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SANTA CLARA COUNTY TITLE COMPANY

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GEORGE A. MAUN, RECORDER
SANTA CLARA COUNTY, OFFICIAL RECORDS

Recording Requested By and
After Recording Return To:

G947 PAGE 697

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR MARRIOTT CENTER

DECLARANT: AINA NUI CORPORATION, a Hawaii corporation.

PROPERTY: All that certain real property situated in the City of Santa Clara, County of Santa Clara, State of California, described as follows: Parcels 1 through 27, inclusive, as shown on a Map, filed on April 24, 1981, in Book 483, Pages 25, 26 and 27, inclusive, of Maps, County of Santa Clara, California.

1051-4-42.07, 42.03, 014 42.08.01

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FOR MARRIOTT CENTER

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MARRIOTT CENTER

This Declaration is made on _____, 1982, by
AINA NUI CORPORATION, a Hawaii corporation (hereinafter
"Declarant").

PREAMBLE

A. Declarant is the owner of certain real property
("Properties") located in the City of Santa Clara, County of
Santa Clara, State of California, described as follows:

Parcels 1 through 27, inclusive, as shown on a
Map, filed on April 24, 1981, in Book 483, Pages
25, 26 and 27, inclusive of Maps, County of Santa
Clara, California.

B. Declarant and all subsequent Owners of Lots in the
Properties shall be bound by, and everything contained
herein shall be junior and subordinate to the following
recorded documents affecting the Properties:

(1) Declaration of Restrictions - Marriott Business
Park, dated March 10, 1976, recorded on March 15, 1976, in
Book B915, Page 228, of the Official Records of Santa Clara
County, California, which Declaration was amended by a
Amendment dated October 20, 1977, and recorded in Book D281,
Page 411, of the Official Records of Santa Clara County,
California ("Master Declaration"). The Master Declaration
contains general use restrictions, and among other things
certain set-back and sign restrictions.

(2) Agreement for the Installation and Main-
tenance of Landscape Improvements, dated December 14, 1976,
and recorded December 17, 1976 in Book C484, Page 109, of
the Official Records of Santa Clara County, California.

C. Declarant has developed the Properties and shall
grant the Lots thereon to Owners pursuant to a general plan

for all of the Properties and subject to the covenants, conditions, restrictions and easements as hereinafter set forth.

D. Declarant has deemed it desirable, for the preservation of the value, desirability and attractiveness of the Properties, to create a corporation under the Nonprofit Mutual Benefit Corporation Law of the State of California to which shall be assigned the powers and responsibilities of maintaining and administering the Common Areas and the Exterior Surface Maintenance Areas, enforcing the covenants and restrictions herein contained, and collecting and disbursing the assessments and charges hereinafter created.

E. Declarant hereby declares that all of the Properties shall be held, occupied, sold, and conveyed subject to the following covenants, conditions, restrictions and easements, all and each of which are for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Properties, in furtherance of a general plan for the protection of the Properties, or any portion thereof. All, and each of these covenants, conditions, restrictions, and easements are hereby imposed as equitable servitudes upon the Properties. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with the Properties, shall be binding on all parties having or acquiring any right, title or interest in the Properties or in any part thereof, and their successors and assigns, shall inure to the benefit of every portion of the Properties and any interest therein, shall inure to the benefit of each Owner, and his successors and assigns, and may be enforced by any Owner, the Association and Declarant.

ARTICLE I

DEFINITIONS

The following words, when used in this Declaration and in any Certificate of Amendment, unless otherwise provided,

shall have the following meanings:

1.1 "Architectural Committee" or "Committee" shall mean the Architectural Committee formed pursuant to Section 9.1 of the Declaration.

1.2 "Articles" shall mean the Articles of Incorporation of the Association which have been or may hereafter be filed in the office of the Secretary of the State of California, as such Articles may be amended from time to time.

1.3 "Assessments" shall collectively mean Common Assessments (including supplemental Common Assessments), Special Assessments, Reconstruction Assessments and Capital Improvement Assessments.

1.4 "Association" shall mean the Marriott Center Owners Association, a California non-profit mutual benefit corporation, its successors and assigns.

1.5 "Board of Directors" or "Board" shall mean the Board of Directors of the Association.

1.6 "By-Laws" shall mean the By-Laws of the Association, as adopted by the Board initially, as such By-Laws may be amended from time to time.

1.7 "Capital Improvement Assessment(s)" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for installation or construction or replacement of any capital Improvements on any of the Common Areas or capital Improvements constructed on property other than the Properties but directly benefiting the Properties, which the Association may from time to time authorize in accordance with Section 3.7 of this Declaration.

1.8 "Close of Escrow" shall mean the date on which a grant deed to a Lot is Recorded.

1.9 "Common Areas" shall mean that portion of the Properties consisting of Parcel 27 as shown on the Map

(including the Improvements constructed thereon), which is owned by the Association for the common use of all of the Owners. Declarant shall grant the Association fee title to the Common Areas prior to the first Close of Escrow for the sale of a Lot.

1.10 "Common Assessment(s)" shall mean the annual charge against each Owner and his Lot, which shall be paid by each Owner to the Association, to satisfy those Common Expenses for ordinary maintenance, operation, repair and management of the Common Areas and Exterior Surface Maintenance Areas and which are not otherwise payable as Capital Improvement Assessment(s), Special Assessments and Reconstruction Assessments.

