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MISSION VILLAS

ACCOMODATION ONLY

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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MISSION VILLAS

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by Santa Clara Associates, a joint venture, hereinafter referred to as "Declarant," is made with reference to the following facts:

A. Declarant is the owner of certain property located in the City of Santa Clara ("City"), County of Santa Clara, State of California, more particularly described on the Map entitled Tract No. 8174, filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on April 26, 1989, in Book 598 of Maps, page(s) 48 and 49.

B. The development shall be referred to as the "project" as defined in section 1.22.

C. Declarant intends by this document to impose upon the property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of lots.

NOW, THEREFORE, Declarant hereby declares that all of the property described above shall be held, sold, leased, mortgaged, encumbered, rented, used, occupied, improved and conveyed subject to the following declarations, limitations, easements, restrictions, covenants, and conditions, which are imposed as equitable servitudes pursuant to a general plan for the development of the property for the purpose of enhancing and protecting the value and desirability of the property and every part thereof, and which shall run with the property and be binding on Declarant and its successors and assigns, and on all parties having or acquiring any right, title or interest in or to the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

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

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

1.3 "Association" shall mean and refer to the MISSION VILLAS/BOWERS AVENUE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the members of which shall be the owners of lots in the project.

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

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

1.6 "Common area" shall mean and refer to the portions of the property (and all improvements thereon) owned by the Association for the common use and enjoyment of the owners consisting upon recordation of the Map and conveyance by deed to the Association of the lot designated as Lot 13 ("Fargher Drive") on the Map.

1.7 "Common expenses" means and includes the actual and estimated expenses of operating the common area and any reasonable reserve for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the Declaration, Articles, or Bylaws.

1.8 "Declarant" shall mean and refer to Santa Clara Associates, a joint venture, and any successor or assign that expressly assumes the rights and duties of the Declarant hereunder.

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

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

1.11 "Eligible mortgage holder" shall mean a first lender who has requested notice of certain matters from the Association in accordance with section 8.5C.

1.12 "Eligible insurer or guarantor" shall mean an insurer or governmental guarantor of a first mortgage who has requested notice of certain matters from the Association in accordance with section 8.5C.

1.13 "First lender" shall mean any bank, savings and loan association, insurance company, or other financial institution holding a recorded first mortgage on any lot.

1.14 "Lot" shall mean and refer to each lot or parcel shown on the map with the exception of the common area.

1.15 "Map" shall mean and refer to that subdivision map entitled Tract No. 8174, filed for record the 26th day of April, 1989, in Book 598 of Maps at page(s) 48 and 49, in the records of Santa Clara County.

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

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

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

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

1.20 "Owner" shall mean and refer to the record owner, whether one (1) or more persons or entities, of fee simple title to any lot which is a part of the project but excluding those persons or entities having an interest merely as security for the performance of an obligation. If a lot is sold under a contract of sale and the contract is recorded, the purchaser, rather than the fee owner, will be considered the "owner" from and after the date the Association receives written notice after recorded contract.

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

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

1.23 "Project documents" shall mean and refer to this Declaration, together with the other basic documents used to create and govern the project, including the Map, the Articles, and the Bylaws (but excluding unrecorded rules and regulations adopted by the Board or the Association).

1.24 "Property" shall mean and refer to the real property described on the Map and all improvements thereon.

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

2.1 **Description of Project:** The project is a planned development, consisting of the common area, twelve (12) residential lots, and all improvements thereon.

2.2 **Easements; Dedication of Common Area:** Each of the lots shown on the Map shall have appurtenant to it as the dominant tenement an easement over the common area as the servient tenement for ingress and egress, and for use, occupancy and enjoyment, and for the construction, maintenance and operation of utilities; subject to the following provisions:

A. The right of the Association to discipline members and to suspend the voting rights of a member for any period during which any assessment against the member's lot remains unpaid, and for any infraction of the Declaration, Bylaws, Articles or written rules and regulations in accordance with the provisions of sections 4.10, 5.2.F and 8.1 hereof.

B. The right of the Association to dedicate, transfer or mortgage all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided, that in the case of the borrowing of money and the mortgaging of its property as security therefor, the rights of such mortgagee shall be subordinate to the rights of the members of the Association. No such dedication, transfer or mortgage shall be effective unless an instrument signed or approved by two-thirds (2/3) of each class of members agreeing to such dedication, transfer or mortgage has been recorded.

C. The right of the Association to grant easements under, in, upon, across, over, above or through any portion of the common area for purposes, including, without limitation, access, utilities, and parking, which are beneficial to the development of the property in accordance with the general plan established by this Declaration.

D. The right of the Association or Declarant to install or have installed a cable or central television antenna system. The system, if and when installed, shall be

maintained by the Association or cable television franchisee. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each lot for the purpose of connecting the same with the master cable television terminal, central television antenna or line. Each lot shall be subject to an easement in favor of all other lots and in favor of the entity holding the CATV franchise, to provide for the passage through the lot and any structure thereon of television connections from any other lot to the cable system, and shall be subject to a further easement for the placement and maintenance of such connections.

E. Easements for work necessary to complete development and construction of the project, including all parcels annexed or to be annexed, as more particularly described in section 8.9.

The foregoing easements are granted and reserved subject to the condition that their use and enjoyment shall not unreasonably interfere with the use, occupancy or enjoyment of all or any part of the lot servient to them or to which they are appurtenant.

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

2.4 Delegation of Use: Any owner may delegate, in accordance with the Bylaws, his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers, who reside on the property.

2.5 Conveyance of Common Area to Association: On or before conveyance of title to the first lot, Declarant shall deed the common area to the Association to be held for the benefit of the members of the Association.

2.6 Owners' Rights and Easements for Utilities: The rights and duties of the owners of lots within the project with respect to sanitary sewer, drainage, water, electric, gas, television receiving, telephone equipment, cables and lines, elevators, elevator shafts, exhaust flues, and heating and air conditioning facilities (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 lot or lots owned by other than the owner of a lot served by said utility facilities, the owners of any lots served by said utility facilities, shall have the right of reasonable access for themselves or for utility companies or the City of Santa Clara 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 serve more than one (1) lot, the owner of each lot served by said utility facilities shall be entitled to the full use and enjoyment of such portions of said utility facilities as service his lot.

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 (1) of such owners addressed to the Association, the matter shall be submitted to arbitration within sixty (60) days pursuant to the rules of the American Arbitration Association, and the decision of the Arbitrator(s) shall be final and conclusive on the parties.

2.7 Encroachment Easements: Each lot as the dominant tenement shall have an easement over adjoining lots and common area as the servient tenements for the purpose of accommodating any encroachment due to foundations, exterior wall, windows, roof overhang and fences or walls which are built in accordance with the original design, plans and specifications of Declarant, or due to engineering errors, errors or adjustments in original construction, settlement or shifting of the building, or similar causes. There shall be valid easements for the maintenance of said encroachments as long as they shall exist, and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the intentional conduct of said owner or owners other than adjustments by Declarant in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the owners of each adjoining lot agree that minor encroachments over adjoining lots and common area shall be permitted and that there shall be valid easements for the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the common area, or into or onto an adjoining lot, or into a required setback area, a correcting modification may be made in the subdivision map. Said modification shall be in the form of a Certificate of Correction and shall be executed by Declarant (so long as Declarant is the sole owner of the property) and by Declarant's engineer and, by the City Engineer. If the correction occurs after title to the common area has been conveyed to the Association, the Association shall also execute the Certificate of Correction. The Board of Directors may, by vote or written approval of a majority of the directors, authorize the execution of the Certificate of Correction.

2.8 Boundary Line Easements:

A. Easements: In all cases where a structural wall of a residence that was built as part of the original construction is located on or adjacent to the boundary line between adjacent lots, the owner of the residence as the dominant tenement shall have a non-exclusive easement over the adjacent lot as the servient tenement for access to and use of that portion of the servient tenement as may be reasonably necessary for the maintenance of the wall, the reconstruction of the wall in the event of the partial or total destruction of the same, and the drainage associated with the wall or the residence of which the wall is a part, and an easement to accommodate the foundation and/or roof or eave encroachment as per the original design, plans and specifications which were the basis for the original construction of the residence. The owner of a lot having a structural wall situated on the boundary line between his lot and the adjoining lot shall not attach anything to the outside of the wall which shall protrude across the boundary line into the adjoining lot, and the owner of the adjoining lot upon which such a wall is situated shall not attach anything to the outside of the wall without (in each case) the consent and permission of the owner of the adjoining lot upon which the residence of which the wall is a part is situated.

B. Arbitration: In the event of any dispute arising concerning the provisions of this section, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association, or any successor thereto.

2.9 Sideyard Easements: Certain lots as the servient tenements are subject to sideyard easements in favor of an adjoining lot as the dominant tenement in the areas designated sideyard easements ("S.Y.E.") on the Map. The occupants of the dominant tenement shall have the exclusive use and possession of the sideyard easement area subject to the right of the owners of the servient tenement or the owners' agents to enter the area in order to maintain and repair (including repainting) any improvement or fixture on the

servient tenement and to maintain, repair or replace any encroachment into this area, such as a roof overhang or building encroachment that was established at the time the improvements on the servient tenement were originally constructed. The owner of the dominant tenement shall maintain the landscaping within the sideyard easement and shall not take any action that could unreasonably interfere with the rights reserved in favor of the servient tenement.

2.10 Maintenance Easement: An easement over each lot is reserved by Declarant, and is hereby granted to the Association, for the purpose of entering upon the property to perform such maintenance, if any, as the Association may do in accordance with the provisions of section 5.1.A of this Declaration.

2.11 Drainage Easements: An easement over and under each lot as the servient tenement is reserved in favor of each other lot as the dominant tenement for the purpose of allowing the Association's agents to enter the lot to make emergency repairs to any portion of the storm drainage system that may be located thereon. No owner or occupant shall commit any act that would interfere with the operation of any drainage system (including drainage swales) installed on the owner's lot, each owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each lot and the common area and between adjoining lots are reserved for the flow of water.

