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**RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
THE BARRON SQUARE HOMEOWNERS ASSOCIATION**

RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
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**RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
THE BARRON SQUARE HOMEOWNERS ASSOCIATION**

This restated Declaration, made on the date hereinafter set forth, pursuant to the written consent of fifty-one percent (51%) of the Owners of the Property, is made with reference to the following facts:

1. The Association and its Members are the Owners of certain Property located in the City of Palo Alto, County of Santa Clara, State of California, more particularly described as follows: Lots 1 and 2 as shown on the Subdivision Map and Condominium Plan entitled, "TRACT NO. 6432 BARRON SQUARE, A CONDOMINIUM, CITY OF PALO ALTO, SANTA CLARA COUNTY, CALIFORNIA" which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 2, 1979, in Book 436 of Maps at Pages 47-56.

2. Covenants, conditions and restrictions have previously been imposed upon the Property as recorded on March 12, 1979, Document No. 6309004, Book 338, page 18 et seq. and as recorded on October 11, 2002, Document No. 16535083 in the Office of the Recorder of Santa Clara County, State of California.

3. The Association intends by this document to restate those restrictions previously imposed upon the Property by the prior Declaration. Said prior Declaration shall be operative until this restated Declaration is recorded.

NOW, THEREFORE, Association hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, used, occupied, and improved, subject to these covenants, conditions and restrictions, all of which are imposed as equitable servitudes pursuant to a general plan for the purpose of improving and protecting the value and attractiveness of the Property, and every part thereof. All of these covenants, conditions and restrictions shall constitute covenants which shall run with the land and shall be binding upon and inure to the benefit of the Association and all parties having or acquiring any right, title or interest in or to any part of the Property.

ARTICLE I
DEFINITIONS

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

1.2 "Association" shall mean THE BARRON SQUARE HOMEOWNERS ASSOCIATION, a California non-profit mutual benefit corporation.

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

1.4 "Bylaws" shall mean or refer to the Bylaws of the Association, as amended from time to time.

1.5 "Common Area" or "Common Areas" shall mean the entire Property excepting all the Units therein granted or reserved.

1.6 "Condominium" shall refer to the Unit together with the undivided interest in the Common Area conveyed in fee to an Owner, and all easements appurtenant thereto, all as more particularly defined in Section 1351(f) of the Civil Code of the State of California.

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

1.8 "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Association in accordance with Article IX.

1.9 "Eligible Insurer or Guarantor" shall mean an insurer or governmental guarantor of a First Mortgage who has requested notice of certain matters from the Association in accordance with Article IX.

1.10 "First Mortgage" shall mean and refer to the recorded Mortgage encumbering a Condominium with first priority over other Mortgages thereon, made in good faith and for value.

1.11 "Governing Documents" means and includes this Restated Declaration as it may be amended from time to time, and the Articles, Bylaws and Rules.

1.12 "Manager" shall mean and refer to the person or corporation appointed or retained by the Board, and charged with the maintenance of the Property and the administration of the Association.

1.13 "Map" shall mean and refer to that subdivision map entitled "Tract 6432" recorded on March 2, 1979, in Book 436 of Maps, at Pages 47-56, County of Santa Clara, State of California.

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

1.15 "Mortgage" shall include a deed of trust as well as a Mortgage.

1.16 "Mortgagee" shall include a beneficiary or a holder of a deed of trust as well as a Mortgage.

1.17 "Owner" or "Owners" shall mean and refer to the record holder or holders of title, if more than one, of a Condominium in the Property. This shall include any person having a fee simple title to any Condominium but shall exclude persons or entities having any interest merely as security for the performance of an obligation. If a Condominium is sold under a recorded contract of sale, the purchaser, rather than the fee Owner, shall be considered the Owner from and after the date the Association receives written notice of the recorded contract.

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

1.19 "Property" shall mean and refer to all that certain real property shown on the Map, and subject to this Declaration.

1.20 "Restricted Common Area" shall mean and refer to that portion of the Common Area, the exclusive use of which is set aside, allocated and restricted to a particular Unit or the use of a particular Unit Owner, as is hereinafter designated, and as shown on the Map. Exclusive easements to Restricted Common Area shall be specifically designated in the deed to any Condominium.

1.21 "Rules" shall mean and refer to the Rules adopted by the Board pursuant to Paragraph 5.2.1 of this Declaration.

1.22 "Total Voting Power of the Association" shall mean the total of 65 votes allotted to the Members.

1.23 "Unit" shall mean the elements of a Condominium not owned in common with the Owners of other Condominiums in the Property. Each Unit is an individual residence that is shown, defined and delineated on the Map as a numbered parcel preceded by the words "Unit".

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

2.1 **Description of Property:** The Association is a Condominium development consisting of the underlying real property, the Common Areas and 65 Units as shown on the Map.

2.2 **Division of Property:** The Property is divided as follows:

A. **Units:** Each of the Units in each structure, each separately shown, numbered, and designated in the Map, shall be a separate freehold estate consisting of the space bounded by and contained within the interior unfinished surfaces (exclusive of paint, paper, wax, tile, enamel or other finishes) of the perimeter walls, interior beams and columns, floors, ceilings, bearing walls, windows, doors and door frames and trim of each Unit, each such space being defined and referred to herein as a "Unit". Each Unit includes both the portions of the building so described and the airspace so encompassed. The following are not part of the Unit: bearing walls, perimeter walls, columns, floors, roofs, foundations and air ducts. In interpreting deeds, declarations and plans, the existing physical boundaries of the Unit or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds (or other description) expressed in the deed, plan or declaration, regardless of settling or lateral movement of the building or regardless of minor variance between boundaries showing on the plan, deed or declaration and those of the building.

B. **Common Areas:** The remaining portion of the Property constitutes Common Area as defined in Section 1.5. Each Owner shall have, as appurtenant to his or her Unit, an undivided interest in the Common Area. The ownership of each Condominium shall include a Unit and such undivided interest in the Common Area. The common interest appurtenant to each Condominium is permanent in character and cannot be altered without the consent of all the Owners affected, and the First Mortgagees of such Owners, as expressed in an amended Declaration. The undivided common interest cannot be separated from the Unit, and any conveyance or transfer of the Unit shall include the undivided common interest, the owner's membership in the Association, and any other benefits or burdens appurtenant to that Owner's Condominium. Each Owner may use the Common Areas in accordance with the purposes for which they are intended without hindering the exercise of or encroaching upon the rights of any other Owners subject to the rights of each Owner in the Restricted Common Area appurtenant to that Owner's Condominium.

C. **Restricted Common Areas:** Covered and uncovered parking spaces, balconies and patios, referred to as Restricted Common Areas, are set aside and allocated for the exclusive use of the Owner of the Condominium to which they are attached or assigned by Unit number as shown on the Map, and are appurtenant to that Condominium. The Restricted Common Areas allocated for restricted uses of the respective Units are as follows:

1. Exclusive easement to use, for vehicle parking purposes, either (a) one (1) covered garage space, and one (1) uncovered space, or (b) two (2) covered garage spaces as separately delineated and designated on the Map and deeded to each Owner.