1.11 "Common Expense(s)" shall mean the actual and estimated costs of: maintenance, management, operation, repair and replacement of the Common Areas and Exterior Surface Maintenance Areas (including unpaid Special Assessments, Capital Improvement Assessments and those other costs not paid by the Owner responsible for payment); the costs of landscape maintenance and supplies incidental thereto; the costs of maintaining lighting facilities; the costs of all general liability, property damage and other insurance carried by the Association; the costs of all commonly metered utilities, and other commonly metered charges for the Properties; the costs of refuse storage and collection; the costs of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all services benefiting the Common Areas and Exterior Surface Maintenance Areas; the costs of bonding of the members of the management body; taxes and assessments (including, but not limited to, assessments for public improvements or benefit) paid by the Association and amounts paid by the

Association for the discharge of any lien or encumbrance levied against the Common Areas; the costs of policing and security protection; and the costs of any other item or items incurred by the Association for any reason in connection with the Properties for the benefit of all of the Owners.

1.12 "Declarant" shall mean Aina Nui Corporation, its successors and any person to which it has assigned any of its rights hereunder by an express written assignment.

1.13 "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Marriott Center, as it may be amended from time to time as provided herein.

1.14 "Exterior Surface Maintenance Area(s)" shall mean, as the same may from time to time exist, the exterior surfaces of all Improvements on a Lot including without limitation all buildings, fences, walls and the exterior sidewalks and entryways, and shall specifically include all glass areas and shall specifically exclude roofs.

1.15 "Improvement(s)" shall mean all structures and appurtenances thereto of every kind, located on the Properties, whether above or below the land surface, including but not limited to, buildings, utility systems, walkways, driveways, parking areas, loading areas, landscaping items, fences, walls, decks, stairs, poles, landscaping vegetation, sprinkler and irrigation systems, signs, exterior fixtures and any other structure of any kind.

1.16 "Lot" shall mean any of the numbered lots or parcels shown upon a Recorded subdivision map or Recorded parcel map of the Properties, including all Improvements thereon. The term "Lot" shall not include any portion of the Common Areas.

1.17 "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting and other related Improvements and fixtures on the Properties in

a state similar to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of regular fertilization, irrigation, and other garden management practices necessary to promote a healthy weed-free environment for optimum plant growth, as well as maintenance of the irrigation system and its parts.

1.18 "Map" shall mean that certain map entitled "Lands of F.E. Trotter, Inc., et al.", Filed on the 24th day of April 1981, in Book 483 of Maps, Pages 25, 26, and 27 inclusive.

1.19 "Master Declaration" shall mean the Recorded Declaration of Restrictions described in paragraph B(1) of the Preamble to this Declaration.

1.20 "Member" shall mean every person holding a membership in the Association, as provided in Section 2.4 hereof. "Membership" shall mean the status of being a Member.

1.21 "Mortgage" - "Mortgagee" - "Mortgagor". A mortgage shall mean any mortgage or deed of trust or other conveyance of an interest in a Lot or in the Common Areas, which secures the performance of an obligation and which will be void and reconveyed upon completion of such performance. Reference in this Declaration to a mortgagee shall be deemed to include the beneficiary of a deed of trust; reference to a mortgagor shall be deemed to include the trustor of a deed of trust.

1.22 "Owner" The Owner of a Lot shall mean any person, including Declarant, holding fee simple title of record to the Lot, excluding those having such interest merely as security for the performance of an obligation and including the vendee (buyer) of a Lot under a contract of sale (real property sales contract). "Ownership" shall mean the status of being an Owner.

1.23 "Properties" shall mean all the real property described in paragraph A of the Preamble to this Declaration, as the same now is and as it may, from time to time, be

developed and improved.

1.24 "Reconstruction Assessment(s)" shall mean a charge against each Owner and his Lot, representing a portion of the cost to the Association for repair or replacement of any portion of damaged or destroyed Improvements in the Common Areas, as provided for in this Declaration.

1.25 "Record" and "File" shall mean, with respect to any document, the recordation thereof, and with respect to any map, the filing thereof, in the Office of the Recorder of Santa Clara County, State of California.

1.26 "Special Assessment(s)" shall mean a charge against a particular Owner and his Lot directly attributable to, or reimbursable by, the Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest and other charges thereon, as provided for in this Declaration.

1.27 "Street" shall mean any street, drive, way, lane, place or other thoroughfare either as shown on any Recorded subdivision map or Recorded parcel map of the Properties, however designated, or as so used as a part of the Common Areas.

ARTICLE II

ASSOCIATION

2.1 Formation and Membership. The Association shall be incorporated under the name of Marriott Center Building Owners Association, as a corporation not for profit under the Nonprofit Mutual Benefit Corporation Law of the State of California.