2.12 Other Easements: The common area and each lot are subject to all easements, dedications, and rights of way granted or reserved in, on, over and under the property as shown on the Map.

2.13 Rights of Entry and Use: The lots and common area (including restricted common area) shall be subject to the following rights of entry and use:

A. The right of the Association's agents to enter any lot to cure any violation of this Declaration or the Bylaws, provided that the owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Association;

B. The access rights of the Association to maintain, repair or replace improvements or property located in the common area as described in section 5.2E;

C. The easements described in this Article II;

D. The right of the Association's agents to enter any lot to perform maintenance as described in section 8.6;

E. The rights of the Declarant during the construction period as described in section 8.9.

2.14 Partition of Common Area: There shall be no subdivision or partition of the common area, nor shall any owner seek any partition or subdivision thereof.

Notwithstanding any provisions to the contrary contained in this Declaration and in order to provide for a means of terminating the project if this should become necessary or desirable, on occurrence of any of the conditions allowing an owner of a lot to maintain an action for partition (as such conditions are presently set forth in Civil Code §1359 or as such conditions in the future may be set forth in any amendment thereto or comparable provisions of law), two-thirds (2/3) of the owners of lots shall have the right to petition the Superior Court having jurisdiction to alter or vacate the Map under California Government Code

§66499.21, et seq., or any comparable provisions of law, and to vest title to the property in owners as tenants in common and order an equitable partition of the property in accordance with the laws of the State of California.

Nothing herein shall be construed to prohibit partition of a joint tenancy or co-tenancy in any lot.

ARTICLE III ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 Association to Own and Manage Common Areas: The Association shall own and manage the common area in accordance with the provisions of this Declaration, and the Articles and Bylaws.

3.2 Membership: The owner of a lot shall automatically, upon becoming the owner of same, be a member of the Association, and shall remain a member thereof until such time as his ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a lot. Membership shall be held in accordance with the Articles and Bylaws.

3.3 Transferred Membership: Membership in the Association shall not be transferred, encumbered, pledged, or alienated in any way, except upon the sale or encumbrance of the lot to which it is appurtenant, and then only to the purchaser, in the case of a sale, or mortgagee, in the case of an encumbrance of such lot. On any transfer of title to an owner's lot, including a transfer on the death of an owner, membership passes automatically with title to the transferee.

A mortgagee does not have membership rights until it obtains title to the lot through foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No member may resign his membership. On notice of a transfer, the Association shall record the transfer on its books.

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

Class A. Class A members shall be all owners with the exception of the Declarant (as defined in section 1.8) and shall be entitled to one (1) vote for each lot owned. When more than one (1) person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

Class B. The Class B member shall be the Declarant whose voting rights shall be the same as for Class A memberships, except that the Class B members may triple its votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

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

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

Any action by the Association which must have the approval of the members before being undertaken shall require the vote or written assent of a majority of each class of

membership during the time that there are two (2) outstanding classes of membership. Where the vote or written assent of each class of membership is required, any requirement that the vote of Declarant be excluded is not applicable, except as provided in section 8.13 hereof. After the conversion of Class B membership to Class A membership, any provision herein requiring the approval of members other than Declarant, except as provided in section 8.13, shall mean the vote or written assent of a majority of the total voting power of the Association (including Declarant's vote(s)) and the vote or written assent of a majority of the total voting power of members other than the Declarant. Voting rights attributable to lots shall not vest until assessments have been levied against those lots by the Association.

ARTICLE IV MAINTENANCE AND ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each lot owned within the project, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees: (1) to pay to the Association annual assessments or charges, and special assessments for purposes permitted herein, such assessments to be established and collected as hereinafter provided, and (2) 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. The annual and special assessments, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made, the lien to become effective upon recordation of a notice of delinquent assessment. Each such assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal, joint and several, obligation of each person who was the owner of such property at the time when the assessment fell due. [The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.] No owner of a lot may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or by the abandonment of his lot.

4.2 Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the project and to provide insurance, improvement and maintenance of the common area, and of the homes situated upon the property for the common good of the project.

4.3 Assessments:

A. Annual Assessments: The Board shall establish and levy annual assessments in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year.

The annual assessment shall include a portion for reserves in such amounts as the Board in its discretion considers appropriate to meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds shall be deposited in a separate account and the signatures of at least two (2) persons who shall either 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 to withdraw monies from the reserve account. Reserve funds may not be expended for any purpose other than repairing, replacing or adding to the major improvements or fixtures that the Association is obligated to maintain without the consent of owners holding a majority of the voting power either at a duly held meeting or by written ballot.

B. Special Assessments: The Board, at any time, may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate. Special assessments shall be allocated among the lots in the same manner as regular assessments except as otherwise directed by the Board in the case of an assessment levied by the Board against a member to reimburse the Association for costs incurred in bringing the member and his lot in to compliance with provisions of the Project Documents.

4.4 Restrictions on Annual or Special Assessments: The Board may not impose an annual assessment on any lot which is more than twenty percent (20%) greater than the annual assessment for the immediate preceding fiscal year or levy a special assessment to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds 5% of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of members casting a majority of the votes at a meeting of the Association at which a quorum is present. For purposes of this section 4.4, a "quorum" means more than fifty percent (50%) of the members of the Association. Any meeting of the Association for purposes of complying with this section 4.4 shall be conducted in accordance with Chapter 5 (commencing with § 7510) of Part 3, Division 2 of Title 1 of the Corporations Code and § 7613 of the Corporations Code.

Notwithstanding the foregoing, the Board, without membership approval, may increase annual assessments or levy special assessments necessary for an emergency situation. For purposes of this section, an emergency situation is 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 property or any part of it for which the Association is responsible where a threat to personal safety on the property is discovered, or
- (3) an extraordinary expense necessary to repair or maintain the property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget, provided, however that prior to the imposition or collection of the assessment, the Board shall 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 the resolution shall be distributed to the members with the notice of the assessment.

This section 4.4 incorporates the statutory requirements of Civil Code § 1366(b). If this section of the Civil Code is amended in any manner, this section 4.4 automatically shall be amended in the same manner without the necessity of amending this Declaration.

4.5 Notice and Quorum for Any Action Authorized Under Section 4.4: Any action authorized under section 4.4, which requires a vote of the membership, shall be taken at a meeting called for that purpose, written notice of which shall be sent to all members not less than ten (10) nor more than ninety (90) days in advance of the meeting, specifying the place, day and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken. The action may also be taken without a meeting pursuant to the provisions of Corporations Code § 7513.

4.6 Division of Assessments: All assessments, both annual and special, shall be levied equally among the lots except as provided in section 4.3. Annual assessments shall be collected on a monthly basis unless the Board directs otherwise. Special assessments may be collected in one (1) payment or periodically as the Board shall direct.

4.7 Date of Commencement of Annual Assessments; Due Dates: The regular assessments provided for herein shall commence as to all lots covered by this Declaration on the first day of the month following the first conveyance of a lot to the purchaser thereof under authority of a public report. Subject to the provisions of section 4.3 hereof, the Board of Directors shall use their best efforts to fix the amount of the annual assessment against each lot and send written notice thereof to every owner at least sixty (60) days in advance of each annual assessment period, provided that failure to comply with the foregoing shall not affect the validity of any assessment levied by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Such a certificate shall be conclusive evidence of such payment.

4.8 Effect of Nonpayment of Assessments: Any assessment not paid within fifteen (15) days after the due date shall be delinquent, shall bear interest at the rate of twelve percent (12%) per annum from thirty (30) days after the due date until paid, and shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law.

4.9 Transfer of Lot by Sale or Foreclosure: Sale or transfer of any lot shall not affect the assessment lien. However, the sale of any lot pursuant to mortgage foreclosure of a first mortgage shall extinguish the lien of such assessments (including fees, late charges, fines or interest levied in connection therewith) as to payments which became due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage). No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

Where the mortgagee of a first mortgage of record or other purchaser of a lot obtains title to the same as a result of foreclosure of any such first mortgage, such acquirer of title, and his successor and assigns, shall not be liable for the assessment by the Association chargeable to such lot which became due prior to the acquisition of title to such lot by such acquirer (except for assessment liens recorded prior to the mortgage). No amendment of the preceding sentence may be made without the consent of owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, and the consent of the eligible mortgage holders holding first mortgages on lots comprising fifty-one percent (51%) of the lots subject to first mortgages. The unpaid share of such assessments shall be deemed to be common expenses collectible from all of the lots including such acquirer, and his successors or assigns.

If a lot is transferred, the grantor shall remain liable to the Association for all unpaid assessments against the lot through and including the date of the transfer. The grantee 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 lot to be transferred and the lot 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 assessments that become due after the date of the transfer.

4.10 Priorities; Enforcement; Remedies: If an assessment is delinquent, the Association may record a notice of delinquent assessment and establish a lien against the lot of the delinquent owner prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deeds of trust with first priority over other mortgages or deed of trust) made in good faith and for value. The notice of delinquent assessment shall state the amount of the assessment, collection costs, attorneys' fees, late charges and interest, a description of the lot against which the assessment

and other sums are levied, the name of the record owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any management agent retained by the Association.

An assessment lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Civil Code § 2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§2924, 2924b, 2924c, 2924f, 2924g and 2924h of the Civil Code, including any successor statutes thereto, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law. Nothing herein shall preclude the Association from bringing an action directly against an owner for breach of the personal obligation to pay assessments.

Fines and penalties for violation of restrictions are not "assessments", and are not enforceable by assessment lien.

