to enter Units as necessary in connection with construction, maintenance or emergency repairs for the benefit of the Common Areas or the Owners in common.

(u) Maintain and otherwise manage: (1) all easements and real property and all facilities, improvements and landscaping thereon in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association, (2) all personal property in which the Association holds an interest, subject to the terms of any instrument transferring such interest to the Association, and (3) all property, real or personal, which the Association is obligated to repair or maintain pursuant to the Declaration of Covenants, Conditions and Restrictions.

(v) Provide an Owner within ten (10) days of the delivery of written request, with (1) a copy of the Association's governing instruments; (2) a copy of the most recent financial statement distributed pursuant to Section 1365; (3) a true written statement from an authorized representative of the Association as to the amount of the Association's current regular and special assessments and fees, as well as any assessments levied upon

the owner's Condominium which are unpaid on the date of the statement. The statement shall also include true information on late charges, interest and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's condominium pursuant to California Civil Code Section 1367; (4) any change in the Association's current regular and special assessments and fees which have been approved by the Board of Directors, but have not become due and payable as of the date disclosure is provided pursuant to this subsection. The Association may charge a fee for this service, which shall not exceed the Association's reasonable cost to prepare and reproduce the requested information.

(w) Grant permits, licenses and easements on, over, and under the Common Area for utilities, roads and other purposes not inconsistent with the intended use and occupancy of the covered property and reasonably necessary or useful for the proper maintenance or operation of the Properties, provided that such permits, licenses and easements shall not unreasonably interfere with the right of any Owner to the use and enjoyment of his Condominium and the Common Area.

Section 9.03. Limitations on Powers. Without the vote or written assent of a majority of the Members, the Board of Directors shall not take any of the following actions:

(a) Enter into a contract with a third party for the furnishing of goods or services to the Common Area or the Association for a term longer than one (1) year. This restriction shall not apply to: (1) FHA or VA approved management contracts; (2) public utility contracts where the rates charged for materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract does not exceed the shortest term for which the supplier will contract at the regulated rate; (3) prepaid casualty or liability insurance policies not to exceed three (3) years duration; provided the policies provide for short rate cancellation by the insured; (4) agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration; or (5) agreements for the sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration.

(b) Incur aggregate expenditures for capital improvements to the Common Areas in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that year.

(c) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that year.

(d) Pay compensation to members of the Board of Directors for services performed in the conduct of the Association's business; provided that Directors can be reimbursed for reasonable travel and other expenses, verified in writing, incurred in the discharge of their duties.

(e) Borrow money on behalf of the Association in a sum in excess of ten percent (10%) of the budgeted gross receipts for the current fiscal year.

Section 9.04. Due Process Requirements. Before the Board imposes any monetary penalties (except late charges for late payment of any assessment), or suspends membership rights or Common Area use privileges against any Member for failure to comply with the Declaration, these Bylaws, or Association Rules, the Board must act in good faith and must satisfy each of the following requirements:

(a) The Association shall provide the Member thirty (30) days written notice of the claimed violation of the Declaration, Bylaws and/or Association Rules. However, such notice need not be given in emergency situations. The notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the Member as shown on the Association's records.

(b) The Member is then given fifteen (15) days prior notice of the discipline to be imposed and the reasons for the imposition of the discipline. The notice may be given by any method reasonably calculated to give actual notice. If the notice is given by mail, it must be sent by first-class or registered mail to the last address of the Member as shown on the Association's records.

(c) The Member is given an opportunity to be heard, orally or in writing, by the Board, not less than five (5) days before the effective date of the imposition of the discipline. The provisions of this Section 9.04 shall not apply to any monetary penalties, suspensions of membership rights or common area use privileges against any member for failure to pay regular or special assessments in accordance with the provisions of Article VI of the Covenants, Conditions and Restrictions.

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

Section 9.05. Withdrawal From Reserves. The signature of two (2) persons, who shall be members of the Board or, one officer who is not a member of the Board and a member of the Board, shall be required for the withdrawal of monies from the Association's reserve accounts.

ARTICLE X

Committees

Section 10.01. Committees, Generally. The Board may, by resolution adopted by a majority of the Directors then in office, designate one or more committees, each consisting of two or more Directors, or other Members who are not Directors, to serve at the pleasure of the Board, which shall have all the authority of the Board, except that no committee, regardless of Board resolution, may:

(a) Take any final action on any matter which, under the Non-Profit Corporation Law of California, also requires approval of the Members.

(b) Fill vacancies on the Board of Directors or in any committee which has been delegated any authority of the Board.

(c) Amend or repeal Bylaws or adopt new Bylaws.

(d) Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable.

(e) Appoint any other committees of the Board of Directors or the members of those committees.

(f) Approve any transaction (1) to which the corporation is a party and one or more Directors have a material financial interest; or (2) between the corporation and one or more of its Directors; or (3) between the corporation or any person in which one or more of its Directors have a material financial interest.

- (g) Levy fines.

Section 10.02. Standing Committees. The following standing committees shall be established and maintained by the Board:

(a) Architectural Committee. The Board shall appoint or serve as an Architectural Committee consisting of three or more Members, said committee to have the powers and responsibilities described in Article IX, Section 9.01, of the Covenants, Conditions and Restrictions.

(b) Nomination Committee. The Board shall appoint a three person Nomination Committee in accordance with Article VII, Section 7.03 of these Bylaws, which committee shall have the powers and responsibilities described in said Section 7.03.

Section 10.03. Executive Committee. Subject to Section 10.01 of this Article X, the Board shall have the power to appoint an Executive Committee composed of two or more members of the Board to act on its behalf during intervals between regular Board meetings.

Section 10.04. Meetings and Actions of Committees. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of Article VIII of these Bylaws, concerning meetings of Directors, with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee. Special meetings of committees also may be called by resolution of the Board of Directors. Notice of special meetings of committees also shall be given to any and all alternate members, who shall have the right to attend all meetings of the committee. Minutes shall be kept of each meeting of any committee and shall be filed with the corporate records. The Board of Directors may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

ARTICLE XI

Officers

Section 11.01. Officers. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer all of whom shall be members of the Board.

The Association may also have, at the discretion of the Board, one or more Assistant Secretaries, one or more Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 11.03 following.

Section 11.02. Election of Officers. The officers of the Association, except such officers as may be appointed in accordance with the provisions of Section 11.03 following, shall be chosen annually by majority vote of the Board at its first regular meeting each year, and each shall hold his office until he shall resign or shall be removed or otherwise disqualified to serve, or his successor shall be elected and qualified.

Section 11.03. Subordinate Officers. The Board may appoint, and may empower the President to appoint, such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws and as the Board may from time to time determine.

Section 11.04. Removal of Officers. Any officer may be removed, either with or without cause, by the Board at any regular or special meeting, or by any officer upon whom such power of removal may be conferred by the Board; provided, however, that no such officer shall remove an officer chosen by the Board.

Section 11.05. Resignation of Officers. Any officer may resign at any time by giving written notice to the Board or to the President or to the Secretary. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Association under any contract to which the officer is a party.

Section 11.06. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

Section 11.07. President. The President shall be elected by the Board from among the Directors. He or she shall be the chief executive officer of the Association, and subject to the control of the Board, shall have general supervision, direction and control of the affairs and officers of the Association. He or she shall preside at all meetings of the Board, shall see that orders and resolutions of the Board are carried out, shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. He or she also shall have the general power and duties of management usually vested in

the office of president of a California non-profit mutual benefit corporation, together with such other power and duties as may be prescribed by the Board or the Bylaws.

Section 11.08. Vice President. The Vice President shall be elected by the Board from among the Directors. In the event of absence, disability or refusal to act of the President, the Vice President shall perform all the duties of the President and when so acting shall have all the powers of, and be subject to all the restrictions upon, the President. He or her shall have such other powers and perform such other duties as from time to time may be prescribed by the Board or the Bylaws.

Section 11.09. Secretary. The Secretary shall keep or cause to be kept at the principal office or such other place as the Board may order, the following:

(a) A book of minutes of all meetings of Directors and Members, with the time and place of holding same, whether regular or special, and if special, how authorized, the notice thereof given, the names of those present at Directors' meetings, the number of Members present in person or by proxy at Members' meetings, and the proceedings thereof and a record of the votes.

(b) Appropriate current records showing the Members of the Association, together with their addresses.

(c) A copy of the Articles, Bylaws and Covenants, Conditions & Restrictions as amended to date.

He or she shall give, or cause to be given, notice of all meetings of the Board required by the Bylaws or by law to be given, and he or she shall keep any seal of the Association in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board or by the Bylaws. The Secretary shall be responsible to verify the filing of the annual Statement of Officers with the Secretary of State.

Section 11.10. Treasurer. The Treasurer shall be a member of the Board. The Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, fund balance and other matters customarily included in financial statements. The books of account shall at all reasonable times be open to inspection by any Director or Member. The Treasurer shall deposit all monies and other valuables in the name and to the credit

of the Association with such depositories as may be designated by the Board. He or she shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and Directors, whenever they request it, an account of all of his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws. If required by the Board, the Treasurer shall give the Association a bond in the amount and with the surety or sureties specified by the Board for faithful performance of the duties of his or her office and for restoration to the Association of all its books, papers vouchers, money, and other property of every kind in his possession or under his or her control on his or her death, resignation, retirement, or removal from office.

Section 11.11. Multiple Offices. The office of Secretary and Treasurer may be held by the same person. The office of Vice-President and Treasurer may also be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of subordinate officer positions created pursuant to Section 11.03 of this Article XI.

