
**FIRST RESTATED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE GARDENS - SUNNYVALE**

This First Restated Declaration of Covenants, Conditions and Restrictions for The Gardens - Sunnyvale (the "Declaration") is made on the date hereinafter set forth by THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (the "Association").

RECITALS

A. The Association is an "association", as that term is defined in California Civil Code Section 1351(a), which has been created to manage that certain condominium project located in Santa Clara County, California, commonly known as The Gardens - Sunnyvale, which is more particularly described in attached Exhibit "A" (the "Project").

B. The developer of the Project, UWC-Sunnyvale, a California limited partnership ("Declarant"), executed the Declaration of Covenants, Conditions and Restrictions For Tracts 7245 and 7246 which was Recorded on July 30, 1984 as Instrument No. 8141189 in Book I757, Page 579 et seq., of the Official Records of Santa Clara County, California (the "Original Declaration");

C. Following the Recordation of the Original Declaration, the Declarant executed the following (collectively referred to as the "Declarations of Annexation"):

1. First Declaration of Annexation Tract 7536, which was Recorded on January 11, 1985, in Book J173, Page 731 et seq., of the Official Records of Santa Clara County, California;

2. Declaration of Annexation Tract 7537, which was Recorded on May 31, 1985, in Book J359, Page 1906 et seq., of the Official Records of Santa Clara County, California;

3. Declaration of Annexation Tract 7538, which was Recorded on February 27, 1986, in Book J614, Page 2127 et seq., of the Official Records of Santa Clara County, California;

4. Declaration of Annexation Tract 7539, which was Recorded on February 27, 1986, in Book J614, Page 2142 et seq., of the Official Records of Santa Clara County, California;

5. Declaration of Annexation Tract 7244, which was Recorded on February 19, 1987, in Book K042, Page 2115 et seq., of the Official Records of Santa Clara County, California;

6. Declaration of Annexation Lot 1 of Tract 7540, which was Recorded on June 25, 1987, in Book K201, Page 92 et seq., of the Official Records of Santa Clara County, California; and

7. Declaration of Annexation Lot 2 of Tract 7540, which was Recorded on October 15, 1987, in Book K326, Page 168 et seq., of the Official Records of Santa Clara County, California.

D. The Original Declaration, as supplemented by the Declarations of Annexation, established certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in the real property comprising the Project.

E. The Owners of at least seventy-five percent (75%) of the condominium units desire to amend, supersede, and restate the Original Declaration pursuant to Article XX, Section 6 thereof.

NOW, THEREFORE, it is hereby declared as follows:

1. The Original Declaration is hereby amended, superseded and restated to read in its entirety as set forth in this Declaration.

2. All of the real property comprising the Project constitutes a "condominium project", as that term is defined in California Civil Code Section 1351(f).

3. All of the real property comprising the Project is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the Project and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the real property comprising the Project and any part thereof.

4. All of the covenants, conditions, and restrictions set forth in this Declaration shall constitute enforceable equitable servitudes as provided in California Civil Code Section 1354, shall constitute covenants that shall run with the real property comprising the Project, and shall be binding upon and inure to the benefit of each Owner of any portion of such real property or of any interest therein and their heirs, successors, and assigns.

ARTICLE 1 DEFINITIONS

1.1 Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.

1.2 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.

1.3 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 6.5.

1.4 Articles. "Articles" shall mean the Articles of Incorporation of The Gardens - Sunnyvale Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.

1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.

1.6 Association. "Association" shall mean The Gardens - Sunnyvale Homeowners Association, its successors and assigns.

1.7 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.

1.8 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.

1.9 City. "City" shall mean the City of Sunnyvale, County of Santa Clara, State of California.

1.10 Common Area. "Common Area" shall mean all of the property comprising the Project, but excluding the Units.

1.11 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.

1.12 Condominium. "Condominium" shall mean an estate in real property as defined in California Civil Code sections 783 and 1351(f), consisting of an undivided interest in common in the Common Area, and a separate fee interest in a Unit together with any easements or other interests in the Project or any portion thereof as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.

1.13 Condominium Plan. "Condominium Plan" or "Plan" shall mean the plans recorded pursuant to California Civil Code section 1351 with respect to the Project and any amendments thereto which identify the Common Area and each separate interest in the Project.

1.14 County. "County" shall mean the County of Santa Clara, State of California.

1.15 Declaration. "Declaration" shall mean this instrument, as it may be amended from time to time.

1.16 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 6.8.

1.17 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Residents of a particular Unit or Units, including, without limitation, those portions designated on the Condominium Plans as "Restricted Common Area" and the storage closets assigned to the Units. An exclusive easement to such Exclusive Use Common Area may be specifically granted in each individual grant deed conveying a Condominium;

however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement herein granted.

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

1.19 Maintenance. "Maintenance" shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.

1.20 Member. "Member" shall mean each person or entity who is a record owner of a fee or undivided fee interest in any Condominium within the Project, except any such person or entity who holds an interest in a Condominium merely as security for the performance of an obligation.

1.21 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as more particularly set forth in the Bylaws.

1.22 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.

1.23 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as under a Mortgage.

1.24 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Condominium which is a part of the Project, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation.

1.25 Project. "Project" shall mean all of the real property described in this Declaration which comprises the Gardens - Sunnyvale Condominium Project, including all structures and other improvements located at any time upon the real property.

1.26 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 6.7.

1.27 Repair. "Repair" shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.

1.28 Replacement. "Replacement" shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.

1.29 Resident. "Resident" shall mean any person who resides in a Unit within the Project whether or not such person is an Owner as defined in Section 1.24 above.

1.30 Rules. "Rules" shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Project or any part thereof as adopted and published by the Board of Directors from time to time.

1.31 Simple Majority. "Simple Majority" shall mean a majority of the votes (i) represented and voting at a meeting at which a quorum is present, or (ii) cast by written ballot (in conformity with Corporations Code section 7513) where the number of ballots received equals or exceeds the number required to establish a quorum.

1.32 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 6.6.

1.33 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Unit, excluding any Units as to which an Owner is not then a Member in Good Standing.

1.34 Unit. "Unit" shall mean the elements of a Condominium that are not owned in common with the other Owners of Condominiums within the Project, which Units are shown as separately designated and numbered areas on the Condominium Plan. Each Unit consists of the interior space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and window frames, doors, door frames and trim, of each of such interior spaces; provided, however, that bearing walls located within the aforesaid boundaries of a Unit (except for the finished surfaces thereof) are Common Area and not part of the Unit. Fireboxes, chutes, chimneys, and flues are Exclusive Use Common Area appurtenant to the Unit which they serve. Each Unit includes the utility installations, fixtures, and appliances located within its boundaries and/or which exclusively serve the Unit including, without limitation, oven, range and fans, garbage disposal unit; dishwasher unit; hot water heaters; space heaters; lighting fixtures; heating conduits; any air conditioning units, condensers, and equipment serving such Unit; bathtubs, sinks and wash basins, shower stalls, toilets, and other plumbing fixtures; and interior partitions which are located entirely within the boundaries of the Unit they serve. Each Unit includes both the portion of the building so described and the air space so encompassed. In interpreting deeds, the Declaration, and the Condominium Plan, it shall be conclusively presumed that the then existing physical boundaries of a Unit are its boundaries, rather than the metes and bounds or other description expressed in the deed, the Declaration, or the Condominium Plan, regardless of any settling or lateral movement of buildings and regardless of minor variance between the boundaries shown on the deed, the Declaration, or the Condominium Plan and the actual existing physical boundaries.

ARTICLE 2

PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

2.1 Ownership of Condominium; Exclusive Easements. Ownership of each Condominium within the Project shall include (i) a designated Unit, (ii) the respective percentage ownership interest as tenant in common in a portion of the Common Area as set forth in Exhibit "B", (iii) a Membership in the Association, and (iv) any exclusive easements or easements appurtenant to such Unit upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan. The undivided interests in the Common Area established in this Declaration cannot be changed. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.

2.2 Owners Non-Exclusive Easements of Enjoyment. Every Owner of a Condominium shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Project for ingress, egress, and support over and through the Common Area; provided, however, such non-exclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Units over Exclusive Use Common Area including, without limitation, any garages which are designated as Exclusive Use Common Area on the Plans. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Condominium, subject to the following rights and restrictions:

- (a) The right of the Board of Directors to establish and enforce reasonable rules and regulations governing the use of the Common Area and facilities thereon, including, without limitation, rules limiting the number of guests of Members permitted to use the Common Areas and facilities thereon at any one time;
- (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;
- (c) The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's rights and privileges as a Member, including voting rights and right to use the recreational facilities for any period during which any Assessment against such Owner's Condominium remains unpaid and/or for infraction of the Governing Documents of the Association;
- (d) The right of the Board, as set forth in Section 3.4, to grant easements and rights of way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;
- (e) The right of the Board, subject to approval of the Members as set forth in Section 5.11, to sell or transfer property owned by the Association;
- (f) The right of the Board to mortgage, pledge, encumber, or otherwise hypothecate the Common Area and facilities thereon as security for money borrowed by the Association; and

- (g) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common.

2.3 Delegation of Use. Any Owner may delegate his rights of use and enjoyment, including easements, in the Project to the members of his family, tenants, contract purchasers, guests and invitees, subject to the terms of the Governing Documents. Upon the leasing or renting of a Unit, or upon occupancy of a Unit by a contract purchaser, the Owner shall be deemed to have delegated and assigned all such rights exclusively to the tenants or contract purchasers of such Unit. Each Owner shall notify the Secretary of the Association of the names of any tenants or any such contract purchasers of such Owner's Unit. Each Owner, tenant, or contract purchaser shall also notify the Secretary of the Association of the names of all members of his or her household to whom such Owner, tenant, or contract purchaser has delegated any rights of enjoyment in the Project as provided herein and the relationship which each such person bears to such Owner, tenant, or contract purchaser. Any rights of enjoyment delegated pursuant to this section are subject to suspension to the same extent that rights of Owners are subject to suspension as provided in the Governing Documents.

2.4 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.

2.5 Mechanic's Liens. In the event there shall be filed against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Project or his or her Condominium, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

ARTICLE 3 EASEMENTS

3.1 Easements in General. In addition to all easements reserved and granted in the Condominium Plan and on the subdivision map(s) and the easement provided in Section 2.2, there are hereby specifically reserved and granted for the benefit of the Units and Unit Owners in common and for each Unit and Unit Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this article.