The Association, acting on behalf of the owners, shall have the power to bid for the lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Where the purchase of a foreclosure lot will result in a five percent (5%) or greater increase in assessments, the purchase shall require the vote or written consent of a majority of the total voting power of the Association, including a majority of members other than Declarant. During the period a lot is owned by the Association, following foreclosure: (1) no right to vote shall be exercised on behalf of the lot; (2) no assessment shall be assessed or levied on the lot; and (3) each other lot shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such lot had it not been acquired by the Association as a result of foreclosure. After acquiring title to the lot at foreclosure sale following notice and publication, the Association may execute, acknowledge and record a deed conveying title to the lot 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 foreclosing or waiving the lien securing the same.

The Board may temporarily suspend the voting rights of a member who is in default in payment of any assessment, after notice and hearing, as provided in the Bylaws.

4.11 Unallocated Taxes: In the event that any taxes are assessed against the common area, or the personal property of the Association, rather than being assessed to the lots, said taxes shall be included in the assessments made under the provisions of section 4.1 and, if necessary, a special assessment may be levied against the lots in an amount equal to said taxes, to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

5.1 Duties: In addition to the duties enumerated in the Articles and 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 and repair the following:

(1) The common area, all improvements and landscaping thereon, and all property owned by the Association, including without limitation, parking areas,

driveways, private streets, irrigation systems, lighting fixtures, and utility, sewer or drainage systems not maintained by a public entity, utility company, or improvement district;

(2) Landscaping for the unfenced areas of each lot except for private patio areas. Maintenance shall include regular fertilization, irrigation and other garden management practice necessary to promote a healthy, weed free environment for optimum plant growth.

(3) The stucco and wood fence situated between lots 1, 8 and 9 and Bowers Avenue. Maintenance shall include periodic repainting and restaining and structural repairs as may be necessary, provided that the owners of lots 1, 8 and 9 shall be responsible, at the owner's cost, to periodically repaint and restain the interior side of the fence that is located within the fenced backyard of the owner's lot.

If the Association incurs any maintenance or repair costs because of the willful or negligent act or omission of any owner or the owner's agents, occupants, or invitees, and such cost was not covered by insurance maintained by the Association, the Association shall charge the responsible owner who immediately shall pay the charge to the Association together with interest thereon at the rate of twelve percent (12%) per annum (but not in excess of the maximum interest rate authorized by law) from the date the cost was incurred by the Association until the date the charge is paid by the owner. If the owner disputes the charge, the owner shall be entitled to a notice and a hearing as provided in the Bylaws before the charge may be collected.

B. Insurance: The Association shall obtain and maintain the following insurance:

(1) A hazard policy insuring any improvements and fixtures owned by the Association if the Board in its sole discretion determines that such insurance is necessary;

(2) A comprehensive general liability policy insuring the Association, its agents, and the owners and their respective family members, against any liability incident to the ownership or use of the common area or any other Association owned or maintained real or personal property; the amount of general liability insurance which the Association shall carry at all times shall be not less than \$500,000 as required by California Civil Code §1365.7;

(3) Workers' compensation insurance to the extent required by law;

(4) Fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds and officers and directors liability insurance if the Board in its discretion considers it necessary; and

(5) Such other insurance as the Board in its discretion considers necessary or advisable.

The amount, term and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard mortgage clauses, notices of changes or cancellations, and the insurance company rating) shall satisfy the minimum requirements imposed for this type of project by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor thereto. If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements

on any policy required hereunder, the term, amount and coverage of such policy shall be no less than that which is customary for similar policies on similar projects in the area.

Each owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the owners in connection with all insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing the owners in any proceeding, negotiation, settlement or agreement.

Any insurance maintained by the Association shall contain "waiver of subrogation" as to the Association and its officers, directors and members, the owners and occupants of the lots (including Declarant) and mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The Association shall periodically (and not less than once every three (3) years) review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

Each owner shall obtain and maintain, at the owner's sole expense, fire and casualty coverage as may be required by any mortgagee of the owner's lot and in no event less than the amount and type of fire and casualty insurance as may be required to be obtained by the Board. All such individually carried insurance shall contain a waiver of subrogation by the carrier as to the other owners, the Association, Declarant, and the mortgagees of such lot.

The Association, and its directors and officers, shall have no liability to any owner or mortgagee if, after a good faith effort, it is unable to obtain the liability insurance required hereunder, because the insurance is no longer available or, if available, can be obtained only at a cost that the Board in its sole discretion determines is unreasonable under the circumstances, or the members fail to approve any assessment increase needed to fund the insurance premiums. In such event, the Board immediately shall notify each member and any mortgagee entitled to notice that the liability insurance will not be obtained or renewed.

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

D. Assessments: The Association shall fix, levy, collect and enforce assessments as set forth in Article IV hereof.

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

F. Enforcement: The Association shall enforce this Declaration.

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

A. Utility Service: The Association shall have the authority (but not the obligation) to obtain, for the benefit of all of the owners, all water, gas and electric service and refuse collection.

B. Easements: The Association shall have authority (by majority vote) to grant easements where necessary for utilities, and sewer facilities over the common area to serve the common areas and lots.

C. Manager: The Association may 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, record or foreclose liens, or make capital expenditures, provided that any contract with a firm or person appointed as a manager or managing agent shall not exceed a one (1) year term, shall provide for the right of the Association to terminate the same at the first annual meeting of the members of the Association, and to terminate the same without cause or payment of a termination fee on ninety (90) days' written notice, or for cause on thirty (30) days' written notice.

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

E. Access: For the purpose of performing construction, maintenance or emergency repair for the benefit of the common area or the owners in common, the Association's agents or employees shall have the right, after reasonable notice (except in emergencies, not less than twenty-four (24) hours) to the owner thereof, to enter any lot 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 IV hereof. The Association may impose fines or take disciplinary action against any owner for failure to pay assessments or for violation of any provision of the project 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 the member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action.

G. Enforcement: The Association shall have the power to enforce this Declaration.

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 total voting power of the Association which shall include two-thirds (2/3) of the members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of members.

I. Loans: The Association shall have the power to borrow money, and only with the assent (by vote or written consent) of two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of members, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

J. Dedication: The Association shall have the power to dedicate, sell, or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication shall be effective unless an instrument has been signed or approved by two-thirds (2/3) of the total voting power of the Association including two-thirds (2/3) of the members other than Declarant, or where the two (2) class voting structure is still in effect, two-thirds (2/3) of the voting power of each class of members, agreeing to such dedication, sale or transfer.

K. Contracts: The Association shall have the power to contract for goods and/or services for the common areas, facilities and interests or for the Association, subject to limitations set forth in the Bylaws, or elsewhere herein.

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

(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 and regulations promulgated by the Board;

(3) To make a decision to levy monetary fines, impose special assessments against individual lots, temporarily suspend an owner's rights as a member of the Association or otherwise impose discipline;

(4) To make a decision to levy regular or special assessments; or

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

M. 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 4.10 and as provided in Civil Code § 1367(b).

N. Other Powers: In addition to the powers contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation under Corporations Code §7140.

5.3 Commencement of Association's Duties and Powers: Until incorporation of the Association, all duties and powers of the Association as described herein, including all rights of consent and approval, shall be and remain the duties and powers of Declarant. From and after the date of incorporation of the Association, the Association shall assume all duties and powers, and Declarant shall be relieved of any further liability therefor.

**ARTICLE VI
ARCHITECTURAL CONTROL**

6.1 Approval of Plans: No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, carport cover, trellis, improvement, or structure of any kind shall be commenced, installed, erected, painted or maintained upon the property, nor shall any alteration or improvement of any kind be made thereto, or to the exterior of any residence, until the same has been approved in writing by the Board, or by an Architectural Control Committee appointed by the Board. Plans and specifications showing the nature, kind, shape, color, size, materials and location of such improvements, alterations, etc., shall be submitted to the Board or to the Architectural Control Committee for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building set back line. No permission or approval shall be required to repaint in accordance with Declarant's original color scheme, or to rebuild in accordance with Declarant's original plans and specifications. No permission or approval shall be required to repaint in accordance with a color scheme previously approved by the Committee or the Board, or to rebuild in accordance with plans and specifications previously approved by the Committee or by the Board. Nothing contained herein shall be construed to limit the right of an owner to remodel the interior of his residence, or to paint the interior of his residence any color desired.

6.2 Architectural Control Committee Action: The Architectural Control Committee shall consist of three (3) members. Declarant may appoint all of the original members of the Committee and all replacements until the first anniversary of the issuance of the original final public report for the project. The Declarant reserves to itself the power to appoint a majority of the members to the Committee until ninety percent (90%) of all the lots in the project have been sold or until the fifth anniversary of the issuance of the final public report for the project, whichever first occurs. After one (1) year from the date of the issuance of the original public report for the project, the Board shall have the power to appoint one (1) member to the Architectural Control Committee until ninety percent (90%) of all of the lots in the development have been sold or until the fifth anniversary date of the issuance of the final public report, whichever first occurs. Thereafter, the Board shall have the power to appoint all of the Architectural Control Committee. Members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. Members appointed to the Architectural Control Committee by the Declarant need not be members of the Association. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the successor shall be appointed by the person, entity or group which appointed such member until Declarant no longer has the right to appoint any members to the Committee, and thereafter the Board shall appoint such a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant hereto. In the event the Committee fails to approve or disapprove plans and specifications within thirty (30) days after the same have been submitted to it, approval will not be required and the related covenants shall be deemed to have been fully complied with.

6.3 Landscaping: No landscaping of patios or yards or portions of lots visible from the street or from any common area shall be undertaken by any owner until plans and specifications showing the nature, kind, shape, and location of the materials shall have been submitted to and approved in writing by the Architectural Control Committee, or the Board.

6.4 Governmental Approval: Before commencement of any alteration or improvements approved by the Architectural Control Committee, the owner shall comply with all appropriate governmental laws and regulations. Approval by the Committee does not satisfy the appropriate approvals that may be required by any governmental entity with appropriate jurisdiction.