ARTICLE XII

Assessments and Finances

Section 12.01. Description of Assessments to which Owners are Subject. Owners of Units within the Properties are subject to Annual and Special Assessments as more particularly described in Article VI of the Covenants, Conditions and Restrictions.

Section 12.02. Creation of the Lien and Personal Obligation of Assessments. The creation of the lien and personal obligation of assessments are governed by Section 6.01 of Article VI of the Covenants, Conditions and Restrictions.

Section 12.03. Purpose and Basis of Assessments. The purpose and basis of assessments are as specified in Sections 6.02 through 6.05 of Article VI of the Covenants, Conditions and Restrictions.

Section 12.04. Date of Commencement of Assessments: Due Dates. The date of commencement and the due dates of assessments are as specified in Sections 6.01(d), 6.03(d) and 6.04(b) of Article VI of the Covenants, Conditions and Restrictions.

Section 12.05. Effect of Non-Payment of Assessment: Remedies of the Association. The effect of non-payment of assessments and the remedies of the Association shall be as specified in Section 6.09 of Article VI of the Covenants, Conditions and Restrictions.

Section 12.06. Subordination of Lien to Mortgages. The lien of the assessments shall be subordinated to the lien or charge of any first mortgage of record as more particularly described in Section 6.11 of Article VI of the Covenants, Conditions and Restrictions.

Section 12.07. Checks. All checks or demands for money and notes of the Association shall be signed by the President and Treasurer, or by such other officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 12.08. Association Accounts. The Board shall maintain a deposit account and any other accounts it shall deem necessary to carry out its purposes, including reserve accounts for replacement of capital improvements as more particularly set forth in Article VI of the Covenants, Conditions and Restrictions. The signatures of at least two (2) persons, who shall be members of the Board of Directors or, one officer who is not a member of the Board of Directors and a member of the Board of Directors, shall be required for the withdrawal of money from the Association's reserve accounts.

Section 12.09. Budgets and Financial Statements. Financial statements for the Association shall be regularly prepared and copies thereof shall be distributed to each Member of the Association as follows:

(a) A pro forma operating budget for each fiscal year shall be distributed to Members not less than forty-five (45) nor more than sixty (60) days before the beginning of the fiscal year. The pro forma operating statement shall include all of the following:

- (1) The estimated revenue and expenses on an accrual basis.
- (2) A summary of the Association's reserves based upon the most recent review or study conducted pursuant to California Civil Code Section 1365.5 (or any successor statute thereto), which shall be printed in bold type and include all of the following:

- (i) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.
 - (ii) As of the end of the fiscal year for which this study is prepared:
 - (A) The current estimate of the amount of cash reserves necessary to repair, replace, restore or maintain the major components.
 - (B) The current amount of accumulated cash reserves actually set aside to repair, replace, restore or maintain major components.
 - (iii) The percentage that the amount determined for purposes of clause (B) of subsection (ii) is of the amount determined for purposes of clause (A) of subsection (ii);
- (3) A statement as to whether the Board of Directors of the Association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor;
 - (4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement or additions to those major components that the Association is obligated to maintain.
- (b) Within one hundred twenty (120) days after the close of the fiscal year, an annual report consisting of:
- (1) A balance sheet as of the end of the fiscal year.
 - (2) An operating (income) statement for the fiscal year.
 - (3) A statement of changes in financial position for the fiscal year.
 - (4) A statement of the place where the names and addresses of the current Members are located.

- (5) Any information required to be reported under Section 8322 of the Corporations Code with respect to certain transactions in excess of Fifty Thousand Dollars (\$50,000.00) per year between the Association and a Director or officer of the Association and indemnifications and advances to officers or Directors in excess of Ten Thousand Dollars (\$10,000.00) per year or such other transactions as may be required to be disclosed by such statute or any successor statute.

The annual report shall be prepared by an independent accountant for any fiscal year in which the gross income of the Association exceeds Seventy-five Thousand Dollars (\$75,000.00), and shall be prepared in accordance with generally accepted accounting principles and standards as established by the California State Board of Accountancy. If the annual report is not prepared by an independent accountant it shall be accompanied by the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

(c) In lieu of the distribution of the financial statement required by Section 12.09(a) of this Article XII, the Board may elect to distribute a summary of the statement to all Members with a written notice that the statement is available at the business office of the Association or at another suitable location within the boundaries of the development and that copies will be provided upon request and at the expense of the Association. If any Member requests a copy of the financial statement required by said Section 12.09(a) to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Association Members shall be in at least 10-point bold type on the front page of the summary of the statement.

(d) A statement as to the Association's policies and practices in enforcing the lien rights or other legal remedies for the default in the payment of its assessments against its Members shall be distributed to each Member of the Association within sixty (60) days prior to the beginning of the fiscal year.

Section 12.10. Fiscal Review. The Board of Directors shall do all of the following:

(a) Review a current reconciliation of the Association's operating accounts on at least a quarterly basis.

(b) Review a current reconciliation of the Association's reserve accounts on at least a quarterly basis.

(c) Review the current year's actual reserve revenues and expenses compared to the current year's budget, on at least a quarterly basis.

(d) Review the latest account statements prepared by the financial institution where the Association has its operating and reserve accounts.

(e) Review an income and expense statement for the Association's operating and reserve accounts on at least a quarterly basis.

Section 12.11. Limitation on Reserve Expenditures. The Board of Directors shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided the Board has made a written finding, recorded in the Board's minutes, explaining the reasons that the transfer is needed, and describing when and how the money will be repaid to the reserve fund. The transferred funds shall be restored to the reserve fund within one (1) year of the date of the initial transfer, except that the Board may, upon making a finding supported by documentation that a temporary delay would be in the best interests of the Association, temporarily delay the restoration. The Board shall exercise prudent fiscal management in delaying restoration of these funds and in restoring the expended funds to the reserve account, and shall, if necessary, levy a special assessment to recover the full amount of the expended funds within the time limits required by this Section. This special assessment is subject to the limitation imposed by California Civil Code Section 1366, unless the Special Assessment is to pay for legal costs associated with litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain. The Board may, at its discretion, extend the date the payment of the Special Assessment is due. Any extension shall not prevent the Board from pursuing any legal remedy to enforce the collection of an unpaid special assessment.

When the decision is made to use reserve funds or to temporarily transfer money from the reserve fund to pay for litigation, the Association shall notify the members of the Association of that decision in the next available mailing to all members pursuant to

Section 5016 of the Corporations Code, and of the availability of an accounting of those expenses. The Association shall make an accounting of expenses related to the litigation on at least a quarterly basis. The accounting shall be made available for inspection by members of the Association at the Association's office.

Section 12.12. Reserve Study Requirements. At least once every three years the Board of Directors shall cause a study of the reserve account requirements of the Association to be conducted if the current replacement value of the major components which the Association is obligated to repair, replace, restore, or maintain is equal to or greater than one-half of the gross budget of the Association for any fiscal year. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

The study required by this Section shall at a minimum include:

- (a) Identification of the major components which the Association is obligated to repair, replace, restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years.
- (b) Identification of the probable remaining useful life of the components identified in subparagraph (a) of this Section 12.12 as of the date of the study.
- (c) An estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in subparagraph (a) of this Section 12.12 during and at the end of its useful life.
- (d) An estimate of the total annual contribution necessary to defray: the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

As used in this Section 12.12, "reserve accounts" means moneys that the Board of Directors has identified for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain; and the term "reserve account requirements" means the estimated funds which the Board of Directors has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

ARTICLE XIII

Indemnification and Insurance

Section 13.01. Indemnification Right and Power.

(a) The Association shall indemnify any agent of the Association who was a party to any proceeding by reason of the fact that the person is or was an agent of the Association against expenses actually and reasonably incurred in any proceeding to the extent that the agent was successful on the merits in defense of the proceeding or in defense of any claim, issue, or matter therein. Expenses shall include any attorney's fees and any other expenses of establishing a right to indemnification.

(b) The Association may indemnify any agent of the Association who was or is a party or is threatened to be made a party to any proceeding by reason of the fact that such person is or was an agent of the Association, against expenses actually and reasonably incurred in connection with such proceeding provided the approval requirements described in Section 13.02 of these Bylaws have been satisfied.

(c) For purposes of Sections 13.01-13.05 of these Bylaws, the term "agent" means any present or former director, officer, employee, or other agent of the Association, the term "proceeding" means any threatened, pending or completed action or proceeding, whether civil, criminal, administrative or investigative, and the term "expenses" includes judgments, fines, or settlements occurring in any proceeding other than a proceeding brought by or on behalf of the Association.

Section 13.02. Indemnification Approval.

(a) Unless indemnification is required as provided in Section 13.01 of these Bylaws, indemnification shall be made only if authorized in the specific case on a determination that indemnification is proper in the circumstances because the agent satisfied the appropriate standard of care described in Section 13.03 of these Bylaws. The determination must be made by one (1) of the following methods:

- (1) A majority vote of a quorum of the Board consisting of Directors who are not parties to the proceeding.
- (2) The affirmative vote of a majority of the Voting Power of the Members entitled to vote at a duly held Members' meeting in which

a quorum was present, or the approval by written ballot under the procedures described in Section 4.06 of these Bylaws, provided that if the agent to be indemnified is a Member, the agent shall not be entitled to vote.

- (3) The court in which such proceeding is or was pending on application made by the Association or the agent or the attorney or other person rendering services in connection with the defense, whether or not the application is opposed by the Association.

(b) Notwithstanding the foregoing, any indemnification in any proceeding brought by or on behalf of the Association shall be subject to the restrictions contained in California Corporation Code Section 7237(c).