3.2 Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Unit and such portion or portions of the Common Area adjacent thereto and/or as between adjacent Units due to the unwillful placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon in accordance with the terms of the Declaration; provided, however, that in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, a tenant, or the Association.

In the event that a structure on any Unit is partially or totally destroyed and then repaired or rebuilt in accordance with the provisions of the Declaration, the Owners of each Unit agree that minor encroachments over adjoining Units shall be permitted and there shall be easements for the maintenance of the encroachments so long as they shall exist.

3.3 Utility Easements. Easements over and under the Project or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Condominium Plan, and as may be hereafter required or needed to service the Project, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for (i) those installations maintained by utility companies, public, private, or municipal and (ii) utility installations which are within a Unit as defined in Section 1.34. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

3.4 Easements Granted by The Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining thereon, therein, or thereunder overhead or underground lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities, and for any other purposes deemed by the Board to be appropriate and not inconsistent with the purposes and interests of the Association, and each purchaser, in accepting a deed to a Unit, expressly consents thereto; provided, however, that no such easements may be granted if such easement would interfere with the use, occupancy, or enjoyment by an Owner or Resident of any Unit and any existing exclusive easements over Common Area appurtenant thereto, if any, without the consent of the Owner(s) affected.

ARTICLE 4 USE RESTRICTIONS

4.1 Residential Use. Units shall be occupied and used for residential purposes only.

4.2 Rental Restrictions. Subject to the provisions of the Governing Documents and this section, an Owner shall have the right to lease his or her Unit, provided (i) the Owner notifies the Board of the name of the tenants and members of the tenants' household and provides the Board with a copy of the signed lease, and any amendments thereto, at the beginning of the tenancy term and thereafter on an annual basis; and (ii) there is a written lease or rental agreement which expressly provides that the agreement is subject to the provisions of the Governing Documents and that the breach of any provision of the Governing Documents shall constitute a default under the lease.

- 4.2.1 Short-Term Rentals. With the exception of a lender in possession of a Unit following a default in a first mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Unit for transient or hotel purposes, which shall include, but is not limited to, rental for any period less than thirty (30) days or any rental where the occupants of a Unit are provided customary hotel services such as room service for food and beverage, maid service, periodic furnishing of clean bed linen or towels, laundry service, and bellboy services. No Owner may lease less than the entire Condominium.
- 4.2.2 Owner's Responsibility for Tenant's Actions. Each Owner leasing a Unit shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of all Association Governing Documents. An Owner leasing or renting a Unit shall provide the tenant(s) with copies of the Governing Documents and all subsequent amendments.
- 4.2.3 Association's Enforcement Rights. In the event a tenant's conduct involves damage or misuse of any Common Area or facilities on any Common Area or constitutes an unreasonable nuisance to Residents, the Association shall be entitled to, but shall have no obligation to, maintain an eviction action against such tenant to the same extent as the Owner of the Unit, the Association being deemed to be a third party beneficiary of any lease or rental agreement involving any Unit within the Project. The Association's right to maintain an eviction action shall arise only in the event that (i) the Association has given notice to the Owner detailing the nature of the infraction and the Owner has had a reasonable opportunity to take corrective action or to appear before the Board to present arguments as to why eviction by the Association is not necessary, and (ii) the Owner has not taken action to prevent and/or correct the actions of the tenant giving rise to the damage or nuisance.
- 4.2.4 Indemnification of Association. Every Owner of a Unit that is occupied by persons other than the Owner pursuant to a lease or otherwise, agrees to and shall indemnify and defend the Association, its officers, directors, and agents and shall hold them harmless from any cost, loss, claim, or damages of any kind, including but not limited to attorneys' fees arising out of the conduct or presence of the occupants of the Unit upon the Project, including any such arising or alleged to have arisen out of the enforcement or nonenforcement by the Association of the Governing Documents against such occupants. Without limiting the generality of the foregoing, all costs, including attorneys' fees incurred by the Association to enforce the Governing Documents against such occupants, including eviction as

provided herein, shall be reimbursed to the Association by the Owner and may be assessed by the Association as a Reimbursement Assessment.

4.2.5 Requirements of Written Lease or Rental Agreement. Any lease or rental of any Unit within the Project shall be by written lease or rental agreement, a copy of which shall be filed with the Board as specified at Section 4.2 above, which shall expressly provide that its terms are subject to all of the provisions of the Governing Documents, that the tenants and lessees of such Unit shall comply with all provisions of the Governing Documents, and that any violation of any provisions of the Governing Documents shall constitute a breach and default of the terms of such lease or rental agreement.

4.2.6 Requirement of Inclusive Lease. No Owner may lease, rent or hire any garage, accessory building, or similar improvement to anyone who does not have the right of possession of the entirety of the Unit.

4.3 Time-Share Arrangements. No Unit or Units shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Unit or Units in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Unit in the Project by any Owner or his or her or its social or familial guests.

4.4 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Project except such professional and administrative professions as may be permitted by applicable governmental ordinances and provided that there shall be no external evidence thereof.

4.5 Family Day Care Centers. No family day care center for children shall be permitted within the Project except as specifically authorized by California Health and Safety Code §1597.40 and other applicable state statutes. The owner/operator of any permitted day care facility shall provide the Association with prior written notice as to its operation, and comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, as provided under Health & Safety Code section 1597.531. This subsection is intended to be and shall be conclusively deemed to be the written notice to the operator or owner from the Association as specified in Health and Safety Code section 1597.531;
- (b) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and operation of the day care center;
- (c) Abide by and comply with all of the Association's Rules;

- (d) Supervise and be completely responsible at all times for children for whom day care services are provided while they are within the Project; and
- (e) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

4.6 Community Care Facilities. Except for residential facilities defined as community care facilities under Health & Safety Code section 1502, serving six (6) or fewer persons, no health care facilities operating as a business or charity and serving the sick, elderly, disabled, handicapped or retarded shall be permitted in the Project. The owner/operator of any such community care facility shall comply with all local and state laws regarding the licensing and operating of such a community care facility, and, in addition, to the extent permitted by applicable laws, shall:

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of such a community care facility;
- (b) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and operation of such a community care facility;
- (c) Abide by and comply with all of the Association's Rules as applied to Units in the Project in a general manner;
- (d) Supervise and be completely responsible for occupants of such a residential facility at all times while they are within the Project; and
- (e) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of such a community care facility to these conditions, or other reasonable requests.

4.7 Offensive Conduct, Nuisances, Noise. No noxious, harmful, or offensive activities shall be conducted upon or within any part of the Project, nor shall anything be done thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to any Residents of the Project, or which shall in any way interfere with their use of the Common Area and facilities thereon or the use and enjoyment of their Condominiums or Units. Without limiting any of the foregoing, no Resident shall permit noise, including but not limited to the barking of dogs, to emanate from the Resident's Unit, which would unreasonably disturb another Resident's enjoyment of his or her Unit or of the Common Area.

4.8 Use of the Common Area. All use of Common Area is subject to the Governing Documents. Without limiting the generality of the foregoing, no alterations or additions to the Common Area shall be permitted without the prior written approval of the Board; nothing shall be altered, constructed, placed, kept, stored, parked (except for vehicles as permitted by this Declaration), planted on, or removed from the Common Area without the prior written consent of the Board; and the Common Area shall be kept free of rubbish, debris, and other unsightly or unsanitary materials. Each Owner shall avoid causing any damage to the Common Area.

4.9 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within the Project that will increase the rate of insurance or result in

the cancellation of insurance under any insurance policy obtained by the Association, or which will be in violation of any governmental statute, ordinance, rule, or regulation. Nothing shall be stored in the Common Area without the prior consent of the Board. Each Owner and Resident shall comply with all requirements of all federal, state, and local governmental authorities and all laws, ordinances, rules and regulations applicable to his or her Unit.

4.10 Requirement of Architectural Approval. As addressed in greater detail in Article 10, construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to approval of the Board.

4.11 Sports Apparatus. No basketball standards (including so-called portable basketball standards) or fixed sports apparatus shall be placed upon or attached to any portion of the Project without the written permission of the Board.

4.12 Mailboxes and Exterior Newspaper Tubes. Mailboxes shall comply with all applicable postal regulations, and Architectural Rules, if any. There shall be no free-standing exterior mailboxes or newspaper tubes.

4.13 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained in the Project.

4.14 Antennas. No outside mast, tower, pole, antenna, or satellite dish shall be erected, constructed, or maintained on the Common Area including the outside of any Unit, except (i) those erected, constructed, or maintained by the Association, (ii) those expressly approved by the Board, (iii) those initially installed during the construction of the buildings, or (iv) as specifically permitted by law.

4.15 Animals.

4.15.1 Limitation on Pets. No dogs, cats, birds, or other animals of any kind shall be kept, maintained, or bred in any Unit or within the Project except that domestic dogs, cats and other customary household pets may be kept in reasonable numbers and size, subject to the Rules and any applicable local governmental ordinances, provided they are not kept, bred, or raised for commercial purposes. While in Common Areas each dog must be restrained on a leash held by a responsible person capable of controlling it.

4.15.2 Owner's Responsibility for Pets. The owner of each pet shall be responsible for immediately removing and disposing of any waste introduced to any portion of the Project by such pet. Each Owner, Resident, and any person bringing or keeping an animal within the Project shall be absolutely liable to the Association and all other persons for any injury or damage to persons or property caused by the animal brought upon or kept upon the Project by such person or by members of his or her family, tenants, guests, or invitees. The Owner shall indemnify the Association and its officers, directors, and agents against any and all claims, damages, losses, demands, liabilities, and expenses, including but not limited to attorneys' fees, arising out of or resulting from the presence or conduct of any animal brought upon or kept within the Project by the Owner, members of his or her family, guests, tenants, or invitees.

4.15.3 Pet Rules. The Board may adopt and enforce Pet Rules in addition to the provisions of this section. The Association shall have the right to prohibit the

keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person.

4.16 Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in covered sanitary containers. Such containers shall be located in areas designated in the Common Area for their storage. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of the Project, except in such containers.

4.17 Construction Materials, Construction Debris. No portion of the Project shall be used for the storage of building materials other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container.

