

#### ARCHWAY, THE MANAGEMENT COMPANY

October 10, 2016

First American Title Company Attn: Julie Clothier 12880 Saragota-Sunnyvale Road Saratoga, CA 95070 Association Name: Jefferson Square Homeowners Association

Account No.: 45,0054

Property Address: 75 Hobson Street Unit 4A, San Jose, CA

Owner Name: Kyle M. Graham and Sarah N. Hall

File No.: 4307-5305031(jc)

#### **Escrow Demand**

This letter will serve as our demand for the escrow package requested for the above referenced property. The documents package fee has been paid in the amount of \$325.00 by check #228 from Kyle Graham and Sarah Hall.

#### **Assessment Information:**

Amount of Monthly Assessment: \$314.00. This account is PAID thru September 2016.

Please be advised, the assessment amount increased from \$303.00 to \$314.00 effective October 1, 2016.

The monthly assessment is due on the 1<sup>st</sup> of each month and delinquent if not paid by the 15<sup>th</sup> of the month.

The Homeowner is currently enrolled in the Association's automatic payment program. In order for the automatic payment service to be cancelled, the Homeowner must notify Archway, The Management Company in writing as soon as possible. The notification must be received by the 25<sup>th</sup> of the month in order to cancel payment for the next month. If the automatic payment occurs, because of banking regulations, Jefferson Square Homeowners Association will not be able to issue a refund check for 60 days from the date of the auto-payment processing.

**Special Assessments:** NONE

Litigation Status: NONE

Owner Occupancy Ratio: Owner 66% Rental 34%

Rental Restrictions: YES - Please refer to the complete copy of the CC&R's and see attached rental rules.

Refer to Seller for parking space information

Insurance Information: Please contact the Insurance agent directly as follows:

Allstate Insurance 831-685-6580 – Master Policy Allanson Insurance 831-685-0101 – Earthquake Policy

Please call our office prior to close to confirm the status of the assessment account.

Please collect any outstanding assessments, plus two month's assessments in advance payable to:

#### **Jefferson Square Homeowner Association**

At the time of closing please forward the following to Archway, The Management Company:

- 1) Copy of the Grant Deed
- 2) Full Names and Mailing address for the new Buyer(s).

Please contact the undersigned if you have any questions or need additional information.

Sincerely,

Jackie M<sup>e</sup>Garry

**Enclosures** 

## Jefferson Square Homeowners Association

RENTAL POLICY Adopted by the Board: April 25, 2016

#### **PURPOSE OF THIS POLICY:**

The purpose of the Rental Policy is to set forth general rules for the Homeowners of Jefferson Square to rent their units. This policy follows the CC&R's Article VII, Section 7.8 Right to Lease. Failure to comply with this Rental Policy will result in a hearing with the Board and monetary fine(s). Please refer to Section 7.8 Right to Lease (D) "Any violation of the Association's governing documents shall be a breach of the lease or rental agreement, allowing termination thereof by Owner or Board.

#### **Guidelines:**

- Owners will be deemed ineligible to be added to the rental list if they are more than two (2) months in arrears with their HOA dues.
- Owners that are currently on the rental list and are two (2) months in arrears will be removed from the rental list. Other Homeowners in good standing will be given priority to be added to the rental list.
- Owners, who fail to provide a current rental agreement, as per the CC&R's, will be subject to a hearing, monetary fine(s) and loss of rental rights.
- When two (2) requests to rent a unit are receive by Management at the same time, the Homeowner that has held ownership in the property the longest at Jefferson Square will be added to the rental list.

#### Waiting List for Rental Units:

- 1. Once the number of rental units falls below the 30% threshold the HOA management firm will notify the Homeowner at the top of the waiting list within 30 days.
- 2. The Homeowner has 30 days to respond to the HOA management firm as to whether they plan to rent their unit or not.
- 3. The Homeowner has four options:
  - a. Reply that they will rent out their unit. Once they reply 'yes', the HOA management firm will inform them they are required to rent their unit out within 60 days. If they do not rent it in 60 days the Homeowner must request an extension from the Board or they will move to the end of the rental waiting list and lose their top place on the list. The Board has discretion whether to grant the extension, and if so, for how long.
  - b. Respond that they do not wish to rent their unit at this time, but would like to remain on the rental list. At which point they will be moved to the bottom of the list.
  - c. Respond that they no longer wish to rent their unit and then the HOA Management firm will remove them from the list.
  - d. If the HOA management firm receives no response within 30 days then the Homeowner will be removed from the list, unless the HOA management firm was notified previously from the homeowner that they will be out of contact for an extended period of time.
- 4. If any Homeowner falls out of good standing then they will be removed from the waiting list.
- 5. If a Homeowner is approved to rent, then the rental approval will remain with that Homeowner until they notify the Board that they no longer plan to rent their unit, the unit is sold or they fall out of good standing.

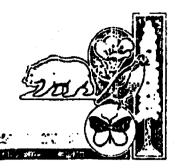
## FIRST RESTATED DECLARATION OF CONDITIONS, COVENTANTS AND RESTRICTIONS OF JEFFERSON SQUARE HOMEOWNERS ASSOCIATION A CONDOMINIUM PROJECT

#### CC&R's Article VII, Section 7.8 Right to Lease

Owners shall be entitled to rent or lease their Unit provided that:

- (A) Not less than the entire unit is leased or rented.
- (B) The lease term is for a period of not less than thirty (30) days.
- (C) Any lease or occupancy agreement for a Unit shall be in writing and shall provide that it is subject to the covenants, conditions and restrictions, limitations and uses contained in this Declaration as well as the rules and regulations established by the Association. The Owner shall remain liable for any violation or infraction of this Declaration or such rules and regulations by the tenant. Owner shall file a fully conformed copy of the lease or rental agreement with the Board prior to occupancy.
- (D) Any violation of the Association's governing documents shall be a breach of the lease or rental agreement, allowing termination thereof by Owner or Board.
- (E) In the event an owner defaults in payment of Association dues, special assessments, or fees, the tenant shall make the monthly rental payments directly to the Association. The Association shall retain the delinquent amount and remit any remand to owner.
- (F) Any lease or renting of a unit will not result in a percentage of non-owner occupied units exceeding thirty percent (30%). The Board shall establish reasonable rules in order to fairly achieve compliance with this provision, including, but not limited to, a "grandfather" clause to commit the continuance of rental units already in existence at the Project at the time such rules are established.

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



# State Of California OFFICE OF THE SECRETAR

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

That the annexed transcript has been compared with the 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

> > DEC 1 0 1985



March Foreg Eu

Secretary of State

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ENDORSED
FILED
In the office of the Secretary of State
of the Serie of California
DEC1 0 1985

#### ARTICLES OF INCORPORATION

OF

MARCH FUNG LU, Secretary of State

Kethleen P. Gutierrez

Deputy

#### JEFFERSON SQUARE HOMEOWNERS ASSOCIATION

## ARTICLE I

The name of the corporation (hereinafter called the "Association") is JEFFERSON SQUARE HOMEOWNERS ASSOCIATION.

## ARTICLE II AGENT FOR SERVICE OF PROCESS

The name of the Association's initial agent for service of process is: David S. Wilson. The address of its initial agent is: 14370 Saratoga Avenue, Saratoga, California 95070.