Section 13.03. Standard of Care. In any proceeding brought by or on behalf of the Association, the applicable standard of care shall require that the agent acted in good faith, in a manner the agent believed to be in the best interests of the Association and with the care, including reasonable inquiry, that an ordinarily prudent person in like position would use under similar circumstances. In all other proceedings, the agent must have acted in good faith, in a manner the agent believed to be in the best interests of the Association and, in the case of a criminal proceeding, had no reasonable cause to believe that his conduct was unlawful.

Section 13.04. Advancement of Expenses. On approval by the Board, expenses incurred in defending any proceeding may be advanced by the Association prior to the final disposition of the proceeding, provided the Association receives an undertaking by or on behalf of the agent that the advances will be repaid unless it is ultimately determined that the agent was entitled to indemnification as required or authorized by these Bylaws.

Section 13.05. Insurance. The Association shall have the power to purchase and maintain insurance on behalf of its agents, against any liability asserted against or incurred by any agent in such capacity or arising out of the agent's status as such whether or not the Association would have the power to indemnify the agent against such liability under Section 13.01-13.04 of these Bylaws.

Section 13.06. Officer and Director Liability. Until Section 1365.7 of the California Civil Code is amended to provide otherwise, any person who suffers injury, including, but not limited to, bodily injury, emotional distress, wrongful death or property damage or loss as a result of the tortious act or omission of a volunteer officer or volunteer

director of the Association shall not recover damages from a volunteer officer or volunteer director if all of the following criteria are met:

(a) The act or omission was performed within the scope of the officer's or director's Association duties.

(b) The act or omission was performed in good faith.

(c) The act or omission was not willful, wanton, or grossly negligent.

(d) The Association maintained and had in effect at the time the act or omission occurred and at the time a claim is made one or more policies of insurance which shall include coverage for (1) general liability of the Association and (2) individual liability of officers and directors of the Association for negligent acts or omissions in that capacity; provided, that both types of coverage are in the minimum amount of Two Million Dollars (\$2,000,000).

The payment of actual expenses incurred by a director or officer in the execution of the duties of that position does not affect the Director's or officer's status as a volunteer within the meaning of this Section.

Nothing in this Section shall be construed to limit the liability of the Association for its negligent act or omission or for any negligent act or omission of an officer or Director of the Association.

This Section shall only apply to a volunteer officer or Director who is a tenant of a separate interest in the Properties or is an Owner of not more than two separate interests in the Properties.

ARTICLE XIV

Miscellaneous

Section 14.01. Records. The Association shall maintain the following records:

(a) Adequate and correct books and records of account.

- (b) Written minutes of the proceedings of its Members, Board and committees of the Board.
- (c) A record of its Members, giving their names, addresses and voting rights.
- (d) The Association shall keep at its principal office the original or a copy of the Declaration, the Articles, these Bylaws and the Association Rules, as amended to date.

Section 14.02. Inspection of Books and Records.

(a) All books, records, minutes (including minutes of meetings of committees of the Board), membership lists and papers of the Association, except confidential or privileged matters such as litigation files or employee records, shall at all times, during reasonable business hours, be subject to the inspection of any Member at the offices of the Association for any purpose reasonably related to the Member's interest as such. Members' rights of inspection hereunder shall be exercisable on ten (10) days written demand on the Association, which demand shall state the purpose for which the inspection rights are requested. Inspection rights as to the membership list shall be subject to the Association's right to offer a reasonable alternative to inspection within ten (10) days after receiving the Member's written demand (as more particularly set forth in Sections 8330 and following of the California Non-Profit Corporation Law).

(b) The Board of Directors shall establish reasonable rules with respect to (1) notice of inspection, (2) hours and days of the week when inspection may be made, and (3) payment of the cost of reproducing copies of documents requested by the Member.

(c) Every Director shall have an absolute right at any reasonable time to inspect all books, records, documents and minutes of the Association and the physical properties owned by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents.

Section 14.03. General Manager. The Board may, from time to time, employ the services of a manager to manage the affairs of the Association and, to the extent not inconsistent with the laws of the State of California, and upon such conditions as are otherwise deemed advisable by the Board, the Board may delegate to the manager any of its day-to-day management and maintenance duties and powers under these Bylaws and the Covenants, Conditions and Restrictions, provided that the general manager shall at all times remain subject to the general control of the Board.

Section 14.04. Corporate Seal. The Association may have a seal in circular form having within its circumference the words Saratoga Place Homeowners Association, State of California.

Section 14.05. Amendment or Repeal of Bylaws. Except as otherwise expressly provided herein, these Bylaws may only be amended or repealed, and new Bylaws adopted by the affirmative vote or written ballot of a majority of the total membership of the Association; provided that if any provision of these Bylaws requires the vote of a larger proportion or all of the Members, such provisions may not be altered, amended or repealed except by such greater vote, unless otherwise specifically provided herein.

Section 14.06. Notice Requirement. Except as otherwise specifically provided in these Bylaws, any notice or other document permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: if to the Association or the Board c/o Community Management Services, Inc., 727 University Avenue, Los Gatos, CA 95030, such other address as the Board of Directors may from time to time designate in a writing distributed to the Members; if to a Director, at the address from time to time given by such Director to the Secretary for the purpose of service of such notice; if to a Member, at the address from time to time given by such Member to the Secretary for the purpose of service of such notice, or, if no such address has been so given, to any Unit within the Properties owned by such Member.

Section 14.07. Construction and Definitions. Unless the context requires otherwise or a term is specifically defined herein, the general provisions, rules of construction, and definitions in the California Non-Profit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the masculine gender includes the feminine and neuter, and singular number includes the plural and the plural number includes the singular.

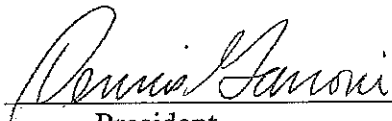
Section 14.08. Fiscal Year. The fiscal year of the Association shall be the calendar year. However, the fiscal year of the Association is subject to change from time to time as the Board shall determine by resolution, and without the necessity of amending these Bylaws.

Section 14.09. Conflicts Between Documents. The terms and provisions set forth in these Bylaws are not exclusive as Owners also shall be subject to the terms and provisions of other Association management documents including the Articles of

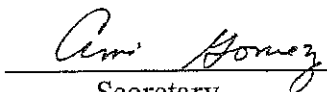
Incorporation, Declaration of Covenants, Conditions and Restrictions, Rules and Regulations, and Architectural Standards. In the event of a conflict between any provisions of any of said Association management documents with the provisions of any other Association management documents, the order of superiority of such documents shall be (1) Articles of Incorporation, (2) Declaration of Covenants, Conditions and Restrictions, (3) Bylaws, (4) Architectural Standards, and (5) Association Rules and Regulations, and the provisions of any such documents shall be superseded by the provisions of the document shown above to be superior to such document to the extent of such conflict.

In Witness Whereof, we have hereunto subscribed our names this FIRST day of SEPTEMBER, 1995.

Saratoga Place
Homeowners Association



President



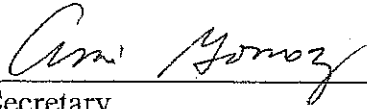
Secretary

Certificate of Secretary

I, the undersigned, the duly elected and acting Secretary of Saratoga Place Homeowners Association, a California non-profit mutual benefit corporation, do hereby certify:

That the within and foregoing Bylaws were adopted by written ballot of the Members of said Association as the Bylaws of said Association on the 30TH day of OCTOBER, 1995, and that the above foregoing Bylaws consisting of 44 pages do now constitute the Bylaws of said Association.

In Witness Whereof, I have hereunto subscribed my name this FIRST
day of SEPTEMBER, 1995.

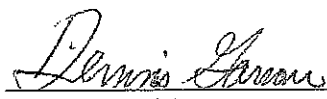

Secretary

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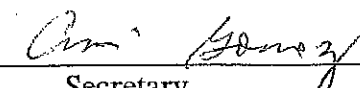
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In Witness Whereof, we have hereunto subscribed our names this _____ day of _____, 1995.

Saratoga Place
Homeowners Association



President



Secretary

Certificate of Secretary

I, the undersigned, the duly elected and acting Secretary of Saratoga Place Homeowners Association, a California non-profit mutual benefit corporation, do hereby certify:

That the within and foregoing Bylaws were adopted by written ballot of the Members of said Association as the Bylaws of said Association on the 30 day of AUGUST, 1995, and that the above foregoing Bylaws consisting of 44 pages do now constitute the Bylaws of said Association.

In Witness Whereof, I have hereunto subscribed my name this _____
day of _____, 1995.


Secretary

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

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**FIRST RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SARATOGA PLACE HOMEOWNERS ASSOCIATION**

September 1, 1995

SARATOGA PLACE HOMEOWNERS ASSOCIATION
FIRST RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
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FIRST RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
SARATOGA PLACE HOMEOWNERS ASSOCIATION

THE DECLARATION, executed by CWW Homes Limited, A California Limited Partnership, ("Declarant"), entitled "Saratoga Place Enabling Declaration Establishing A Plan For Condominium Ownership" and recorded January 16, 1987, in Book K005, Page 778, File No. 9115301, of the Official Records of Santa Clara County, California (the "Original Declaration"), which Declaration affects all of the Properties described and commonly known as Saratoga Place, is hereby amended and restated in its entirety to read as follows:

Recitals

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

2. Declarant desired to subdivide and develop the Properties and to subject the Properties to certain easements, protective covenants, conditions, restrictions, reservations, liens and charges as set forth in the Original Declaration referred to above, all of which are for the benefit of all portions of the Properties and for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Properties and all of which shall run with the Properties and be binding on all parties having or acquiring any right, title or

interest in the Properties, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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

4. On the date specified in the Officers' Certification of Amendment attached hereto, sixty-seven percent (67%) of the total voting power of Saratoga Place Homeowners Association (the successors in interest to the Declarant) voted by written ballot to amend and restate the Original Declaration, all in accordance with the procedures for amendment set forth in Article VIII, Sections 8.4 and 8.6D(1)(b) of the Original Declaration. As so amended and restated, these easements, covenants, restrictions, and conditions shall run with the Properties and shall be binding on all parties having or acquiring any right, title or interest in the Properties or any portion thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I

Definitions

Section 1.01. "Architectural Standards" shall mean written specifications, details, plans and/or drawings adopted by the Board pursuant to Article IX, Section 9.01 of this Declaration.