4.18 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be maintained or operated within the Project except as is customary and necessary in connection with approved construction.

4.19 Signs. No sign of any kind shall be displayed to the public view from any portion of the Project except that this limitation shall not apply to:

- (a) Signs required by legal proceedings;
- (b) Signs which by law cannot be prohibited;
- (c) A single sign of customary and reasonable dimension and design, complying with the Architectural Rules and other Rules and reasonably located on a Unit advertising a Unit for sale or rent;
- (d) A single identification sign which has been approved by the Board located on a Unit identifying the number or address of the Unit and/or the names of the occupants;
- (e) Signs approved by the Association located at or near any entrance to the Project identifying the Project;
- (f) Signs required for traffic control and regulation of streets or open areas within the Project; and
- (g) Signs on the Common Area as approved by the Board for a purpose reasonably related to the affairs of the Association.

4.20 Vehicles and Parking.

4.20.1 Resident Parking; Limitation on Types of Vehicles. Vehicles of Residents shall not be parked anywhere in the Project except wholly within a garage. No trailer, camper, mobile home, motor home, recreational vehicle, boat, golf cart or similar equipment, motorcycle or any commercial vehicle or truck other than a standard size pickup truck, and no dilapidated, inoperable, or abandoned vehicle shall be parked, kept, stored, or permitted to remain upon any area within the Project, other than temporarily in accordance with the Rules, unless placed or maintained within an enclosed garage, or in an area designated by the Board for that purpose. The term "commercial vehicles" shall not

include sedans or standard size pickup trucks which are used for both business and personal uses, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

4.20.2 Guest Parking Areas. All parking areas within the Project, with the exception of the garage serving each Unit, are reserved for the guests of Residents. The Board shall have the authority, in accordance with Section 4.21, to establish limitations on the amount of time and frequency with which vehicles of guests are parked within the Project. No Resident may park within the Project except as provided in Subsection 4.20.1 above.

4.20.3 Noisy and Polluting Vehicles. No unreasonably noisy vehicles and no vehicles emitting foul smelling or offensive exhaust fumes shall be operated within the Project.

4.21 Parking Enforcement. In addition to the provisions of Section 4.20 above, the Board shall have the power and authority to adopt, promulgate, and enforce parking rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Project in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Project shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Condominium Owner responsible or whose household members, tenants, contract purchasers, or guests are responsible for the presence of such vehicle.

4.22 Garages/Parking Spaces. Each Owner and Resident shall keep his or her garage/parking space in a neat, orderly, sanitary, and safe condition. Each garage door shall remain closed except during ingress or egress or when necessary to provide ventilation for individuals working in the garage area.

4.23 Window Coverings. Drapes, window shades, and other window coverings shall be installed in the windows of all Units and shall comply with any rules adopted by the Board of Directors. In no event shall aluminum foil, newspaper, bed sheets or similar materials be placed in windows. All window coverings shall be maintained in good repair and condition at all times.

4.24 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Project, except in strict compliance with the provisions of this Declaration, including Article 10 concerning approval by the Board. In no event shall any such structure or any garage be used as a residence or for residential purposes, either temporarily or permanently.

4.25 Mineral Exploration. No Unit shall be used to explore for or to remove any water, oil, hydrocarbons, or minerals of any kind without the approval of the Board, and only if permitted by local ordinance.

4.26 Screens and Awnings. No screens (including screen doors), sunshades, or awnings shall be installed or maintained within the Project unless and until approval is obtained from the Board pursuant to Article 10.

ARTICLE 5

HOMEOWNERS ASSOCIATION

5.1 Management and Operation. The Association shall manage and operate the Project in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law. The Association shall have all of the powers set forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

5.2 Membership. Every Owner of a Condominium within the Project shall be a Member of the Association and shall remain a Member thereof until such time as his or her Condominium ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.

5.3 Voting. Only Members in Good Standing shall be entitled to vote, and only one vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.

5.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.

5.5 Association Rules. The Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Project and the conduct of business and affairs of the Association. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, including Exclusive Use Common Area; pets; signs; collection and disposal of refuse; minimum standards for maintenance of property; use of recreation facilities; parking and traffic regulations; rental or leasing of Units within the Project; and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.

5.6 Manager and Other Personnel. The Board of Directors shall have the power and authority to employ a manager and such other persons or entities as the Board shall deem appropriate to assist it in managing the Project and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws.

5.7 Assessments. The Board shall have the power and duty to levy and collect Assessments, as more particularly set forth in Article 6 of this Declaration.

5.8 Insurance. The Board shall procure and maintain liability insurance and property insurance as it shall deem proper and as more particularly set forth in the Bylaws.

5.9 Acquisition of Property. The Board acting on behalf of the Association shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, and maintain real or personal property in connection with the affairs of the Association.

5.10 Capital Improvements. The Board of Directors shall have the power and authority to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of two-thirds (2/3) of the Total Voting Power of the Association. Member approval shall not be required for the expenditure of any funds accumulated in a reserve fund for capital improvements so long as the expenditure is for the purpose for which the fund was established, nor shall it apply to any reconstruction governed by Article 7 of this Declaration.

5.11 Sale or Transfer of Association Property. Except as provided in Section 3.4, the Board of Directors shall not in any fiscal year sell or transfer (i) personal property owned by the Association having a value in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year; or (ii) the Common Area, or any portion thereof, without approval of at least seventy-five percent (75%) of the Total Voting Power of the Association.

5.12 Sale, Transfer or Dedication of Common Area to Public Agency or Utility. Except as provided in Section 3.4, the Board of Directors shall have the power to dedicate, sell or transfer all or any part of the Common Area to a public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members provided that the approval of seventy-five percent (75%) of the Total Voting Power is first obtained.

5.13 Access. The Board and its duly authorized agents or representatives shall have the right, after reasonable notice to the Owner thereof, to enter any Unit 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 their responsibilities.

5.14 Exclusive Easements. The Board shall not have the power to grant to Owners easements, licenses to use, and/or rights of way over the Common Area for their exclusive use.

ARTICLE 6 ASSESSMENTS AND LIENS

6.1 Covenant of Owner. Each Owner of a Condominium within the Project, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, shall be deemed to have covenanted and agreed to pay to the Association: (i) Annual Assessments, (ii) Special Assessments, (iii) Reimbursement Assessments, and (iv) Enforcement Assessments levied by the Association as hereinafter provided, together with all Additional Charges. Such deed or conveyance shall be deemed to vest in the Association the right and power to initiate all actions and procedures as the Board shall deem necessary or appropriate for the collection of such Assessments and Additional Charges and for the enforcement of the liens hereinafter provided for. Each Assessment levied by the Association under this Article 6, together with all Additional Charges, shall be a separate, distinct, and personal debt and obligation of the Owner against whom it is assessed, and shall bind his or her heirs, devisees, personal representatives, successors, and assigns. Such obligation to pay Assessments and Additional Charges and the right and power of the Association to initiate all actions and procedures for collection shall run with the land, so that each successive Owner or Owners of record of any Condominium within the Project shall, in turn, become liable to pay all such Assessments and Additional Charges assessed during the time he or she is record Owner of such Condominium. After an Owner transfers of record any Condominium he or she owns, he or she shall not be liable for any Assessments levied thereafter with respect to such Condominium. Such Owner shall remain personally liable, however, for all unpaid amounts due and owing at the time of transfer, together with Additional Charges accruing until time of collection. A contract seller of any Condominium shall continue to be liable for all Assessments and Additional Charges until a conveyance by deed of such Condominium is recorded in the Office of the County Recorder of Santa Clara County.

6.2 Creation of Lien. Each Assessment levied by the Association pursuant to this Declaration, together with all Additional Charges, shall be a charge upon the land and upon levy shall be secured by a continuing lien upon the property against which such Assessment is levied. The Association shall have a separate lien and a separate lien is hereby created upon each Condominium to secure the payment of any such Assessments and Additional Charges as may be levied under this Declaration. The lien provided for herein shall continue to secure all Assessments and Additional Charges levied upon any Condominium notwithstanding the transfer of record title to such Condominium, and any such transfer shall be subject to the Association's lien, provided that, prior to such transfer, a Notice of Delinquent Assessment has been recorded as provided in the Declaration and by law. The priority of all such liens on each Condominium shall be in inverse order so that upon the foreclosure of the lien for any particular charge on any Condominium, any sale of such Condominium pursuant to foreclosure of the lien will be made subject to all liens securing the respective monthly Assessments and Additional Charges on such Condominium for succeeding months.

6.3 Purpose of Annual Assessments. The Annual Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Project, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit, and interests of the Owners and Residents in the Project, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Units situated within the Project or which, in the opinion of the Board, shall be deemed to be necessary or proper for the management of the Project or of the affairs of the Association, or the benefit of the Condominium Owners, or for the enforcement of the Governing Documents.

6.4 Authority of the Board. The Board shall have the power and the duty to levy Annual and Special Assessments sufficient to meet the Association's obligations under the Governing Documents and applicable law.

6.5 Annual Assessments.

6.5.1 Calculation of Estimated Requirement. Not later than forty-five (45) days prior to the beginning of each fiscal year, the Board shall complete and distribute to all Owners an estimate of the net funds required by the Association for such fiscal year, including a reasonable amount allocated to contingencies and to a reserve fund for restoration, repair, and/or replacement of those components for which the Association is responsible and which must be repaired or replaced on a periodic basis; to manage, administer, operate, and maintain the Project; to conduct the affairs of the Association; and to perform all of the Association's duties in accordance with this Declaration.

6.5.2 Allocation of Annual Assessment. The Board shall allocate and assess the amount of estimated required funds equally among the Condominiums by dividing the amount by the number of Condominiums within the Project. Unless the Board shall designate otherwise, Annual Assessments shall be levied on an annual basis and shall be paid in twelve (12) equal monthly installments during the fiscal year, and each installment shall be due and payable on the first day of each month.

6.5.3 Surplus Funds. If, as of the end of any fiscal year, there is a surplus of cash in the Association's current maintenance and operating account, as reflected in the Association's financial statement for such fiscal year, such surplus shall be applied to reserves unless some other disposition of such surplus funds is determined by the vote of the Members.