2.2 Duties and Powers. The duties and powers of the Association are those set forth in the Articles and this Declaration, together with the general and implied powers of a nonprofit mutual benefit corporation to do any and all things that a corporation organized under the Nonprofit Mutual Benefit Corporation Law of the State of California

may lawfully do which are necessary and proper for the peace, health, comfort, safety and general welfare of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, By-Laws and this Declaration. The Association shall further have the right to install or construct reasonable capital Improvements on the Common Areas, for the benefit of all of the Owners. Subject to the provisions of Section 9.2(a) below, the Association may at any time, and from time to time, reconstruct, replace, add, or refinish any Improvement or portion thereof and any destroyed trees or other vegetation and plant trees, shrubs and ground cover upon the Common Areas, without the approval of the Committee. The Association may contract for equipment, tools, supplies and other goods for the Common Areas and may contract with a public utility company, and use and pay for utility services to the Common Areas and the Improvements thereon. The Association may employ personnel necessary for the effective operation and maintenance of the Common Areas, including the employment of legal and accounting services. The Board shall not enter into any management service contract for a term in excess of one (1) year, without the vote or written assent of both classes of Membership or except as otherwise provided in the By-laws. To the extent not paid by the Owners, the Association shall have the authority to pay all real and personal property taxes and assessments (including, but not limited to, assessments for public improvements on benefit) which shall constitute a lien upon any portion of the Common Areas. Such taxes or assessments may be contested or compromised by the Association; provided, however, that any such contested taxes or assessments shall be paid or a bond insuring the payment thereof shall be posted prior to the sale or other disposition of any portion of the Common Areas.

to satisfy the payment of such taxes or assessments. Any taxes or assessments so paid by the Association shall be a Common Expense and shall be included in the Common Assessments levied against the Owners pursuant to the terms hereof; provided however all taxes and assessments paid by the Association, the payment of which is the responsibility of an Owner, shall be charged to such Owner as a Special Assessment, as herein provided.

2.3 Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles or the By-Laws, the terms and provisions of this Declaration shall prevail.

2.4 Membership. Every Owner shall automatically, upon acquiring his Lot, be a Member of the Association, and shall remain a Member thereof until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Ownership of a Lot shall be the sole qualification for Membership in the Association. All Memberships shall be appurtenant to a Lot, and with the exception of Declarant, a Person shall be deemed an Owner of a Lot only upon Recordation of a deed to such Lot. Except as may otherwise be provided herein, the rights, duties, privileges and obligations of all Members shall be as set forth in this Declaration, the Articles and By-Laws, and the rules and regulations of the Association adopted in accordance with the By-Laws.

2.5 Transfer. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale, lease or encumbrance of such Owner's entire interest in a Lot, and then only to the purchaser, lessee or mortgagee of such an interest. Any sale, transfer or conveyance of any Owner's entire interest in a Lot, including a foreclosure sale, shall operate to transfer the Membership

held by such Owner without the requirement of any express reference thereto. Upon termination of an Owner's entire interest in a Lot, Membership in the Association shall also terminate. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association.

2.5 Voting Rights. The Association shall have two (2) classes of voting Membership.

(a) Class A. Class A Members shall be all Owners, with the exception of Declarant for so long as there exists a Class B Membership. A Class A Member shall be entitled to one (1) vote for each one thousand (1,000) square feet of gross floor area of each floor of the building which has been constructed on such Member's Lot, as computed by taking into consideration the setback, building, zoning and other relevant laws and ordinances applicable to the Properties on the date this Declaration is Recorded, and rounded off to the nearest one thousand (1,000) feet. The initial square footage floor area for buildings which has been constructed on each Lot shall be as set forth in Exhibit "A" which is attached hereto and incorporated herein by this reference, and such totals may only be modified with the consent of the Architectural Committee. Unless and until so modified, the floor areas attributable to each Lot shall be conclusively presumed for all purposes to be as set forth on Exhibit "A". When more than one person is the Owner of any Lot, all Owners shall be Members of the Association and the votes attributable to such Lot shall be exercised as among the Owners themselves determine, but in no event shall more votes than those authorized under this paragraph be cast with respect to any Lot. No vote shall be cast for any Lot owned by more than one Owner where the majority of co-Owners

cannot agree to such vote.

(b) Class B. The Class B Member shall be Declarant. With respect to each Lot of which Declarant is the Owner, the Class B Member shall be entitled to ten (10) times the number of votes which would be attributable to such Lot if the Owner of such Lot were a Class A Member. The Class B Membership shall cease and be converted to Class A Membership on the happening of the earlier of the following events: (a) When the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; or (b) seven (7) years from the date on which this Declaration is originally Recorded.

2.7 Initial Board of Directors. The initial Board of Directors consisting of three (3) persons shall be elected by Declarant upon the incorporation of the Association and such Board shall hold office until the earlier of six (6) months after the first Close of Escrow for a Lot or forty-five (45) days after the Close of Escrow for the Lot which represents the fifty-first percentile (51%) of the Lots to have been sold.

2.8 Subsequent Boards of Directors. Upon the termination of the term of said initial Board, a special meeting of the Members of the Association shall be held for the purpose of electing a new Board consisting of three (3) directors who shall serve until the first regular annual meeting of the Association. At said annual meeting, and at each subsequent annual meeting, the Members of the Association shall elect a Board consisting of three (3) directors who shall serve until the next annual meeting. The authorized number of directors may be changed by an amendment to the By-Laws. Each such director, except for those appointed and serving as initial directors, shall be an Owner and a Member of the

Association (or an agent of Declarant until the last Lot has been conveyed to a purchaser); provided that at no time shall the Board consist of less than three (3) directors. The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Owners. The Board shall not, except with the vote or written assent of a majority of the voting power of the Association, pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a member or officer to be reimbursed for his actual expenses incurred in carrying on the business of the Association, and nothing herein contained shall preclude any member of the Board or officer of the Association from serving the Association in some other capacity and receiving compensation therefor.