## 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 units and common area within a certain tract of property situated in the City of San Jose, 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 Enabling Declaration Establishing a Plan for Condominium Ownership, hereinafter called the "Declaration" recorded or to be recorded with respect to said property in the Office of the Recorder of Santa Clara County, as required by \$1355 of the California Civil Code.

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

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

IOHN PAUL HANNA

care of the Association property, and other than by a rebate of excess membership dues, fees, or assessments. So long as there is any unit, 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 y **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 JoTH day of November , 1985.

David S. Wilson AVID S. WILSON

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

& S. Wilson

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

## BYLAWS OF JEFFERSON SQUARE HOMEOWNERS ASSOCIATION

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#### **BYLAWS OF**

#### JEFFERSON SQUARE HOMEOWNERS ASSOCIATION

## ARTICLE I

#### 1.1 Name and Location:

The name of the corporation is Jefferson Square 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 !! DEFINITIONS

#### 2.1 Incorporation:

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

#### 2.2 Enabling Declaration.

"Declaration" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Project recorded on the 12th day of March, 1986, in Book J627, pages 340-416, Official Records, Santa Clara County, and subsequent amendments thereto.

## ARTICLE III MEETING OF MEMBERS AND VOTING

#### 3.1 Annual Meeting:

The annual meeting of the Members shall be set by the 80ard so as to occur no later than ninety (90) days after the close of the Association's fiscal year.

#### 3.2 Special Meetings:

- A. Who May Call. A majority of the Board, the request of the President, or upon written request of the Members representing five percent (5%) of the total voting power of the Association may call a special meeting of the Members at any time to consider any reasonable business of the Association.
- B. Calling Special Meetings by Members. If a special meeting is called by Members other than the President, the request shall be submitted by such Members in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the President, any Vice President, or the Secretary of the Association. The officer receiving the request shall cause notice to be promptly given to the Members entitled to vote, in accordance with the provisions of Section 3.3 of this Article III, that a meeting will be held, and the date and time for such meeting, which date shall not be

less than 35 or more than 90 days following the receipt of the request. If the notice is not given within the 20 days after receipt of the request, the persons requesting the meeting may give the notice. Nothing contained in this subsection shall be construed as limiting, fixing, or affecting the time when a meeting of Members may be held when the meeting is called by action of the Board of Directors or the President.

#### 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 or manager, 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, 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(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 Santa Clara 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 at any such meeting may 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 defined above, 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, and the only matters that may be voted upon at said adjourned meeting are matters the general nature of which was noticed not less than 10 nor more than 90 days before the date of the meeting to each member entitled to vote at the meeting. 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 adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for annual 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, excluding the number of votes as to which voting rights are suspended at the time of the subject meeting.

#### 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 conveyances by the Member of his Unit, 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 Section 7414 and 7613.

#### 3.6 Membership and Voting:

Members shall be all Owners and shall be entitled to one (1) vote for each Unit owned. When more than one (1) person holds an interest in any Unit, all such persons shall be Members. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit.

#### 3.7 Eligibility to Vote:

Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all Assessments levied against the Member's Unit(s) and not subject to any suspension of voting privileges as a result of any disciplinary proceeding conducted in accordance with the Declaration. "Current" as used in this section, means an unpaid installment of regular or special assessments has not existed as to that Member's Unit, for thirty (30) days past its due date. A Member's good standing shall be determined as of the record date established in accordance with Section 3.8. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of non payment of Assessments,

although a delinquent Member shall be entitled to request such a hearing. A Member shall maintain good standing if said standing has not been suspended by the provisions of these Bylaws and the Member has maintained a current filing with the Association of the following:

- (a) The signature or signatures of the Owner(s) authorized to vote on behalf of the Member's Unit;
  - (b) Address where all notices shall be sent; or, alternatively,
- (c) A proxy that names the Owner's representative and lists the representative's address.

#### 3.8 Record Dates:

- A. Record Dates Established by the Board: For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting, or exercise any rights in respect to any other lawful action, the Board may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record date, except as otherwise provided in the Articles, by agreement, or in the California Nonprofit Mutual Benefit Corporation Law. The record dates established by the Board pursuant to this section shall be as follows:
- 1. Record Date for Notice of Meetings: In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting;
- 2. Record Date for Voting: In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;
- 3. Record Date for Action by Written Ballot Without Meeting: In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and
- 4. Record Date for Other Lawful Action: In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.
- B. Failure of Board to Fix a Record Date: If the Board, for any reason, fails to establish a record date, the following rules apply:
- 1. Record Date for Notice of Meetings: The record date for determining those members entitled to receive notice of a meeting of Members shall be the business day preceding the day on which notice is given, or, if notice is waived, the business day preceding the day on which the meeting is held.

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

#### 3.9 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.

#### 3.10 Conduct of Meetings:

Meetings of the membership of the Association shall be conducted in accordance with a recognized system of parliamentary procedures or such parliamentary procedures as the Association may adopt. Notwithstanding any other provision of law, notice of meetings of the Members shall specify those matters the Board intends to present for action by the Members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. In the event of an emergency meeting, the Board shall post the notice as soon as possible.

Members of the Association shall have access to Association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Title of the Corporations Code. Any Member shall be permitted to speak at a meeting of the Association Members; however, the Board of

Directors may establish a reasonable time limit for Members to speak before a meeting of the Association Members.

## ARTICLE IV BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

The activities and affairs of this Association shall be administered and overseen by, and the powers of the Association exercised under the direction of, a Board of Directors. The Board may delegate the management activities to any management company or a managing agent, provided that the activities and affairs of the Association shall be directed, overseen and managed, and the corporate powers exercised, under the ultimate direction of the Board.

#### 4.1 Number:

The affairs of this Association shall be managed by a Board of five (5) directors, all of whom must be Members of the Association. The number of directors may be changed by approval of the Members.

#### 4.2 Term of Office:

At the annual meeting in 1990, five (5) Directors were elected; two (2) having been elected for a term of two (2) years and three (3) such Directors for a term of one (1) year. Each successor Director shall be elected for a term of two (2) years and until a successor is elected.

#### 4.3 Removal: Vacancies:

A director may be removed from office prior to the expiration of his term only by the votes of a majority of Members in good standing. 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. 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 in discharging his or her duties as a director of 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. Nothing shall be construed to preclude any director from serving the Association in some other capacity and receiving reasonable compensation.

#### 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 Board authorized 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. This committee shall consist of a Chairman, who shall be a member of the Board of Directors, and up to any two (2) or more Members of the Association. This committee shall be appointed by the President not less than thirty (30) days prior to each annual meeting of the Members, to serve until the close of such annual meeting. This 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:

Voting for directors shall be by secret written ballot. Members entitled to vote shall be entitled to cumulate their votes for one (1) or more candidates for the Board. The candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be elected.

#### ARTICLE VI MEETING OF DIRECTORS

#### 6.1 Regular Meetings:

Regular meetings of the Board of Directors shall be held monthly 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. Notice of any 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 (1) 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; (d) by telegram, facsimile, or electronic mail. Such notice shall be posted or communicated in a manner prescribed for notice of regular meetings and shall be sent to all directors not less than four (4) days prior to the meeting. All Members shall be given notice of the time and place of a special meeting, except for an emergency meeting, at least four (4) days prior to the meeting. Notice may be given by posting the notice in a prominent place or places within the Common Area, by mail, or delivery of the notice to each Unit in the Project, or by newsletter or similar means of communication. Notices sent by first class mail shall be deposited into a United States mailbox at least six (6) days before the time set for the meeting.