Section 1.02. "Articles" shall mean the Articles of Incorporation of Saratoga Place Homeowners Association, which are filed in the Office of the Secretary of State of the State of California.

Section 1.03. "Assessment" means an assessment made or assessed against an Owner and his Condominium in accordance with the provisions of Article VI of this Declaration.

Section 1.04. "Association" shall mean and refer to Saratoga Place Homeowners Association, a California non-profit mutual benefit corporation, its successors and assigns.

Section 1.05. "Association Common Area" shall mean all real property (excepting individual Condominium Units) title to which is held by owners in common. Association Common Area includes the Condominium Common Area and Recreational Common Area, as more particularly defined in Article I, Section 1.32 and Article II, Section 2.02(b) hereof.

Section 1.06. "Association Common Facilities" means the swimming pool, pool apron area, pool storage and pump house, pool furniture, play areas, other community facilities, and the trees, hedges, plantings, lawns, shrubs, landscaping, fences, utilities, berms, streets, sidewalks, pipes, lines, lighting fixtures, buildings, structures and other facilities constructed or installed, or to be constructed or installed, or currently located on the Common Area.

Section 1.07. "Association Common Funds" means all funds collected or received by the Association (a) for use in the maintenance, management, administration, insurance, operation, replacement, repair, addition to, alteration or reconstruction of, all or any portion of the Common Area and Common Facilities and (b) for use in discharging any and all of its functions as provided for in its Articles of Incorporation, the Bylaws and this Declaration.

Section 1.08. "Association Common Expense" means any use of Common Funds authorized by Article VI and/or described in Exhibit "C" attached hereto and includes (a) all expenses or charges for the management, maintenance, administration, insurance, operation, repairs, additions, alterations or reconstruction of the Association Common Facilities as incurred or as may be estimated from time to time by the Association and/or its Board of Directors, (b) any amounts reasonably necessary for reserves for maintenance and for nonpayment of any assessments, (c) the costs and expenses of the Association in the performance of its functions as provided for in its Articles of Incorporation, the Bylaws, or this Declaration, and (d) an adequate reserve fund for replacement of Association Common Facilities, which shall be established by the Association and funded by Regular Assessments.

Section 1.09. "Association Management Documents" means this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations, and Architectural Standards.

Section 1.10. "Association Rules" shall mean the rules adopted by the Board of Directors of the Association, as the same may be in effect from time to time pursuant to Article V, Section 5.08 of this Declaration.

Section 1.11. "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

Section 1.12. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may, from time to time, be amended.

Section 1.13. "Common Areas," "Common Expenses" and "Common Facilities" shall refer respectively to Association Common Areas, Association Common Expenses and Association Common Facilities.

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

Section 1.15. "Condominium Common Area" shall mean and refer to all of the property (excepting the individual Condominium units, and the earth below and the air surrounding the Condominium Buildings) within the outside perimeter walls of each Condominium Building as each building is described on the Condominium Plan, and including balconies, staircases and other items permanently affixed to the Condominium Building and patios to the extent the patios are within the outside perimeter of the Condominium Building as described on the Condominium Plan. The Condominium Common Area includes, without limitation: Outside perimeter walls, bearing walls, columns, girders, ceiling joists, subfloors, unfinished floors, roofs, and foundation; fireplaces, chimneys and flues; central hot water heaters; reservoirs, tanks, pumps, motors, ducts, and chutes; conduits, pipes, plumbing, wires, utility meters and other utility installations (except the outlets thereof when located within the unit, and except as provided in Section 2.02(a)), required to provide power, light, telephone, gas, water, sewerage, and drainage; exterior sprinklers and sprinkler pipes.

Section 1.16. "Condominium Building" shall mean a residential structure containing Condominium Units.

Section 1.17. "Condominium documents" means and includes this Declaration as it may be amended from time to time, the exhibits, if any, attached thereto, the Articles, the Bylaws of the Association, and the Rules and Regulations for the Members as established from time to time.

Section 1.18. "Condominium Plan" shall mean and refer to the recorded diagrammatic floor plan of the Units built or to be built on the property which identifies each Unit and shows its dimensions pursuant to California Civil Code Section 1351 a copy of which was recorded as Exhibit "A" to the Original Declaration.

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

Section 1.20. "Declarant" shall mean and refer to the project developer of the Properties, namely, CWW Homes Limited, A California Limited Partnership, its successors and assigns.

Section 1.21. "Declaration" shall mean this Restated Declaration of Covenants, Conditions and Restrictions as such Declaration may, from time to time, be amended. The "Original Declaration" shall mean the document referenced in the preamble to this Declaration.

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

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

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

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

Section 1.25. "Lease" means any agreement (written or verbal) under which a person is permitted to occupy a Unit for compensation of any kind including, without limitation, any fee, service, gratuity or other consideration while the Owner is not in residence. The verb "leasing" shall include renting or otherwise permitting a person other than an Owner to occupy a Unit for compensation of any kind including any fee, service, gratuity or other compensation while the Owner is not in residence.

Section 1.26. "Map" shall mean and refer to that Subdivision Map entitled Tract 7894 filed for record the 1st day of August, 1986, in Book 563 of Maps at Pages 12 and 13, in the records of Santa Clara County.

Section 1.27. "Member" shall mean and refer to every person or entity who holds a membership in the Association and whose rights as a Member are not suspended pursuant to Article XV, Section 15.06 hereof.

Section 1.28. "Mortgage" means a mortgage or deed of trust encumbering a Condominium or other portion of the Project. A "Mortgagee" shall include the beneficiary under a deed of trust and any guarantor or insurer of a Mortgage. An "institutional" Mortgagee is a Mortgagee that is a bank or savings and loan association or mortgage company or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans, or any insurance company or any federal or state agency or instrumentality, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. A "first" Mortgage, or "first" Mortgagee is one having priority as to all other Mortgages or holders of Mortgages encumbering the same Condominium or other portions of the Project.

Section 1.29. "Owner" means any person, firm, corporation or other entity which owns a fee simple interest in any Unit (including contract sellers, but excluding those having such interest merely as security for the payment of a debt or the performance of an obligation).

Section 1.30. "Owner of Record" and "Member of the Association" include an Owner and means any person, firm, corporation or other entity in which title to a Unit is vested as shown by the official records of the Office of the County Recorder.

Section 1.31. "Properties" shall mean and refer to that certain real property described in the first Recital to this Declaration and such additions thereto as may thereafter be brought within the jurisdiction of the Association.

Section 1.32. "Recreational Common Area" shall mean and refer to Lot 1, 2 and 3 as shown on the Map: Condominium Buildings and the Units are not included in the Recreational Common Area. Portions (if any) of patios located outside of the perimeter of a Condominium Building as shown on the Condominium Plan are included within the Recreational Common Area.

Section 1.33. "Regular Assessment" means an assessment levied against an Owner and his Condominium in accordance with Article VI, Section 6.02 hereof.

Section 1.34. "Residential Use" shall mean occupation and use of a Unit for residential dwelling purposes in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state or municipal rules and regulations.

Section 1.35. "Special Assessment" means an assessment levied on an Owner and his Condominium in accordance with Article VI, Section 6.03 hereof.

Section 1.36. "Special Individual Assessment" means an assessment made against an Owner in accordance with Article VI, Section 6.04 hereof.

Section 1.37. "Tenant" means and includes any lessee or renter of a Unit.

ARTICLE II

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

Section 2.01. Description of Project. The Project consists of the underlying real property with Condominium Units and all other improvements located thereon. The Project consists of one hundred (100) residential Condominium Units located in eight (8) residential structures. The Project includes the Common Area facilities, open space,

appurtenances, and easements, all as more particularly set forth on the Condominium Plan. The common interest subdivision referred to herein is a Condominium project within the meaning of California Civil Code Section 1353 (a).

Section 2.02. Division of Property. The property is hereby divided into the following separate freehold estates:

(a) Units.

(1) 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, 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 the Unit are Common Area, not part of the Unit, except for the finished surfaces thereof. Fireplaces (fireboxes), chimneys and flues are Common Area. Each Unit includes the utility installations located within its boundaries that the Owner has exclusive use of including, without limitation, gas and electric heating, hot water heaters, space heaters, lighting fixtures and cabinetry, which are located entirely within the Unit they serve. Each Unit includes both the portions of the building so described and the airspace so encompassed.

The Unit does not include those areas and those things which are defined as "Common Area" in Article II, Section 2.02(b). Each Unit is subject to such encroachments as are contained in the building, whether the same now exist or may be later caused or created in any manner referred to in Article XI, Section 11.01. In interpreting deeds and plans, the then existing physical boundaries of 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 building.

(2) The title of each Unit Owner to a Unit is subject to the following:

- (A) Any portion of the Common Area lying within said Unit.
- (B) An easement appurtenant to the Common Area for encroachment upon the airspace of the Unit by any portions of the Common Area located within the Unit.