2.9 Regular and Special Meetings of Board. Regular and special meetings of the Board shall be open to all Members of the Association; provided, however, that Members who are not on the Board may not participate in any deliberation or discussion unless expressly so authorized by the vote of a majority of a quorum of the Board. The Board may, with the approval of a majority of a quorum of its members, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, the suspension or conditioning of an Owner's rights or privileges hereunder, the levying of a Special Assessment, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

(a) Regular Meetings. Regular meetings of the Board shall be held at a time and at a place within the Properties fixed by the Board from time to time, as provided by and in accordance with the By-Laws. Notice of the time and place of a regular meeting shall be posted at a prominent place or places within the Common Areas and shall be communicated to Board members not less than seventy-two (72) hours prior to the meeting, unless the time and place of meeting is fixed by the By-Laws; provided, however, that notice of a meeting need not be given to any Board member who has signed a waiver of notice or a written consent to the holding of the meeting.

(b) Special Meetings. A special meeting of the Board may be called by written notice signed by the president of the Association or by any two members of the Board other than the president. The notice of such special meeting shall specify the time and place of the meeting and the nature of any special business to be considered. As more fully set forth in the By-Laws, notice of the special meeting shall be posted in the manner prescribed for notice of regular meetings of the Board and shall be sent to all Board members not less than seventy-two (72) hours prior to the scheduled time of the meetings; provided, however, that notice of the meeting need not be given to any Board member who has signed a waiver of notice or a written consent to the holding of the meeting.

2.10 Annual and Special Membership Meetings.

(a) Regular Meetings. The Association shall hold regular annual meetings of the Members at such time as provided by and in accordance with the By-Laws. The first regular annual meeting of Members shall be held within forty-five (45) days after Close of Escrow for the Lot which represents the fifty-first percentile (51%) of the Lots to

be sold, but in no event later than six (6) months after the first Close of Escrow for a Lot.

(b) Special Meetings. Special meetings of the Members may be called at any time for the purpose of considering matters which, by the terms of this Declaration, the Articles, or the By-Laws, require the approval of all or some of the Members, or for any other reasonable purpose. A special meeting of the Members shall be promptly called by: (a) the Chairman of the Board; (b) the President of the Association; (c) the vote for such a meeting by a majority of a quorum of the Board; or (d) the receipt by the Secretary of the Association of a written notice for a special meeting signed by Members representing at least five percent (5%) of the total voting power of the Association.

(c) Place of Meetings. Meetings of Members shall be held within the Properties or at a meeting place as close thereto as possible. Unless unusual conditions exist, Members' meetings shall not be held outside Santa Clara County.

(d) Notice of Meetings. Written notice of regular and special meetings shall be given to Members by the Board by any means which is appropriate given the physical setup of the Properties, as more fully provided in the By-laws. The notice shall specify the place, date, and hour of the meeting and, in the case of a special meeting, the nature of the business to be undertaken.

(e) Quorum. A quorum for the transaction of business at a meeting of Members through presence in person or by proxy shall be established by the By-Laws at a percentage of not less than twenty-five percent (25%) and not more than sixty-six and two-thirds percent (66-2/3%) of the total voting power of the Association.

ASSESSMENTS

3.1 Creation of the Lien and Personal Obligations for Assessments. Declarant, for each Lot of which Declarant is the Owner, covenants and agrees to pay, and each Owner, by acceptance of a deed to a Lot, whether or not it shall be so expressed in therein, is deemed to covenant and agree to pay to the Association, all Common Assessments (including supplemental Common Assessments), applicable Special Assessments, Reconstruction Assessments and Capital Improvement Assessments and shall thereby vest in the Association the right and power to bring all actions for the collection of such charges and Assessments, costs of suit and attorneys' fees, and for the enforcement of such liens. All Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a separate, distinct and personal obligation of the Owner at the time the Assessments fall due, shall be a continuing lien upon the Lot against which such Assessment is made to secure the payment of such Assessment, together with interest, costs and reasonable attorneys' fees, and shall bind his heirs, successors in interest, devisees, personal representatives and assigns. The priority of all such liens on each Lot shall be an inverse order, so that upon the foreclosure of the lien of any particular charge on any Lot, any such sale of an interest in a Lot pursuant to such foreclosure will be made subject to all liens securing the charges on such Lot for preceding periods of time. This personal obligation of each Owner cannot be avoided by abandonment of a Lot or by an offer to waive use of the Common Areas. 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 Areas or from any action taken to comply with any

law, ordinance or order of a governmental authority.

3.2 Purpose of Assessments. The Assessments levied by the Board of Directors on behalf of the Association shall be used exclusively to promote the health, safety and welfare of the Owners and their employees and for the operation, replacement, improvement and maintenance of the Common Areas and Exterior Surface Maintenance Areas. All Assessments must be used solely for the common benefit of all of the Owners for purposes authorized by this Declaration, as it may be amended from time to time. Disbursements from the maintenance fund of the Association shall be made by the Board, as agent of the Owners, for such purposes as may be necessary for the discharge of its responsibilities herein and in the Articles of the Association, for the common benefit of all of the Owners. Nothing in this Declaration shall be construed in such a way as to limit the right of the Board to use any Common Assessments to abate any annoyance or nuisance emanating from outside the physical boundaries of the Properties.