#### 6.3 Emergency Meetings:

An emergency meeting of the Board of Directors may be called by the president, or by any two (2) Directors other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the Board, and which of necessity make it impracticable to provide the notices required by Section 6.1. Notice of an emergency meeting may be given with as little advance notice as four (4) hours, if circumstances reasonably require it.

#### 6.4 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.

#### 6.5 Open Meetings:

Except as provided in Sections 6.6 and 6.7, 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. However, the Board shall establish a reasonable time limit for all Members of the Association to speak to the Board of Directors at any meeting of the Board of Directors, and permit any Member of the Association to speak at any meeting of the Board of Directors within such time limit.

#### 6.6 Executive Session:

The Board may, with approval of a majority of its Members present at a meeting in which a quorum for the transaction of business has been

established, or, if all members of the governing body are present, by a majority vote of the Members, 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, matters relating to the formation of contracts with third parties, Member discipline 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. Any matter discussed in executive session shall be generally noted in the minutes of the Board of Directors. The Board shall meet in executive session, if requested by a Member who may be subject to a fine, penalty, or other form of discipline, and the Member affected shall be entitled to attend the executive session.

#### 6.7 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 person at such meeting. Arrangements shall be made to enable any Member who desires to listen to the telephone meeting of the Board, to be able to do so. An explanation of the action taken shall be posted at a prominent place within the Common Area within three (3) days after the meeting.

#### 6.8 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.

#### 6.9 Notice of Adjourned Meeting:

Notice of the time and place of holding an adjourned meeting need not be given, unless 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.

#### 6.10 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. If the Common Area consists only of an easement or is otherwise unsuitable for posting the explanation of the action taken, the Board shall communicate said explanation by any means it deems appropriate.

#### 6.11 Definition of Meeting:

"Meeting" includes any congregation of a majority of the Members of the Board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the Board, except those matters that may be discussed in executive session.

## 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 5.1(A) of the Declaration.
- B. Insurance: Maintain insurance as required by Section 5.1(B) of the Declaration.

The Association shall, upon issuance or renewal of insurance, but no less than annually, notify the Members as to the amount and type of insurance carried by the Association, and it shall accompany this notification with statements (required under Civil Code section 1365.9(c) to the effect that the Association is or is not insured to the levels specified by Civil Code section 1365.9, and that if the Association is not so insured that Owners may be individually liable for the entire amount of a judgment, and, if the Association is insured to the levels specified in the section, then the Owners may be individually liable only for their proportional share of Assessments levied to pay the amount of any judgment which exceeds the limits of the Association's insurance. The Association shall not levy any Assessment against the Members to pay the amount of any judgment against the Association without a vote approving such Assessment or written consent of a majority of the Members.

- 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 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 Members; keep adequate and correct books and records of account, minutes of proceedings of its Members and giving their names and addresses.
- 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.
- 1. 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 for use to defray the future repair or replacement of, or additions to, those major components which the Association is obligated to maintain.
- J. Financial Account Withdrawal Restrictions: Require that at least two (2) signatures be needed for the withdrawal of monies from the Association's financial accounts.
- K. Reserve Account Fund Management: The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain and for which the reserve fund was established. However, the Board may authorize the temporary transfer of money from a reserve fund to the Association's general operating fund to meet short-term cash-flow requirements or other expenses, provided that such transfer does not have the effect of increasing the total annual budget and is solely for the purpose of meeting short-term cash-flow requirement. The transferred funds shall be restored to the reserve fund within one (1) year of the date of initial transfer, except that the Board may, upon making a finding supported by documentation that a delay would be in the best interests of the Project, delay the restoration until the time which the Board reasonably determines to be necessary.
- L. Reserve Studies: At least every three years the Board shall cause a study of the reserve account requirements of the Project to be conducted, including a reasonably competent and diligent visual inspection of the accessible areas of the major components which the Association is obligated

to repair, replace, restore or maintain, if the current replacement value of said major components is equal to or greater than one-half of the gross budget of the Association, excluding the Association's reserve account for that period. The Board shall review this study annually and shall consider and implement necessary adjustments to the Board's analysis of the reserve account requirements as a result of that review.

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

- (1) identification of the major component which the Association is obligated to repair, replace or restore, or maintain which, as of the date of the study, have a remaining useful life of less than thirty (30) years;
- (2) identification of the probable remaining useful life of the components identified in paragraph (1) as of the date of the study;
- (3) an estimate of the cost of repair, replacement, restoration, or maintenance of each major component identified in paragraph (1) during and at the end of its useful life, and
- (4) an estimate of the total annual contribution necessary to defray the cost to repair, replace, restore, or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

As used in this section, "reserve account requirements" means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace, or restore those major components which the Association is obligated to maintain.

M. Future Changes in Financial Records and Reserve Account Requirements: The provisions of subsections K and L incorporate the statutory requirements of California Civil Code §1365.5. If said §1365.5 is amended in any manner, this Section 7.1 shall be amended in the same manner without the necessity of formal amendment.

#### 7.2 Powers:

The Board of Directors shall have power to:

- A. Manager: Employ a manager as provided in Section 5.2(C) of the Declaration.
- B. Adoption of Rules: Adopt rules in accordance with Section 5.2(D) of the Declaration.

- C. Assessments, Liens and Fines: Levy and collect assessments and impose fines as provided in Section 5.2(F) 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 required herein shall be given by any method reasonably calculated to provide actual notice. Any notice given by mail shall be given by first class or registered mail sent to the last address of the Member as shown on the Association's records.
- E. Contracts: Contract for goods and/or services in accordance with Section 5.2(J) of the Declaration.
- F. Appointment of Trustee: Appoint a trustee to enforce assessment liens by power of sale or any other manner permitted by law as provided in the Declaration and in California Civil Code §1367(b).
- G. 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 California Corporations Code §7140.

#### 7.3 Prohibited Acts:

The Board shall not take any of the following actions, except with the vote at a meeting of the Association or by written ballot without a meeting pursuant to Corporations Code §7513, of a simple majority of the Members entitled to vote:

- 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);
- (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;
- (5) agreements for cable television services and equipment or satellite dish television services and equipment of not to exceed five (5) years' duration;
- (6) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services of not to exceed five (5) years' duration;
- (7) a contract for a term not to exceed three (3) years that is terminable by the Association after no longer than one (1) year without cause, penalty, or other obligation upon ninety (90) days' written notice of termination to the other party.
- 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. Seiling 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 two (2) years 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 a majority vote of 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; 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:

- 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) a summary of the Association's reserves based upon the most recent review or study conducted pursuant to Section 7.1L, which shall be printed in bold type and include all of the following:
    - (i) the current estimated replacement cost, estimated remaining life, and estimated useful life of each major component;
    - (ii) as of the end of the fiscal year for which the study is prepared:
      - (A) the current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components;
      - (B) the current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components;
    - (iii) the percentage that accumulated cash reserves actually set aside is of the current estimate of cash reserves necessary;
  - (c) a statement as to whether the Board has determined or anticipates that the levy of one or more special Assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor;
  - (d) a general statement setting forth the procedures used in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Common Areas and facilities for which the Association is responsible.