ARTICLE VII USE RESTRICTIONS

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

7.1 Use of Lot: No lot shall be occupied and used except for residential purposes by the owners, their tenants, and social guests, except that Declarant, its successors or assigns, may use the property for a model homesite or sites, and display and sales office during construction until the last lot is sold by Declarant or, where Declarant elects to retain one (1) or more lots as an investment, until three (3) years from the date of issuance of the most recently issued public report, whichever occurs first. No tent, shack, trailer, basement, garage, outbuilding or structure of a temporary character shall be used on any lot at any time as a residence, either temporarily or permanently.

No health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped or retarded shall be permitted in the project.

7.2 Nuisances: No noxious, illegal, or seriously offensive activities shall be carried on upon any lot, or any part of the property, nor shall anything be done thereon which may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of his respective lot.

7.3 Vehicle Restrictions and Towing: No trailer, camper, mobile home, commercial vehicle, truck (other than standard size pickup truck or standard size van), boat, inoperable automobile, or similar equipment shall be permitted to remain upon any area within the property and as may be authorized pursuant to regulations adopted by the Board. Commercial vehicles shall not include sedans (or standard size vans or pickup trucks) which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the property. No unlicensed motor vehicles shall be operated upon the property. The Association may install a sign at each vehicular entrance to the project containing a statement that public parking is prohibited and that all vehicles not authorized to park on the project will be removed at the owner's expense. The sign shall contain the telephone number of the local traffic law enforcement agency and shall not be less than 17 x 22 inches in size with lettering not less than one inch in height.

The Association may cause the removal of any vehicle wrongfully parked on the property, including a vehicle owned by an occupant. If the identity of the registered owner of the vehicle is known or readily ascertainable, the President of the Association or his or her designee shall, within a reasonable time thereafter, notify the owner of the removal in writing by personal delivery or first class mail. In addition, notice of the removal shall be given to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number and the address from where the vehicle was removed. If the identity of the owner is not known or readily ascertainable and the vehicle has not been returned to the owner within one hundred twenty (120) hours after its removal, the Association immediately shall send or cause to be sent a written report of the removal by mail to the California Department of Justice in Sacramento,

California and shall file a copy of the notice with the proprietor of the public garage in which the vehicle is stored. The report shall be made on a form furnished by the Department of Justice and shall include a complete description of the vehicle, the date, time and place from which the vehicle was removed, the amount of mileage on the vehicle at the time of removal, the grounds for removal and the name of the garage or place where the vehicle is stored. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the project or any lot, parking space or garage located thereon. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal in compliance with this section or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle. If requested by the owner of the vehicle, the Association shall state the grounds for the removal of the vehicle.

7.4 Parking: Garage space shall be used for parking of permitted vehicles only and not for the permanent parking or storage of boats, trailers or nonmobile vehicles except as expressly authorized by the Board. Unless approved by the Board, garage space may not be converted into any use (such as a recreational room or storage) that would prevent its use as parking space for the number of vehicles it was designed to contain.

7.5 Commercial Activity: No business, professional, or commercial activity of any kind shall be conducted on any lot.

7.6 Storage in Common Area: Nothing shall be stored in the common area without the prior consent of the Board.

7.7 Signs: No signs shall be displayed to the public view on any lot or on any portion of the property except such signs as are approved by the Board or committee appointed by the Board. "For Sale" or "For Rent" signs shall be allowed, provided they do not exceed five (5) square feet in size. Only one (1) such sign shall be permitted on any lot. The sign shall not be attached to the outside of the house or fence. It may be displayed in the window, or staked in the yard.

7.8 Animals: No animals, of any kind shall be raised, bred, or kept on any lot or in the common area for any commercial purposes. All animals shall be kept under control at all times. The Board may require the removal of any animal from the property if the Board, after notice and a hearing, determines that the animal is a nuisance. After making a reasonable attempt to notify the owner, the Association or any owner may cause any unleashed dog found within the common area to be removed by the Association (or any owner) to a pound or animal shelter under the jurisdiction of the City of Santa Clara, or the County of Santa Clara, by calling the appropriate authorities, whereupon the owner may, upon payment of all expenses connected therewith, repossess the dog. Owners shall prevent their pet from soiling the common area and shall promptly clean up any mess left by their pet. Owners shall be fully responsible for any damage caused by their pet.

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

7.10 Radio and Television Antennas: No external antennas, towers, poles or any structure to be used for the purpose of transmitting or receiving radio, television or related signals shall be installed on any lot that is visible from any other lot, the common area or any public property except as expressly authorized by the Board. No satellite dishes shall be authorized under any circumstances. The Board may authorize a cable TV franchisee or other appropriate entity to provide television or radio reception to the project.

7.11 Clothes Lines: No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. No draping of towels, carpets, or laundry over railings shall be allowed.

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

7.13 Liability of Owners for Damage to Common Area: The owner of each lot shall be liable to the Association for all damage to the common area improvements (including landscaping) caused by such owner or the owner's agents, occupants, invitees, or pets, except for that portion of damage covered by insurance carried by the Association. The responsible owner shall be charged with the cost of repairing such damage (including interest thereon) as described in section 5.1A.

7.14 Leasing of Lots: No owner shall be permitted to lease his lot for any period less than thirty (30) days. Any lease agreement shall be in writing and shall be subject in all respects to the provisions of the Declaration, Articles and Bylaws and to all house rules and regulations adopted by the Board and any failure of the tenant to comply with the terms of such documents shall be a default under the lease, regardless of whether the lease describes the documents. In the event of such a default, the owner immediately shall take all appropriate steps to cure the default, including, if necessary, eviction of the tenant. Other than the foregoing, there is no restriction in the right of any owner to lease his lot. All owners leasing or renting their lots shall promptly notify the Secretary of the Association in writing of the names of all tenants and members of tenant's family occupying such lot and of the address and telephone number where such owner can be reached.

7.15 Commonly Metered Utilities: The Board may establish restrictions regarding the individual use of any utility on a common meter, and may impose reasonable charges for the individual use thereof.

ARTICLE VIII GENERAL PROVISIONS

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

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

8.3 Term: The covenants and restrictions of this Declaration shall run with and bind the property, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then owners of the lots, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

8.4 Amendments: Prior to close of escrow on the sale of the first lot, Declarant may amend this Declaration. After sale of the first lot, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of the total voting power of the Association, and a majority of the affirmative votes or written consent of members other than the Declarant, or where the two (2) class voting structure is still in effect, a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be certified in a writing executed and acknowledged by the President or Vice President of the Association and recorded in the Recorder's Office of the County of Santa Clara.

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

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

B. Audited Statement: Any holder of a first mortgage shall be entitled, upon written request, to have an audited financial statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available. Such statement shall be furnished within a reasonable time following such request.

C. Notice of Action: Upon written request to the Association, identifying the name and address of the eligible mortgage holder or eligible insurer or guarantor, and the lot number or address, such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of: (1) any condemnation loss or any casualty loss which affects a material portion of the project or any lot on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable; (2) any default in performance of obligations under the project documents or

delinquency in the payment of assessments or charges owed by an owner of a lot subject to a first mortgage held, insured or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days; (3) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; (4) any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in section 8.5D. The Association shall discharge its obligation to notify eligible holders or eligible insurers or guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by section 8.12.

D. Consent to Action:

(1) Except as provided by statute or by other provision of the project documents in case of substantial destruction or condemnation of the project, and further excepting any reallocation of interests in the common area(s) which might occur pursuant to any plan of expansion or phased development contained in the original project documents:

(a) The consent of owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on lots which have at least sixty-seven percent (67%) of the votes of lots subject to eligible holder mortgages, shall be required to terminate the legal status of the project as a planned unit development project;

(b) The consent of owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of the lots subject to eligible holder mortgages, shall be required to add or amend any material provisions of the project documents which establish, provide for, govern or regulate any of the following: (i) voting; (ii) assessments, assessment liens or priority of such liens; (iii) reserves for maintenance, repair and replacement of the common area(s) (or lots if applicable); (iv) insurance or fidelity bond; (v) rights to use of common areas; (vi) responsibility for maintenance and repair of the several portions of the project; (vii) expansion or contraction of the project or the addition, annexation or withdrawal of property to or from the project (except as provided in paragraph D(1) above); (viii) boundaries of any lot; (ix) reallocation of interests in the general or restricted common areas or rights to their use; (x) convertibility of lots into common areas or of common areas into lots; (xi) leasing of lots; (xii) imposition of any right of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot; (xiii) any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insurers or guarantors of first mortgages on lots; (xiv) restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than specified herein;

(c) An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition of amendment shall be deemed to have approved such request, provided the notice has been delivered to the mortgage holder by certified or registered mail, return receipt requested.

(2) Unless the holder(s) of at least two-thirds (2/3) of the first mortgages (based upon one (1) vote for each first mortgage or deed of trust owned), or two-thirds (2/3) of the owners (other than Declarant) of the individual lots in the project have given their prior written approval, the Association and/or the owners shall not be entitled to:

(a) By act or omission, seek to abandon or terminate the project, or abandon, partition, subdivide, encumber, sell or transfer the common area or property owned directly or indirectly, by the Association (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause) except for abandonment or termination provided by law in the case of substantial destruction by fire or other casualty, or in the case of a taking by condemnation or eminent domain; or

(b) Change the method of determining the obligations, assessments or dues or other charges which may be levied against an owner; or

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of lots, the exterior maintenance of lots, the maintenance of the common area walks or fences and driveways, or the upkeep of landscaping in the common area; or

(d) Fail to maintain the hazard insurance required to be maintained under section 5.1B(1); or

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

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

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

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

H. Priority of Liens: Any first lender who obtains title to a lot pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such lot's unpaid assessments and fees, late charges, fines or interest levied in connection therewith which accrue prior to the acquisition of title to such lot by the mortgagee (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessments or charges to all project lots including the mortgaged lot, and except for assessment liens recorded prior to the mortgage).