3.3 Determination of Common Assessments. The Board of Directors shall authorize and levy the amount of the annual Common Assessment upon each Owner and such Owner's Lot, as provided herein, by majority vote of the Board. The initial Common Assessment shall commence on the first day of the calendar month following the first Close of Escrow for the sale of a Lot. Common Assessments shall be borne proportionately by the Owners in the same proportion that the total gross square footage floor area of the building which is or may be constructed on each Owner's Lot bears to the total gross square footage floor area of all structures which may be constructed on the Properties, as such proportions are set forth in Exhibit "A" attached hereto. In the event that any additional square footage floor area is constructed on

any Lot with the approval of the Architectural Committee, if required pursuant to the terms hereof, then the Common Assessments shall be adjusted by the Board to account for the increased total gross square footage floor area of the building on such Lot. Unless and until so modified, the proportions of the total Association budget for Assessment purposes shall be conclusively presumed for all purposes to be as set forth in Exhibit "A". Written notice of the annual Common Assessments shall be sent to every Member. Without first receiving the approval of the Members, the Board may increase the annual Common Assessment against each Member and such Member's Lot in any fiscal year by an amount not in excess of twenty-five percent (25%) of the annual Common Assessment levied in the preceding fiscal year. Any such increase in excess of twenty-five percent (25%) shall require the prior approval of a majority of the voting power of both classes of Membership of the Association. The omission by the Board to fix the Common Assessments provided for hereunder before the expiration of any Association fiscal year, for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the Assessments, or any installment thereof for that or any subsequent year, but the Common Assessment fixed for the preceding year shall continue until a new Common Assessment is fixed.

3.4 Payment of Assessments. Each Member shall pay to the Board of Directors his annual Common Assessment in equal monthly installments in advance, or at such frequency and in such amounts as may be hereafter established by the Board of Directors. Declarant shall pay its pro rata share of the Common Assessments on all Lots in the Properties subject to assessment of which Declarant is the Owner. At the end of

any fiscal year of the Association, the Board by majority vote may determine that all excess funds derived from Common Assessments may be returned to the Members proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. In the event of any voluntary or involuntary conveyance of an interest in a Lot, the new Owner ("Purchaser") shall be jointly and severally liable with the previous Owner ("Seller") for all unpaid installments of Common Assessments levied against such Lot up to the date of close of escrow of the conveyance, without prejudice to the right of the Purchaser to collect from the Seller therefor. However, any such Purchaser shall be entitled to a statement from the Board of Directors setting forth the amount of the unpaid Assessments against such Lot; and such Purchaser shall not be liable for, nor shall the interest conveyed be liable for any unpaid Assessments levied by the Board of Directors against the Seller in excess of the amount set forth in the statement; provided, however, that the Purchaser shall be personally liable for any and all installments of Assessments and other charges becoming due after close of escrow for the conveyance. Notwithstanding the foregoing, any Mortgagee for value who obtains an interest in a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, shall not be liable for unpaid Assessments or charges against the mortgaged Lot which accrue prior to the time such Mortgagee acquires title to such interest; provided, however, such transfer of title shall not relieve such Lot from claims for a pro rata share of Assessments or charges resulting from a reallocation of delinquent Assessments to all Lots, including the mortgaged Lot.

3.5 Supplemental Common Assessments. In the event the Board of Directors shall determine that the total Common

Assessment charges for the current Association fiscal year are, or will become, for any reason, inadequate to meet all those Common Expenses for which Common Assessments are levied, it shall immediately determine the approximate amount of such inadequacy. The Board of Directors, by a majority vote, shall have the authority to levy at any time a supplemental Common Assessment reflecting a revision of the total charges to be assessed against each Member and the Member's Lot, which charge shall not exceed: (a) twenty-five percent (25%) of the then current Common Assessment, if the current Common Assessment has been previously approved by a majority of the voting power of both classes of Membership of the Association; or (b) if the current Common Assessment has not been so approved, twenty-five percent (25%) of the previous year's Common Assessment. To the extent that any supplemental Common Assessment or the aggregate of any supplemental Common Assessments in any fiscal year of the Association exceeds the foregoing, such excess shall require the prior approval, by vote or written consent, of a majority of the voting power of the Association. Written notice of supplemental Common Assessments levied by the Association through the Board of Directors shall be given to all Members not less than thirty (30) days prior to the date such supplemental Common Assessment is payable.

3.6 Exemption from Payment of Common Assessments. Any Owner of a Lot which does not include a completed Improvement for which a Certificate of Occupancy or its equivalent has been issued on the date the initial Common Assessment shall be levied pursuant to Section 3.3 above, shall be exempt from the payment of such portion of any Common Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and the use of such Improvement. The amount of such exemption and those portions

of the Common Assessment attributable to the existence and use of such Improvement shall be determined by the Board and it may include, without limitation, expenses related to maintenance of Exterior Surface Maintenance Areas, refuse disposal and common utilities supplied to such Improvements. Any such exemption from the payment of Common Assessments shall be in effect only until the date a notice of completion of the Improvement has been Recorded or the date which is one hundred eighty (180) days after the issuance of a building permit for the Improvement, whichever first occurs. In the event such date is other than the first day of the month, Common Assessments for such partial month shall be prorated. All portions of the Properties subject to any easement or other interests dedicated and accepted by the county or other local authority and devoted to public use and all of the Common Areas shall be exempt from the Assessments, charges and liens created herein.