In lieu of the distribution of the pro forma operating budget, the Board may elect to distribute a summary of the items described above, to all the Members, with written notice that the budget 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 pro forma operating budget, including the items referred to above, to be mailed to the Member, the Association shall provide the copy to the Member by first-class United States mail at the expense of the Association and delivered within five (5) days. The written notice that is distributed to each of the Association Members shall be in at least 10-point bold type on the front page of the summary of the statement;

- 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 Section 8322 of the California Corporations Code;
  - (3) if the report referred to in D(2) 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;
  - (4) 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;
- (5) a summary of the Association's insurance policies as set forth in Civil Code section 1365(e)(1) shall be distributed to the Members within sixty (60) days 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 Committee:

The Board of Directors shall provide for committees as provided in the Declaration and these Bylaws. The Board shall provide for 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 including drafts and summaries), and of committees shall be made available for inspection 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. Board minutes shall be available to Members within thirty (30) days of the meeting, and shall be distributed to any Member upon request and upon reimbursement of the costs in making that distribution.

#### 10.2 Rules for Inspection:

The Board shall establish reasonable rules with respect to:

- A. Notice to be given to the custodiam 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, 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), (2) and (4) together with a true statement in writing from an authorized representative of the Association as to the amount of the Association's current regular and special Assessments and well as any assessments levied upon the Owner's interest which 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 Unit. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare, reproduce and deliver the requested documents.

## ARTICLE XI MISCELLANEOUS

#### 11.1 Amendments:

These Bylaws may be amended, upon proper notice, only by the affirmative vote (in person or by proxy) or written consent of Members representing a majority of a quorum of the Association.

#### 11.2 Conflicts:

In the case of any conflict between the Articles and Byławs, 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.

#### CERTIFICATE

I, the undersigned, the duly elected and acting Secretary of Jefferson Square Homeowners Association, a California nonprofit mutual benefit corporation, do hereby certify that the foregoing Bylaws were adopted as the Bylaws of the Association on the 3 day of Sury 1998, and that the same do now constitute the Bylaws of the Association.

This Certificate is executed under penalty of perjury on the 31 day of كالب 1998, Santa Clara County, California.

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

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BRENDA DAVIS SANTA CLARA COUNTY RECOF Recorded at the request Homeowners' Associatio

RDE # 102 7/31/1998 9:00 AM

WHEN RECORDED RETURN TO:

JEFFERSON SQUARE HOMEOWNERS ASSOCIATION c/o PLASTIRAS & TERRIZZI 24 PROFESSIONAL CENTER PARKWAY, SUITE 150 SAN RAFAEL, CA 94903

### FIRST RESTATED DECLARATION

OF

CONDITIONS, COVENANTS AND RESTRICTIONS

OF -

JEFFERSON SQUARE HOMEOWNERS ASSOCIATION

A CONDOMINIUM PROJECT

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### FIRST RESTATED DECLARATION

OF

## CONDITIONS, COVENANTS AND RESTRICTIONS

**OF** 

# JEFFERSON SQUARE HOMEOWNERS ASSOCIATION

## A CONDOMINIUM PROJECT

THIS DECLARATION is made on the date hereinafter set forth by **JEFFERSON SQUARE HOMEOWNERS ASSOCIATION**, referred to herein as "Declarant."

Declarant is the Homeowners Association of that certain property located in the City of San Jose, County of Santa Clara, State of California, more particularly described as follows:

Tract No. 7737, on that certain map filed for record in the Office of the Recorder of Santa Clara County, California, on September 3, 1985, in Book 548 of Maps, Pages 18 and 19, as corrected by a Certificate of Correction recorded on February 26, 1986 in the Official Records of Santa Clara County as Instrument Number 8701549.

Declarant intends to amend its existing Declaration of Conditions, Covenants and Restrictions entitled DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS originally recorded March 12, 1986 as Instrument No. 8716114, Official Records, Santa Clara County. This condominium project is established under the provisions of the Davis-Stirling Common Interest Development Act providing for separate title to each unit within the Project, each unit to have an undivided interest in all the remaining property.

The development shall be referred to herein as the "Project" as defined in Article I, Section 1.28.

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

Declarant hereby establishes by the Declaration a plan for the individual ownership of the real property estates, consisting of the area of space contained in each unit (as defined in Article I, Section 1.33), as well as the co-ownership by the individual owners, as tenants in common and as hereafter set forth, of all the remaining portions of the Project which is hereinafter defined and referred to as the "Common Area," as defined in Article I, Section 1.5.

NOW, THEREFORE, Declarant hereby establishes that the property hereinafter described shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following declarations, limitations, covenants, conditions, restrictions and easements, all of which are for the purposes of enhancing and protecting the value and attractiveness of the property, and the Project, and every part thereof; in accordance with the plan for the improvement of the property and the division thereof into condominiums. All of the limitations, covenants, conditions, restrictions and easements shall constitute covenants which shall run with the land and shall be binding upon Declarant and the successors and assigns of the Declarant and all parties having or acquiring any right, title or interest in or to any part of the property or the Project.

#### ARTICLE I

#### DEFINITIONS

- Section 1.1 "Assessment" Shall mean that portion of the cost of maintaining, improving, operating and managing the property which is to be paid by each owner, as determined by the Association, and shall include regular and special Assessments.
- Section 1.2 "Association" Shall mean and refer to the JEFFERSON SQUARE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation, the members of which shall be owners of condominiums in the Project.
- Section 1.3 "Board" or "Board of Directors" Shall mean and refer to the governing body of the Association.
- Section 1.4 "Bylaws" Shall mean or refer to the Bylaws of the Associationas amended from time to time.
- Section 1.5 "Common Area" Shall mean and refer to Condominium, Common Area and Recreational Common Area.
- Section 1.6 "Common Expenses" Means and includes the actual and estimated expenses of operating the property 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 Condominium Documents.
- Section 1.7 "Common Interest" Means the proportionate undivided interest in the Common Area which is appurtenant to each unit as set forth in this Declaration.
- Section 1.8 "Condominium" Shall mean an estate in real property as defined in California Civil Code §§783 and 1351(f), consisting of title to a Unit and an undivided interest in the Common Area.
- Section 1.9 "Condominium Building" Shall mean the residential structure containing condominium Units. The condominium buildings include the units and condominium common area.
- Section 1.10 "Condominium Common Area" Shall mean and refer to all of the Project, excepting the individual Units, within the outside perimeter walls of each Condominium Building, as each building is described on the Map, excluding patios and decks.
- Section 1.11 "Condominium Documents" Means and includes this Declaration as it may be amended from time to time, the attachments, if any, annexed hereto, the Articles of Association, and Bylaws of the Association, and the rules and regulations for the members, as established from time to time.