2. Exclusive easement to use the balcony adjacent to certain of the Units where numbered and designated on the Map.

3. Exclusive easement to use the patio adjacent to certain of the Units where numbered and designated in the Map.

2.3 **Rights of Entry and Use:** The Units and Common Area (including Restricted Common Area) shall be subject to the following rights of entry and use:

A. The right of the Association's agents or employees to enter any Unit or the Restricted Common Area appurtenant thereto to inspect for or cure any violation of the Governing Documents, provided that the Owner has received notice and a hearing as required by the Bylaws (except in the case of an emergency) and the Owner has failed to cure the violation or take steps necessary to cure the violation within thirty (30) days after the finding of a violation by the Board.

B. The access rights of the Association to maintain, repair or replace improvements or property located in the Common Areas as described in Section 5.1.1.

C. The encroachment rights described in section 2.8.

D. The rights of owners to make improvements or alterations authorized by Civil Code §1360(a)(2).

2.4 **Partition Prohibited:** The Common Areas shall remain undivided. Except as provided by California Civil Code §1359 or Article VIII, no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Property. Judicial partition by sale of a single Condominium owned by two or more persons and division of the sale proceeds is not prohibited hereby.

2.5 **Owner's Easements:** Easements are hereby specifically reserved for the benefit of the Owners, in common and for each Owner severally, and the Association as their respective interests shall obtain, as follows:

2.5.1 There is reserved for the benefit of each Unit, as dominant tenement, as easement for encroachment, support, occupancy and use of such portion of the Property and each other Unit and the Common Area jointly as the servient tenement, as shown on the Map.

2.5.2 An easement for vehicular ingress and egress to and from each Unit over the private driveway in the Common Area is reserved for the non-exclusive use of each Unit. Parking

of automobiles and other motor driven vehicles on the private driveway shall not be permitted except in designated parking spaces.

2.5.3 An easement for pedestrian ingress and egress to and from each Unit over the sidewalks, paths and private driveway in the Common Area is reserved for the non-exclusive use of each Unit.

2.5.4 Each parcel designated on the Map with a "B" and a number is a balcony area, the exclusive use of which is reserved to the Owner of the correspondingly numbered Unit. Each parcel designated with a "P" and a number is a patio area, the exclusive use of which is reserved to the Owner of the correspondingly numbered Unit. Each parcel designated on the Map with an "S" and a number is a storage area, the exclusive use of which is reserved to the Owner of the correspondingly numbered Unit. Each easement designated with a "G" and a number is a garage parking area and each easement designated with a "UP" and a number is an uncovered parking area. The exclusive use of parking areas is reserved to the Owner of the correspondingly numbered Unit.

2.6 **Delegation of Use:** Any Owner may delegate his or her rights of use and enjoyment in the Common Area, including the recreational facilities, to the members of his or her family, his or her guests, tenants and invitees. However, if an Owner has sold his or her Condominium to a contract purchaser or rented it, the Owner, members of his or her family, guests or invitees, shall not be entitled to use and enjoy the recreational facilities of the Association while the Owner's Condominium is occupied by such contract purchaser or tenant.

2.7 **Association Easement:** There is hereby reserved to the Association an easement appurtenant to the Common Area and all other Units, as dominant tenements, through each Unit, as servient tenements, for the maintenance and repair of the Common Area.

2.8 **Encroachment Rights:** If any portion of the Common Area encroaches on any Unit or any part thereof or any portion of a Unit encroaches on any Common Area or another Unit due to engineering errors, errors or adjustments in original construction, reconstruction, repair, settlement, shifting, or movement of the building, or any other cause, the Owner of the encroachment shall have the right to maintain, repair or replace the encroachment, as long as it exists, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that no right shall be created in favor of an Owner if said encroachment occurred due to the intentional conduct of said Owner, or any previous owner, other than adjustments in the original construction. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be appropriate rights of the maintenance of said encroachments so long as they shall exist. In the event that an error in engineering, design or construction results in an encroachment of a building into the Common Area, or into or onto an adjoining Unit, or into a required setback area, a correcting modification may be made in the Map. Said modification shall be in the form of a certificate of correction and shall be executed by the president and by the Association's engineer. The Board of Directors may authorize the execution of the certificate of correction.

ARTICLE III
MANAGEMENT, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

3.1 **Association to Manage Common Areas:** The management of the Property shall be vested in the Association in accordance with the Governing Documents. The administration of the Association shall be in accordance with the provisions of the Governing Documents.

3.2 **Limitation of Liability of Board:** Neither the Board nor the Association shall be liable for any failure of water supply or other service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements, or by another Owner or person in the Property, or resulting from water or dirt which may leak or flow from outside or from any parts of the Common Area, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place unless the Association is insured for the loss. No diminution or abatement of assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

3.3 **Membership:** The Owner of a Condominium shall automatically, upon becoming the Owner of same, be a Member of the Association, and shall remain a Member thereof until such time as the ownership ceases for any reason, at which time the membership in the Association shall automatically cease. Membership shall be held in accordance with the Governing Documents.

3.4 **Transferred Membership:** Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except upon the sale or other transfer of title of the Condominium to which it is appurtenant, and then only to the purchaser or transferee. On any transfer of title to a Condominium, membership passes automatically with title to the transferee. A Mortgagee does not have membership rights until it obtains title to the Condominium by foreclosure or deed in lieu thereof. Any attempt to make a prohibited transfer is void. No Member may resign his or her membership. On notice of a transfer, the Association shall record the transfer on its books.

3.5 **Voting:** At any meeting of the Members, each of the Owners shall be entitled to cast one vote for each Condominium owned by him or her. When more than one (1) person owns any Condominium, all such persons shall be Members. The vote for such Condominium shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Condominium.

ARTICLE IV
ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation For Assessments: Each Owner of any Condominium by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees: (1) to pay to the Association annual, special and reimbursement assessments, such assessments to be established and collected as hereinafter provided; and (2) to allow the Association to enforce any assessment lien established hereunder by nonjudicial proceedings under a power of sale or by any other means authorized by law. The annual, special and reimbursement assessments, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall be a charge on the Condominium and shall be a continuing lien upon the Condominium against which each such assessment is made, the lien to become effective upon recordation of a notice of assessment lien. Each such assessment, together with interest, late charges, collection costs, and reasonable attorneys' fees, shall also be the personal, joint and several obligation of each Person who was an Owner of such Condominium at the time when the assessment fell due. No Owner shall be exempt from liability for payment of assessments by waiver of the use or enjoyment of the Common Area or by the abandonment of the Owner's Condominium. The interest of any Owner in the amounts paid pursuant to any assessment upon the transfer of Ownership shall pass to the new Owner. Upon the termination of these covenants for any reason, any amounts remaining from the collection of such assessments after paying all amounts properly charged against such assessment shall be distributed to the then Owners on the same pro rata basis on which the assessments were collected.