6.5.4 Increases in Annual Assessment. Except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

6.6 Special Assessments.

6.6.1 Purpose of Special Assessments. If at any time during any fiscal year the Annual Assessment proves inadequate for any reason, including nonpayment of any Owner's share thereof or the unexpected repair, replacement, or reconstruction of improvements located in the Project, or if funds are otherwise required for any authorized activity of the Association, the Board may levy a Special Assessment in the amount of such actual or estimated inadequacy or cost.

6.6.2 Allocation of Special Assessments. Except as provided in Article 7 of this Declaration, Special Assessments shall be allocated and assessed among the Condominiums in the same manner as Annual Assessments.

6.6.3 Approval of Special Assessments. Except in the case of an emergency situation as defined in Civil Code section 1366, in any fiscal year the Board may not levy Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, except upon the affirmative vote or written consent of a majority of the Members voting on any such Special Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than fifty percent (50%) of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

6.7 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against any Owner and his or her Condominium if a failure by such Owner, or any person or pet for whom the Owner is responsible, to comply with any provision of the Governing Documents has necessitated or resulted in an expenditure of funds by the Association to deal with such lack of compliance or to bring such Owner or his Condominium into compliance. A Reimbursement Assessment shall include any costs, including attorneys' fees, incurred by the Association, including costs of collecting from an Owner any amount which the Owner is obligated to pay to the Association. A Reimbursement Assessment shall be due and payable to the Association when levied.

6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.

6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.

6.10 Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.

6.11 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Condominium by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent

Assessment, the Association shall provide notice to the Owner as required by Civil Code section 1367(a) or other applicable statute. The Notice of Delinquent Assessment shall be mailed in the manner set forth in Civil Code section 2924b to all record owners of the Unit no later than ten (10) days after recordation as required by Civil Code section 1367(b). No procedures shall be initiated to foreclose the lien securing any Assessment levied under this article until after the expiration of thirty (30) days following the recording of a lien pursuant to Civil Code section 1367(b) or other applicable statute. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect such sums, including all Additional Charges.

6.12 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the Civil Code of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy the lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at the sale. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision, and it must so proceed upon the written request therefor signed by any five (5) Owners. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.

6.13 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.

6.14 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this article shall have priority as of the date of recording of the original Declaration applicable to the Project over all other liens and encumbrances applicable to the Condominiums; provided, however, that such Assessment lien shall be subordinate to the lien of any first mortgage or first deed of trust recorded against the Condominium; and provided, further, that such subordination shall apply only to the Assessments which have become due and payable prior to the sale of such property pursuant to a decree of foreclosure of any such mortgage or deed of trust, or pursuant to a power of sale contained in any such mortgage. Such foreclosure sale shall not relieve such property from liability for any Assessments and Additional Charges thereafter becoming due, nor from the lien of any subsequent Assessment.

6.15 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION OPERATING ACCOUNT and THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION RESERVE ACCOUNT. The Assessments collected by the Association shall be properly deposited into such accounts. The Board shall allocate a portion of the Annual Assessments as collected for the annual maintenance and operation of the Project and another portion of the funds as collected as reserves for contingencies, replacement, and deferred maintenance of the capital improvements of the Project, as specified in the annual budget.

6.16 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this article, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this article.

6.17 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Charges, and liens created herein:

- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use; and
- (b) Any Condominium which is owned by the Association as a result of the Association having acquired such Condominium through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Association is record owner of such Condominium; and
- (c) All Common Area.

ARTICLE 7 DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION

7.1 Single Unit. If the residence building is damaged by fire or other casualty and the damage is limited to a single Unit and such portions of Common Areas as may form a structural part thereof, all insurance proceeds payable by reason thereof shall be paid to the Owner or Mortgagee of such Unit, as their respective interests may appear, and such Owner or Mortgagee shall use the proceeds to rebuild or repair the damaged Unit and the portions of the Common Area in accordance with the original plans and specifications therefor. In the event the insurance proceeds are insufficient to complete such work, the Unit Owner(s) shall pay such additional sums as may be necessary to complete such rebuilding and repair. Repair or rebuilding shall be commenced within a reasonable time, which shall in no event exceed one (1) year after the occurrence of the damage or destruction.

7.2 Damage to More Than One Unit. If any residence building is damaged by fire or other casualty and such damage extends to two or more Units, or extends to any part of the Common Areas other than a part forming a structural part of one Unit, then:

- (a) If the available insurance proceeds do not exceed the sum of Seventy-Five Thousand Dollars (\$75,000.00) and the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Ten Thousand Dollars (\$10,000.00), such proceeds shall be paid to the insurance trustee hereinafter designated. The Association shall thereupon contract to repair or rebuild the damaged elements of the Project in accordance with the original plans and specifications therefor and the funds held by the insurance trustee shall be used for that purpose. If the insurance proceeds are insufficient to defray the costs of repairing or rebuilding, the Association shall levy a Special Assessment on all Owners, as provided in Section 7.2(b)(iii), to make up any deficiency;
- (b) If Subparagraph (a) is inapplicable, then:
 - (i) Insurance Proceeds. All insurance proceeds shall be paid to such bank or trust company as may be designated by the Board of

Directors, to be held in trust for the benefit of the Owners and their Mortgagees as their respective interests appear. The Association may enter into an agreement consistent with this Declaration with such insurance trustee upon such terms and conditions as are appropriate;

- (ii) Decision to Rebuild. The Board of Directors shall obtain firm bids, including an obligation to obtain a performance bond, from two or more responsible contractors to rebuild the damaged or destroyed portions of the Project in accordance with the original plans and specifications and shall, as soon as practicable thereafter, call a special meeting of the Owners to consider such bids. If the Board fails to obtain such bids and to call such a meeting within sixty (60) days after the casualty occurs, any Owner may obtain such bids, and call and conduct such meeting. At any such meeting, the Owners may, by vote of two-thirds (2/3) of the voting power, vote to reject all bids and therefore agree not to rebuild. Failure to reject all bids shall authorize the Board of Directors of the Association to accept the unrejected bid it considers most favorable. Failure by the Board and the Owners to call such a meeting or to repair such casualty damage within twenty-four (24) months from the date such damage occurred shall be a decision to not rebuild the damaged or destroyed elements of the portions of the Project;
- (iii) Special Assessment. If a bid is to be accepted, the Association shall levy a Special Assessment to make up any deficiency between the total insurance proceeds and the contract price for such repair or rebuilding, and such assessment and all insurance proceeds, whether or not subject to liens or Mortgages, shall be paid to the insurance trustee to be used for rebuilding. Such Special Assessment shall be levied against each Unit in the ratio that the square footage of the floor area of such Unit bears to the total square footage of the floor area of all Units to be assessed. If any Owner fails to pay the Special Assessment within thirty (30) days after the levy thereof, the Association shall utilize the maintenance fund to liquidate the deficiency. Upon payment to the insurance trustee of an amount equal to the contract price, the Association shall let the contract to the successful bidder;
- (iv) Sale of Project. Upon an election not to rebuild, the Association, as soon as reasonably practicable and as agent for the Owners, shall sell the entire Project, in its then condition, free from the effect of the Covenants which shall terminate upon such sale, on terms satisfactory to the Board of Directors. The net proceeds, and all funds held by the insurance trustee, shall thereupon be distributed to the Owners and to the Mortgagees of the interests of the Owners, as their respective rights and interests may appear. Each Owner shall receive of the amounts to be distributed, a sum equal to the whole of the amounts multiplied by a fraction the numerator of which is the value of each Unit immediately prior to destruction and the denominator of which is the value of all Units immediately prior to destruction. For purposes of determining value, the Board of Directors shall select an independent appraiser, who shall be either an MAI or SRA. Such appraiser shall, in

determining value, take into consideration, the size and location of the Units within the building as well as other physical and economic factors affecting value. In the absence of fraud or gross negligence, the determination of value by such appraiser shall be binding upon all Owners.

- (v) Judicial Partition. Within sixty (60) days after such damage occurs, the Association or if it does not, any Owner, the insurer, the insurance trustee, or any Mortgagee of any Owner shall record a sworn declaration stating that such damage has occurred, describing it, identifying the residence building sustaining such damage, the name of any insurer against whom claim is made, and the name of any insurance trustee, reciting that the sworn declaration is recorded pursuant to this section of this article of the Declaration, and that a copy of such sworn declaration has been served pursuant to the provisions of this article on the Owners. If the Owners decide not to rebuild, either by calling a meeting and rejecting all bids presented or by failing to call such a meeting and failing to repair such damage within twenty-four (24) months after the damage occurs, then the Board of Directors, or if it does not, any Owner or Mortgagee of the interest of any Owner, may record a sworn declaration setting forth such decision and reciting that under the provisions of this Declaration, judicial partition of the Project may be obtained pursuant to the laws of the State of California. Upon final judgment of a court of competent jurisdiction decreeing or adjudging such partition, this Declaration shall terminate.

7.3 Sale by Unanimous Consent. If an action for condemnation of all or a portion of the Project is proposed or threatened by any governmental agency having the power of eminent domain, then, on the unanimous written consent of all Owners (or of all affected Owners, in the case of a sale of less than all of the Project) and after written notice to all Mortgagees, the Project, or a portion of it, may be sold.

7.4 Distribution of Sale Proceeds or Condemnation Award.

- (a) Total Taking. Upon the sale under threat of condemnation, or upon the making of an award upon sale proceeds or condemnation award shall be distributed to the Owners and their respective mortgagees, as their respective interests may appear, in the manner and ratios provide in Section 7.2(b)(iv).
- (b) Partial Taking. Upon the sale under threat of condemnation of, or upon the making of an award in condemnation with respect to, less than all of the Project, the proceeds shall be distributed as follows:
 - (i) The severance damages and the damages for taking of common facilities (or portion of the sales proceeds paid in lieu of such damages) shall be retained by the Association for the purpose of restoring the remaining Common Areas and structures to the condition in which they were prior to the sale or taking.

- (ii) The balance of the award or sale proceeds shall be paid to the Owners of Units totally taken and to their Mortgagees, as their respective interests may appear, in the ratio that the value of each Unit totally taken prior to such taking. Value shall be determined in the manner provided in Section 7.2(b)(iv).

In the event that no apportionment of the award as between (i) and (ii) is made in the sale documents or in the judgment of condemnation, and in the further event that the Owners cannot agree to such an apportionment, the matter shall be submitted to binding arbitration under the rules of the American Arbitration Association.