3.7 Capital Improvement Assessments. Should the Board of Directors determine the need for a capital Improvement or replacement expenditure on any of the Common Areas or any other property for the direct benefit of the Properties, the cost of which (when added to any prior Capital Improvement Assessments for the then current fiscal year) is in excess of five percent (5%) of the budgeted gross expenses of the Association for its current fiscal year, then a vote of at least a majority of the voting power of each class of Members shall be required to approve and render effective a Capital Improvement Assessment levied by the Board of Directors to cover the cost of such expenditure. Capital Improvement Assessments shall be due and payable by all Owners in such installments and during such period or periods as the Board shall designate.

3.8 Special Assessments. The Board shall levy a Special Assessment against any Owner whose failure to comply with this Declaration or whose negligent act or omission or the negligent act or omission of his employees, patrons, invitees, guests or tenants results in the expenditures of moneys by the Association in performing its function under this Declaration, in an amount equal to such expenditures plus interest and other charges thereon, as provided for in this Declaration. Such Special Assessments shall be for the purpose of reimbursing the Association for such expenditures and shall be due and payable by such Owner to the Association when levied.

3.9 Reconstruction Assessments. Reconstruction Assessments shall be levied by the Board under such circumstances, and in such amounts and shall be payable pursuant to the terms of Section 11.1 hereof.

3.10 Annual Report and Budget. Not less than sixty (60) days before the beginning of each fiscal year of the Association, the Board of Directors shall prepare and distribute to all Members a pro forma operating statement (budget) for such fiscal year, which shall include, without limitation, a reasonable provision for contingencies and reserves for infrequently recurring expenditures. Any such contingency or reserve funds shall be deemed conclusively to be savings of the Owners held for their benefit. Not later than one hundred twenty (120) days after the close of the Association's fiscal year, the Board of Directors shall prepare and distribute to the Members of the Association an annual report including a balance sheet, an income statement reflecting the total income and Common Expenses of the Association during the immediately preceding fiscal year, a statement of the place where the names and addresses of the current Members of the Association may be found and any

information required to be reported under Section 8322 of the California Corporations Code. Ordinarily the annual report referred to above shall be prepared by an independent accountant, as a Common Expense, for any fiscal year in which the gross income of the Association exceeds Seventy-Five Thousand Dollars (\$75,000). If the annual report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association stating that the statements were prepared without audit from the books and records of the Association.

ARTICLE IV

NONPAYMENT OF ASSESSMENTS

4.1 Delinquency. Any installment of an Assessment provided for in this Declaration shall become delinquent if not paid on the due date established by the Board of Directors. With respect to each installment of an Assessment not paid within ten (10) days after its due date, the Board of Directors may, at its election, require the delinquent Owner to pay a late charge of ten percent (10%) of the amount of the delinquent installment, together with interest at the maximum rate permitted by law on such delinquent sums, calculated from the date of delinquency to and including the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days after its due date, the Board may mail a notice ("Notice of Assessment") to the Owner and to the first Mortgagee of such Owner if such Mortgagee has filed with the Board a request for such notice, and cause a copy of such Notice of Assessment to be Recorded. The Notice of Assessment shall: (a) state the amount of such delinquent Assessment or installment, as the case may be, and other authorized charges and interest, including the cost of preparing and Recording such Notice of Assessment, the expenses of collection in connection with

any delinquent installments and reasonable attorneys' fees;

(b) describe the Lot against which the same has been assessed;

(c) state the name of the Owner thereof, and the name and address of the Association; (d) state the action required to cure the delinquency; (e) specify a date, not less than thirty (30) days from the date the Notice of Assessment is mailed to the Owner, by which such delinquency must be cured; (f) specify that failure to cure the delinquency on or before the date specified in the Notice of Assessment may result in acceleration of the balance of the installments of the Assessments payable for the then current fiscal year and sale of the Owner's Lot; and (g) state that such Owner shall have the right to cure the delinquency after any such acceleration pursuant to the terms of California Civil Code Section 2924c, as the same may be amended from time to time. Such Notice of Assessment shall be signed by an authorized representative of the Association, and shall create a lien against the Lot upon its Recordation. If the delinquent Assessment installment(s) and any charges thereon are not paid in full on or before the date specified in the Notice of Assessment, the Board, at its option, may declare all of the unpaid balance of the Assessments for the then current fiscal year to be immediately due and payable without further demand, subject to the Owner's right to cure, and may enforce the collection of such delinquent Assessment and accelerated installments and all charges thereon in any manner authorized by law and this Declaration.

4.2 Enforcement of Liens.

(a) Priority of Liens. All sums assessed in accordance with the provisions of this Declaration shall constitute a lien on the Lot prior and superior to all other liens, except:

(1) such taxes, bonds, assessments and other levies which, by law, would be superior thereto; and

(ii) the lien or charge of any Mortgage of record made in good faith and for value and Recorded prior to the date on which the Notice of Assessment is Recorded, subject to the provisions of Section 3.4 and Article XII of this Declaration.