- Section 1.12 "Condominium Plan" Shall mean and refer to the recorded 3-Dimensional plan of the Condominiums built on the property in the Project which identifies the Common Area and each separate interest pursuant to California Civil Code §1351.
- Section 1.13 "Declarant" Shall mean and refer to JEFFERSON SQUARE HOMEOWNERS ASSOCIATION, together with its successors and assigns.
- Section 1.14 "Declaration" Shall mean and refer to this enabling Declaration, as amended or supplemented from time to time.
- Section 1.15 "Eligible Holder Mortgages" Shall mean mortgages held by "eligible mortgage holders".
- Section 1.16 "Eligible Mortgage Holder" Shall mean a First Lender who has requested notice of certain matters from the Association in accordance with Section 9.8C.
- Section 1.17 "Eligible insurer or Guarantor" Shall mean an insurer or governmental guarantor of the first mortgage who has requested notice of certain matters from the Association in accordance with Section 9.6C.
- Section 1.18 "First Lender" Shall mean any person, entity, bank, savings and loan association, insurance company or financial institution holding a recorded First Mortgage on any Condominium.
- Section 1.19 "First Mortgage" Shall mean and refer to any recorded mortgage made in good faith and for value on a Condominium with first priority over other mortgages thereon.
- Section 1.20 "Foreclosure" Shall mean and refer to the legal process by which the mortgaged property of a borrower in default under a mortgage is sold, and the borrower(s) interest in such property is sold, pursuant to California Civil Code § § 2924a et. seq. or sale by the Court pursuant to California Code of Civil Procedure § 725a et. seq. and any other applicable law.
- Section 1.21 "Map" Shall mean that subdivision map entitled "Tract 7737, filed the 3rd day of September, 1985, in Book 548 of Maps at Page 18 and 19, in the records of Santa Clara County, as corrected by the Certificate of Correction recorded on February 26, 1986, in the Official Records of Santa Clara County, California, as Instrument Number 8701549.
- Section 1.22 "Member" Shall mean and refer to a person entitled to membership in the Association as provided in this Declaration.
- Section 1.23 "Mortgagë" Shall include a deed of trust 'a well as a mortgage.
- Section 1.24 "Mortgagee" Shall include a beneficiary or a holder of a deed of trust as well as a mortgagee.
- Section 1.25 "Mortgagor" Shall include the trustor of a deed of trust as well as a mortgagor.

Section 1.26 "Owner" or "Owners" Shall mean or refer to the record holder or holders of title, if more than one, of a condominium in the Project. This shall include any person having a fee simple title to any Unit but shall not include contract sellers and those persons or entities having any interest merely as security for the performance of any obligation. If a Unit is sold under a recorded installment land contract to a purchaser, such purchaser, rather than the fee owner, shall be considered the "owner."

Section 1.27 "Person" Means a natural person, a corporation, a partnership, a trustee or other legal entity.

Section 1.28 "Project" Shall mean and refer to the entire real property described herein, including all structures and improvements erected thereon.

Section 1.29 "Project Documents" Shall mean the same as "condominium documents".

Section 1.30 "Recreational Common Area" Shall mean and refer to all of the property including the air space, land and any improvements thereon, other than the Condominium Buildings and the Units. "Portions if any" of patios located outside of the perimeter of a Condominium Building as shown on the Condominium Plan are included within the recreational common area.

Section 1.31 "Restricted Common Area" or "Exclusive Use Area" Shall mean and refer to those portions of the Common Area, if any, set aside for exclusive use of a Unit owner or owners, pursuant to Article II, Section 2.2(c), and shall constitute "exclusive use common area" within the meaning of California Civil Code § 1351(i).

Section 1.32 "Rules" Shall mean and refer to the rules adopted from time to time by the Association pursuant to Section 5.2D.

Section 1.33 "Unit" Shall mean and refer to the elements of the Condominium, as defined in Section 2.2A, which are not owned in common with the Owners of other condominiums in the Project.

#### ARTICLE II

# DESCRIPTION OF PROJECT, DIVISION OF PROPERTY

## AND CREATION OF PROPERTY RIGHTS

Section 2.1 Description of Project. The Project is a Condominium Project consisting of the land, the eighty-six (86) unit residential Condominium Complex and all other improvements located thereon. Reference is made to the Condominium Plan for further details.

Section 2.2 Division of Property. The Project is divided as follows:

#### A. Units:

Each of the Units as separately shown, numbered and designated in the Condominium Plan, consists of the space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows, window frames, doors and door frames and trim, of each Unit, each of said space is being defined and referred to herein as a "Unit". Bearing walls located within the interior of a Unit are Common Area, not part of the Unit, except for the finished surfaces thereof. Fireplaces (fireboxes), chimneys and flues are Common Area. Soffits and exposed beams and ceilings shall not be part of the Unit. Areas within dropped ceilings are part of a Unit. Each Unit includes the utility installations located within its boundaries that the owner has exclusive use of, including, without limitation: hot water heaters, space heaters, lighting fixtures, and air conditioning units. Each Unit includes both the portions of the Condominium Building so described in the air space so encompassed. The Unit does not include those areas and those things which are defined as "Condominium Common Area" in Section 1.10. Each Unit is subject to such encroachments as are contained in the Condominium Building, whether the same now exist or may be later caused or-created in any manner referred to in Section 9.5 encroachment rights. In interpreting deeds and plans, the then existing physical boundaries of a Unit, when the boundaries of the Unit are contained within a Condominium Building, or of a Unit reconstructed in substantial compliance with the original plans thereof, shall be conclusively presumed to be its boundaries rather than the boundaries expressed in the deed or plan, regardless of settling or lateral movement of the Condominium Building and regardless of minor variance between boundaries shown on the plan or deed, and those of the Condominium Building. Each unit shall have appurtenant to it, non-exclusive rights for ingress, egress and support through the Common Area subject to the rights of each Owner in the Restricted Common Area pertinent to that Owner's Condominium.

### B. Condominium Common Areas:

The Condominium Common Area consists of all that portion of the Project defined in Section 1.11. Each Owner shall have, as appurtenant to the Owner's Unit, an equal interest in the Condominium Common Area of the Condominium Building in which the Unit is located. Each Condominium includes a Unit and such undivided interest in the Condominium Common Area. The Common Interest appurtenant to each Unit is permanent in character and cannot be altered without the consent of all the owners effected as expressed in an amended Declaration. Such undivided Common Interest cannot be separated from the Unit to which it is appurtenant, and any conveyance or transfer of a Unit includes the undivided Common Interest, the owner's

membership in the Association and any other benefits or burdens appurtenant to the Owner's Condominium. Each Owner may use the Condominium Common Area and Recreational Common Area in accordance with the purposes for which they are intended subject to this Declaration and the Association's Rules, without hindering the exercise of or encreaching upon the rights of any other Condominium Owners, subject to the rights of each Owner in any Restricted Common Area appurtenant to that Owner's Condominium.

#### C. Restricted Common Areas:

The following described portions of the Common Areas commonly referred to as "Restricted Common Areas", are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are attached or assigned as shown on the Condominium Plan and are appurtenant to the Unit:

- (1) Carport "C";
- (2) Patio "P";
- (3) Balcony "B";
- (4) Storage "S";
- (5) Fireplace attached to the Unit.

For purposes herein, a restricted common area (other than a carport space) shall be considered "attached to the Unit" if the principal means of access is from that Unit and/or the area is constructed to serve that particular Unit.

Each Unit shall be assigned the exclusive use of one carport space, which assignment has been made pursuant to original construction. All carport spaces shall be appurtenant to the Unit to which they are assigned, may not be conveyed, leased or otherwise transferred apart from the Unit and any attempt to do so shall be null and void. Any conveyance or transfer of title to the Unit automatically shall transfer the assigned carport space regardless of whether the instrument of transfer specifically includes the assigned carport space.