7.5 Awards for Owners' Personal Property and Relocation Allowances. Where all of the Project is taken by eminent domain, each Owner shall have the exclusive right to claim all of the award made for his personal property, and any relocation, moving expense, or other allowance of a similar nature designed to facilitate relocation. Notwithstanding the foregoing provisions, however, or the provisions of Sections 7.3 and 7.4, the Association shall represent each Owner in an action to recover all awards with respect to such portion, if any, of an Owner's personal property as is at the time of any taking, as a matter of law, part of the real estate comprising any Unit, and shall allocate to such Owner so much of any awards as is attributable in the taking proceedings, or failing such attribution, attributable by the Board of Directors to such portion of Owner's personal property.

The amount so allocated shall be paid to the Owner entitled thereto, whether or not the Unit in which such Owner's personal property was located is to be restored by the Association. Notwithstanding restoration of the Unit, the Association shall have no responsibility for restoration of such Owner's personal property.

7.6 Notice to Owners and Listed Mortgagees. The Board of Directors immediately upon having knowledge of any taking of eminent domain of the Project, the buildings, the Units, the Common Areas, or any threat thereof, shall promptly notify all Owners, all holders of first mortgages on Units in the Project and those Mortgagees who have filed a written request for such notice with the Association.

ARTICLE 8 MAINTENANCE OF PROPERTY

8.1 Association Responsibility. The Association shall provide maintenance, repair, and replacement of the Common Area and all facilities, improvements, and landscaping thereon, including private streets, private driveways, walks and utility facilities, except for those utility facilities which are maintained by public or private utility companies or agencies, and all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair. However, the Association shall not be responsible for maintenance, repair, or replacement of Exclusive Use Common Area and other portions of the Common Area to the extent the responsibility therefor is expressly assigned to one or more Owners, as set forth in this article. The Association shall further be responsible for providing lighting, landscaping, gardening, and janitorial services for the Common Area and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in good condition and repair, including painting of the exterior surfaces of the building(s) and such other portions of the Common Area as the Board, in its discretion, determines to be necessary. The Board of Directors shall have the discretion to determine the nature, extent and level of care to be performed by the Association in discharging its obligations under this article.

- 8.1.1 Maintenance of Exteriors. The Association shall provide exterior maintenance upon each Unit which is subject to Assessment hereunder as follows:

The Association shall maintain, repair and, when necessary, replace:

- (a) the siding;
- (b) the roof coverings, roof structures, gutters, downspouts and chimneys; and
- (c) the garage doors and garage door frames.

8.2 Authority for Entry of Unit or Exclusive Use Common Area. The Association or its agents may enter any Unit or any portion of Exclusive Use Common Area which has been designated or assigned for the exclusive use of the Residents of a particular Unit, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Board is responsible or which it is authorized to perform, including without limitation the authorization provided in Section 8.6. Although under no obligation to do so, the Board, in its complete and sole discretion, may enter or may authorize the Association's agents to enter any Unit or any portion of Exclusive Use Common Area to effect emergency repairs where such repairs are necessary for safety reasons or to prevent or discontinue damage to the entered Unit or Exclusive Use Common Area, any other Unit or the Common Area. The cost of performing any such emergency repairs shall be charged to the Owner as a Reimbursement Assessment. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

8.3 Association Liability. Except as specifically provided in this article, the Association shall not be responsible or liable for any maintenance, repair, or replacement of a Unit or Exclusive Use Common Area or any improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

8.4 Owner Responsibility.

- 8.4.1 Maintenance of Units and Portions of the Common Area. Each Owner shall be responsible for the:

- (a) maintenance, repair, and replacement of his or her Unit or any portion thereof, including any equipment, utility facilities, fixtures, and appliances located therein, and the finished surfaces of the interior walls, ceilings, and floors of the Unit, in a clean, sanitary, workable, and attractive condition, subject to the provisions of this article;
- (b) cleaning, maintenance, repair, and replacement of all doors, windows, glass, and screens serving his or her Unit, both interior and exterior and including frames, except that the painting of the outside surface of the exterior doors and the cleaning, maintenance, repair, and replacement of garage doors and garage door frames shall be the responsibility of the Association; and

- (c) maintenance, repair, and replacement of the internal installations, appliances, equipment, and other features servicing his or her Unit, even though located partly outside of such Unit, including, without limitation, garbage disposals, hot water heaters, ranges, refrigerators, freezers, dishwashers, and other kitchen appliances, washing machines, dryers, light fixtures and light bulbs, heating, ventilating and air conditioning units, condensers and equipment, plumbing facilities, showers, bathtubs, sinks, toilets, telephone facilities, skylights, solar devices, and any other accessories within the boundaries of the Unit. The provisions of this subparagraph shall not be construed to permit any interference with or damage to the structural integrity of any building.

8.4.2 Exclusive Use Common Area. Each Owner shall further be responsible for providing maintenance, cleaning, and upkeep of any Exclusive Use Common Area which is appurtenant to his or her Unit, including, without limitation, the following:

- (a) any yard area, patio, balcony and deck, which has been assigned to such Unit, including any landscaping located within such areas;
- (b) fireplace (firebox) chutes and flues; and
- (c) the storage closets assigned to each Unit.

All planting and landscaping in yard areas, patios or balconies to which the Residents of a Unit have been assigned or granted a right of exclusive use shall be installed, maintained and replaced by the Owner and Resident of such Unit at the expense of the Owner and Resident in conformity with plans approved by the Board. Notwithstanding the above, the Association shall be responsible for (i) the maintenance, repair and replacement of the fences within the Project, including, without limitation, those bounding Exclusive Use Common Areas, (ii) the repair and replacement of all patios, balconies and decks, and (iii) the repair and replacement of the storage closets.

8.4.3 Garages. Regardless of whether the garage servicing each Unit is a part of the Unit or is Exclusive Use Common Area, each Owner shall be responsible for providing maintenance, cleaning, upkeep, repair and replacement of the interior of the garage, the automatic garage door opener (if any), and all garage door mounting hardware.

8.5 Interior Decorations. Each Owner shall have complete discretion as to furniture, furnishings, and interior decorating of the interior of his or her Unit and shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors bounding his or her Unit, and to substitute new finished surfaces for the finished surfaces existing on the walls, ceilings, floors, and doors, including, without limitation, substitution of paint for paper or paper for paint, substitution of any type of panel for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile, or substitution of wood for linoleum or tile or of linoleum or tile for wood; provided that no Owner shall do anything in or about his or her Unit that will affect the structural integrity of the building in which it is located, and provided further that windows shall be covered only by drapes or shades and shall not under any circumstances be painted or covered by foil, cardboard, or other similar materials.

8.6 Board Discretion. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Project or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner, and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.

8.7 Owner Liability. In the event the need for any maintenance, repair, or replacement is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenants, contract purchaser, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

ARTICLE 9 RIGHTS OF MORTGAGEES

9.1 Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage or deed of trust made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise.

9.2 Subordination of Assessment Liens. The lien of the Regular and Special Assessments established and created by any provision hereof shall be junior and subordinate to the lien of any first mortgage or first deed of trust encumbering the unit assessed. The transfer of a Unit as the result of the exercise of a power of sale or a judicial foreclosure (collectively "foreclosure") arising from a default under the first mortgage or first deed of trust shall extinguish the lien of assessments which were due and payable prior to such foreclosure. No such foreclosure shall relieve the new Owner, whether the former encumbrancer or a third party, from liability for any assessments becoming due after the date of such foreclosure or the Unit from the lien thereof.

9.3 Notice to Lenders. Association shall give notice in writing to any first mortgagee requesting such notice ("eligible holder" herein) or any insurer or governmental guarantor of a first mortgage requesting such notices ("eligible insurer or guarantor" herein) of:

- (a) Any condemnation or casualty loss which affects a material portion of the Project or any Unit or if the loss or taking to the Common Area exceeds \$10,000.00 or if the damage to an individual Unit exceeds \$1,000.00.
- (b) Any delinquency in the payment of assessment or charge owed or other default by the Owner of the Unit encumbered by such mortgagee of such Owner's obligations under the condominium documents, which default remains uncured for a period of sixty (60) days.
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action to amend this Declaration in a manner which would require the consent of a specified percentage of eligible mortgagees.

9.4 Inspection of Books. Each first mortgagee shall have the right to examine the books and records of the Association during reasonable business hours.

9.5 Mortgagees' Consent. Unless at least seventy-five percent (75%) of the first mortgagees (based on one vote for each first mortgage owned) or Owners (other than Declarant) of units have given their prior written approval, the Association shall not:

- (a) By act or omission seek to abandon or terminate the condominium regime.
- (b) Change the pro rata interest or obligations of any individual unit for (i) purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or (ii) determining the pro rata share of ownership of each unit in the Common Area.
- (c) Partition or subdivide any condominium unit.
- (d) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause.
- (e) Use hazard insurance proceeds for losses to any condominium property (whether to units or to common elements) for other than the repair, replacement or reconstruction of such improvements, except in the case of a partition, as provided by Civil Code §1354 in case of substantial loss to the units and/or common elements of the condominium project.

9.6 Reserve for Replacement. The monthly maintenance assessments provided for in Article 6 shall include an adequate reserve fund for maintenance, repair and replacement of those portions of the Common Areas, and the facilities thereon, which must be replaced on a periodic basis.

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

9.8 Termination of Status. Any election to terminate the legal status of the Project after substantial destruction or a substantial taking in condemnation of the Project property must require the approval of eligible holders holding mortgages on Units which have at least fifty-one percent (51%) of the votes of Units subject to eligible holder mortgages.

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

9.10 Professional Management. When professional management has been previously required by any eligible holder or eligible insurer or guarantor, whether such entity became an

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

ARTICLE 10 ARCHITECTURAL PROCEDURES

10.1 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the Association, no building, fence, wall, obstruction, balcony, screen, patio cover, tent, awning, carport cover, improvement or other structure of any kind or any landscaping shall be commenced, erected, painted, or maintained within the Project, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, color, height, size, materials, and location of the same shall have been submitted to and approved in writing by the Board as to quality of workmanship and design, harmony of external design and location in relation to surrounding structures, topography, and finished grade elevation.