I. Distribution of Insurance or Condemnation Proceeds: No owner or any other party shall have priority over any rights of first lenders pursuant to their mortgages in the case of a distribution to lot owners of insurance proceeds or condemnation awards for losses to or taking of common area property.

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

K. Termination: Any action to terminate the legal status of the project after substantial destruction or a substantial taking in condemnation of the project property requires the approval of eligible mortgage holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages, and the consent of the owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

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

M. Termination of Professional Management: When professional management has been previously required by the project's documents or by any eligible mortgage holder or eligible insurer or guarantor, whether such entity became an eligible mortgage holder or eligible insurer or guarantor at that time or later, any decision to establish self management by the Association shall require the prior consent of owners of lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible mortgage holders holding mortgages on lots which have at least fifty-one percent (51%) of the votes of lots subject to eligible holder mortgages.

N. Payment of Taxes or Insurance by Lenders: First lenders may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the common area property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common area property and first lenders making such payment shall be owed immediate reimbursement therefor from the Association, provided that said lender(s) have given notice to the Association prior to the making of such payment(s) and the Association has failed to pay the same.

8.6 Owner's Right and Obligation to Maintain and Repair: Except for those portions of the project which the Association is required to maintain and repair, each lot owner shall, at his sole cost and expense, maintain and repair his lot and all landscaping thereon, keeping the same in good condition.

In the event an owner of any lot shall fail to maintain his or her lot and the improvements thereon as required herein, the Association's agents may, after notice and a hearing as provided in the Bylaws, enter the lot and perform the necessary maintenance. The cost of such maintenance shall immediately be paid to the Association by the owner of such lot, together with interest at the rate of twelve percent (12%) per annum (but not to exceed the maximum interest rate authorized by law) from the date the cost was incurred by the Association until the date the cost is paid by the owner.

8.7 Damage or Destruction: If an improvement on any lot other than a common area lot is damaged or destroyed by fire or other casualty, the owner of such lot shall repair or reconstruct the improvement in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in

force at the time of such repair or reconstruction or as authorized by the Architectural Control Committee.

If any common area improvement is damaged or destroyed by fire or other casualty, the improvement shall be repaired or reconstructed substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Architectural Control Committee, unless either of the following occurs: (1) the cost of repair or reconstruction is more than fifty percent (50%) of the current replacement costs of all project improvements, available insurance proceeds are not sufficient to pay for at least eighty-five percent (85%) of the cost of such repairs or reconstruction, and three-fourths (3/4) of the total voting power of the Association residing in members and their first lenders vote against such repair and reconstruction; or (2) available insurance proceeds are not sufficient to substantially repair or reconstruct the improvement within a reasonable time as determined by the Board, a special assessment levied to supplement the insurance fails to receive the requisite approval (if such approval is required) as provided in section 4.4, and the Board, without the requirement of approval by the owners, is unable to supplement the insurance by borrowing on behalf of the Association sufficient monies to enable the improvements to be substantially repaired or reconstructed within a reasonable time.

If the common area improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of \$20,000, the Board shall designate a construction consultant, a general contractor, and an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor and architect certify within ten (10) days prior to any disbursement substantially the following:

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

B. That such disbursement request represents monies which either have been paid by or on behalf of the construction consultant, the general contractor or the architect and/or are justly due to contractors, subcontractors, materialmen, engineers, or other persons (whose name and address shall be stated) who have rendered or furnished certain services or materials for the work and giving a brief description of such services and materials and the principle subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

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

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

E. That the amount held by the depository, after payment of the amount requested in the pending disbursement request, will be sufficient to pay in full the costs necessary to complete the repair or reconstruction.

If the cost of repair or reconstruction is \$20,000 or less, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

The repair or reconstruction, including repair and reconstruction of a residence, shall commence no later than ninety (90) days after the date of such damage or destruction, and shall be completed no later than one hundred eighty (180) days after such date, subject to delays that are beyond the control of the party responsible for making the repairs. Notwithstanding the foregoing, the owner immediately shall take such steps as may be reasonably required to secure any hazardous conditions resulting from the damage or destruction, and to screen any unsightly views.

If the common area improvement is not repaired or reconstructed in accordance with the foregoing, all available insurance proceeds shall be disbursed among all owners and their respective mortgagees in the same proportion that the owners are assessed, subject to the rights of the owners' mortgagees, after first applying the proceeds to the cost of mitigating hazardous conditions on the property, making provision for the continuance of public liability insurance to protect the interests of the owners until the property can be sold, and complying with all other applicable requirements of governmental agencies.

8.8 Condemnation: If all or any part of a lot (except the common area) is taken by eminent domain, the award shall be disbursed to the owner of the lot, subject to the rights of the owner's mortgagees. If the taking renders the lot uninhabitable, the owner shall be divested of any further interest in the project, including membership in the Association, and the interests of the remaining owners shall be adjusted accordingly. If all or any part of the common area is taken by eminent domain, the proceeds of condemnation shall be used to restore or replace the portion of the common area affected by condemnation, if restoration or replacement is possible, and any remaining funds, after payment of any and all fees and expenses incurred by the Association relating to such condemnation, shall be distributed among the owners in the same proportion as such owners are assessed, subject to the rights of mortgagees. If necessary, the remaining portion of the project shall be resurveyed to reflect such taking. The Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where lots are not valued separately by the condemning authority or by the court. The Association shall represent the lot owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the common area, or part thereof.

8.9 Limitation of Restrictions on Declarant: Declarant is undertaking the work of construction of a planned development and incidental improvements upon the property. The completion of that work and the sale, rental, and other disposal of said lots is essential to the establishment and welfare of the property as a residential community. In order that said work may be completed and said property be established as a fully occupied residential community as rapidly as possible, nothing in this Declaration shall be understood or construed to:

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

B. Prevent Declarant or its representatives from erecting, constructing and maintaining on the property (except upon lots owned by others), such structures as may be reasonable and necessary for developing said property as a residential community and disposing of the same by sale, lease or otherwise; or

C. Prevent Declarant from conducting on the property (except upon lots owned by others) its business of completing said work and of establishing a plan of residential ownership and of disposing of said property in lots by sale, lease or otherwise; or

D. Prevent Declarant from maintaining such sign or signs on the property (except upon lots owned by others) as may be necessary for the sale, lease or disposition thereof; or

E. Subject Declarant to the architectural control provisions of Article VI for the construction of any residence or other improvement on the property.

The foregoing rights of Declarant shall terminate upon sale of Declarant's entire interest in the project or five (5) years after the date of recordation of the deed of the first lot to be sold in the project, whichever occurs first. So long as Declarant, or its successors and assigns, owns one (1) or more of the lots described herein, Declarant, or its successors and assigns, shall be subject to the provisions of this Declaration. Declarant shall make reasonable efforts to avoid disturbing the use and enjoyment of lots and the common area by their owners, while completing any work necessary to said lots or common area.

8.10 Termination of Any Responsibility of Declarant: In the event Declarant shall convey all of its rights, title and interest in and to the property to any person then and in such event, Declarant shall be relieved of the performance of any further duty or obligation hereunder, and such partnership, individual or individuals, corporation or corporations, shall be obligated to perform all such duties and obligations of the Declarant.

8.11 Owners' Compliance: Each owner, tenant or occupant of a lot shall comply with the provisions of this Declaration, and (to the extent they are not in conflict with the Declaration) the Articles and Bylaws, and the decisions and resolutions of the Association or the Board, as lawfully amended from time to time. Failure to comply with any such provisions, decisions, or resolutions shall be grounds for an action (1) to recover sums due, (2) for damages, (3) for injunctive relief, (4) for costs and attorneys fees, or (5) any combination of the foregoing.

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

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

8.13 Special Provisions Relating to Enforcement of Declarant's Obligation to Complete Common Area Improvements: Where the project includes common area improvements which have not been completed prior to the close of escrow on the sale of the first lot, and where the Association is obligee under a bond or other arrangement (hereafter "bond") to secure performance of the commitment of Declarant to complete said

improvements, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond with respect to any improvement for which a notice of completion has not been filed within sixty (60) days after the completion date specified for that improvement in the plan of construction statement appended to the bond. If the Association has given an extension in writing for the completion of any common area improvement, the Board shall consider and vote on the aforesaid question if a notice of completion has not been filed within thirty (30) days after the expiration of the extension. A special meeting of members of the Association for the purpose of voting to override a decision by the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question shall be held not less than thirty-five (35) days nor more than forty-five (45) days after receipt by the Board of a petition for such a meeting signed by members representing five percent (5%) or more of the total voting power of the Association. At such special meeting a vote of a majority of members of the Association other than the Declarant shall be required to take action to enforce the obligations under the bond and a vote of a majority of the voting power of the Association, excluding Declarant, shall be deemed to be the decision of the Association, and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

On satisfaction of the Declarant's obligation to complete the common area improvements, the Association shall acknowledge in writing that it approves the release of the bond and shall execute any other documents as may be necessary to effect the release of the bond. The Association shall not condition its approval of the release of the bond on the satisfaction of any condition other than the completion of the common area improvements as described on the planned construction statement. Any dispute between the Declarant and the Association regarding the completion of the common area shall be submitted to binding arbitration under the commercial rules of the American Arbitration Association and the prevailing party shall be entitled to recover costs, including reasonable attorneys' fees.