- (C) An easement through said Unit appurtenant to the Common Area and all other Units for support, maintenance and repair of the Common Area and all other Units.

(3) The ownership of each Unit shall include appurtenant easements to and for the benefit of the Unit as follows:

- (A) Non-exclusive easements for ingress and egress to and from the Unit and for support of a Unit through the Common Area and for maintenance and repair of the Unit through all other Units and the Common Area.
- (B) An exclusive easement for use of the Exclusive Use Common Area referred to in Section 2.02(c) of this Article II.
- (C) A non-exclusive easement for the use and enjoyment of the Common Area as provided herein.

(b) Condominium Common Areas. That portion of the property, referred to herein as "Condominium Common Area", shall include the area defined in Section 1.15. Each Owner shall have, as appurtenant to the Owner's Unit, an undivided percentage interest in the Condominium Common Area of the Condominium Building in which the Unit is located. The percentage interest of a Unit Owner shall be as set forth in Exhibit "B" attached to this Declaration. Each Condominium includes a Unit and such undivided interest in the Condominium Common Area. The common interest appurtenant to each Unit is permanent in character and cannot be altered without the consent of all of the owners affected, as expressed in an amended Declaration. Such undivided common interest cannot be separated from the Unit to which it is appurtenant, and any conveyance or transfer of the Unit includes the undivided common interest, the owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Each Owner may use the Condominium Common Area and Recreational Common Area in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Condominium Owners, subject to the rights of each Owner in any restricted Common Area appurtenant to that Owner's Condominium.

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

- (1) Non-exclusive easements appurtenant to all Units for ingress and egress to and from all Units for support, maintenance and repair of all Units.
- (2) Exclusive easements for garage spaces, carports, patios, storage spaces, yards and decks as shown on the Condominium Plan.
- (3) Easements for the installation and maintenance of utilities.
- (4) Non-exclusive easements for the benefit of Unit Owners for the use and enjoyment of the Common Area as provided herein.

(c) Exclusive Use Common Areas. The following described portions of the Common Area, referred to as "Exclusive Use Common Areas", are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are attached or assigned by Unit number as shown on the Condominium Plan, and are appurtenant to that Condominium:

- (1) Garage space designated "G", followed by the number of the Unit;
- (2) Carport designated "CP", followed by the number of the Unit;
- (3) Patio designated "PT", followed by the number of the Unit;
- (4) Storage space designated "S", followed by the number of the Unit;
- (5) Yard designated "Y", followed by the number of the Unit;
- (6) Deck designated "D", followed by the number of the Unit.

In addition, the following areas or items are "Exclusive Use Common Areas" appurtenant to the Condominiums in which they are located or attached:

- (1) That portion of any Common Area floor or ceiling that is pierced by interior stairs;
- (2) The space between the exterior boundary of any Unit and the interior surface of any bay or greenhouse window;

(3) Fireplace, chimney structure, and flue; and

(4) The space between the upper boundaries of the second floor units as described on the Condominium Plan and the unfinished ceiling of the Unit.

Any air conditioning equipment serving a Unit is part of the Unit, belongs to the Owner of that Unit, and shall be maintained by the Unit Owner. The space occupied by the air conditioning equipment, wherever located, shall be restricted to the exclusive use of the Unit Owner whose air conditioner occupies such space.

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

(d) Recreational Common Area. The Recreational Common Area consists of Lots 1, 2 and 3 as shown on the Map.

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

Section 2.03. Partition Prohibited. Except as expressly provided in this clause and in Article III of this Declaration, an Owner shall have no right to partition or divide his ownership of the Common Area. Partition of the Common Area can be had on a showing that the conditions to such partition as stated in Article XIII, Section 13.05 (relating to damage or destruction) or in Article XIV, Section 14.02 (relating to condemnation) or in California Civil Code Section 1359(b) have been met. Nothing in this Declaration shall prevent partition of a cotenancy in a Condominium.

Section 2.04. Distribution of Proceeds. Proceeds or property resulting from a partition shall be distributed to and among the respective Owners and their Mortgagees as their interests appear in proportion to the ratio that the fair market value of each Owner's Condominium bears to the fair market value of all Owners' Condominiums determined as provided in Article XIII, Section 13.07 and Article XIV, Section 14.03, but as of a date

immediately prior to the event giving rise to the right of Owners to partition the Common Area.

ARTICLE III

Circumstances Warranting Partition of Common Area

Section 3.01. Power of Attorney. Each of the Owners irrevocably appoints the Association as attorney-in-fact and irrevocably grants to the Association full power in the name and stead of such Owner to sell the entire Project, and to execute deeds and conveyances to it, in one or more transactions, for the benefit of all Owners when partition of the Project may be had under Civil Code Section 1359 and under the circumstances authorizing partition under this Declaration. The power of attorney shall (a) be binding on all Owners, whether they assume the obligations under this Declaration or not; (b) be exercisable by a majority of the Board acting on behalf of the Association, subject to obtaining the prior approval by vote or written consent of 75% of the Owners and 75% of all institutional first Mortgagees; and (c) be exercisable only after recordation with the County Recorder of a certificate executed by those who have power to exercise the power of attorney that the power of attorney is properly exercisable under the authority of this Declaration. This certificate shall be conclusive evidence of proper exercise in favor of any person relying on it in good faith.

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

Section 3.03. Provision To Limit Interests Conveyed. Any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium. However, nothing contained in this Section shall preclude the Owner of any Condominium from limiting the duration of the enjoyment of his Condominium estate, such as by creating

an estate for life or an estate for years, or from creating a cotenancy or joint tenancy in the ownership of the Condominium with any other person or persons.

ARTICLE IV

Property Rights

Section 4.01. Owners' Non-Exclusive Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, including ingress and egress to and from his Unit, which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

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

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

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

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

(e) The right of the Association, or its agents, when necessary, to enter any Unit or Exclusive Use Common Area to perform its obligations under this Declaration, including the enforcement of restrictions, any obligations with respect to construction, maintenance and repair as necessary for the benefit of the Common Areas or the Owners in common, or to make necessary repairs that an Owner has failed to perform which, if left undone, will pose a threat to, or cause an unreasonable interference with, Association

property. The Association's right of entry for such purposes shall be immediate in case of an emergency originating in or threatening such Unit, and the Association's work may be performed under such circumstances whether or not the Owner is present. In all non-emergency situations the Association, or its agents, shall furnish the Owner with at least twenty-four (24) hours written notice of its intent to enter the Unit, specifying the purpose of such entry.

(f) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving and maintaining the Common Area and facilities and in aid thereof to mortgage said property; provided, the rights of any such mortgagee in said properties shall be subordinate to the rights of the Owners hereunder.

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

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

Section 4.02. Delegation of Use/Rights and Obligations of Lessees; Restriction on Rental of Units.

(a) Restriction on Leasing. The right to lease or rent a Condominium is restricted as follows:

1. No more than twenty (20) of the total one hundred (100) Condominiums in the Properties may be leased or rented at any time. The Board of Directors shall adopt written rules and regulations pursuant to Article V, Section 5.08(a) of this Declaration to implement this restriction, including rules pertaining to the priority of right to lease or rent a Condominium, in the event that twenty (20) or more

Condominiums are leased or rented at any time.

2. If an Owner has an interest in more than one Condominium, no more than one (1) Condominium may be leased or rented, and such right to lease or rent is further subject to the restrictions of Section 4.02(b) hereof.
3. The Board of Directors may, in its discretion, relieve an Owner from one or more of the restrictions of this Article IV, Section 4.02(a), upon a written finding that the application of such restriction or restrictions would result in extreme hardship to the Owner, including, but not limited to, inability to sell the Owner's property despite reasonable efforts over an extended period of time.
4. This Section 4.02(a) shall not apply to any owner of record as of the date this Declaration is recorded. Rather, this Section 4.02(a) shall only be binding on Owners taking title after the date of recording of this Declaration. Further, this Section 4.02(a) shall not apply to any holder of a first trust deed as of the date of recording of this Declaration ("exempt lender") if the exempt lender acquires title to a Unit by virtue of such deed of trust. This Section 4.02(a) shall apply to any Owner who acquires title to a Unit from an exempt lender.

(b) Leasing of Units. In addition to Section 4.02(a), any Owner who leases a Condominium must comply with each of the following restrictions, and each lease will be subject to these restrictions, whether they are expressly included within the lease or not.

- (1) Each lease must be in writing.
- (2) No lease shall be for an initial term of less than 180 days.
- (3) Leases shall be subject in all respects to provisions of this Declaration, the Bylaws, and all Rules and Regulations.
- (4) Owners shall notify the Secretary of the Association, in writing, within fourteen (14) days of entering into a lease, of the names of all tenants and members of tenants' family occupying the Condominium,

and a description for each vehicle to be parked on the Properties by the residents of the Condominium, including vehicle license plate numbers, and shall provide the Secretary of the Association with a complete copy of the lease; Owners leasing their Condominium additionally shall notify the Secretary of the Association of the address and telephone number where such Owner can be reached.

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

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

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

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

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

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

(a) Whenever utility facilities are installed within the Project, which utility facilities or any portion thereof lie in or upon a Unit or Units owned by other than the Owner of a Unit served by said utility facilities, the Owners of any Units served by said utility facilities shall have the right of reasonable access for themselves or for utility companies or the City of San Jose to repair, to replace and generally maintain said utility facilities as and when the same may be necessary, due to failure or inability of the Board to take timely action to make such repairs or perform such maintenance.

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

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said utility facilities, or with respect to the sharing of the cost thereof, then, upon written request of one Owner addressed to the other Owner(s), the matter shall be submitted to alternative dispute resolution as provided in Article XV, Section 15.08 of this Declaration.