(b) Duty and Authority of Board. The Board may commence any procedure for collection, upon its own decision and it must so proceed upon the written request therefor signed by any five (5) Owners, after the expiration of at least thirty (30) days from the date on which the Notice of Assessment was Recorded, provided that at least ten (10) days have expired since a copy of the Notice of Assessment was mailed to the Owner affected thereby, and subject to the provisions of Section 4.1 in the event that the Board accelerates the due date of any Assessment installments. It shall be the duty of the Board of Directors to enforce the collection of any amounts due under this Declaration by means of an action at law against the Owner personally obligated to pay the same, or foreclosure of its lien against the Lot of such Owner by appropriate action in court, or as provided in Section 4.2(c) hereof. In any action by the Board to foreclose the Association's lien against a Lot the Owner of such Lot shall be required to pay a reasonable rental for the Lot and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. Suit to recover a money judgment against an Owner for unpaid Assessments shall be maintainable without foreclosing or waiving the lien securing the same; provided, however, such suit shall not constitute an affirmation of the adequacy of money damages. All remedies provided for herein or at law or in equity shall be cumulative and not

exclusive. Any recovery resulting from a suit in law or equity initiated pursuant to this Section may include reasonable attorneys' fees as fixed by the court.

(c) Appointment of Association as Trustee. Each Owner by acceptance of a deed to a Lot, whether or not it shall be so expressed therein, is deemed to appoint the Association as trustee to enforce and to foreclose its Assessment lien by private power of sale as provided in Division 3, Part 4, Title 14, Chapter 2, Article 1 of the Civil Code of the State of California and further grants to the Board on behalf of the Association the authority and power to sell the Lot of such defaulting Owner, or any part thereof, to satisfy said lien, and actual expenses, costs, attorneys' fees and such other fees as may be allowed by law, or as may be prevailing at the time the sale is conducted, for lawful money of the United States to the highest bidder. The Board as trustee for the remaining Owners, or any other Owner, may purchase at said sale. Such sale shall be conducted in accordance with the provisions of the California Civil Code applicable to the exercise of powers of sale in Mortgages, or in any manner permitted by law.

4.3 Satisfaction of Assessment. Upon payment to the Association of the full amount claimed in the Notice of Assessment, or other satisfaction thereof, the Board of Directors shall cause to be Recorded a notice stating the satisfaction and release of such amount claimed ("Notice of Release"). The Board of Directors may demand and receive from the applicable Owner a reasonable charge for the preparation and Recordation of such Notice of Release before Recording the same. Any purchaser or encumbrancer, who has acted in good faith and extended value, may rely upon such Notice of Release, as conclusive evidence of the full satisfaction of the sums stated in the Notice of Assessment.

ARTICLE V

EASEMENTS AND RIGHT OF ENTRY5.1 Easements.

(a) Access. Declarant expressly reserves for itself and its successors and assigns and hereby grants to each Owner and the Association reciprocal nonexclusive, appurtenant easements over all of the Common Areas and the individual Lots, for access, ingress and egress. Such easements may be used by Declarant, its successors, and assigns, the Association and all Owners, their guests, tenants and invitees, transacting business on or temporarily visiting the Properties, for walkways, vehicular access, ingress and egress, parking, drainage and such other purposes reasonably necessary for the use and enjoyment of a Lot, subject to the following: (i) the provisions of this Declaration, the Articles and the By-Laws (as the same may from time to time be adopted and amended) governing use and enjoyment thereof; (ii) the easements reserved and granted herein and as shown on and in accordance with the Map; (iii) the right of the Association to grant easements and rights-of-way over the Common Areas to any person including any public agency, authority, or utility, or any assessment, maintenance or other special district.

(b) Maintenance and Repair. Declarant expressly reserves for itself and its successors and assigns and for the benefit of the Association and all agents, officers and employees of the Association and hereby grants to the Association nonexclusive, appurtenant easements over the Common Areas and the Lots as necessary to maintain and repair the Common Areas and the Exterior Surface Maintenance Areas and to perform all other tasks in accordance with the provisions of this Declaration. Such easements shall be established and used so as not to unreasonably interfere with the use and

enjoyment by the Owners of their Lots.

(c) Utilities. Declarant expressly reserves for itself and its successors and assigns and for the benefit of the Owners and the Association, and hereby grants to the Owners and the Association, reciprocal appurtenant easements over the Lots and the Common Areas for installation, operation, replacement and maintenance of drainage facilities, utility services and laterals including without limitation utility lines, pipes, wires and conduits, sewer and drainage pipes serving the individual Lots as necessary in accordance with the location of the utilities as initially installed or in accordance with alterations as approved by the Architectural Committee. All such easements shall at all times be open and accessible to public and quasi-public utility corporations, and other persons erecting, constructing and servicing such utilities and quasi-utilities and to Declarant, its successors and assigns. Declarant expressly reserves for itself and its successors and assigns the right to grant additional easements and rights-of-way over the Properties to utility companies and public agencies, as necessary, for the proper development and disposal of the Properties.

(d) Encroachment. Declarant hereby reserves for itself, its successors and assigns, and grants to the Association and Owners of contiguous Lots, reciprocal easements appurtenant to each of the Lots over the Lots and the Common Areas for the purposes of: (a) accommodating any encroachment of any portion of the Improvements thereon due to engineering errors, errors in original construction, settlement or shifting of Improvements, or any other similar cause; and (b) maintaining the same and accommodating authorized construction, reconstruction and repair of Improvements or any portion thereof; provided, however, in no event shall a valid easement for encroachment be created in favor of an

Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners.