4.2 Purpose of Assessments: The assessments levied by the Association shall be used exclusively to promote the economic interests, recreation, health, safety, and welfare of all the residents in the Association, and to enable the Association to perform its obligations hereunder.

4.3 Assessments.

4.3.1 Annual Assessment: The Board shall establish and levy annual assessments, in an amount that the Board estimates will be sufficient to raise the funds needed to perform the duties of the Association during each fiscal year. The annual assessment shall also include a portion for reserves as the Board considers appropriate to adequately meet the costs of the future repair, replacement or additions to the major improvements and fixtures that the Association is obligated to maintain and repair. Reserve funds may not be expended for any purpose other than repairing, replacing or adding to the major improvements or fixtures that the Association is obligated to maintain, except as provided in Civil Code Section 1365.5.

4.3.2 Special Assessments: The Board at any time may levy a special assessment in order to raise funds for unexpected operating or other costs, insufficient operating or reserve funds, or such other purposes as the Board in its discretion considers appropriate.

4.3.3 Reimbursement Assessments: The Board may levy a reimbursement assessment against any Owner and his or her Condominium who has caused damage to the

Common Area, or whose failure to comply with the Governing Documents has necessitated an expenditure of monies by the Association to bring such Owner or Condominium into compliance with said documents or in otherwise performing its functions, including but not limited to attorney's fees. Such assessment shall be for the purpose of reimbursing the Association, shall be limited to the amount so expended, shall be due and payable to the Association only after notice to the Owner and an opportunity for a hearing before the Board.

4.4 **Restrictions on Annual or Special Assessments:** The Board may not impose an annual assessment which is more than 20% greater than the annual assessment for the immediate preceding fiscal year, or levy special assessments which in the aggregate exceeds 5% of the budgeted gross expenses of the Association for that fiscal year, without the vote or written assent of Members casting a majority of the votes at a meeting of the Association at which a quorum is present. For purposes of this section, a "quorum" means more than fifty percent (50%) of the Total Voting Power of the Association.

However, the Board, without membership approval, may increase annual assessments or levy special assessments necessary for an emergency situation. For purposes of this section, an emergency situation is one of the following:

- A. an extraordinary expense required by an order of a court,
- B. an extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible, where a threat to personal safety or the Property is discovered, or
- C. an extraordinary expense necessary to repair or maintain the Property or any part of it for which the Association is responsible that could not have been reasonably foreseen by the Board in preparing and distributing the proforma operating budget, provided, however, that prior to the imposition or collection of the assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process and the resolution shall be distributed to the Members with the notice of the assessment.

The Association shall provide notice to the owners by first-class mail of any increase in the regular or special assessments not less than thirty (30) nor more than sixty (60) days prior to the increased assessment becoming due.

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

4.5 Division of Assessments:

4.5.1 Annual and special assessments shall be charged to and divided between the Condominiums as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

4.5.2 Reimbursement assessments may be levied against any individual Condominium.

4.6 Due Date of Assessments: The Board shall use its best efforts to fix the amount of the annual assessment against each Condominium and send written notice thereof to every Owner at least forty five (45) days in advance of each annual assessment period, provided that failure to comply with the foregoing shall not affect the validity of any assessment levied by the Association. Each Owner shall be obligated to pay assessments in equal monthly installments on or before the first day of each month, or in such other reasonable manner as the Board shall designate. Special assessments may be collected in one (1) payment, or periodically as the Board shall direct. The Association shall, on demand, and for a reasonable charge, furnish a certificate signed by an agent of the Association setting forth whether the assessments on a specified Condominium have been paid. Such a certificate shall be conclusive evidence of such payment.

4.7 Effect of Nonpayment of Assessments: Any assessment not paid within fifteen (15) days after the due date shall be delinquent, shall incur a late payment penalty in the amount of up to ten percent (10%) of the delinquent assessment and shall bear interest on the unpaid principal, late charges, costs and fees at the maximum rate allowed by law commencing thirty (30) days after the due date until paid.

4.8 Transfer of Condominium by Sale or Foreclosure: Sale or transfer of any Condominium shall not affect the assessment lien. However, the sale of any Condominium pursuant to the foreclosure of a First Mortgage shall extinguish the lien of such assessments (including attorney's fees, late charges, or interest levied in connection therewith) as to payments that became due prior to such foreclosure sale, except for assessment liens recorded prior to the Mortgage. No sale or transfer shall relieve such Condominium from liability for any assessments thereafter becoming due or from the lien thereof.

In any transfer of a Condominium, a grantor shall remain personally liable to the Association for all unpaid assessments against the Condominium up to and including the date of the transfer. The grantee shall be entitled to a statement from the Association, for a reasonable charge, dated as of the date of transfer, setting forth the amount of the unpaid assessments against the grantor due the Association. The grantee shall be personally liable for assessments imposed after the transfer. In any event, the Condominium shall be subject to a lien for all such assessments.

4.9 Enforcement; Remedies: If an assessment is delinquent, the Association may record a notice of assessment lien and establish a lien against the Condominium of the delinquent Owner prior and superior to all other liens except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (2) the lien or charge of any First Mortgage. The

notice of assessment lien shall state the amount of the assessment, collection costs, attorney's fees, late charges, and interest, a description of the Condominium against which the assessments and other sums are levied, the name of the record Owner, and the name and address of the trustee authorized by the Association to enforce the lien by sale. The notice shall be signed by any officer of the Association or any agent retained by the Association for that purpose.

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

The Association, acting on behalf of the Owners, shall have the power to bid for the Condominium at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period a Condominium is owned by the Association: (1) no right to vote shall be exercised on behalf of the Condominium; (2) no assessment shall be assessed or levied on the Condominium; and (3) each other Condominium shall be charged, in addition to its usual assessment, its share of the assessment that would have been charged to such Condominium had it not been acquired by the Association as a result of foreclosure. The Association may execute, acknowledge, and record a deed conveying title to the Condominium which deed shall be binding on the Owners, their successors, and all other parties.

Suit to recover a money judgment for unpaid assessments, late charges, interest and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

The Board may suspend the voting rights and the right to use recreational facilities of a Member who is in default in payment of any assessment, without notice and hearing.