Any air conditioning equipment serving only one (1) Unit is reserved for the exclusive use of that Unit, and shall be maintained by the Unit Owner. The space occupied by the air conditioning equipment, wherever located, shall be restricted to the exclusive use of the Unit Owner whose air conditioner occupies such space.

### D. Recreational Common Area:

Recreational Common Area is defined in Section 1.30, and shall be held for the benefit of all Condominium Owners.

Section 2.3 Parking: Other than the Restricted Common Area carport spaces assigned to the Units on the Condominium Plan, all common area parking spaces shall remain available for guest parking. Owners are to use their carports for parking of their vehicles so that common area parking will be available for guest parking. The Association may establish rules and regulations from time to time for the parking of vehicles in the Common Areas.

- Section 2.4 Rights Of Entry And Use: The Units and Common Area (including Restricted Common Areas) shall be subject to the following rights of entry and use:
- A. The right of the Association's agents or employees to enter any Unit to cure any violation of this Declaration or the By-laws provided that the Owner has received notice and a hearing as required by the By-laws (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 rights of the owners, and the Association to install, maintain, repair or replace utilities as described in Article VI.
  - D. The encroachment easements described in Section 9.5.
- E. The rights of owners to make improvements or alterations authorized by California Civil Code §1360(a)(2), subject to the provisions of Section 7.9 to the extent applicable.
- Section 2.5 Partition Prohibited. The Common Area shall remain undivided as set forth herein. Except as provided by California Civil Code §1359 or authorized under Section 8.2B or 8.3, no Owner shall bring any action for partition of the Project or any part thereof, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Project. Judicial partition by sale of a single Unit owned by two or more persons and division of the sale proceeds is not prohibited hereby.
- Section 2.6 All Easements Part Of The Common Plan. Whenever any easements are created or are to be reserved or created herein, such easements shall constitute equitable servitudes for the mutual benefit of all property in the Project, even if only certain Units are specifically mentioned as subject to or benefiting from a particular easement, and when easements referred to herein are subsequently created by grant deeds, such easements are part of the common plan created by this Declaration for the benefit of all property Owners within the Project.

#### ARTICLE III

#### ASSOCIATION-ADMINISTRATION, OWNERSHIP AND VOTING RIGHTS

Section 3. Association to Manage Common Areas. The management of the Common Area shall be vested in the Association in accordance with its Bylaws. The Owners of all of the condominiums covenant and agree that the administration of the Project shall be in accordance with the provisions of this Declaration, the Articles of Association, and the Bylaws of the Association.

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

Section 3.3 Transferred Membership. Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the condominium to which it is appurtenant, and then only to the purchaser of such condominium. A mortgagee does not have membership rights until he becomes an Owner by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void, in the event the owner of any condominium should fail or refuse to transfer the membership registered in his name to the purchaser of his condominium, the Association shall have the right to record the transfer upon its books and thereupon any old membership outstanding in the name of the seller shall be null and void.

No Member may resign his or her membership.

Section 3.4 Membership Class and Voting Rights. The Association shall have one class of voting membership. Each condominium shall be allocated one vote in the Association. When more than one Owner holds an interest in any condominium, all such co-owners shall be members of the Association. However, the vote of such co-owners shall be exercised as the co-owners of such condominium shall determine, but in all events, only one vote shall be cast with respect to any condominium.

#### ARTICLE IV

## **MAINTENANCE AND ASSESSMENT**

Section 4.1 Creation of the Lien and Personal Obligation of Assessment. Each Owner of any condominium by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association regular assessments and special assessments, such assessments to be established, made and collected as provided in this. Declaration.

Each assessment or installment thereof, together with any late charge, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of the Owner at the time such assessment, or installment, became due and payable. If more than one person is the Owner of a condominium, the personal obligation to pay such assessment, or installment, respecting such condominium shall be both joint and several. The annual and special assessments provided for in this Article IV, together with interest, late charges, collection costs and reasonable attorneys' fees, shall be a continuing lien upon the property against which the assessment is made, the lien to become effective upon recordation of a notice of delinquent assessment. No Owner of a condominium may exempt himself from payment of assessments, or installments, by waiver of the use or enjoyment of all or any portion of the Common Area or by waiver of the use or enjoyment, or by abandonment of, his condominium.

Section 4.2 Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the members of the Association; the improvement, replacement, repair, operation and maintenance of the Common Area and the performance of the duties of the Association as set forth in this Declaration. Such assessments shall include reserves for the replacements of the Common Area.

#### Section 4.3 Assessments.

#### A. Annual Assessments:

(a) The Board shall establish and levy annual assessments in an amount the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year, subject to the limitations contained in Section 4.4 hereof.

Such annual assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those major components of the Common Area and facilities which the Association is obligated to maintain and that must be replaced on a periodic basis, and shall be payable in regular installments rather than by special assessments.

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.

#### B. Special Assessments:

If the Board determines that the estimated total amount of funds necessary to defray the common expenses of the Association for a given fiscal year is, or will become, inadequate to meet expenses for any reason (including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements on the Common Area) the Board shall determine the approximate amount necessary to defray such expenses, and if the amount is approved by a majority vote of the Board, it shall become a special assessment. The Board may, in its discretion, prorate such special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Unit. Unless exempt from Federal or State income taxation, all proceeds from any special assessment shall be segregated and deposited into a special account and shall be used solely for the purpose or purposes for which it was levied or it otherwise shall be handled and used in a manner authorized by law or regulations of the Internal Revenue Service and the California Franchise Tax Board in order to avoid, if possible, its taxation as income to the Association.

Any special assessments against owners to raise funds for the repair, replacement or addition of a portion of a Condominium Building shall be levied on the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of the floor area of all the Units in that Condominium Building.

The Board may levy a special Assessment against a Member to reimburse the Association for costs incurred in bringing the Member and his Unit into compliance with the provisions of the Project Documents.

# Section 4.4 Restrictions On Increases In Annual or Special Assessments:

(A) The Board may not impose an annual assessment on any Condominium which is more than twenty percent (20%) greater than the annual Assessment for the immediately proceeding 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 five percent (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, 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 shall be conducted in accordance with Chapter 5 (commencing with §7510) of Part 3, Division 2 of Title 1 of the California Corporations Code and §7613 of the California Corporation Code. The Board may increase annual assessments by up to twenty percent (20%) over the annual Assessment for the immediately proceeding fiscal year only if the Board has complied with the provisions of California Civil Code §1365(a), which provisions are set forth in Section 8.7D(1)-(5) of the By-laws or has obtained the approval of such increase by the Members in the manner set forth in this Section 4.4.

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 the court.
- (2) An extraordinary expense necessary to repair or maintain the project, or any part of it for which the Association is responsible, where a threat to safety of persons is discovered.
- (3) Repairs to or maintenance of the project that could not have been reasonably foreseen in preparing the budget. Prior to imposition of the assessment, the Board shall make written findings, distributed to the members, as to the necessity of the expense and why it could not have been foreseen.

The Association shall provide notice by first-class mail to the Owners of any increase in the regular or special Assessments of the Association, less than thirty (30), no more than sixty (60) days prior to the increased Assessment becoming new.