10.2 Rules. The Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." The Architectural Rules shall interpret and implement the provisions of this article by setting forth the standards and procedures for Board review and guidelines for architectural design, placement of buildings and other structures, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Project; provided, however, that the Architectural Rules shall not be in derogation of the minimum standards required by this Declaration.

10.3 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this article, shall apply for approval by notifying the Board, in writing, of the nature of the proposed work and furnishing such information and documentation as the Board may require.

10.4 Grant of Approval. The Board shall grant the requested approval only if:

- (a) The Owner shall have complied with the provisions of Section 10.1 above;
- (b) The Board shall find that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Board; and
- (c) The Board shall determine that the proposed improvements would be consistent with the standards of the Project and the purposes of this Declaration as to quality of workmanship, design and materials, as to harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations.

10.5 Form of Approval. All approvals and denials of requests for approval shall be in writing except as provided in Section 10.6. The Board may approve a request for approval subject to the Owner's consent to any modifications made by the Board. If the Owner does not consent to the modifications, the request for approval shall be deemed denied in its entirety.

10.6 Time for Board Action. Any request for approval which has not been acted upon within forty-five (45) days from the date of receipt thereof by the Board shall be deemed approved.

The Owner requesting approval shall have the burden of establishing the date of receipt of the request for approval by the Board.

10.7 Commencement. Upon receipt of approval pursuant to Sections 10.4 and 10.5 above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations, and excavations pursuant to the approval, commencement to occur, in all cases, within ninety (90) days from the date of such approval. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of the ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.

10.8 Completion. The Owner shall, in any event, complete the construction, reconstruction, refinishing, or alteration of any such improvement within one (1) year after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this section, the Board shall proceed in accordance with the provisions of Section 10.9 below, as though the failure to complete the improvements was a non-compliance with approved plans.

10.9 Inspection. Inspection of work and correction of defects therein shall proceed as follows:

- (a) Upon the completion of any construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this article, the Owner shall give written notice thereof to the Board.
- (b) Within sixty (60) days after the receipt of such written notice, the Board, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Board finds that such construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.
- (c) If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after the expiration of the 30-day remediation period. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner and, in the discretion of the Board, to any other interested party.
- (d) At the hearing the Owner and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall

determine whether there is a non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be assessed against the Owner as a Reimbursement Assessment.

- (e) If the Board fails to notify the Owner of any non-compliance within sixty (60) days after receipt of a notice of completion from the Owner, the improvement shall be deemed to be in accordance with the approved plans. The Owner shall have the burden of establishing the date of receipt by the Board of the Owner's notice of completion.

10.10 Preliminary Approval. Any Owner proposing to construct improvements requiring the prior approval of the Board may apply to the Board for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Architectural Rules. The purpose of the preliminary approval procedure is to allow an Owner proposing to make substantial improvements an opportunity to obtain guidance concerning design considerations before expending substantial sums for plans and other exhibits required to apply for final approval. Application for preliminary approval shall be considered and disposed of as follows:

- (a) Within forty-five (45) days after proper application for preliminary approval, the Board shall consider and act upon such request. However, notwithstanding any other provision of this Declaration, no failure to act upon an application for preliminary approval shall be deemed to be an approval of such application. The Board shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the preliminary application, would be entitled to a final approval on the basis of a full and complete application. In granting or denying approval, the Board may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.
- (b) Any preliminary approval granted by the Board shall be effective for a period of ninety (90) days from the date of the issuance thereof. During this period, any application for final approval which consists of proposed improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Board.
- (c) In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

10.11 Non-Waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.

10.12 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall Record an estoppel certificate, if permitted by the County, certifying (with respect to any Unit of such Owner) that as of the date thereof, either: (i) all improvements made and other work completed by such Owner comply with this Declaration, or (ii) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Unit through him, shall be entitled to rely on such certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.

10.13 Notice of Noncompliance. If any improvements are installed within the Project that are not in conformance with this Declaration, the Association is authorized to Record a Notice of Noncompliance if permitted by the County. The Notice of Noncompliance shall provide: (i) a legal description of the Unit affected, (ii) the name of the record Owner as most recently reported to the Association, and (iii) a description of the general nature of the noncompliance. If and when such Unit is brought into compliance with this Declaration, as determined by the Board, the Association shall issue and, if permitted by the County, Record an estoppel certificate in accordance with Section 10.12.

10.14 Liability. Neither the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Project; (iv) the execution and filing of an estoppel certificate pursuant to Section 10.12, whether or not the facts therein are correct; provided, however, that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or him; or (v) the execution and filing of a notice of noncompliance pursuant to Section 10.13, whether or not the facts therein are correct; provided, however, that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or him. Without in any way limiting the generality of the foregoing, the Board or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Board.

10.15 Compliance With Governmental Requirements. The application to the Association and the review and approval of any proposals, plans, or other submittals shall in no way be deemed to be satisfaction of or compliance with any building permit process or any other governmental requirements, the responsibility for which lies solely with the respective Owner.

ARTICLE 11 ENFORCEMENT

11.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its Officers or Board of Directors or by any Owner; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.

11.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

11.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be fully responsible for informing members of his or her family and his or her tenants, contract purchasers, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Project or the Association resulting from the negligent or intentional conduct of any of them or any household pets. If a Condominium is owned jointly by two (2) or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

11.4 No Avoidance. No Owner may avoid the burdens or obligations imposed by the Governing Documents through non-use of any Common Area facilities or by abandonment of his or her Unit.

11.5 Rights and Remedies of the Association.

11.5.1 Cumulative. The Association, its Directors, Officers, or agents, and any Owner shall have the right to enforce any and all provisions of the Governing Documents by any proceeding at law or in equity, or through the use of such other remedies as are available and deemed appropriate by the Board. Each remedy provided is cumulative and not exclusive.

11.5.2 Member Not In Good Standing. Upon a determination by the Board of Directors, after prior notice to the affected Member and an opportunity for a hearing, that the Member has violated any provision of the Governing Documents including a failure to pay any Assessment when due, the Board may give notice in writing to such Member that he or she is deemed not to be a Member in Good Standing. Such Member shall be deemed to remain in that status until such time as the Board shall determine in writing that the violation which resulted in the Board's determination has been cured or remedied or, on some other basis as in the judgment of the Board is just and proper, that such Member shall again be deemed to be a Member in Good Standing of the Association.

11.5.3 Imposition of Sanctions. In the event of a breach or infraction of any provision of the Governing Documents by an Owner, members of an Owner's family, or his or her tenants, contract purchasers, or guests, the Board shall have the power to impose a sanction against the Owner who is responsible as provided in Section 11.3 for such breach or infraction. A sanction may include, but shall not necessarily be limited to, the imposition of a monetary penalty and/or the suspension of an Owner's rights as a Member of the Association, including an Owner's voting rights or an Owner's right to use the recreational or community facilities on the Common Area. Imposition of a sanction shall be effective only after notice and an opportunity for hearing as provided in the Bylaws. Any monetary penalty imposed pursuant to

this section shall not exceed the amount for each violation, as set forth in the Bylaws. The payment of any such monetary penalty may be enforced as an Enforcement Assessment as provided in Article 6 as well as in any manner permitted by law. Further, each Owner shall be obligated to pay Reimbursement Assessments levied by the Board for reimbursement of any costs incurred by the Association relating to violation of any provisions of the Governing Documents by such Owner's family, tenants, contract purchasers, guests, pets, or other invitees.

11.5.4 Inadequacy of Legal Remedy. Except for the non-payment of any Assessment levied pursuant to the provisions of Article 6 of this Declaration, it is hereby declared that a remedy at law to recover damages for a default in the performance of any of the terms and provisions of any of the Governing Documents or for the breach or violation of any such provisions is inadequate and that the failure of any Owner or a member of the family of any Owner or an Owner's tenants, guests, or household pets or any other occupant or user of any of the property within the Project to comply with any provision of the Governing Documents may be enjoined in any judicial proceedings initiated by the Association, its Officers or Board of Directors, or by any Owner or by their respective successors in interest.

11.5.5 Limitation on Disciplinary Rights. The Association shall not have the power and authority to cause a forfeiture or abridgment of a Member's right to the full use and occupancy of his or her Unit as the result of the failure by such Owner, members of such Owner's family, or his or her tenants, guests, invitees or household pets to comply with any provision of the Governing Documents, except where such forfeiture or abridgment is the result of the judgment of a court of competent jurisdiction, a decision arising out of an arbitration proceeding, or a foreclosure or sale under private power of sale for failure of such Owner to pay Assessments levied by the Association pursuant to Article 6 of this Declaration. The provisions of this section shall not affect the Association's right to impose fines or monetary penalties or to suspend an Owner's membership rights, as provided in the Governing Documents.

11.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in and constituting a part of the Governing Documents.

11.7 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Project, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Project or any portion thereof, (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that

constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request therefor shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

11.8 Alternative Dispute Resolution. Any dispute which is subject to California Civil Code section 1354(b) shall be submitted to alternative dispute resolution procedures ("ADR") as herein described. The power and duty of the Board of Directors to levy and collect assessments through lien foreclosure proceedings shall not be subject to ADR; however, any underlying dispute resulting in the imposition of a Reimbursement Assessment or an Enforcement Assessment shall be submitted to ADR prior to foreclosure upon the request of any party to the dispute. In the case of any claim, dispute, or controversy which is not otherwise subject to California Civil Code section 1354(b), involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of ADR.

11.8.1 Procedure. To the extent that prior notice and an opportunity for a hearing by the Board is required under the Governing Documents, such notice and an opportunity for a hearing shall be provided before any dispute is submitted to ADR. Prior to filing an action seeking judicial resolution of any dispute subject to the provisions of this section, the Association or any Member who is a party to such dispute and who desires to obtain resolution of such dispute shall serve upon all other parties to the dispute a Request for Resolution. The form of the Request for Resolution shall conform to the requirements of Civil Code section 1354 and service shall be in the manner provided in that section. If all parties agree, the matter shall be submitted to binding arbitration. If all parties do not agree to binding arbitration, the matter shall be submitted to mediation.

If a judicial action to resolve a dispute subject to the provisions of this section has been commenced but the dispute has not been submitted to ADR, then upon demand by any party to the action the dispute shall be submitted to ADR as provided in this section or a reference shall be ordered in accordance with the terms of California Code of Civil Procedure section 638(1) or any successor provision of law. The provisions of this section shall not be deemed to prohibit a party to a dispute from seeking preliminary or temporary injunctive relief where such relief is necessary, provided that the substance of the dispute shall be submitted to ADR.