ARTICLE V DUTIES AND POWERS OF THE ASSOCIATION

5.1 **Duties:** In addition to the duties enumerated in its Governing Documents, and without limiting the generality thereof, the Association shall perform the following duties:

5.1.1 **Maintenance:** The Association shall keep and maintain the Common Area (including structural elements of Restricted Common Areas) in good condition and repair, shall provide lighting, landscaping, gardening, and janitorial services as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area in first-class condition and repair, including painting of the exterior of the buildings and such other portions of the Common Area as the Board in its discretion determines to be necessary. The

Association shall maintain, repair and replace: (1) chimneys, flues and spark arrestor caps; (2) skylights, patios, decks and balconies as originally constructed; (3) all glass surfaces; window and door frames; exterior and garage doors; and (4) all landscaping except within the Restricted Common Area of a Unit. General cleaning and upkeep of Restricted Common Area shall be the responsibility of the Owner who is granted an exclusive easement for the use thereof, as provided in Section 6.10.

The responsibility of the Association for maintenance and repair shall not extend to repairs or replacements arising out of or caused by the willful or negligent act or omission of an Owner, or his or her guests, tenants, invitees, or pets, the cost of which is not covered by insurance carried by the Association. Owners shall be liable for all damages caused by water leaks due to willful or negligent act or omission that originate inside their Units. Such repairs shall be made by the responsible Owner, provided the Board approves the person actually making the repairs and the method of repair. If the responsible Owner fails to take the necessary steps to make the repairs, the Association shall make the repairs and assess the cost thereof to the responsible Owner after notice and a hearing as provided in the Bylaws.

5.1.2 **Insurance:** The Association shall maintain such policy or policies of insurance as are required by Article VII of this Declaration.

5.1.3 **Discharge of Liens:** The Association shall discharge by payment, if necessary, any lien against the Common Area, and charge the cost thereof to the Member responsible for the existence of the lien after notice and a hearing, as provided in the Bylaws.

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

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

5.1.6 **Utility Service:** The Association shall pay for all utilities serving the Common Area, except for utilities metered to separate Units, and refuse services for garbage cans owned and/or used by separate Units.

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

5.2.1 **Adoption of Rules:** The Association may adopt reasonable Rules not inconsistent with this Declaration relating to the use of the Common Area and all facilities thereon, and the conduct of Owners and their tenants and guests with respect to the Property and other Owners. Written copies of the Rules and any schedule of fines shall be furnished to the Owners.

The Board for the Association may establish move-in fees, title transfer fees, and such other fees as may reasonably be necessary for the operation of the Association.

5.2.2 **Easements:** The Association shall have the authority, by the vote or written consent of a majority of the Total Voting Power of the Association, to grant easements in addition to those shown on the Map, where necessary for utilities, cable television, sewer facilities, or other purposes, over the Common Area to serve the Owners or the Condominiums in common.

5.2.3 **Manager:** The Association shall have the authority to employ a Manager or other Persons and to contract with independent contractors to perform any assigned duties as directed by the Board, except for the responsibility to levy fines, impose discipline, hold hearings, or make capital expenditures. Any contract with a firm or Person appointed as a Manager shall not exceed a one (1) year term, and shall provide for the right of the Association to terminate the same for cause on thirty (30) days' written notice, and without cause and without payment of a termination fee or penalty on ninety (90) days' written notice.

5.2.4 **Access:** For the purpose of performing inspection, construction, maintenance, or repair for the benefit of the Common Area or the Owners in common, or correcting violations of the Governing Documents, the Association's agents or employees shall have the right, after reasonable notice (not less than forty-eight (48) hours except in emergencies) to the Owner thereof, to enter any Unit or any portion of the Common Area at reasonable hours. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired at the expense of the Association, unless the need for entry was caused by the Owner.

5.2.5 **Enforcement:** The Board shall have the power to enforce the provisions of the Governing Documents in any manner provided by law or in equity, including but not limited to self-help. The Association may impose fines or take disciplinary action against any Owner for failure to pay assessments or for violation of any provision of the Governing Documents. Penalties may include, but are not limited to, fines, recording a notice of noncompliance against a Condominium, temporary suspension of voting rights, temporary suspension of rights to the use of recreational facilities, or other appropriate discipline, provided the Member is given notice and a hearing as provided in the Bylaws before the imposition of any fine or disciplinary action, except for the failure to pay assessments.

5.2.6 **Acquisition and Disposition of Property:** The Association shall have the power to acquire (by gift, purchase or otherwise), own, hold, improve, operate, maintain, convey, lease, or otherwise dispose of real or personal property in connection with the affairs of the Association. Any transfer of real property, except the sale of a Condominium acquired through foreclosure of assessment lien, shall be approved by the vote or written consent of a majority of the Total Voting Power of the Association.

5.2.7 **Use of Recreational Facilities:** The Association shall have the power to limit the number of an Owner's tenants or guests who may use the recreational facilities, provided that all limitations apply equally to all Owners, unless imposed for disciplinary reasons, and to

charge reasonable admission and other fees for the use of the recreational facility situated on the Common Area.

5.2.8 **Loans:** The Association shall have the power to borrow money, but, only with the vote or written consent of a majority of the Total Voting Power of the Association, to mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5.2.9 **Contracts:** The Association shall have the power to contract for goods and/or services for the Common Area, and interests of the Association, subject to limitations of the Bylaws, or elsewhere set forth in the Declaration.

5.2.10 **Appointment of Trustee:** The Association has the power to appoint a trustee to enforce assessment liens by sale as provided in this Declaration and Civil Code Section 1367(b).

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

ARTICLE VI USE RESTRICTIONS

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

6.1 **Residential Use:** Each Condominium shall be used for residential purposes only and no part of the Property shall be used for any business, commercial, manufacturing, mercantile, storing, vending or other nonresidential purpose. Notwithstanding the foregoing, Owners or occupants of a Condominium may use a room or rooms in the Unit as an office provided that the use is judged by the Board to be unobtrusive to other residents; that the primary use of the Condominium is as a residence; no advertising or sign is used in any manner in connection with the office use; no customers, suppliers, clients, or patients enter the Unit on any regular basis, and that no vehicles are parked, laid over, or dispatched from the Property. The Board shall have the authority to adopt additional Rules regarding the use of offices within the Property in order to maintain the residential characteristics of the Property. Residency shall be limited to no more than two (2) persons per bedroom, plus one person, in any Condominium. No tent, trailer, mobile home, garage, outbuilding or structure of a temporary character shall be used at any time as a residence either temporarily or permanently.

6.2 **Common Area Storage:** There shall be no obstruction of the Common Area. It is not allowed to place any furniture, packages, or objects of any kind in the Common Area, except temporarily in connection with mail or freight deliveries or when residents are moving in or

out of Units. The Common Area shall not be used for storage of supplies, clotheslines, personal property, trash or refuse of any kind nor shall the patios or other Common Area be used in any way for storing unsightly objects or for the drying, shaking or airing of clothing or other fabrics. Nothing shall be stored in the Common Area without prior consent of the Board, except as herein expressly provided or in designated storage areas.

6.3 **Insurance:** Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance without prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit or in the Common Area that will result in the cancellation of insurance on any Unit, or any part of the Common Area, or which will be in violation of any law. No waste shall be committed in the Common Area.