ARTICLE V

Homeowners Association

Section 5.01. Association Membership. Every Owner of a Unit shall be a Member of the Association which shall have the responsibility of managing and maintaining the Common Area and discharging the other duties and responsibilities described in this Declaration, the Articles and the Bylaws. Such membership is appurtenant to and may not be separated from ownership of any Unit within the Properties.

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

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

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

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

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

Section 5.06. Rights and Duties of the Association Board of Directors. The rights, duties and obligations of the Board of Directors of the Association shall be as set forth in this Declaration, the Articles, the Bylaws and the Rules and Regulations of the Association.

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

Section 5.08. Association Rules.

(a) **Rulemaking Power.** The Board may, from time to time and subject to the provisions of this Declaration, propose, enact and amend Rules of general application to the Owners of Units within the Properties. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Areas and Common Facilities, signs,

collection and disposal of refuse, minimum standards of maintenance of landscaping or improvements in any Unit, the elimination of improvements which obstruct the vision of motorists or which create a hazard for vehicular or pedestrian traffic, the keeping of household pets in Units, the number of guests of an Owner who may use the recreational facilities, and any other subject or matter within the jurisdiction of the Association as provided in this Declaration and the Bylaws of the Association. Notwithstanding the foregoing grant of authority, the Association Rules shall not be inconsistent with or materially alter any provision of, or the rights, preferences and privileges of Members as set forth in, the Articles or Bylaws of the Association or this Declaration. In the event of any material conflict between any Association Rule and any provision of the Articles, Bylaws or Declaration, the provision contained in the Articles, Bylaws or Declaration (as the case may be) shall prevail.

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

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

Section 5.09. Breach of Rules or Restrictions.

(a) In the event of a breach of any Rule or of any of the restrictions contained in the Bylaws or this Declaration by an Owner, his family, guests, employees, invitees, licensees, or tenants, the Board, for and on behalf of all other Owners, shall enforce the obligations of each Owner to obey such Rules or restrictions in any manner provided by law or in equity, including but not limited to appropriate hiring of legal counsel, the pursuing of legal action, or suspension of the Owner's right to use the Common Area and/or Common Facilities or suspension of the Owner's voting rights as a Member of the Association; provided, however, that any suspension for an infraction of the Association Rules may not be for a period in excess of six (6) months, after notice and hearing, if requested, as provided in Article XV, Section 15.06, hereof. The provisions of this Section 5.09(a) shall not apply to the rights, remedies, legal action and/or suspension of

an Owner's right to use the Common Area and/or Common Facilities or suspension of the Owner's voting rights as a Member of the Association resulting from the failure to pay assessments as provided in Article VI of this Declaration.

(b) In addition to the other remedies herein set forth, the Board, by vote of a majority of a quorum, may levy a fine against such Owner, after appropriate notice and hearing as hereinafter provided, in an amount not to exceed Five Hundred and no/100 Dollars (\$500.00) for each such violation and the payment of such fine may be enforced as a Special Individual Assessment in the manner set forth in Section 6.04 of Article VI hereof. The Board shall also implement schedules of reasonable fines and penalties as part of its general rulemaking power. A violation shall be defined as a single act or omission occurring on a single day. If the detrimental effect of a violation continues for additional days, discipline imposed by the Board shall include one component for the violation and a per diem component for so long as the detrimental effect continues, according to the Board's discretion. Similar violations on different days shall justify cumulative imposition of discipline. The Association shall take reasonable and prompt action to repair or avoid the continuing damaging effects of a violation or nuisance in the Common Area at the cost of the responsible Owner; provided that no discipline may be founded upon continuance of a violation beyond a date when the Association should reasonably have commenced action to end it.

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

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

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

shall extend to such matters as the establishment of the Association's annual financial budget and the funding of Association capital replacement and reserve accounts.

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

(c) Each Owner and lessee, on behalf of himself, his heirs, successors, and assigns, agrees not to make any claim against the Association or any member of its Board, or any of its officers, committee members, agents or employees for or on account of any loss, damage or conduct coming within the limitations on liability referred to in this Section 5.10 and agrees to indemnify each of them against, and hold each of them harmless from, any such claim made by any member of his family, any of his guests, servants, employees, licensees or invitees or the heirs, successors or assigns of any such person.

ARTICLE VI

Assessments

Section 6.01. Assessments Generally.

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

(b) Each installment payment of any Regular Assessment and each lump sum or installment payment of any Special Assessment or Special Individual Assessment, together with any interest charge provided for in subparagraph (e) hereof and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall

be a separate debt of the Owner against whom the same has been assessed. Furthermore, each Regular Assessment and each Special Assessment is hereby declared and agreed to be a lien upon and against the Unit so assessed in the nature of a mortgage with a power of sale in accordance with California Civil Code Section 2924 (or a comparable superseding statute), all as more particularly described in Section 6.09 of this Article VI. Special Individual Assessments may only be imposed as a lien against the Owner's Unit in those instances specifically identified in Section 6.04 of this Article VI.

(c) Each Owner who acquires title to a Condominium (whether at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Condominium so purchased which become due and payable after the date of purchase by such Owner; provided that any unpaid Assessment of a previous Owner shall remain the debt of such previous Owner against whom assessed and any lien created pursuant to the provisions of this Article VI by reason of such unpaid Assessment shall remain in force and effect as a lien on the Condominium sold and may be subject to foreclosure as provided in Section 6.09 hereof.

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

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

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

Section 6.02. Regular Assessment.

(a) **Determination of Assessment.** Not less than forty-five (45) nor more than sixty (60) days prior to the beginning of each fiscal year of the Association (which may correspond to the calendar year), the Board shall estimate the anticipated Common Expenses (including prudent contributions to the capital reserve fund for replacement of Common Facilities) for the next succeeding fiscal year and shall deduct therefrom the amount of any estimated surplus which will remain from the current year's Assessment. In preparing its annual estimates of Common Expenses and the appropriate deductions therefrom on account of surplus, the Board shall consider the Association Common Expenses all as more particularly provided in Exhibit "C" attached hereto. The total expenses (less deductions) thus estimated shall be allocated among all the Condominiums within the Properties in the manner described in subparagraph (b) of this Section 6.02 as the Regular Assessment for such Condominium; notwithstanding any other provision in this Declaration to the contrary, the Board may not impose a regular assessment for any fiscal year more than twenty percent (20%) above the regular assessment for the Association's preceding fiscal year without the approval of a majority of the votes at a meeting of the Members of the Association at which a quorum is present. For purposes of this section, a quorum means more than fifty percent (50%) of the Owners of the Association, and the meeting must be conducted in accordance with Corporations Code Sections 7510-7527, 7613.

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

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain when a threat to personal safety on the property is discovered.
- (3) An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under California Civil Code Section 1365, provided that before the imposition or collection of any assessment under this subparagraph,

the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Members with the notice of assessment.

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

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

(b) Allocation of Regular Assessments Among the Owners. The total estimated Association Common Expenses shall be divided equally among, assessed against and charged to all Condominiums within the Properties, except insurance, commonly metered domestic water and gas and reserves for painting, roofing and for water heaters which shall be allocated to each Condominium based on the proportion that the square footage of that Condominium bears to the total square footage of all the Condominiums subject to this Declaration as determined from the plans prepared by Declarant and the budget submitted to the California Department of Real Estate.

(c) Assessment Roll. That portion of the estimated Common Expenses assessed against and charged to each Owner shall be set forth and recorded upon an assessment roll which shall be maintained and available with the records of the Association and shall be open for inspection at all reasonable times by each Owner or his authorized representative. The assessment roll shall show for each Condominium the name and address of the Owner of record thereof, all Assessments, whether Regular or Special, levied against each Owner and his Condominium, and the amount of such Assessments which have been paid or remain unpaid. A certificate executed and acknowledged by the Secretary or Treasurer of the Association stating the indebtedness secured by any lien created hereunder upon any such Condominium shall be conclusive upon the Association and the Owner of such Condominium as to the amount of such indebtedness as of the date of such certificate, in

favor of all persons who rely thereon in good faith, and such a certificate shall be furnished by the Association to any Owner or to any first Mortgagee under a Mortgage encumbering a Condominium upon written request therefor at a reasonable fee payable to the Association.

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

(e) Failure to Make Estimate. If, for any fiscal year, the Board of Directors shall fail to make an estimate of the Common Expenses, the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 6.03 hereof for that year, shall be assessed against each Owner and his Condominium on account of the then current fiscal year, and installment payments (as hereinafter provided) based upon such automatic assessment shall be payable on the regular payment dates established by the Association.

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

Section 6.03. Special Assessments.

(a) Regular Assessment Insufficient in Amount. If, at any time, the Regular Assessment imposed with respect to all Condominiums in any fiscal year is insufficient for any reason, then the Board of Directors shall make an additional Special Assessment, applicable for the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association may incur in the performance of its duties and

the discharge of its obligations hereunder. Special Assessments hereunder may be imposed upon Board action alone except in those instances where membership approval is required pursuant to subparagraph (c) of this Section 6.03.

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

(c) Assessment Increases Requiring Membership Approval. As more particularly provided in California Civil Code Section 1366(b), no Special Assessment described in subparagraphs (a) or (b) hereof shall be made by the Board of Directors whereby the special assessments in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for the fiscal year without the approval of Owners constituting a quorum, casting the majority of the votes at a meeting or election of the Association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For purposes of this Section 6.03(c), quorum means more than fifty percent (50%) of the Owners.