The ADR process shall be completed within one hundred twenty (120) days after the date of service of the Request for Resolution or after the

date a court orders the dispute submitted to ADR or orders a reference, as the case may be.

11.8.2 Mediation. Mediation shall consist of an informal meeting or meetings which all parties to the dispute may attend. In the event any party shall fail without cause to attend and participate in any such mediation that party shall conclusively be deemed to have waived that party's right to have the dispute resolved through mediation. If the parties to a dispute are able to agree upon a mediator, the agreed-upon person shall be notified and, upon such person's acceptance, shall be the mediator for that proceeding. The costs of mediation shall be advanced equally by the parties to the dispute.

The mediator shall establish the format of the mediation proceedings and the procedures to be followed. The mediator shall have the duty to assess the rights and obligations of the parties involved in the dispute and shall be entitled to interview the parties, agents or representatives of the parties, or any other person when the mediator deems such an interview appropriate or necessary. The mediator shall also be entitled to request and receive copies of correspondence, records, minutes, and other such evidentiary documentation to assist in resolving the dispute. The mediator shall use his or her best efforts to effect a settlement of the dispute that is in the best interest of all parties involved.

The mediator may provide the parties to the dispute with a recommendation as to resolution of the dispute, and the parties shall be notified of any such recommendation. If a dispute is not resolved as a result of mediation proceedings, or if the parties do not agree upon a mediator, the moving party may proceed with filing an action for judicial resolution pursuant to Civil Code section 1354.

11.8.3 Binding Arbitration. Any dispute submitted to binding arbitration in accordance with this section shall be resolved in accordance with the provisions of the California Arbitration Act (Sections 1280, *et seq.*, of the California Code of Civil Procedure [hereinafter the "Act"]) or in accordance with such other arbitration procedures as may be mutually agreed upon by the parties.

(a) Selection of Arbitrator. Unless the parties shall mutually agree to have three (3) arbitrators, there shall be one (1) arbitrator. If the parties are able to agree upon the selection of an arbitrator or arbitrators, such person or persons shall serve as arbitrator(s). If the parties are unable to so agree, an arbitrator shall be selected as provided in the Act or in accordance with such other procedure as may be mutually agreed upon by the parties.

(b) Governing Rules and Procedures. The arbitration hearing shall take place in the County of Santa Clara, California, at the time and place selected by the arbitrator(s). The arbitrator(s) may, but shall not be required to, employ the

applicable rules of the American Arbitration Association, Judicial Arbitration & Mediation Services, Inc. (JAMS), or another similar organization as a guide in conducting the arbitration proceedings and shall have absolute discretion to determine whether or not and to what extent the parties shall be permitted to pursue discovery procedures.

Arbitration shall be commenced by the personal delivery or mailing by registered or certified mail of a written demand for arbitration by one party upon the other. At the arbitration hearing, any relevant evidence may be presented including oral testimony of any material witnesses or documentary evidence, and the formal rules of evidence shall not govern. Evidence may be admitted or not admitted in the sole discretion of the arbitrator(s).

- (c) Costs. The costs of arbitration shall be advanced equally by the parties, and the prevailing party shall be entitled to and shall receive as part of the award reimbursement for all costs, including attorneys' fees, advanced or incurred in connection with the arbitration proceeding and any subsequent judicial proceeding arising therefrom; provided, however, that the arbitrator shall have the right to allocate costs between the parties in such proportions as the arbitrator(s) shall deem appropriate.
- (d) Award. The decision of the arbitrator(s) shall be in writing. If there are three arbitrators, the decision of any two of the arbitrators, shall constitute the decision of the arbitrators.

11.8.4 Admissibility of Evidence; disclosure. Unless mutually agreed to by the parties to the dispute, evidence of anything said or of admissions made in the course of the ADR process shall not be admissible in evidence and testimony referring to or disclosure of any such statement or admission may not be compelled in any civil action; and documents prepared for the purpose of, in the course of, or pursuant to ADR procedures shall not be admissible in evidence and disclosure of such documents may not be compelled in any civil action.

11.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.

11.10 Notices. Any notices required or given under this article shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.

11.11 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her family or his or her tenants, contract purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorney's fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. The remedies of the Association to recover the amount of such costs and attorney's fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in Article 6 of this Declaration.

ARTICLE 12 AMENDMENT

12.1 Member Approval. This Declaration may be amended by the affirmative vote or written consent of Members representing at least an Absolute Majority of the Total Voting Power.

12.2 First Mortgagee Approval. No part of Article 9 may be amended, nor may this section be amended, without the concurrence in writing of seventy-five percent (75%) of the holders of first Mortgages upon Units within the Project.

12.3 Execution and Recordation of Amendments. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the Santa Clara County Recorder.

ARTICLE 13 SPECIAL REQUIREMENT OF THE CITY

13.1 Exterior Changes. Notwithstanding anything in Article 10 to the contrary, no changes shall be made in the exterior elevations or exterior appearance of the buildings located in the Project without the prior written approval of the City.

13.2 Association Representatives. The Association shall provide to the Community Relations Office of the City the name, address, and telephone number of a responsible Association representative on or before January 31st of each year **and** at any time the Association designates a new or substituted representative.

13.3 Recreational Vehicle Storage Prohibited. Unenclosed storage of any vehicle intended for recreational purposes, including land conveyances, vessels and aircraft, but excluding attached camper bodies and motorhomes not exceeding eighteen (18) feet in overall length, shall be prohibited within the Project.

13.4 Limitation on Amendment. Notwithstanding anything in Article 12 to the contrary, no provision of this article may be amended, altered, or changed without the prior written approval of the City.

ARTICLE 14 GENERAL PROVISIONS

14.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.

14.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.

14.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Project for the benefit of the community.

14.4 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.

14.5 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Condominium.

14.6 Power of Attorney. To the extent necessary to carry out and enforce the provisions of this Declaration, an irrevocable power of attorney coupled with an interest is granted to the Association by the Owners and each of them.

14.7 Term. The covenants, conditions, restrictions, limitations, reservations, grants of easement, rights, rights-of-way, liens, charges, and equitable servitudes contained in this Declaration shall run with and shall benefit and burden all of the real property subject to this Declaration, including without limitation the Units and Common Areas, and shall inure to the benefit of and be binding upon the Owners, the Association, its Board of Directors and officers, and their respective agents and successors in interest, for a term of thirty (30) years from the date of recordation of this Declaration. Thereafter the term shall be automatically extended for successive periods of ten (10) years each, unless within the six (6) months prior to the expiration of the initial 30-year term or any 10-year extension period a written instrument, approved by Owners entitled to vote and holding at least a majority of the voting power of the Association, terminating the effectiveness of this Declaration shall be recorded in the Office of the County Recorder of Santa Clara County, California.

IN WITNESS WHEREOF, we, the Members of THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION, constituting owners of at least Seventy-Five Percent (75%) of the condominium units, hereby affirm, approve, and adopt the foregoing First Restated Declaration of Covenants, Conditions and Restrictions for the Gardens - Sunnyvale, in accordance with Article XX, Section 6 of the Original Declaration, by means of the signatures of the President and Secretary of the Association.

The President of the Association hereby certifies, and the Secretary of the Association attests to such certification, that the foregoing First Restated Declaration of Covenants, Conditions and Restrictions for the Gardens - Sunnyvale has been adopted in compliance with Article XX, Section 6 of the Original Declaration.

DATED: April __, 2000.

**THE GARDENS - SUNNYVALE
HOMEOWNERS ASSOCIATION,**
a California nonprofit mutual benefit corporation

_____, President

_____, Secretary

EXHIBIT "A"

All that real property situate in the County of Santa Clara, State of California, described as follows:

Lot 1 of Tract No. 7244, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 16, 1983, in Book 517 of Maps, Pages 50 and 51.

Lot 1 of Tract No. 7245, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on February 17, 1984, in Book 524 of Maps, Pages 44 and 45.

Lot 1 of Tract No. 7246, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on February 17, 1984, in Book 524 of Maps, Pages 46 and 47.

Lot 1 of Tract No. 7536, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on May 10, 1984, in Book 528 of Maps, Pages 32 and 33.

Lot 1 of Tract No. 7537, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on May 14, 1984, in Book 528 of Maps, Pages 49 and 50.

Lot 1 of Tract No. 7538, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 27, 1985, in Book 549 of Maps, Pages 45 and 46.

Lot 1 of Tract No. 7539, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 27, 1985, in Book 549 of Maps, Pages 47 and 48.

Lots 1 and 2 of Tract No. 7540, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 27, 1985, in Book 549 of Maps, Pages 49 and 50.

EXHIBIT "B"

1. The Owners of those Units located on Lot 1 of Tract No. 7244, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 16, 1983, in Book 517 of Maps, Pages 50 and 51, have a one tenth (1/10) interest as tenants in common in Lot 1 of Tract No. 7244, excepting therefrom the Units located on such Lot.
2. The Owners of those Units located on (i) Lot 1 of Tract No. 7245, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on February 17, 1984, in Book 524 of Maps, Pages 44 and 45, and (ii) Lot 1 of Tract No. 7246, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on February 17, 1984, in Book 524 of Maps, Pages 46 and 47, have a one fifty-first (1/51) interest as tenants in common in Lot 1 of Tract No. 7245 and Lot 1 of Tract No. 7246, excepting therefrom the Units located on such Lots.
3. The Owners of those Units located on Lot 1 of Tract No. 7536, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on May 10, 1984, in Book 528 of Maps, Pages 32 and 33, have a one twenty-ninth (1/29) interest as tenants in common in Lot 1 of Tract No. 7536, excepting therefrom the Units located on such Lot.
4. The Owners of those Units located on Lot 1 of Tract No. 7537, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on May 14, 1984, in Book 528 of Maps, Pages 49 and 50, have a one forty-eighth (1/48) interest as tenants in common in Lot 1 of Tract No. 7537, excepting therefrom the Units located on such Lot.
5. The Owners of those Units located on Lot 1 of Tract No. 7538, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 27, 1985, in Book 549 of Maps, Pages 45 and 46, have a one thirty-fourth (1/34) interest as tenants in common in Lot 1 of Tract No. 7538, excepting therefrom the Units located on such Lot.
6. The Owners of those Units located on Lot 1 of Tract No. 7539, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 27, 1985, in Book 549 of Maps, Pages 47 and 48, have a one twenty-sixth (1/26) interest as tenants in common in Lot 1 of Tract No. 7539, excepting therefrom the Units located on such Lot.
7. The Owners of those Units located on Lot 1 of Tract No. 7540, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 27, 1985, in Book 549 of Maps, Pages 49 and 50, have a one thirty-sixth (1/36) interest as tenants in common in Lot 1 of Tract No. 7540, excepting therefrom the Units located on such Lot.
8. The Owners of those Units Located on Lot 2 of Tract No. 7540, a map of which was filed for record in the Office of the Recorder of Santa Clara County, California, on September 27, 1985, in Book 549 of Maps, Pages 49 and 50, have a one sixteenth (1/16) interest as tenants in common in Lot 2 of Tract No. 7540, excepting therefrom the Units located on such Lot.