6.4 **Signs:** . No sign or flag of any kind shall be displayed to the public view in the Common Area without the prior written consent of the Board. No signs or flags shall be displayed to the public view on any Condominiums, except (a) such signs as are approved by the Board; (b) one (1) "For Sale" or "For Rent" or "For Exchange" sign; and one (1) sign advertising directions to another Owner's Condominium which is for sale, rent or exchange, not more than four (4) square feet in size, provided the design and locations are reasonable, and (c) a noncommercial sign, poster, flag, or banner made of paper, cardboard, cloth, plastic, or fabric, may be posted or displayed from the window, or door, or on the wall within the balcony or patio of a Unit. Signs may not be made of lights, roofing, siding, paving materials, flora, or balloons, or any other similar building, landscaping, or decorative component, or including the painting of architectural surfaces. Noncommercial signs and posters that are more than 9 square feet in size and noncommercial flags or banners that are more than 15 square feet in size are prohibited.

6.5 **Antennas and Exterior Fixtures:** No television or radio poles, antennas, flag poles, clotheslines, or other external fixtures other than those originally installed or previously approved by the Board and any replacements shall be constructed, erected, or maintained on or within the Common Area and Restricted Common Area without the prior written consent of the Board, except as allowed by law. No wiring, insulation, air-conditioning, or other machinery or equipment other than originally installed or approved by the Board, and their replacements shall be constructed or maintained on or within the Common Area or any structures on it.

6.6 **Dangerous Materials:** No Owner shall store any dangerous explosive or inflammable materials in his or her Unit or in the Common Area.

6.7 **Animals:** One (1) dog or one (1) cat or other ordinary household pet may be kept in any Unit, provided that it is not kept, bred or maintained for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary conditions and provided the size of the pet is reasonable considering the size of the Property and the proximity of the Units. Owners shall prevent their pet from making excessive noise and from soiling walks, paths, patios, courtyards, lawn and shrub areas, and all portions of the Common Area. Each Owner shall pick up their pet's droppings, comply with City leash regulations and be financially responsible for any damage caused by any pet kept by the Owner or his or her

family, tenants or guests. Any animal that is an annoyance or nuisance to other residents of the Property as determined by the Board, shall be permanently removed by the Owner after notice and hearing.

6.8 **Nuisance:** No improper, unlawful, noxious or offensive activity shall be carried on in any Unit or in the Common Area nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners. There shall be no harassment of any Owner, tenant, Manager, contractor or vendor by any Owner or tenant.

6.9 **Vehicles and Parking:** No Owner shall park, store or maintain in or on the Property any motor homes, recreational vehicles, mobile homes, boats, trailers, campers or commercial type trucks, or vehicles other than ordinary passenger cars, family station wagons and three-quarter (3/4) ton or smaller pick-up trucks. The temporary parking of boats, trailers, campers, or other vehicles not customarily used for means of general transportation for periods of short duration, but not to exceed four (4) hours within any forty-eight (48) hour period as an incident to loading or unloading therefor, shall not be deemed a violation of this paragraph. Unless specific approval is granted by the Board, no Owner shall park more than two (2) passenger vehicles on the Property. Overnight parking is not permitted in the driveways. No vehicle may be parked for more than forty-eight (48) hours in a visitor parking space. The visitor parking spaces are not for the use of Owners or their tenants. There shall be no parking in any red zone. No repairs to any automobile or other motor vehicle may be made on the Property, except in case of strict emergency. Garages shall be kept in a clean, sanitary and safe condition and are not to be used for the storage of dangerous substances. Garage doors should remain closed when not in use. No noisy, smoky or unlicensed vehicles shall be operated or parked upon the Property. The Association may cause the removal of any vehicle wrongfully parked on the Property, including a vehicle owned by any Owner, their family, guests or tenants, in any manner allowed by law. The Association shall not be liable for any damages incurred by the vehicle owner, or any Owner, because of the removal in compliance with this section, or for any damage to the vehicle caused by the removal. Notwithstanding the foregoing, the Association may cause the removal, without notice, of any vehicle parked in a marked fire lane, within fifteen (15) feet of a fire hydrant, in a parking space designated for handicapped without proper authority or in a manner which interferes with any entrance to, or exit from, the Property or any Unit, parking space or garage located thereon.

6.10 **Owner's Maintenance Duties:** Except for those portions which the Board is required to maintain and repair hereunder, each Owner shall, at his or her sole cost and expense, maintain and repair his or her Unit, keeping the same in good condition. Each Owner shall also, at his or her own expense, keep those portions of the Restricted Common Area to which he or she has an exclusive easement in a clean and sanitary condition. Each Owner shall maintain, repair and replace their water heater, heating and air conditioning equipment, screens and automatic garage door openers, kitchen and bathroom appliances and fixtures. Each Owner shall maintain, repair and replace their fireplace, and shall be responsible for the periodic cleaning of their chimney flue and dryer vents. Each Owner shall maintain and keep in repair everything in his Unit and shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows, doors bounding his own Unit; and the right to paint

or decorate the interior surface of the backyard fence, subject to the prior written approval of color by the Board. Window coverings must be white or a neutral off-white color, and the screens on windows and doors must be in the existing color scheme of the development.

6.11 **Architectural Control:** No Owner shall enlarge or structurally alter his or her Unit or alter or paint the exterior thereof without prior written consent of the Board. No window awnings may be installed without the prior written consent of the Board.

6.12 **Right to Lease:** Any Owner may lease his or her Condominium. As used in this Article "lease" shall mean any and all agreements, including, but not limited to leases, subleases, or rental agreements, for the use or occupancy of any Condominium. Any Owner who wishes to lease his or her Condominium must meet each and every one of the following restrictions, and the lease will be subject to these restrictions whether they are included within the lease or not:

6.12.1 All leases must be in writing and the lease must state that the tenancy is subject to the Governing Documents. The lease must be for the entire Condominium and not merely parts thereof, unless the Owner remains in residence. No lease shall be for a period of less than ninety (90) days.

6.12.2 All Owners who lease their Condominiums shall promptly notify the secretary or Manager in writing of the telephone number and names of all tenants and members of tenants' family occupying such Condominium. The Owner shall also provide the address and telephone number where such Owner can be reached;

6.12.3 A copy of the Governing Documents must be given by the Owner to the tenant prior to the inception of the lease. Each Owner shall be responsible for compliance with the provisions of the Governing Documents by his guests and tenants and shall pay the assessments or penalties imposed pursuant to the Governing Documents for a violation thereof by his tenant or guest. The Owner shall be liable for any and all damages or costs incurred by the Association due to the tenants, their guests or pets;

6.12.4 By becoming a tenant, each tenant agrees to be bound by the Governing Documents, and recognizes and accepts the rights and power of the Association to evict a tenant for any violation by the tenant of the Governing Documents.