This Section 4.4 incorporates the statutory requirements of California Civil Code §1366. If this section of the California 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.

Section 4. 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 at which a quorum equaling more than fifty percent (50%) of the total voting power of the Association is present. Written notice of said meeting 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 California Corporations Code §7513.

Section 4.6 Division of Assessments: All Assessments, both annual and special, shall be levied equally among the Condominiums except as provided in Section 4.3 and except for that portion of the assessments allocated to meet the cost of insurance, painting and roof reserves, and any commonly metered domestic water, gas or electricity. These specially allocated items shall be levied among the Condominiums in the proportion that the square footage of living space to each Unit bears to the square footage of all the Units subject to this declaration. 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.

Section 4.7 Date of Commencement of Annual Assessments; Due Dates: The Board of Directors shall use its best efforts to fix the amount of the annual Assessment against each Condominium and send notice to every owner at least forty-five (45) days in advance of each annual assessment. Failure to comply with the foregoing shall not effect the validity of any Assessment levied by the Board. Annual assessments may be prorated on a monthly basis. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or designated representative of the Association stating whether the Assessments on a specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment. The regular assessment period shall commence on January 1 of each year and shall terminate on December 31 of each year.

Section 4.8 Effect of Non-Payment 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 commencing 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.

Section 4.9 Transfer of Condominium By Sale Or Foreclosure: Sale or transfer of any Condominium shall not effect the assessment lien. However, the sale of any Condominium pursuant to Foreclosure of a First Mortgage shall extinguish the lien of such assessments lincluding attorneys fees, late charges or interest levied in connection therewith, as to payments which became due prior to such sale or transfer except for assessment liens as to which a notice of delinquent assessments has been recorded prior to the mortgage). No sale or transfer shall relieve such Condominium from liability for any Assessments thereafter becoming due or from the lien thereof.

If a Condominium is transferred, the grantor shall remain liable to the Association for all unpaid Assessments against the Condominium 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 Condominium to be transferred and the Condominium 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.

Section 4.10 Priorities; Enforcements; Remedies: If An Owner fails to pay an Assessment when due, the Association has the right, and option, to bring legal action against the Owner to enforce collection of the unpaid and past due Assessment, or may impose a lien on the Unit owned by Owner pursuant to the provisions of Civil Code \$1367, or both. Suit to recover a money judgment for unpaid Assessments, and attorneys fees, shall be maintainable without foreclosing or waiving the liens securing the same. Before the Association may place a lien upon a Unit, pursuant to Civil Code §1367(a), the Association shall notify the Owner by Certified Mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including the principal owed, and any late charges, and the method of collection, any attorneys fees, and the collection practices used by the Association, including the right of the Association to the reasonable cost of collection. After compliance with the provisions of Civil Code §1367(a), the Association may record a notice of delinquent Assessment and establish a lien against the Condominium 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, and (2) the lien or charge of any First Mortgage of record (meaning any recorded mortgage or deeds of trust with the first priority over other mortgages or deeds of trust) made in good faith and for value. The notice of delinquent Assessment shall state the amount of the Assessment, collection cost, attorneys fees, late charges and interest, a description of the Condominium 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 and shall be mailed in the manner set forth in Civil Code §2924(b) to all record owners of the unit no later than 10 days after recordation.

After the expiration of thirty (30) days following the recordation of the lien, 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 California Civil Code §2934(a). Any sale by the trustee shall be conducted in accordance with the provisions of §§2924, 2924(b), 2924(c), 2924(f), 2924(g), and 2924(h) of the California Civil Code applicable to the exercise of powers of sale in mortgages and deeds of trust, including any successor statutes, 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.

The Association, acting on behalf of the Condominium Owners, shall have the power to bid for the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. If the purchase of the Condominium would result in a five percent (5%) or greater increase in Assessments, the purchase shall require that vote or written consent of a majority of the total voting power of the Association.

Fines and penalties for violation of restrictions are not "Assessments," and are not enforceable by assessment lien, but are enforceable by court proceedings; provided, however, pursuant to Civil Code §1367(b), monetary penalties imposed by the Association to reimburse the Association for costs incurred for repair of damage to Common Areas or facilities for which the Owner, or guest or tenants of an Owner, were responsible may become the subject of a lien.

Section 4.11 Unallocated Taxes. In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Condominiums, such 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 condominium in an amount equal to such taxes, to be paid in two (2) installments, not less than thirty (30) days prior to the due date of each installment.

#### **ARTICLE V**

# **DUTIES AND POWERS OF THE ASSOCIATION**

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

(A) Maintenance. The Association shall maintain, repair, replace, restore, operate and manage all of the Common Area and all facilities, improvements, furnishings, equipment and landscaping, as well as all properties that may be acquired by the Association, provided that each Owner shall maintain the Restricted Common Area assigned to that Owner in a neat and clean condition. Maintenance shall include without limitation, painting, maintaining, cleaning, repairing and replacing of all Common Areas, including landscaping (except for private patio areas which are to be maintained by Owners as per Section 9.7). The Association shall bear the costs for any portion of the Common Area damaged by the presence of wood-destroying pests or organisms. The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or neglect of an Owner or his guests, tenants or invitees, the cost of which is not covered by insurance. Repairs or replacements resulting from such excluded items shall be the responsibility of each Owner; provided, however, that if an Owner shall fail to make the repairs or replacements which are his responsibility as provided herein, then, upon a vote of a majority of the Board of Directors, and after not less than thirty (30) days notice to the Owner, and hearing (except in an emergency situation), the Association shall have the right (but not the obligation) to make such repairs or replacements, and the cost thereof shall be added to the assessments chargeable to such condominium and shall be payable to the Association by the Owner of such condominium.

(B) Insurance. The Association shall maintain the following policies of insurance:

- 1. A master hazard policy insuring all improvements, equipment and fixtures in the Project (including the units as originally constructed); The Board shall review the limits of such insurance at least every year and shall increase or adjust the same, if necessary, to provide the coverage and protection required by this Declaration.
- 2. If obtainable, an occurrence version comprehensive general liability policing insuring the Association, its agents, the owners and their respective family members, against liability incidental 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 the minimum amounts required by California Civil Code §1365.7 and 1365.9;
- 3. Worker's Compensation insurance to the extent necessary to comply with all applicable laws of the State of California or the regulations of any governmental body or authority having jurisdiction over the Project.
- 4. A fidelity bond or insurance covering officers, directors and employees that have access to any Association funds.

- 5. Flood insurance if the Project is located in an area designated by an appropriate governmental agency as a special flood hazard area.
- 6. Officer and Director's liability insurance in the minimum amounts required by California Civil Code §1365.7;
- 7. Earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates in the opinion of the Board.

The amount, term, and coverage of any policy required hereunder (including the type of endorsements, the amount of the deductible, the named insurers, the loss payees, standard mortgage clauses, and notices of changes or cancellations) 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 customarily carried by prudent owners of similar property in the County in which the Project is located.

Each Owner appoints the Association or any insurance trustee designated by the Association to act on behalf of the Owners in connection with insurance matters arising from any insurance policy maintained by the Association, including without limitation, representing 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 condominiums (including Declarant) and mortgagees, and, if obtainable, cross liability endorsements or severability of interest endorsements insuring each insured against the liability of 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).