TABLE OF CONTENTS TO
 FIRST RESTATED DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS FOR
 THE GARDENS - SUNNYVALE

		Page Number
RECITALS		1
ARTICLE 1	DEFINITIONS	2
1.1	Absolute Majority.	2
1.2	Additional Charges.	3
1.3	Annual Assessments	3
1.4	Articles	3
1.5	Assessments	3
1.6	Association	3
1.7	Board of Directors	3
1.8	Bylaws	3
1.9	City	3
1.10	Common Area	3
1.11	Contract Purchaser/Contract Seller	3
1.12	Condominium	3
1.13	Condominium Plan	3
1.14	County	3
1.15	Declaration	4
1.16	Enforcement Assessment	4
1.17	Exclusive Use Common Area	4
1.18	Governing Documents	4
1.19	Maintenance	4
1.20	Member	4
1.21	Member in Good Standing	4
1.22	Mortgage	4
1.23	Mortgagee	4
1.24	Owner	4
1.25	Project	4
1.26	Reimbursement Assessment	5
1.27	Repair	5
1.28	Replacement	5
1.29	Resident	5
1.30	Rules	5
1.31	Simple Majority	5
1.32	Special Assessment	5
1.33	Total Voting Power	5
1.34	Unit	5

ARTICLE 2	PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT	6
2.1	Ownership of Condominium; Exclusive Easements	6
2.2	Owners Non-Exclusive Easements of Enjoyment	6
2.3	Delegation of Use	7
2.4	Common Area Construction	7
2.5	Mechanic's Liens	7
ARTICLE 3	EASEMENTS	8
3.1	Easements in General	8
3.2	Easements of Encroachment	8
3.3	Utility Easements.....	8
3.4	Easements Granted by The Board.....	8
ARTICLE 4	USE RESTRICTIONS	9
4.1	Residential Use	9
4.2	Rental Restrictions	9
4.2.1	Short-Term Rentals	9
4.2.2	Owner's Responsibility for Tenant's Actions.....	9
4.2.3	Association's Enforcement Rights	9
4.2.4	Indemnification of Association	10
4.2.5	Requirements of Written Lease or Rental Agreement	10
4.2.6	Requirement of Inclusive Lease	10
4.3	Time-Share Arrangements	10
4.4	Restriction on Businesses	11
4.5	Family Day Care Centers	11
4.6	Community Care Facilities.....	11
4.7	Offensive Conduct, Nuisances, Noise	12
4.8	Use of the Common Area	12
4.9	Hazards	12
4.10	Requirement of Architectural Approval.....	12
4.11	Sports Apparatus.....	12
4.12	Mailboxes and Exterior Newspaper Tubes.....	12
4.13	Outside Drying and Laundering.....	13
4.14	Antennas	13
4.15	Animals.....	13
4.15.1	Limitation on Pets.	13
4.15.2	Owner's Responsibility for Pets	13
4.15.3	Pet Rules	13
4.16	Trash Disposal	13
4.17	Construction Materials, Construction Debris	13
4.18	Machinery and Equipment.....	14

4.19	Signs	14
4.20	Vehicles and Parking.....	14
	4.20.1 Resident Parking; Limitation on Types of Vehicles.....	14
	4.20.2 Guest Parking Areas.....	14
	4.20.3 Noisy and Polluting Vehicles	15
4.21	Parking Enforcement.....	15
4.22	Garages/Parking Spaces	15
4.23	Window Coverings	15
4.24	Outbuildings	15
4.25	Mineral Exploration.....	15
4.26	Screens and Awnings.....	15
ARTICLE 5	HOMEOWNERS ASSOCIATION.....	16
5.1	Management and Operation.....	16
5.2	Membership.....	16
5.3	Voting	16
5.4	Board of Directors	16
5.5	Association Rules.....	16
5.6	Manager and Other Personnel	16
5.7	Assessments	16
5.8	Insurance.....	16
5.9	Acquisition of Property	17
5.10	Capital Improvements.....	17
5.11	Sale or Transfer of Association Property.....	17
5.12	Sale, Transfer or Dedication of Common Area to Public Agency or Utility.....	17
5.13	Access.....	17
5.14	Exclusive Easements	17
ARTICLE 6	ASSESSMENTS AND LIENS	17
6.1	Covenant of Owner.....	17
6.2	Creation of Lien	18
6.3	Purpose of Annual Assessments	18
6.4	Authority of the Board.....	18
6.5	Annual Assessments.....	18
	6.5.1 Calculation of Estimated Requirement	18
	6.5.2 Allocation of Annual Assessment	19
	6.5.3 Surplus Funds.....	19
	6.5.4 Increases in Annual Assessment.....	19
6.6	Special Assessments	19
	6.6.1 Purpose of Special Assessments.	19
	6.6.2 Allocation of Special Assessments.	19
	6.6.3 Approval of Special Assessments	20

6.7	Reimbursement Assessments.....	20
6.8	Enforcement Assessments.....	20
6.9	Failure to Fix Assessments	20
6.10	Offsets	20
6.11	Delinquent Assessments.....	20
6.12	Power of Sale	21
6.13	Certificate of Satisfaction and Release of Lien.....	21
6.14	Priority	21
6.15	Association Funds	21
6.16	Waiver of Exemptions.....	22
6.17	Property Exempt From Assessments.....	22
ARTICLE 7	DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION	22
7.1	Single Unit.....	22
7.2	Damage to More Than One Unit	22
7.3	Sale by Unanimous Consent.....	24
7.4	Distribution of Sale Proceeds or Condemnation Award	25
7.5	Awards for Owners' Personal Property and Relocation Allowances.....	25
7.6	Notice to Owners and Listed Mortgagees	26
ARTICLE 8	MAINTENANCE OF PROPERTY	26
8.1	Association Responsibility.....	26
	8.1.1 Maintenance of Exteriors.....	26
8.2	Authority for Entry of Unit or Exclusive Use Common Area	26
8.3	Association Liability.....	27
8.4	Owner Responsibility.....	27
	8.4.1 Maintenance of Units and Portions of the Common Area.....	27
	8.4.2 Exclusive Use Common Area.....	27
	8.4.3 Garages.....	28
8.5	Interior Decorations	28
8.6	Board Discretion.....	28
8.7	Owner Liability.....	28
ARTICLE 9	RIGHTS OF MORTGAGEES	29
9.1	Mortgage Protection Clause.....	29
9.2	Subordination of Assessment Liens	29
9.3	Notice to Lenders	29
9.4	Inspection of Books	29
9.5	Mortgagees' Consent.....	30
9.6	Reserve for Replacement.....	30
9.7	Restoration	30

9.8	Termination of Status	30
9.9	Reallocation of Interests	30
9.10	Professional Management.....	31
ARTICLE 10 ARCHITECTURAL PROCEDURES		31
10.1	Submission of Plans and Specifications.....	31
10.2	Rules	31
10.3	Application.....	31
10.4	Grant of Approval	31
10.5	Form of Approval.....	32
10.6	Time for Board Action.....	32
10.7	Commencement	32
10.8	Completion	32
10.9	Inspection	32
10.10	Preliminary Approval	33
10.11	Non-Waiver	34
10.12	Estoppel Certificate	34
10.13	Notice of Noncompliance	34
10.14	Liability	34
10.15	Compliance With Governmental Requirements	35
ARTICLE 11 ENFORCEMENT		35
11.1	Violations as Nuisance	35
11.2	Violation of Law	35
11.3	Owners' Responsibility for Conduct of Others and Damages	35
11.4	No Avoidance	35
11.5	Rights and Remedies of the Association.....	35
11.5.1	Cumulative.....	35
11.5.2	Member Not In Good Standing	36
11.5.3	Imposition of Sanctions.....	36
11.5.4	Inadequacy of Legal Remedy	36
11.5.5	Limitation on Disciplinary Rights.....	37
11.6	Disciplinary Rules	37
11.7	Emergency Situations	37
11.8	Alternative Dispute Resolution	38
11.8.1	Procedure	38
11.8.2	Mediation	38
11.8.3	Binding Arbitration	39
11.8.4	Admissibility of Evidence; disclosure	40
11.9	Non-Waiver	40
11.10	Notices	40
11.11	Costs and Attorneys' Fees	41

ARTICLE 12	AMENDMENT	41
12.1	Member Approval	41
12.2	First Mortgagee Approval	41
12.3	Execution and Recordation of Amendments	41
ARTICLE 13	SPECIAL REQUIREMENT OF THE CITY	41
13.1	Exterior Changes	41
13.2	Association Representatives	41
13.3	Recreational Vehicle Storage Prohibited	41
13.4	Limitation on Amendment	42
ARTICLE 14	GENERAL PROVISIONS	42
14.1	Headings	42
14.2	Severability	42
14.3	Liberal Construction	42
14.4	Number; Gender	42
14.5	Easements Reserved and Granted	42
14.6	Power of Attorney	42
14.7	Term	42

**RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:**

THE GARDENS - SUNNYVALE HOMEOWNERS ASSOCIATION
c/o **STEIN & BAYDALINE LLP**
Attn: Michael S. Woodbury, Esq.
2339 Gold Meadow Drive, Suite 220
Gold River, CA 95670

(Space Above For Recorder's Use)

FIRST RESTATED DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

THE GARDENS - SUNNYVALE