6.12.5 Any failure of the tenant to comply with the Governing Documents shall be a default under the lease, regardless of whether the lease so provides. In the event of any such default, the Owner immediately shall take all actions to cure the default including, if necessary, eviction of the tenant;

6.12.6 The Association will give the tenant and the Owner notice and a hearing as provided in the Bylaws before the Association may file for eviction;

6.12.7 If any Owner, acting as a landlord, or tenant is in violation of the provisions of the Governing Documents, the Association may bring an action in its own name and/or in the name of the Owner to have the tenant evicted and/or to recover damages. If the court finds that the tenant is, or has violated any of the provisions of the Governing Documents, the court shall find the tenant guilty of unlawful detainer notwithstanding the fact that the Owner is not a plaintiff in the action and/or the tenant is not otherwise in violation of tenant's lease with the Owner/landlord. For purposes of granting a forcible detainer against the tenant, Owner and tenant agree that the lease was made for the express benefit of the Association. The remedy provided by this subsection is not exclusive and is in addition to any other remedies that the Association has. The Association may recover all its costs, including court costs and attorneys' fees, which shall also be enforceable by a reimbursement assessment;

6.13 Common Area Improvements: No person other than the Board or its duly authorized agent shall construct, reconstruct, refinish, or alter any improvement upon the Common Area including landscaping.

ARTICLE VII INSURANCE

7.1 The Association shall obtain and maintain the following insurance:

7.1.1 A master hazard policy insuring 100% of the insurable replacement cost of all improvements, equipment and fixtures in the Property (including the Units as originally constructed);

7.1.2 If obtainable, an occurrence version comprehensive general liability policy insuring the Association, its agents, the Owners and their respective family members against liability incident to the ownership or use of the Common Area or any other Association owned or maintained real or personal property; the amount of general liability insurance which the Association shall carry at all times shall be not less than \$2,000,000.00;

7.1.3 Workers' compensation insurance to the extent required by law (or such greater amount as the Board deems necessary). The Association shall obtain a certificate of insurance naming it as an additional insured in regard to workers' compensation claims from any independent contractor who performs any service for the Association, if the receipt of such a certificate is practicable;

7.1.4 Fidelity bonds or insurance covering officers, directors, and employees that have access to any Association funds;

7.1.5 Officers and directors liability insurance in at least the minimum amounts required by law;

7.1.6 Earthquake insurance to the extent required by law, and if not required by law, then to the extent available at commercially reasonable rates as determined by the Board; and

7.1.7 Such other insurance as the Board in its discretion considers necessary or advisable.

7.1.8 The following endorsements should be included, if applicable:

(a) changes in building codes, and demolition coverage (sometimes referred to as "ordinance or law endorsement");

(b) inflation guard coverage;

(c) "agreed-amount" endorsement (to eliminate a coinsurance problem);

(d) replacement cost endorsement; and

(e) primary coverage endorsement.

7.2 The amount, term, and coverage of any policy required hereunder including the type of endorsements, the amount of the deductible, the named insureds, the loss payees, standard Mortgage clauses, and notices of changes or cancellations shall satisfy the minimum requirements imposed for this type of Property by the Federal National Mortgage Association ("FNMA") and the Federal Home Loan Mortgage Corporation ("FHLMC") or any successor thereto, unless the cost thereof is determined by the Board to be unreasonable. If the FNMA or FHLMC requirements conflict, the more stringent requirement shall be met. If FNMA and FHLMC do not impose requirements on any policy required hereunder, the term, amount, and coverage of such policy shall be no less than that which is customary for similar policies on similar properties in the area. The Association shall periodically and not less than once every three (3) years review all insurance policies maintained by the Association to determine the adequacy of the coverage and to adjust the policies accordingly.

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

7.4 Any insurance maintained by the Association shall contain waiver of subrogation as to the Association and its officers, directors, and Members, the Owners and occupants of the Condominiums and Mortgagees, and, if obtainable, a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. An Owner shall pay any deductible incurred by the Association due to the negligent or intentional act or omission of the Owner, his family, guests, tenants, or pets.

7.5 All individually owned insurance shall contain a waiver of subrogation as to the Association and its officers, directors, and Members, the Owners and occupants of the Condominiums, and Mortgagees, and all Members are deemed to have waived subrogation rights as to the Association and/or other Members, whether or not their policies so provide. No Owner shall separately insure his or her Condominium against loss by fire or other casualty covered by any insurance carried by the Association. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under the Association's policies that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance. Insurance maintained by the Association does not cover the Owner's or occupant's improvements to his or her Unit, or personal property and does not cover personal liability for damages or injuries occurring within the Unit. Each Owner shall insure his or her personal property against loss and obtain comprehensive personal liability insurance of at least \$100,000. In addition, any improvements made by an Owner within his or her Unit may be separately insured by the Owner, but the insurance is to be limited to the type and nature of coverage commonly known as "improvements insurance".

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

ARTICLE VIII DAMAGE OR DESTRUCTION; CONDEMNATION

8.1 **Damage to Single Unit:** If the Property is damaged by fire or other casualty which is insured against and said damage is limited to a single Unit, the insurance proceeds shall be paid to the Owner or Owners of such Unit, or the Mortgagees thereof as their respective interests appear. Such Owner or Mortgagees shall use the same to rebuild or repair such Unit substantially in accordance with the original as-built plans and specifications, modified as may be required by applicable building codes and regulations in force at the time of such repair or reconstruction and subject to such alterations or upgrades as may be approved by the Board. In the event the insurance proceeds are insufficient to complete such work, the Unit Owner shall pay and advance such additional sums as may be necessary to complete such repair and rebuilding.

8.2 **Damage to Two or More Units or Common Area:** If such damage extends to two (2) or more Units or extends to any part of the Common Area, then and in that event, the Association shall repair or reconstruct the improvement unless (1) the cost of repair or reconstruction is more than seventy-five percent (75%) of the current replacement costs of all Property improvements; (2) available insurance proceeds are not sufficient to pay for at least seventy-five (75%) of the cost of such repairs or reconstruction; and (3) seventy-five percent (75%)

of the Total Voting Power of the Association and fifty-one percent (51%) of the Eligible Mortgage Holders vote against such repair and reconstruction.

8.3 Procedures for Repair.

8.3.1 If the improvement is to be repaired or reconstructed and the cost for repair or reconstruction is in excess of twenty five percent (25%) of the current replacement cost of all the Property improvements, the Board shall designate a construction consultant, a general contractor, or an architect for the repair or reconstruction. All insurance proceeds, Association monies allocated for the repair or reconstruction, and any borrowings by the Association for the repair or reconstruction shall be deposited with a commercial lending institution experienced in the disbursement of construction loan funds (the "depository") as selected by the Board. Funds shall be disbursed in accordance with the normal construction loan practices of the depository that require as a minimum that the construction consultant, general contractor, or architect certify within ten (10) days prior to any disbursement substantially the following:

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

B. That such disbursement request represents monies which are justly due to contractors, or other persons (whose names and addresses shall be stated) who have rendered services or materials for the work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts paid or due to each of said persons in respect thereof and stating the progress of the work up to the date of said certificate;

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

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

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

8.3.2 If the cost of repair or reconstruction is twenty five percent (25%) or less of the current replacement cost of all the Property improvements, the Board shall disburse the available funds for the repair and reconstruction under such procedures as the Board deems appropriate under the circumstances.