No Condominium Owner shall separately insure his or her Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policy that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. The insurance maintained by the Association does not cover the Owner or occupant's personal property and does not cover personal liability for damages or injuries occurring within the Unit. Any Owner can insure his or her personal property against loss and obtain any personal liability insurance that he or she desires. In addition, any improvements made by the Owner within his or her Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance". The Owner shall not obtain such insurance if the policy referred to in Section 5.1(B) will provide coverage for such improvements.

Each buyer of a Condominium shall pay the portion of the premiums(s) attributable to the buyer's Condominium (prorated to the date of close of escrow) for the policy or policies purchased by the Association.

The Association shall make available to all Members a copy of the Association's policy to enable Members to insure their Units without duplicating insurance carried by the Association and inadvertently triggering a co-insurance clause in the Association's policy referred to in Section 5.1B(1).

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 mortgages 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 assess the cost thereof to the member or members responsible for the existence of such lien, provided, however, that said member(s) is given notice and the opportunity for a hearing prior to discharge of the lien.
- (D) Assessments. The Association shall fix, levy, collect and enforce assessments as provided 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.

Section 5.2 Powers. In addition to the powers enumerated in its Bylaws, or elsewhere provided herein, and without limiting the generality thereof, the Association shall have the following p o w e r

- A. Utility Service. The Association shall have the authority (but not the obligation) for the benefit of all of the condominiums, water, gas and electrical service, central television equipment, and refuse collection etc. as stated.
- B. Easements. The Association shall have authority, by documents signed by the President and the Secretary, to grant permits, licenses, and easements in addition to those shown on the Map or Condominium Plan and/or referred to in Article 6, where necessary for roads, utilities, central television, and sewer facilities over the Common Area to serve the common and open space areas and the Condominiums, and/or where necessary to satisfy or achieve appropriate governmental purpose or request.
- C. Manager. The Association shall have the authority to employ a manager or other person and to contract with independent contractors or managing agents to perform all or any part of the day to day management 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 (I) year term and shall provide for the right

to terminate by the Association with cause on thirty (30) days written notice, or without cause or payment of a termination fee upon ninety (90) days written notice.

- D. Adoption of Rules. The Association may adopt reasonable rules not inconsistent with this Declaration relating to the use of the Common Area, the Restricted Common Area and all facilities thereon, and the conduct and use thereof and the conduct of Owners and their tenants and guests with respect to the property and other Owners.
- E. Access. For the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of Directors of their respective responsibilities, the Association's agents or employees shall have the right, after reasonable notice to the Owner thereof, to enter any Unit or to enter any portion of the Common Area at reasonable hours. Except in the case of any emergency, twenty-four (24) hours advance notice shall be given to the Owner or occupant prior to any entry of a Unit, and such entry shall be made at reasonable hours.
- F. Assessments, Liens, Penalties and Fines. The Board shall have the power to levy and collect assessments in accordance with the provisions of Article IV hereof. The Board may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Condominium Documents and the unrecorded Rules adopted by the Board or the Association. Penalties may include, but are not limited to fines, temporary suspension of voting rights or other appropriate discipline, provided that the member is given notice in a hearing as provided in the By-Laws before the imposition of any fine or disciplinary action. The Board shall have the power to adopt a schedule of reasonable fines and penalties for violations of the terms of this Declaration, and for violations of any Rules adopted pursuant to Section 5.2D. The penalties prescribed may include suspension of all rights and privileges of membership; provided. however, that suspension for failure to pay assessments shall be for a maximum period of thirty (30) days, renewable by the Board for an additional thirty (30) day period or periods until paid; and provided further that suspension for infraction of Rules or violation of this Declaration, other than failure to pay assessments, shall be limited to a maximum period of thirty (30) days per infraction or violation and shall be imposed only after a hearing before the Board. The Board may extend the period for an additional period or periods in the case of continuing infraction or violation, and no hearing need be held for such extension. Written copies of Rules and the schedules penalties shall be furnished to Owners. The Board shall assess fines and penalties and shall enforce such assessments as appropriate under applicable law.
- G. Enforcement. The Association shall have the authority to enforce this Declaration as provided in Section 9.1 hereof.
- H. Acquisition 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, dedicate for public use, or otherwise dispose of, real or personal property in connection with the affairs of the Association.
- 1. Loans. The Association shall have the power to borrow money, and only with the consent (by vote or written consent) of two-thirds (2/3) of the members, to mortgage, to pledge, encumber or hypothecate any or all of its real or personal property as security for monies borrowed or debts incurred.

- J. Contract. The Association shall have the power to contract for goods and/or services for the Common Area facilities and interests or for the Association, subject to any limitations set forth in the Condominium Documents.
- **K. Delegation.** The Association shall have the power to delegate its authority and powers to committees, officers or employees of the Association. The Association may not, however, delegate the following powers: i) To levy fines, hold hearings, or impose discipline; ii) To make capital expenditures; iii) To file suit, to cause a claim of lien to be recorded, or to foreclose for failure to pay assessments; or iv) To levy regular and special assessments.
- L. Security. The Association shall have the power (but not the obligation) to contract or enforce security service for the Common Area.
- M. Appointment of Trustee. The Association, or the Board on behalf of the Association, shall have the power to appoint a trustee to enforce assessment liens as provided in Section 4.10 hereof, and as provided in California Civil Code §1367(b).
- N. Litigation/Arbitration: The Association, subject to Section 9.1 of this Declaration, shall have the power to institute, defend, settle or intervene in litigation, arbitration, mediation or administrative proceedings on behalf of the Association pursuant to Code of Civil Procedure §383.
- O. Other Powers. In addition to the powers enumerated in this Declaration and in the Bylaws, the Association may exercise the powers granted to a nonprofit mutual benefit corporation, as such exist from time to time, under the California Corporations Code.

#### **ARTICLE VI**

#### UTILITIES

Section 6.1 Owners' Rights and Duties. The rights and duties of the Owners of Condominiums within the Project with respect to electric, telephone, water, gas and sanitary sewer lines, facilities and connections; cable or master television antenna lines, facilities and connections; and security system lines, facilities and connections (collectively referred to as "utility facilities") shall be as follows:

A. Whenever utility facilities are installed within the Property, which utility facilities, or any portion thereof, lie within or upon Condominiums owned by other than the Owner of a Condominium served thereby, the Board or its authorized representative shall have the right to enter (or to have the utility company enter) upon the Condominiums within or upon which such utility facilities, or any portion thereof, lie, in connection with construction, maintenance or emergency repair for the benefit of the Common Area or the Owners in common.

B. Whenever utility facilities are installed within the Property, which utility facilities serve more than one Condominium, the Owner of each Condominium served thereby shall be entitled to the full use and enjoyment of the portions of such utility facilities as service his Condominium.

Section 6.2 Easements for Utilities and Maintenance. Easements over and under the Property for the installation, repair and maintenance of utility facilities, drainage facilities, walkways, and landscaping, as shown on the recorded Map of the Property, and as may be hereafter required or needed to service the Property are hereby reserved by the Association, together with the right to grant and transfer the same.

Section 6.3 Association's Duties. The Association shall maintain all utility installations located in the Common Area except those installations maintained by utility companies, public, private or municipal. The Association shall pay all charges for utilities supplied to the Project, except those metered and charged separately to the Condominiums.