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

- (1) An extraordinary expense required by an order of a court.
- (2) An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain when a threat to personal safety on the property is discovered.
- (3) An extraordinary expense necessary to repair or maintain the development or any part of it that the Association is responsible to maintain that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget required under California Civil Code Section 1365, provided that before the imposition or collection of any assessment under this subparagraph

the Board must pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and shall distribute the resolution to the Members with the notice of assessment.

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

(d) Allocation and Payment of Special Assessments. When levied by the Board or approved by the Members as provided above a Special Assessment levied under subparagraph (a) shall be allocated among the Members as provided in Section 6.02(b) hereof and a Special Assessment levied under subparagraph (b) shall be equally divided among, assessed against and charged to, such Members and their Condominiums as provided in Section 6.02(b) of this Article VI, and recorded on the Association's Assessment Roll in accordance with Article VI, Section 6.02(c) of this Declaration and notice thereof shall be mailed to each Owner subject thereto. Special Assessments for purposes described in subparagraph (a) shall thereafter be due as a separate debt of the Owner and a lien against his Condominium, which debt shall be payable to the Association in equal monthly installments during the remainder of the then current year. Special Assessments for purposes described in subparagraph (b) shall thereafter be due as a separate debt and payable in full to the Association. The Association shall provide notice by first-class mail to the Owners of any special assessments described in subparagraphs (a) or (b) of this Section 6.03 not less than thirty (30) nor more than sixty (60) days prior to the special assessment becoming due.

Section 6.04. Special Individual Assessments.

(a) In addition to the Special Assessments provided for in Section 6.03 hereof, the Association may also impose Special Individual Assessments against an Owner in any of the circumstances described in subparagraphs (1) through (3) below. Special Individual Assessments imposed pursuant to subparagraphs (1) or (2) below shall be a lien against the Owner's Condominium as described in Section 6.04(b) below, but any Special Individual Assessment imposed pursuant to subparagraph (3) shall be only an obligation of the assessed Owner and may only become a lien against his property to the extent permitted in Section 6.04(b).

- (1) **Damage to Common Area.** In the event of any damage or destruction of any portion of the Common Area or the Common Facilities caused by the willful misconduct or negligent act or omission of any Owner, any member of his family, or any of the Owner's tenants, guests, servants, employees, licensees or invitees, the Board shall cause the same to be repaired or replaced, and all costs and expenses incurred in connection therewith (to the extent not compensated for by insurance proceeds) shall be assessed and charged solely to and against such Owner and the Owner's Condominium as a Special Individual Assessment. Nothing in this Subsection shall require the Board to make a claim on any insurance carrier issuing a policy relating to the Common Area in the event of any such damage or destruction.

- (2) **Act Increasing Insurance Premiums.** In the event any act or omission of any Owner, any member of his or her family, or any of his or her tenants, guests, servants, employees, licensees or invitees, shall in any way cause or be responsible for any increase in the premiums for any insurance purchased or obtained by the Association in accordance with the provisions of Article XII hereof, the amount of such increase may, in the discretion of the Board, be assessed and charged solely to and against such Owner and his or her Condominium as a Special Individual Assessment.

- (3) **Expenses Incurred in Gaining Member Compliance.** In the event that the Association incurs any costs or expenses, including reasonable title company, accounting or legal fees, to accomplish (i) any repair, under this Declaration, the Bylaws or the Association Rules, or (ii) to prevent the continued maintenance of a nuisance or (iii) otherwise bring the Owner and/or the Owner's Condominium into compliance with the provisions of this Declaration, the Bylaws or the Association Rules, the amount incurred by the Association (including reasonable fines, interest and penalties duly imposed hereunder) shall be assessed and charged solely to and against such Owner and the Owner's Condominium as Special Individual Assessment; provided that Special Individual Assessments of the kind described in this Subparagraph (a)(3) may only be imposed after the Owner has been afforded the notice and hearing rights to which the Owner is entitled pursuant to Article XV, Section 15.06 hereof, and

has been given a reasonable opportunity to comply voluntarily with the Association's governing documents before the assessment is imposed. Liens may be filed against the Owner's Condominium for Special Individual Assessments only to the extent provided in Section 6.04(b).

(b) Levy of Special Individual Assessment and Payment. Once a Special Individual Assessment has been levied against an Owner for any reason described and subject to the conditions imposed, in subparagraph (a) of this Section 6.04, such Special Individual Assessments shall be recorded on the Association assessment roll, notice thereof shall be mailed to the affected Owner and the Special Individual Assessment shall thereafter be due as a separate debt of the Owner and, in the case of Special Individual Assessments imposed pursuant to subparagraphs (1) or (2) of Section 6.04 (a), shall also become a lien against his Condominium, payable as set forth below.

Special Individual Assessments imposed pursuant to Section 6.04(a)(3) hereof may not be characterized nor treated as an assessment which may become a lien against the Member's Condominium enforceable by a sale of the Condominium in accordance with the provisions of Sections 2924, 2924(b) and 2924(c) of the Civil Code. Nothing herein shall prevent the Association from recording a notice of the assessment against the Owner's Condominium, for record notice purposes, but without right of foreclosure. Furthermore, the prohibition against foreclosure of Special Individual Assessment Liens imposed hereunder shall not apply to charges imposed against an Owner consisting of reasonable late payment penalties for delinquent assessments and/or charges to reimburse the Association for the loss of interest and for costs reasonably incurred (including attorneys' fees) in its efforts to collect delinquent assessments.

Special Individual Assessments imposed pursuant to either Section 6.04(a)(1) or 6.04(a)(3) shall be payable in full to the Association within 30 days after the mailing of notice of the assessment and Special Individual Assessments imposed pursuant to Section 6.04(a)(2) shall be payable in full to the Association at least ten (10) days in advance of the date or dates for the payment of the increased insurance premium giving rise to the assessment.

Section 6.05. Purpose and Reasonableness of Assessments. Each Assessment, whether it be a Regular, Special or Special Individual Assessment, made in accordance with the provisions of this Declaration, is hereby declared and agreed (a) to be for use exclusively to promote the recreation, health, safety and welfare of the residents of the Properties by the Owners and their families, tenants, invitees, licensees, guests and

employees, or for the repair, maintenance, replacement and protection of the Common Areas and Common Facilities within the Properties and other portions of the Properties that the Association is obligated to maintain and repair under Article VIII of this Declaration, (b) to be a reasonable assessment, and (c) to constitute a separate, distinct and personal obligation of the Owner of the Condominium against which the Assessment is made and shall bind his heirs, successors and assigns; provided that the personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

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

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

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

Section 6.08. Maintenance of Assessment Funds.

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

imposed by California Civil Code Section 1365.5 and Article XII, Section 12.08 of the Bylaws.

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

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

For purposes of accounting, but without requiring any physical segregation of assets, the Association shall keep a separate account of all funds received by it in payment of each Assessment, and of all disbursements made therefrom, except that receipts and disbursements of Special Assessments made pursuant to Section 6.03(a) of this Article VI shall be combined with the receipts and disbursements of the Regular Assessments.

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

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

(a) The amount of any delinquent Regular or Special Assessment which is made in accordance with this Article VI, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Condominium of the Owner so assessed only when the Association causes to be recorded in the Office of the County Recorder of Santa Clara County, State of California, a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth (a) the legal description of such Condominium, (b) the Owner of Record or reputed Owner thereof, (c) the amount claimed, (d) the name and address of the trustee authorized by the Association to enforce the lien by sale, and (e) the name and address of the Association.

(b) The Association may bring an action at law against the Owner personally obligated to pay the delinquent assessment, or foreclose its lien against the Owner's Condominium; provided, however, that the right of foreclosure in the case of Special Individual Assessments described in Section 6.04(a) hereof shall only exist to the extent specifically provided in Section 6.04(b) of this Article VI. To the extent permitted hereunder, foreclosure by the Association of its lien may be by judicial foreclosure or by non-judicial foreclosure, in the same manner as the foreclosure of a mortgage or deed of trust upon real property under the laws of the State of California. Non-judicial foreclosure shall be commenced by the Association or its duly authorized agent by recording in the Office of the County Recorder a notice of default, which notice shall state all amounts which have become delinquent with respect thereto and the costs (including attorneys' fees), penalties and interest which have accrued thereon, the amount of any assessment which is due and payable although not delinquent, a description of the property in respect to which the delinquent assessment is owed, the name and address of the trustee authorized by the Association to enforce the lien by sale and the name of the record or reputed Owner thereof. The Association shall have the rights conferred by Section 2934a of the Civil Code to assign its rights and obligations as Trustee in any non-judicial foreclosure proceeding to the same extent as a Trustee designated under a deed of trust and for purposes of said Section 2934a the Association shall be entitled to employ the services of a title insurance company or responsible company engaged in the business of acting as a trustee in foreclosure to act as an agent on behalf of the Association in commencing and prosecuting the foreclosure process.

The notice of default shall state the election of the Association to sell the Condominium or other property to which the amounts relate and shall otherwise conform with the requirements for a notice of default under Section 2924c of the California Civil

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

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

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

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

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

Section 6.10. Transfer of Condominium by Sale or Foreclosure. Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale or transfer of any Condominium pursuant to foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such Condominium from liability for any assessments thereafter becoming due or from the lien thereof. "First mortgage" as used in this Section 6.10 and in Section 6.11 means any recorded mortgage or deed of trust encumbering the Condominium having priority over all other mortgages or deeds of trust and made in good faith and for value.

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

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

Section 6.11. Priorities. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective Condominium prior and superior to all other liens except (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (b) the lien or charge of any first mortgage of record made in good faith and for value; provided, however, that such subordination shall apply only to the assessment installments which have become due and payable prior to the sale of such

property pursuant to a decree of foreclosure of any such mortgage or deed of trust or pursuant to the power of sale in such mortgage or deed of trust. Such foreclosure shall not relieve such property from liability for any assessment installments thereafter becoming due or from the lien of any such subsequent assessment.