8.3.3 The repair or reconstruction shall commence no later than six (6) months after the date of such damage or destruction and shall be completed no later than one year after commencement of construction subject to delays that are beyond the control of the party

responsible for making the repairs. The Owner of the damaged or destroyed improvement immediately shall take such steps as may be reasonably necessary to secure any hazardous condition and to screen any unsightly views resulting from the damage or destruction.

8.4 Procedures Without Repair.

If the improvements are not repaired or reconstructed in accordance with the foregoing, the Property shall be sold in its entirety. For the purpose of effecting a sale under this section, each Owner grants to the Association an irrevocable power of attorney to sell the entire Property for the benefit of the Owners, to terminate the Declaration and to dissolve the Association.

In the event the Association fails to take the necessary steps to sell the entire Property as required hereunder within sixty (60) days following the date of a determination by the Board of a material alteration, or if within one hundred twenty (120) days following the date of damage or destruction the Board has failed to make a determination as to a material alteration, any Owner may file a partition action as to the entire Property under California Civil Code Section 1359, or any successor statute, and the court shall order partition by sale of the entire Property and distribution of the sale proceeds as provided herein.

If the Property is sold, all available insurance and sales proceeds shall be disbursed among all Owners and their respective Mortgagees in proportion to the respective fair market values of their Condominiums as of the date immediately preceding the date of damage or destruction as determined by a qualified independent appraiser selected by the Board, after first applying the proceeds to the cost of mitigating hazardous conditions on the Property, making provision for the continuance of public liability insurance to protect the interests of the Owners until the Property can be sold, and complying with all other applicable requirements of governmental agencies. In the event of a failure to agree on an appraiser, the appraiser shall be appointed by the then President of the Santa Clara County Bar Association.

8.5 Condemnation: In the event of the condemnation of any Condominium by eminent domain, the Owner or Mortgagee of such Condominium shall be entitled to receive the award for such taking and after acceptance thereof, the Owner and his or her Mortgagee shall be divested of all interest in the Property if such Owner shall vacate his or her Condominium as a result of such taking. The remaining Owners shall decide by majority vote whether to rebuild or repair the Property, or take other action. The remaining portion of the Property shall be resurveyed, if necessary, and the Declaration shall be amended to reflect such taking and to readjust proportionately the percentages of undivided interest of the remaining Owners in the Property. The Association shall represent the Owners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Area, or part thereof. In the event of a taking by eminent domain of any part of the Common Area, the Association shall participate in the negotiations, and shall propose the method of division of the proceeds of condemnation, where Condominiums are not valued separately by the condemning authority or by the court. Proceeds of condemnation shall be distributed among Owners and their respective Mortgagees according to the relative values of the Condominiums affected by the condemnation, said values to be determined by the method provided in Section 8.4.

If there is a substantial taking of the Property (more than seventy-five percent (75%)), the Owners may terminate the legal status of the Property and, if necessary, bring a partition action under California Civil Code Section 1359 or any successor statute, on the election to terminate by seventy-five percent (75%) of the Total Voting Power of the Association and the approval of fifty-one percent (51%) of the Eligible Mortgage Holders. The proceeds from the partition sale shall be distributed to the Owners and their respective Mortgagees in proportion to the fair market values of their Condominiums as determined under the method described in Section 8.4.

ARTICLE IX RIGHTS OF FIRST LENDERS

9.1 **Rights of First Lenders:** All Owners who Mortgage their Condominium shall upon request inform the Association in writing of the document recording date and number and the name and address of the Mortgagee of the Mortgage. No breach of any of the covenants, conditions and restrictions herein contained, nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage, but all of said covenants, conditions and restrictions shall be binding on and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise. Notwithstanding any provision in the Governing Documents to the contrary, First Lenders shall have the following rights:

9.2 **Copies of Property Documents:** The Association shall make available to Owners and First Lenders, and to holders, insurers or guarantors of any First Mortgage, current copies of the Governing Documents, and the books, records, and financial statements of the Association. "Available" means available for inspection and copying, upon request, during normal business hours or under other reasonable circumstances. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

9.3 **Audited Statement:** Any holder, insurer or guarantor of a First Mortgage shall be entitled, on written request, to have an audited financial statement for the immediately preceding fiscal year, at its expense if one is not otherwise available. Such statement shall be furnished within one hundred twenty (120) days of the Association's fiscal year-end.

9.4 **Notice of Action:** Upon written request to the Association, identifying the name and address of the Eligible Mortgage Holder, Insurer or Guarantor, and the Condominium number or address, such Eligible Mortgage Holder or Insurer or Guarantor will be entitled to timely written notice of:

(A) Any condemnation loss or any casualty loss which affects a material portion of the Property or any Condominium on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor, as applicable;

(B) Any default in performance of obligations under the Declaration, Bylaws or Rules of the Association or delinquency in the payment of assessments or charges owed by an Owner subject to a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder, Insurer or Guarantor, which 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; and

(D) Any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders as specified in Section 9.5.

The Association shall discharge its obligation to notify Eligible Mortgage Holders, Insurers or Guarantors by sending written notices required herein to such parties, at the address given on the current request for notice, in the manner prescribed by Section 10.5.

9.5 **Consent to Action:** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Property,

A. The consent of sixty-seven percent (67%) of the Total Voting Power of the Association and the approval of fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to terminate the legal status of the Property as a Condominium development; provided however, that if termination is for reasons other than substantial destruction or condemnation, the agreement of sixty-seven percent (67%) of the Eligible Mortgage Holders is required.

B. The consent of sixty-seven percent (67%) of the Total Voting Power of the Association and the approval of fifty-one percent (51%) of the Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration which establish, provide for, govern, or regulate any of the following: (i) voting rights; (ii) increases on assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens; (iii) reductions in reserves for maintenance, repair and replacement of the Common Areas; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the general or Restricted Common Areas, or rights to their use; (vi) convertibility of Units into Common Areas or vice versa; (vii) expansion or contraction of the Association or the addition, annexation, or withdrawal of property to or from the Property; (viii) hazard or fidelity insurance requirements; (ix) imposition of any restrictions on the leasing of Condominiums; (x) imposition of any restrictions on an Owner's right to sell or transfer his or her Condominium; (xi) restoration or repair of the Property (after damage or partial condemnation) in a manner other than that specified in the Declaration; or (xii) any provisions that expressly benefit Mortgage Holders, Insurers or Guarantors.