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

8.15 BINDING ARBITRATION: IN CASE OF ANY CLAIM OR DISPUTE BETWEEN THE DECLARANT, ITS BUILDER, GENERAL CONTRACTOR, OR BROKER, OR THEIR AGENTS OR EMPLOYEES, ON THE ONE HAND, AND ANY LOT OWNER(S), ON THE OTHER HAND, WHICH CLAIM OR DISPUTE RELATES TO THE RIGHTS AND/OR DUTIES OF THE PARTIES UNDER THE PROJECT DOCUMENTS, OR RELATES TO THE DESIGN OR CONSTRUCTION OF THE PROJECT OR ANY PART THEREOF, THE PROCEDURE SHALL BE AS FOLLOWS: THE AGGRIEVED PARTY OR PARTIES SHALL NOTIFY THE OTHER PARTY OR PARTIES OF THE GRIEVANCE, IN WRITING. WHEN SUCH A NOTICE IS RECEIVED BY DECLARANT, IT SHALL PROMPTLY RESPOND WITH AN INVESTIGATION, INSPECTION, MEETING, DISCUSSION, OR OTHER ACTION REASONABLY APPROPRIATE TO THE CIRCUMSTANCES. APPROPRIATE ACTION SHALL INCLUDE, WITHOUT LIMITATION, PROMPT COMMUNICATION WITH THE AGGRIEVED PARTY OR PARTIES, AND A PROPOSED COURSE OF ACTION TO RESOLVE THE PROBLEM. ALL PARTIES INVOLVED IN THE MATTER SHALL NEGOTIATE IN A GOOD FAITH ATTEMPT TO AMICABLY RESOLVE THE PROBLEM. IF THE PARTIES ARE UNABLE TO RESOLVE THE PROBLEM WITHIN A REASONABLE PERIOD OF TIME (NOT TO EXCEED NINETY (90) DAYS AFTER THE FIRST NOTICE OF CLAIM OR DISPUTE) THE MATTER SHALL BE SUBMITTED TO BINDING ARBITRATION PURSUANT TO THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION, PROVIDED THAT IF THE

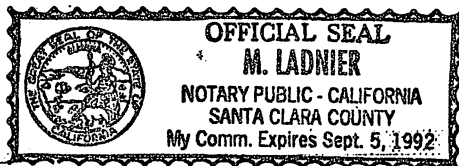
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ON THIS 26th DAY OF July, 1989, BEFORE ME THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED R. J. NEAR, PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT AS PRESIDENT OF OF CASTLEWOOD PARK DEVELOPMENT INC., A CALIFORNIA CORPORATION, THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND KNOWN TO ME TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF SAID CORPORATION, SAID CORPORATION BEING KNOWN TO ME TO BE A GENERAL PARTNER OF PYRAMID ASSOCIATES, A CALIFORNIA CO-PARTNERSHIP AND SAID CO-PARTNERSHIP KNOWN TO ME TO BE A PARTNER OF SANTA CLARA ASSOCIATES, A JOINT VENTURE, AND ACKNOWLEDGED TO ME THAT SAID CORPORATION EXECUTED THE SAME AS SUCH GENERAL PARTNER AND THAT SAID GENERAL PARTNERSHIP EXECUTED THE SAME AS SUCH JOINT VENTURE AND THAT SUCH JOINT VENTURE EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST HEREINABOVE WRITTEN.

M. Ladnier
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE.

NAME OF NOTARY MARLENE LADNIER
COUNTY OF NOTARY'S PRINCIPAL PLACE OF BUSINESS SANTA CLARA
NOTARY'S COMMISSION EXPIRATION DATE 9-5-92



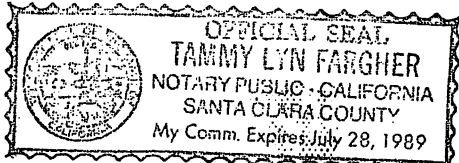
STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

ON THIS 26th DAY OF July, 1989, BEFORE ME THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED LAWRENCE L. FARGHER, PERSONALLY KNOWN TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHO EXECUTED THE WITHIN INSTRUMENT AND BEING KNOWN TO ME TO BE A PARTNER OF SANTA CLARA ASSOCIATES, A JOINT VENTURE, AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE WITHIN INSTRUMENT AS SUCH PARTNER AND THAT SAID JOINT VENTURE EXECUTED THE SAME.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST HEREINABOVE WRITTEN.

Tammy Lyn Fargher
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE.

NAME OF NOTARY TAMMY LYN FARGHER
COUNTY OF NOTARY'S PRINCIPAL PLACE OF BUSINESS SANTA CLARA
NOTARY'S COMMISSION EXPIRATION DATE July 28, 1989



CONSENT AND SUBORDINATION

THE UNDERSIGNED, BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST IN THE AMOUNT OF \$2,500,000.00 DATED MARCH 1, 1989 EXECUTED BY SANTA CLARA ASSOCIATES, A JOINT VENTURE, AS TRUSTORS AND RECORDED MARCH 17, 1989 IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, STATE OF CALIFORNIA, IN BOOK K881 PAGE 465, OF OFFICIAL RECORDS, AND AN ASSIGNMENT SAID DEED OF TRUST IN FAVOR OF THE UNDERSIGNED BENEFICIARY RECORDED MARCH 17, 1989 IN BOOK K881, PAGE 480, OF OFFICIAL RECORDS, HEREBY CONSENTS TO AND SUBORDINATES THEIR INTEREST IN SAID DEED OF TRUST AND ASSIGNMENT TO SAID DEED OF TRUST TO SAID MISSION VILLAS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

PACIFIC WESTERN BANK, A CALIFORNIA CORPORATION

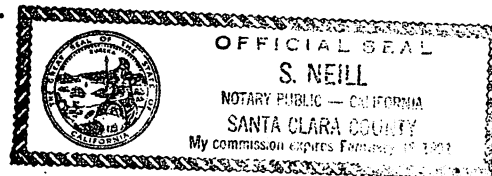
BY: Sharon L. Fernandez SUP

BY: Judith M. Hoeller V.P.

STATE OF CALIFORNIA)
COUNTY OF)

ON THIS 26th DAY OF July, 1989, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID CITY AND COUNTY PERSONALLY APPEARED Sharon L. Fernandez KNOWN TO ME TO BE THE Senior Vice Pres. AND Judith M. Hoeller KNOWN TO ME TO BE THE Vice President OF Pacific Western Bank THE CORPORATION THAT EXECUTED THE WITHIN INSTRUMENT AND ALSO KNOWN TO ME TO BE THE PERSONS WHO EXECUTED THE WITHIN INSTRUMENT ON BEHALF OF THE CORPORATION HEREIN NAMED, AND ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE SAME, AND FURTHER ACKNOWLEDGED TO ME THAT SUCH CORPORATION EXECUTED THE WITHIN INSTRUMENT PURSUANT TO ITS BY-LAWS OR A RESOLUTION OF ITS BOARD OF DIRECTORS.

WITNESS MY HAND AND OFFICIAL SEAL.



NOTARY PUBLIC IN AND FOR SAID CITY AND COUNTY AND STATE
MY COMMISSION EXPIRES Feb 19, 1991

CONSENT AND SUBORDINATION

THE UNDERSIGNED, BENEFICIARY UNDER THAT CERTAIN DEED OF TRUST IN THE AMOUNT OF \$700,000.00 DATED MARCH 17, 1989 EXECUTED BY SANTA CLARA ASSOCIATES, A JOINT VENTURE, AS TRUSTORS AND RECORDED MARCH 17, 1989 IN THE OFFICE OF THE RECORDER OF SANTA CLARA COUNTY, STATE OF CALIFORNIA, IN BOOK K881, PAGE 480 OF OFFICIAL RECORDS, HEREBY CONSENTS TO AND SUBORDINATES HIS INTEREST IN SAID DEED OF TRUST TO SAID MISSION VILLAS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS.

BY:

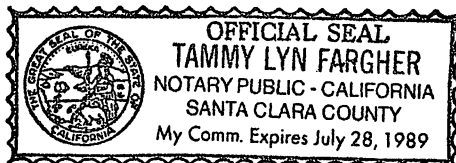
Lawrence L. Fargher
LAWRENCE L. FARGHER

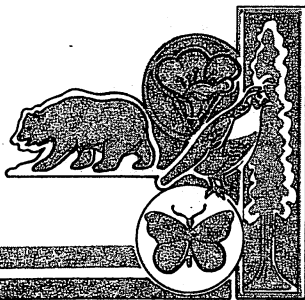
STATE OF CALIFORNIA)
COUNTY OF Santa Clara)

ON THIS 26th DAY OF July, 1989, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID CITY AND COUNTY PERSONALLY APPEARED LAWRENCE L. FARGHER, PERSONALLY KNOW TO ME OR PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED THAT HE EXECUTED IT.

WITNESS MY HAND AND OFFICIAL SEAL.

Tammy Lyn Fargher
NOTARY'S SIGNATURE





State of California

OFFICE OF THE SECRETARY OF STATE

CORPORATION DIVISION

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this

AUG 01 1989



March Fong Eu

Secretary of State

ARTICLES OF INCORPORATION

JUL 31 1989

OF

MISSION VILLAS/BOWERS AVENUE HOMEOWNERS ASSOCIATION

MARCH FONG EU, Secretary of State

ARTICLE I
NAME

The name of the corporation (hereinafter called the "Association") is MISSION VILLAS/BOWERS AVENUE HOMEOWNERS ASSOCIATION.

ARTICLE II
AGENT FOR SERVICE OF PROCESS

The name of the Association's initial agent for service of process is: Randy Near. The address of its initial agent is: 2510 Stevens Creek Boulevard, San Jose, CA 95128.

ARTICLE III
PURPOSES OF THE ASSOCIATION

This corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law.

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the Nonprofit Mutual Benefit Corporation Law of the State of California.

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific primary purposes for which it is formed are to provide for management, administration, maintenance, preservation and architectural control of the residential lots and common area within a certain tract of property situated in the City of Santa Clara, County of Santa Clara, California, and to promote the health, safety and welfare of all the residents within the property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for this purpose, all according to that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration" recorded or to be recorded with respect to said property in the Office of the Recorder of Santa Clara County.

Notwithstanding any of the above statements of purposes and powers, this corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the specific purpose of this corporation.