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

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

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

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

may be made a lien against the Owner's Condominium as provided by this Declaration, the Articles, Bylaws, or Association.

ARTICLE VII

Duties and Powers of the Association

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

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

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

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

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

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

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

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

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

(b) **Easements.** The Association shall have authority, by document signed or approved by two-thirds (2/3) of the total voting power of the Association, to grant permits, licenses and easements in addition to those shown on the Map, where necessary for roads, utilities, cable television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominium Units.

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

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

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

(f) **Assessments, Liens and Fines.** The Association shall have the power to levy and collect assessments in accordance with the provisions of Article VI hereof. The Association may impose fines or take disciplinary action against any Owner for failure to

pay assessments or for violation of any provision of the Condominium documents. Penalties may include but are not limited to: fines, temporary suspension of voting rights, rights to the use of recreational facilities or other appropriate discipline, provided that the accused Member is given notice and the opportunity to be heard with respect to the alleged violations before a decision to impose discipline is made.

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

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

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

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

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

(1) To make expenditures for capital additions or improvements chargeable against the reserve funds;

(2) To conduct hearings concerning compliance by an Owner or his tenant, lessee, guest or invitee with the Declaration, Bylaws or Rules promulgated by the Board;

(3) To make a decision to levy monetary fines, impose Special Assessments against individual Condominiums, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline;

(4) To make a decision to levy annual or Special Assessments; or

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

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

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

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

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

ARTICLE VIII

Maintenance

Section 8.01. Association Maintenance.

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

Maintenance shall include (without limitation): Painting, maintaining, cleaning, repairing and replacing of all Common Areas, including landscaping (except in Exclusive Use Common Areas), parking areas and recreational facilities. The Association also shall maintain all utility facilities located in the Common Area except for those facilities maintained by utility companies, public, private, or municipal and those maintained by the Owners as described in Section 8.02 of this Declaration. The Association shall pay all charges for utilities supplied to the Properties except those metered or charged separately to the Condominiums.

The Association shall be responsible for the periodic maintenance and testing of all built-in fire detection and protection devices and equipment located in the Common Area, except equipment protruding into or within a Unit such as sprinkler heads and smoke detectors.

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

(c) Owner Damage. The financial responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner, or his guests, tenants or invitees, the cost of which is not covered by insurance. The cost of such repair or replacement shall be the responsibility of such Owner. The cost thereof shall constitute a special assessment chargeable to such Condominium and shall be payable to the Association by the Owner of such Condominium as a Special Individual Assessment, as provided in Article VI, Section 6.04(a)(1) of this Declaration.

(d) Exclusive Use Areas. The Association shall be solely responsible for repair and replacement of garages, carports, patios, storage spaces, and decks, and shall be solely responsible for painting of exterior surfaces of garages, carports, patios, storage spaces and decks. The Association shall not be responsible for maintenance, repair or replacement of exterior glass surfaces. The Association shall be responsible for finishing

of the exterior surface of the front door. The Association shall be responsible for repairing and replacing exterior doors and for finishing of the exterior surface of the front door.

Section 8.02. Maintenance by Members.

(a) Interior Unit Maintenance and Improvements. 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, keeping the same in good condition. Without limiting the foregoing:

- (1) Interior Finishes. Each Owner shall have the exclusive right and duty to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, and doors bounding his Unit.
- (2) Windows. Each Owner shall also be responsible for repair, replacement and cleaning of the following building components: interior and exterior glass and window screens.
- (3) Doors. Except as provided in Section 8.01(d) each Owner shall be solely responsible for maintenance, repair and replacement of all door including entry doors and garage doors, door locks, openers and hardware for entry doors and garage doors.
- (4) Interior Components. Each Owner shall bear the cost of maintenance, repair and replacement of the following items within or serving such Owner's Unit: sheetrock on nonbearing walls; interior surfaces of all perimeter and interior walls (except bearing walls to the unfinished surfaces thereof), ceilings and floors (including carpeting, tile, wallpaper, paint or other covering); garbage disposals, hot water heaters solely serving such Unit, ranges, refrigerators, dishwashers, washing machines, dryers, light fixtures, and any and all other appliances of any nature whatsoever; heating, ventilating and air-conditioning equipment servicing such Unit (although such equipment may be located in part outside such Unit); interior doors, including all hardware thereon; light bulbs; electrical lines, circuit breakers and subpanels solely serving such Unit; plumbing and other fixtures of any nature whatsoever solely servicing such Unit (although such pipes or fixtures may be located outside such Unit); "built-in"

features; and decorative features, fireboxes, fireplace vent flue cleaning (but not repair or replacement), and any furniture and any furnishings. However, no Owner may install any appliance which requires a change in the electrical, mechanical or plumbing systems of the Condominium project, without written application to and written approval by the Board of Directors in accordance with Article IX of this Declaration.

- (5) In the event an Owner fails to maintain the interior of his Unit or his Exclusive Use Common Area in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify Owner of the work required and request it be done within thirty (30) days from the giving of such notice. In the event Owner fails to carry out such maintenance within said period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary lien his Unit for the amount thereof.
- (6) No Condominium Owner shall undertake any action or work that will impair the structural soundness or integrity of his or another Unit or impair any easement or estate, or do any act or allow any condition to exist which will adversely affect the other Condominiums or their Owners.

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

- (1) Each Owner shall maintain the landscaping within the private patio area appurtenant to his Unit which is Exclusive Use Common Area, keeping the same in good condition. Provided, however, no landscaping of patios or yards visible from the street or from the Common Area shall be undertaken by any Owner until plans and specifications showing the nature, kind, shape, and location of the proposed landscape improvements have been submitted to and approved in writing by the Architectural Control Committee appointed by the Board as provided in Article IX, Section 9.01 of this Declaration.

(2) Each Owner shall be solely responsible for maintenance of fireplace chimneys and flues including the periodic sweeping or cleaning of fireplace chimneys and flues.

(3) Each Owner who is granted an exclusive easement for the use, possession and benefit of a Patio or Balcony shall landscape, cultivate, maintain, water, fertilize and otherwise care for all containers, planters, plants or landscaping and improvements located within or upon the Patio or Balcony. Each said Owner shall keep and maintain his Patio or Balcony in a neat, clean, orderly and attractive manner. No Owner shall build or place or cause to be built or placed any shed, doghouse, fence or other structure or enclosures within or upon his Patio or Balcony without prior written consent of the Board. Each Owner is solely responsible for maintenance, repair and replacement of patio trellises.

(4) Each Unit Owner shall keep those portions of the Exclusive Use Common Area to which the Owner has exclusive easement rights, including the garage and/or carport interior, clean, free of debris and in a neat and orderly condition. Each Owner is entitled to reasonable access to the Common Areas for the purpose of maintaining the internal and external telephone wiring designed to serve that Owner's Unit, subject to the consent of the Association, which may include the imposition of reasonable conditions, which consent shall not be unreasonably withheld.

(5) Each Owner shall be responsible for the cleaning of all vents serving only his or her Unit.

(6) Each Owner shall be responsible for maintaining, repairing and replacing the door bell and wiring for the door bell of the Owner's Unit.

(7) All wiring for utilities which service the Owner's Unit including, but not limited to, telephone wiring, shall be maintained, repaired and replaced by the Owner.

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

ARTICLE IX

Architectural Control

Section 9.01. Improvements in General; Establishment of Architectural Committees.

(a) Architectural Committee Approval. No building, fence, wall or other structure (including, without limitation, any capital improvement within the Common Area (including landscape improvements in the Exclusive Use Common Area)) shall be commenced, erected or maintained upon the Properties or any portion thereof, nor shall any exterior addition to or change or alteration therein be made until a written application for approval of the proposed work, supported by plans and specifications showing the nature, color, kind, shape, height, materials, and location of the same, has been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors (which shall be composed of three (3) or more representatives appointed by the Board). Said plans and specifications shall be submitted to the Board by personal delivery or certified mail to the Secretary of the Association or the Chairman of the Architectural Committee. Members of the Board of Directors shall be eligible to serve as members of the Architectural Committee.

(b) Additional Information. The Committee shall have the right to request additional information regarding the work of improvement if the request is delivered to the applicant in writing within thirty (30) days following the date the initial application was filed. The Committee shall make its determinations and recommendations to the Board within forty-five (45) days following the date of the initial application or, in the event that additional information has been requested of the applicant, within forty-five (45) days after such additional information is received. If the Board fails to disapprove an application within forty-five (45) days of the completion of the application the same shall be deemed to be unconditionally approved.

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

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

(e) Accessory Structure Limitations. Notwithstanding anything herein to the contrary, no patio cover, trellis, deck or other accessory structure (collectively "structure") shall be constructed in any patio or yard unless the following conditions have been satisfied:

(i) The San Jose Director of Planning has approved the design of the structure;

(ii) The design of the structure is compatible in material, color and style with the main structures on the property;

(iii) The structure does not interfere with any site drainage;

(iv) The structure is in compliance with the San Jose Municipal Zoning Code;

(v) If the structure is a patio cover or trellis, the structure shall maintain a minimum five (5) foot setback from any side yard property line, and a minimum ten (10) foot setback from the rear boundary line, and the maximum height of the structure shall not exceed ten (10) feet from the grade elevation or from the finished floor elevation, whichever is higher; and

(vi) If the structure is a deck, the structure shall maintain a minimum five (5) foot setback from any side boundary line and a minimum ten (10) foot setback from