C. An Eligible Mortgage Holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days after the notice of the proposed addition or amendment, shall be deemed to

have approved such request, provided the notice has been delivered to the Eligible Mortgage Holder by certified or registered mail, return receipt requested.

D. Except as provided by statute, in case of condemnation or substantial loss to the Units and/or Common Area of the Property, unless the holders of at least two-thirds (2/3) of the First Mortgagees (based on one (1) vote for each First Mortgage owned), or two-thirds (2/3) of the Total Voting Power of the Association have given their prior written approval, the Association and/or the Owners shall not be entitled to:

(1) By act or omission, seek to abandon or terminate the Property as a condominium development;

(2) Change the pro rata interest or obligations of any individual Condominium for the purposes of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Owner in the Common Area; provided that no Owner's undivided interest in the Common Area may be changed without the consent of that Owner.

(3) Partition or subdivide any Condominium;

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

(5) Use hazard insurance proceeds for losses to any improvements on Property (whether to Condominiums or to Common Area) for other than the repair, replacement or reconstruction of such improvements.

9.6 **Right to First Refusal:** The right of an Owner to sell, transfer, or otherwise convey his or her Condominium shall not be subject to any right of first refusal or similar restriction.

9.7 **Priority of Liens:** Each holder of a First Mortgage on a Condominium who comes into possession of the Condominium by virtue of foreclosure of the Mortgage, or any purchaser at a foreclosure sale under a first deed of trust, will take the Condominium free of any claims for unpaid assessments and fees, late charges, fines, or interest levied against the Condominium which accrue prior to the time such holder takes title to the Condominium, except for claims for a pro rata share of such assessments or charges to all Condominiums including the mortgaged Condominium, and except for assessment liens recorded prior to the Mortgage.

9.8 **Distribution of Insurance or Condemnation Proceeds:** No provision of the Declaration gives an Owner, or any other party, priority over any rights of First Mortgagees in the

case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or taking of Condominiums and/or Common Area.

ARTICLE X
GENERAL PROVISIONS

10.1 **Non Discrimination**: No Owner shall, either directly or indirectly forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of their Condominium to any person of a specified race, sex, adulthood, marital status, color, religion, ancestry, physical handicap, source of income, sexual orientation, or national origin.

10.2 **Interpretation**: The provisions of these restrictions shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the Property as a Condominium development. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision thereof.

10.3 **Gender, Number and Captions**: As used herein, the singular shall include the plural and masculine pronouns shall include feminine pronouns, where appropriate. The titles and captions of each paragraph hereof are not a part thereof and shall not affect the construction or interpretation of any part thereof.

10.4 **Term**: The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Restated Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by two-thirds (2/3) of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the same.

10.5 **Notice**: Any notice permitted or required by the Governing Documents may be delivered either personally or by mail. If delivery is by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, first class or registered, postage prepaid, addressed to the person to be notified at the current address given by such person to the secretary or Manager, or addressed to the Condominium of such person if no address has been given to the secretary or Manager.

10.6 **Amendment**: This Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of fifty one percent (51%) of the Total Voting Power of the Association. However, the percentage of voting power necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken

under that clause. Any amendment must be certified in a writing executed and acknowledged by the president of Association and recorded in the Recorder's Office of the County of Santa Clara. No amendment shall adversely affect the rights of the Mortgagee of any Mortgage of record prior to the recordation of such amendment.

10.7 **Enforcement:** Each Owner, tenant or occupant of a Condominium shall comply with the provisions of the Governing Documents and resolutions of the Board or its duly authorized representative, all as lawfully amended from time to time, and failure to comply with such shall be grounds for an action to recover sums due, for damages, or for injunctive relief. Each Owner shall be responsible to the Association for compliance with the foregoing by his or her guests and lessees. The Association, or any Owner, shall have the right (but not the obligation) to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of the Governing Documents, and in such action shall be entitled to recover attorneys' fees and costs as ordered by the court. Only the Association can use self-help.

10.7.1 **Nonwaiver:** Failure by the Association or by any Owner to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.7.2 **Violation and Nuisance:** Every action or omission whereby a covenant, condition or restriction of the Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association, or any Owner.

10.7.3 **Violation of Law:** Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any portion of the Property is hereby declared to be a violation of these restrictions and subject to any or all of the enforcement procedures herein set forth.

10.7.4 **Remedies Cumulative:** Each remedy provided by these Restrictions are cumulative and not exclusive.

10.7.5 **Joint and Several Liability:** In the case of joint ownership of a Condominium, in any form, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners as set forth in or imposed by this Declaration shall be joint and several.

IN WITNESS WHEREOF, this Restated Declaration is executed by the President of the Association.

I hereby certify and declare under penalty of perjury, that the foregoing Restated Declaration has been approved by the percentage of Owners required by the Declaration. Executed at Palo Alto, California, on the 3, day of March, 2005.

THE BARRON SQUARE HOMEOWNERS ASSOCIATION

By: Marla Degner
President

STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA CLARA)

On March 3, 2005, before me Ree Campana Dufresne, a Notary Public, personally appeared MARLA DEGNER, the President of THE BARRON SQUARE HOMEOWNERS ASSOCIATION, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Ree Campana Dufresne



cc&r\barron.CCR final
10/6/04 - dmh

EXHIBIT A

BARRON SQUARE CONDOMINIUM
ASSESSMENT ALLOCATION SCHEDULE

<u>Unit No.</u>	<u>Unit Address</u>	<u>% of Allocated Assessment</u>	<u>Unit No.</u>	<u>Unit Address</u>	<u>% of Allocated Assessment</u>
1	4102	1.52	34	548	1.51
2	4106	1.51	35	544	1.51
3	4110	1.79	36	522	1.79
4	4104	1.51	37	526	1.51
5	4108	1.51	38	524	1.51
6	4112	1.51	39	528	1.51
7	4130	1.51	40	510	1.25
8	4126	1.51	41	512	1.25
9	4122	1.79	42	502	1.25
10	4132	1.51	43	504	1.25
11	4128	1.51	44	506	1.25
12	4124	1.51	45	508	1.25
13	4142	1.51	46	514	1.25
14	4146	1.51	47	516	1.25
15	4150	1.79	48	539	1.51
16	4144	1.51	49	535	1.51
17	4148	1.51	50	531	1.79
18	4152	1.51	51	541	1.51
19	4162	1.51	52	537	1.51
20	4166	1.51	53	533	1.51
21	4170	1.79	54	551	1.79
22	4164	1.51	55	555	1.51
23	4168	1.51	56	559	1.51
24	590	1.79	57	553	1.51
25	586	1.51	58	557	1.51
26	582	1.79	59	561	1.51
27	588	1.51	60	4131	1.51
28	584	1.51	61	4135	1.51
29	564	1.79	62	4139	1.79
30	562	1.79	63	4133	1.51
31	550	1.79	64	4137	1.51
32	546	1.51	65	4141	1.51
33	542	1.79			