ARTICLE IV
DISSOLUTION

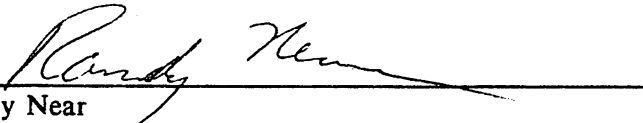
This Association is intended to qualify as a homeowners' association under the applicable provisions of the Internal Revenue Code, and of the Revenue and Taxation Code of California. No part of the net earnings of this organization shall inure to the benefit of any private individual, except as expressly provided in those sections with respect to the acquisition, construction, or provision for management, maintenance, and care of the Association property, and other than by a rebate of excess membership dues, fees, or assessments. So long as there is any lot, or parcel for which the Association is obligated to provide management, maintenance, preservation or control, the Association shall not transfer

all or substantially all of its assets or file a certificate of dissolution without the approval of one hundred percent (100%) of the members. In the event of the dissolution, liquidation, or winding-up of the Association, upon or after termination of the project, in accordance with provisions of the Declaration, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Association, shall be divided among and distributed to the members in accordance with their respective rights therein.


ARTICLE V AMENDMENTS

These Articles may be amended only by the affirmative vote of a majority of the Board, and by the affirmative vote (in person or by proxy) of members representing a majority of the voting power of the Association and a majority of the votes of members other than Declarant, or where the two (2) class voting structure is still in effect (as provided in the Bylaws), a majority of each class of membership. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

IN WITNESS WHEREOF, for the purposes of forming this corporation under the laws of the State of California, the undersigned has executed these Articles of Incorporation this 25th day of July, 19 88.


Randy Near

I declare that I am the person who executed the above Articles of Incorporation, and such instrument is my act and deed.


Randy Near

MISSION VILLAS/BOWERS AVENUE HOMEOWNERS ASSOCIATION

BYLAWS

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BYLAWS OF
MISSION VILLAS/BOWERS AVENUE HOMEOWNERS ASSOCIATION

ARTICLE I
NAME AND LOCATION

1.1 Name and Office. The name of the corporation is MISSION VILLAS/BOWERS AVENUE HOMEOWNERS ASSOCIATION, hereinafter referred to as the "Association." The principal office of the Association shall be located at the project, or at such other place as may be designated by the Board.

ARTICLE II
DEFINITIONS

2.1 Incorporation. The definitions contained in the Declaration are incorporated by reference herein.

2.2 Declaration. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the property recorded in the Official Records of Santa Clara County, and subsequent amendments thereto.

ARTICLE III
MEETING OF MEMBERS AND VOTING

3.1 Annual Meeting. The first meeting of the members, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association or within forty-five (45) days after the closing of the sale of the project interest which represents the fifty-first (51st) percentile interest authorized for sale under the first final public report for the project, whichever occurs first, but in no event later than six (6) months after the close of escrow on the sale of the first subdivision interest in the project. The next annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the members shall be held within thirty (30) days of the same day of the same month of each year at such time as the Board directs. If the day for the annual meeting of the members is a legal holiday, the meeting will be held at the same hour on the first day following, which is not a legal holiday (excluding Saturday and Sunday).

3.2. Special Meetings. Special meetings of the members shall be promptly scheduled at any time by the Board in response to the vote of a majority of the Board of Directors, or in response to a request by the Chairman of the Board, the President, or upon written request of the members representing five percent (5%) of the total voting power of the Association. If the Association is the obligee under a bond or other arrangement to secure performance of the commitment of the Declarant to complete common area improvements which have not been completed prior to the close of escrow of the sale of the first lot, and the provisions of section 8.13 of the Declaration are applicable, a special meeting of members may be called in accordance with the provisions of section 8.13 of the Declaration which provisions are incorporated by reference herein.

3.3 Notice and Place of Meetings. Written notice of each meeting of the members, annual or special, shall be given by, or at the direction of, the Secretary, when the meeting has been called pursuant to section 3.2 above, by mailing a copy of such notice, first class mail, postage prepaid, at least ten (10) but not more than ninety (90) days before such

meeting to each first lender requesting notice and to all members, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal. Member action on such items is invalid unless the notice or written waiver of notice states the general nature of the proposal(s): (a) removing a director without cause; (b) filling vacancies in the Board of Directors by the members; (c) amending the Articles of Incorporation; (d) approving a contract or transaction in which a director has a material financial interest. Meetings shall be held within the project or at a meeting place within the same county, as close to the project as possible.

3.4 Quorum. The presence either in person or by proxy, at any meeting, of members entitled to cast fifty-one percent (51%) of the total voting power of the Association (excluding the number of votes as to which voting rights are suspended at the time of the subject meeting), shall constitute a quorum for any action except as otherwise provided in the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, a majority of the members entitled to vote thereat shall have power to adjourn the meeting to a date not less than five (5) days and not more than thirty (30) days later, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, provided that twenty-five percent (25%) of the total voting power of the Association remains present in person and/or by proxy, and provided further that any action taken shall be approved by a majority of the members required to constitute a quorum. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the manner prescribed for regular meetings.

Notwithstanding anything herein to the contrary, for purposes of obtaining membership approval of special assessments or increases in annual assessments as may be required by section 4.4 of the Declaration, a "quorum" means more than fifty percent (50%) of the members of the Association.

3.5 Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his lot, or upon receipt of written notice by the Secretary of the Board of the death or judicially declared incompetence of a member prior to the counting of the vote, or upon the expiration of eleven (11) months from the date of the proxy. Any form of proxy distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon. The proxy shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice. The proxy also shall identify the person or persons authorized to exercise the proxy and the length of time it will be valid. In addition, voting by proxy shall comply with any other applicable requirements of California Corporations Code §§7514 and 7613.

3.6 Membership and Voting. Membership shall be held as provided in the Declaration. The Association shall have two (2) classes of voting membership:

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

Class B: The Class B member shall be the Declarant whose voting rights shall be the same as for Class A memberships, except that the Class B member may triple its votes for each lot owned. The Class B memberships shall cease and be converted to Class A memberships upon the happening of either of the following events, whichever occurs earlier:

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

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

Any action by the Association which must have the approval of the members before being undertaken shall require the vote or written assent of a majority of each class of membership during the time that there are two (2) outstanding classes of membership. Where the vote or written assent of each class of membership is required, any requirement that the vote of Declarant be excluded is not applicable, except as provided in section 8.13 of the Declaration. After the conversion of Class B membership to Class A membership, any provision herein requiring the approval of members other than Declarant, except as provided in section 8.13 shall mean the vote or written assent of a majority of the total voting power of the Association (including Declarant's vote(s)) and the vote or written assent of a majority of the total voting power of members other than the Declarant. Voting rights attributable to lots shall not vest until assessments against those lots have been levied by the Association.

3.7 Action Without Meeting. Any action that may be taken at any annual or special meeting of members (except the election of directors) may be taken without a meeting in accordance with the provisions of California Corporations Code §§ 7513 and 7516. Any form of written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the written ballot. The written ballot shall provide that, where the member specifies a choice, the vote shall be cast in accordance with that choice.

ARTICLE IV BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

4.1 Number. The affairs of this Association shall be managed by a Board of three (3) directors, all of whom must be members of the Association or an officer, director, employee or agent of a member, including Declarant. The initial directors shall be appointed by the Incorporator and shall hold office until the first meeting of the members as described in section 3.1 and until their successors are elected.

4.2 Term of Office. At the first meeting of the Association the members shall elect three (3) directors for a term of one (1) year, and at each annual meeting thereafter the members shall elect three (3) directors for a term of one (1) year. Unless vacated sooner, each director shall hold office until the director's term expires and a successor is elected.

4.3 Removal; Vacancies. Unless the entire Board is removed from office by the vote of Association members, an individual director shall not be removed prior to the expiration of his term of office if the votes cast against his removal would be sufficient to elect him 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 directors were then being elected. A director who was elected solely by the votes of members other than Declarant may be removed from office prior to the expiration of his term only by the votes of a majority of members other than Declarant. In the event of death or resignation of a director, the vacancy shall be filled by approval of the Board at a duly held meeting, or by the sole remaining director. The successor director shall serve for the unexpired term of his or her predecessor. The members may elect a director at any time to fill any vacancy not filled by the directors. A vacancy created by removal of a director can be filled only by election of the members.

4.4 Compensation. No director shall receive compensation for any service rendered to the Association. However, any director may be reimbursed for his actual expenses, if reasonable, that are incurred in the performance of his or her duties.

4.5 Indemnification of Corporate Agents. The Association shall indemnify any present or former director, officer, employee or other agent of the Association to the fullest extent authorized under California Corporations Code §7237, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was entitled to indemnification under this provision.

ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

5.1 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Notice to the members of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations may also be made from the floor at the annual meeting. 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. The Nominating Committee shall be appointed by the Board of Directors not less than thirty (30) days prior to each annual meeting of the members, to serve until the close of such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to members and to solicit votes.

5.2 Election. The first election of the Board shall be conducted at the first meeting of the Association. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. All members shall be entitled to cumulate their votes for one (1) or more candidates for the Board, if the candidate's name has been placed in nomination prior to voting, and if a 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. So long as a majority of the voting power of the Association resides in the Declarant, or so long as there are two (2) outstanding classes of membership in the Association, at least one of the incumbents on the Board shall have been elected solely by the votes of the owners other than the Declarant, in accordance with the following special procedure: The collected ballots shall be segregated between ballots cast by Declarant, and ballots cast by other members. The ballots received

from other members shall be counted first, and the person receiving the greatest number of votes from such members shall be elected to the Board. The votes of Declarant shall then be added to the totals and the persons receiving the highest number of votes (other than the person already elected) shall be elected to the remaining positions on the Board.

ARTICLE VI MEETINGS OF DIRECTORS

6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly at such place within the project, and at such hour as may be fixed from time to time by resolution of the Board. If a larger meeting room is required than exists within the project, the Board shall select a room as close as possible to the project. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, excluding Saturday and Sunday. Notice of the time and place of meeting shall be posted at a prominent place within the common area, and shall be communicated to directors not less than four (4) days prior to the meeting, provided, however, that notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

6.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) 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 (d) 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. Such notice shall be posted at a prominent place within the common area not less than seventy-two (72) hours prior to the scheduled time of the meeting. 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 seventy-two (72) hours before the time set for the meeting.

6.3 Quorum. A majority of the directors then in office (but not less than two (2)) shall constitute a quorum for the transaction of business. Every act performed or decision made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by a majority of the required quorum for that meeting.

6.4 Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board.

6.5 Executive Session. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

6.6 Telephone Meetings. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all directors

participating in the meeting can hear one another, and all such directors shall be deemed to be present in person at such meeting. An explanation of the action taken shall be posted at a prominent place within the common area within three (3) days after the meeting.

6.7 Waiver of Notice. The transactions 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 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. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

6.8 Notice of Adjourned Meeting. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the directors who were not present at the time of the adjournment, and shall be posted at a prominent place within the common area.

6.9 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively, consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. An explanation of the action taken shall be posted at a prominent place or places within the common area within three (3) days after the written consents of all Board members have been obtained.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 Duties. It shall be the duty of the Board of Directors to:

A. Maintenance: Perform the maintenance described in section 5.1A of the Declaration.

B. Insurance: Maintain insurance as required by section 5.1B of the Declaration.

C. Discharge of Liens: 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 the lien (after notice and hearing as required by these Bylaws).

D. Assessments: Fix, levy, collect and enforce assessments as set forth in Article IV of the Declaration.

E. Expenses and Obligations: 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. Records: Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-

fourth (1/4) of the Class A members; keep adequate and correct books and records of account, minutes of proceedings of its members, Board and committees, and a record of its members giving their names and addresses and classes of membership.

G. Supervision: Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed.

H. Enforcement: Enforce these Bylaws and the Declaration.

I. Review of Financial Records: Review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts. For purposes herein, "reserve accounts" shall mean monies that the Association's Board has identified from its annual budget for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.

J. Reserve Account Withdrawal Restrictions: Require that at least two (2) signatures be needed for the withdrawal of monies from the Association's reserve accounts, who either shall be members of the Board or one (1) member of the Board and one (1) officer who is not a member of the Board.

7.2 Powers. The Board of Directors shall have power to:

A. Manager: Employ a manager as provided in section 5.2C of the Declaration.

B. Adoption of Rules: Adopt rules in accordance with section 5.2D of the Declaration.

C. Assessments, Liens and Fines: Levy and collect assessments and impose fines as provided in section 5.2F of the Declaration.

D. Enforcement (Notice and Hearing): Enforce these Bylaws and/or the Declaration provided that at least fifteen (15) days' prior notice of any charges (other than assessments) or potential discipline or fine and the reasons therefor are given to the member affected, and that an opportunity is provided for the member to be heard, orally or in writing not less than five (5) days before the imposition of the discipline or fine, said hearing to be before the Board. 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.

E. Contracts: Contract for goods and/or services in accordance with section 5.2K of the Declaration.

F. Delegation: Delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate the authority to make expenditures for capital additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an owner or his tenant, lessee, guest or invitee with the Declaration or rules and regulations promulgated by the Board, or to make a decision to levy monetary fines, impose special assessments against individual lots, temporarily suspend an owner's rights as a member of the Association or otherwise impose discipline following any such hearing; to make a decision to

levy regular or special assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of assessments. Any such delegation shall be revocable by the Board at any time. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

G. Appointment of Trustee: Appoint a trustee to enforce assessment liens by power of sale as provided in the Declaration and in Civil Code § 1367(b).

H. Other Powers: In addition to any other power contained herein, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in Corporations Code § 7140.

7.3 Prohibited Acts. The Board shall not take any of the following actions, except with the vote or written consent of a majority of the total voting power of the Association including a majority of members other than Declarant:

A. Entering into a contract with a third person wherein the third person will furnish goods or services for the common area or the Association for a term longer than one (1) year with the following exceptions:

(1) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration (if either has jurisdiction over the project) or by the Department of Real Estate during the period the Department of Real Estate has jurisdiction over the sale of the project pursuant to a public report;

(2) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(3) Prepaid casualty and/or liability insurance policies of not to exceed three (3) years duration provided that the policy permits short rate cancellation by the insured;

(4) Lease agreements for laundry room fixtures and equipment of not to exceed five (5) years duration provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more;

(5) Agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years duration provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; and

(6) Agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years duration provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

B. Incurring aggregate expenditures for capital improvements to the common area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

C. Selling 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 fiscal year.

D. Paying compensation to members of the Board or to the officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may cause a member or officer to be reimbursed for the actual expenses, if reasonable, that are incurred in the performance of his or her duties.

ARTICLE VIII OFFICERS AND THEIR DUTIES

8.1 Enumeration of Officers. The officers of this Association shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary, and a Chief Financial Officer, and such other officers as the Board may from time to time by resolution create.

8.2 Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

8.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4 Special Appointments. The Board may elect 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 the Board may, from time to time, determine.

8.5 Resignation and Removal. Any officer may be removed from office (but not from the Board, if the officer is also a Board member) by the Board with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of 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.

8.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

8.7 Duties. The duties of the officers are as follows:

A. **President.** The President shall preside at all meetings of the Board of Directors; 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. The President shall have the general powers and duties of management usually vested in the office of the President of a California nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

B. Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with the addresses, and shall perform such other duties as required by the Board.

D. Chief Financial Officer. The Chief Financial Officer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all promissory notes of the Association; shall keep proper books of account; shall prepare and shall distribute budgets and financial statements to each member as follows:

(1) A pro forma operating budget for each fiscal year shall be distributed not less than forty-five (45) nor more than sixty (60) days before the beginning of the fiscal year consisting of at least the following: (a) Estimated revenue and expenses on an accrual basis; (b) The identification of the total cash reserves of the Association currently set aside; (c) an estimate of the current replacement costs of the estimated remaining useful life of, and the methods of funding used to defray the future repair, replacement, or additions to, those major components which the Association is obligated to maintain; (d) 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 are attributable to the areas which the Association is obligated to maintain. In lieu of the distribution of the foregoing financial statement, the Board may elect to distribute a summary of the statement to all the members, with 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 subdivision (1) 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 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;

(2) A balance sheet as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a lot in the project, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the numbers of the lots and the name or names of the owners assessed;

(3) A report consisting of the following shall be distributed within one hundred twenty (120) days after the close of the fiscal year: (a) A balance sheet as of the end of the fiscal year; (b) An operating (income) statement for the fiscal year; (c) A statement of changes in financial position for the fiscal year; (d) For any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000), a copy of a review of the financial statement of the Association prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy; (e) Any information required to be reported under §8322 of the California Corporations Code;

(4) If the report referred to in D(3), above is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review;

(5) A statement describing the Association's policies and practices in enforcing lien rights, or other legal remedies for default in payment of its assessments against its member, and a statement of the place where the names and addresses of the current members are located shall be distributed annually to the members during the sixty (60) day period immediately preceding the beginning of the Association's fiscal year.

E. **Delegation.** The foregoing duties may be delegated to a manager appointed by the Board.

ARTICLE IX COMMITTEES

9.1 Architectural Committee. An Architectural Control Committee may be appointed, as provided in the Declaration and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (a) take any final action on matters which, under the Nonprofit Corporation Law of California, also requires members' approval; (b) fill vacancies on the Board of Directors or in any committee; (c) amend or repeal Bylaws or adopt new Bylaws; (d) amend or repeal any resolution of the Board of Directors; (e) appoint any other committees of the Board of Directors or the members of those committees; (f) approve any transaction to which the Association is a party and in which one (1) or more directors have a material financial interest.

ARTICLE X BOOKS AND RECORDS

10.1 Inspection by Members. The membership register (including names, mailing addresses, telephone numbers and voting rights), books of account and minutes of meetings of the members, of the Board, and of committees shall be made available for inspection and copying by any member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the project as the Board shall prescribe.

10.2 Rules for Inspection. The Board shall establish reasonable rules with respect to:

A. Notice to be given to the custodian of the records by the member desiring to make the inspection;

B. Hours and days of the week when such an inspection may be made;

C. Payment of the cost of reproducing copies of documents requested by a member.

10.3 Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a

director includes the right to make extracts and copies of documents, at the expense of the Association.

10.4 Documents Provided by Board. Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide the owner of a lot with a copy of the governing documents of the project, a copy of the most recent budget and statements of the Association distributed pursuant to section 8.7D(1), (3) and (5) together with a true statement in writing from an authorized representative of the Association as to the amount of any assessments levied upon the lot which are unpaid on the date of the statement, including 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 lot. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

ARTICLE XI MISCELLANEOUS

11.1 Amendments. Prior to close of escrow on the sale of the first lot, Declarant may amend these Bylaws (provided any amendment constituting a material change shall require the approval of the Department of Real Estate). After sale of the first lot, these Bylaws may be amended, only by the affirmative vote (in person or by proxy) or written consent of members representing a majority of a quorum of the Association and a majority of the votes or written consent of members other than Declarant, or where the two (2) class voting structure is still in effect, by vote of a majority of each class of members. However, the percentage of voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

11.2 Conflicts. In the case of any conflict between the Articles and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

11.3 Fiscal Year. Unless directed otherwise by the Board, the fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

I, the undersigned, the duly elected and acting Secretary of MISSION VILLAS/BOWERS AVENUE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, do hereby certify that the foregoing Bylaws were adopted as the Bylaws of the Association on August 23, _____, 19 89 _____, and that the same do now constitute the Bylaws of the Association.

This Certificate is executed under penalty of perjury on August 23, _____, 19 89 _____, in San Jose _____, California.



Secretary