(e) Vehicular Traffic. Declarant hereby reserves for itself and its successors and assigns and grants to the Owners nonexclusive easements appurtenant for vehicular traffic over all private Streets within the Properties.

(f) General. Each of the easements provided for in this Declaration shall be deemed to be established upon the Recordation of this Declaration, and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the Common Areas, as the case may be, superior to all other encumbrances applied against or in favor of any portion of the Properties. Except as otherwise provided herein, any conveyance of any such easement unaccompanied by a like conveyance of a corresponding interest in a Lot shall be void. Notwithstanding anything herein expressly or impliedly to the contrary, this Declaration shall be subject to all easements heretofore or hereafter granted by Declarant or its successors or assigns for the installation, repair and maintenance of public services and utilities that are necessary for the development and operation of the Properties, including without limitation sanitary sewer, water and drainage systems.

5.2 Right of Entry. The Board of Directors, the Architectural Committee, Declarant and their authorized agents, representatives, assignees and employees shall have the right to enter upon any Lot as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Areas or the Owners in common, and shall not be deemed guilty of or liable for trespass by reason of such entry. However, nothing herein shall be construed to impose any obligation upon the Association, the Board, the Committee or Declarant to maintain or repair any

portion of any Lot which is to be maintained or repaired by the Owner thereof. Nothing in this Section shall in any manner limit the right of any Owner to the exclusive occupancy and control over his Lot. However, each Owner shall permit access to his Lot by any person authorized by the Board of Directors, the Committee, or Declarant as reasonably necessary, such as in case of any emergency originating on or threatening such Lot, whether or not such Owner is present.

ARTICLE VI

REPAIR AND MAINTENANCE

6.1 Repair and Maintenance Duties of the Association.

The Association shall maintain, repair, replace, resurface and make necessary improvements to the Common Areas and the Exterior Surface Maintenance Areas, or shall contract for such maintenance, repair and improvements, to assure the maintenance of the Common Areas and the Exterior Surface Maintenance Areas in a good, sanitary and attractive condition. Such maintenance, repairs and improvements shall include, without limitation: maintenance and replacement of shrubs, trees, vegetation, irrigation systems and other landscaping improvements located on the Common Areas; repair and maintenance of all mechanical and electrical equipment in the Common Areas; repair, reconstruction, replacement and maintenance of all Streets, parking areas, walks and other means of ingress and egress within the Properties; exterior maintenance (including painting), repair and replacement of the Exterior Surface Maintenance Areas; repair and maintenance of storm drain and sanitary sewer lines (excluding the 10 inch sanitary sewer line and manhole referred to in Section 14.11 below), domestic water lines (excluding that portion of the water lines from the boundary line of the Properties up to and including the water meters), electric power service lines (excluding that portion of such lines from the boundary

line of the Properties up to and including the secondary splice boxes) and fire protection lines in the Common Areas and on Lots; and reconstruction, replacement or refinishing of any Improvements or portion thereof located upon the Common Areas. All such maintenance, repairs and improvements to the Common Areas and the Exterior Surface Maintenance Areas shall be deemed Common Expenses. All work performed by the Association, the performance of which is the responsibility of an Owner, shall be charged to such Owner as a Special Assessment, as herein provided. The Association may contract for an annual inspection of the roof of each building on a Lot. Any repairs indicated by such inspection shall be accomplished by the Owner concerned under Section 6.2 hereof.

6.2 Repair and Maintenance Duties of Owners. Subject to the duty of the Association to provide for the maintenance and repair of the Exterior Surface Maintenance Areas, each Owner shall maintain, repair, replace, reconstruct, refinish and restore or cause to be so maintained, repaired, replaced, reconstructed, refinished and restored, at his sole cost and expense, the buildings, structures and other Improvements on his Lot, including without limitation the roof as provided in Section 6.1 above, in a clean, sanitary and attractive condition, subject to the control and approval of the Architectural Committee. It shall further be the duty of each Owner to pay when due all charges for all utility services which are separately metered to his Lot, unless the Association is paying for such services. Each Owner shall pay all costs for trash collection and removal in the event that the Association has not contracted for common trash collection and removal.

6.3 Special Powers of Association. Without in any way limiting the generality of the foregoing, if the Board determines that any portion of a Lot whose maintenance is

the responsibility of an Owner, is in need of maintenance, repair, restoration or painting, or that there is a violation of any provision of this Declaration, then the Board shall give written notice to such Owner of such condition or violation. Unless the Board has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such period of time as may be determined reasonable by the Board, and such corrective work so approved is completed thereafter within the time allotted by the Board, the Board shall undertake to remedy such condition or violation, and the cost thereof shall be charged to the Owner and his Lot. Such cost shall be deemed a Special Assessment of such Owner and his Ownership Interest, and subject to levy, enforcement and collection by the Board of Directors in accordance with the Assessment lien procedure provided for in this Declaration.

ARTICLE VII

COMMON AREAS

7.1 Association Control. The Association shall have fee title to the Common Areas, and an easement over the Lots in order to perform its duties hereunder. Such title and easement shall include, without limitation, the following appurtenant rights and duties:

(a) The right of the Association to reasonably limit the number of guests, patrons and invitees of Owners using the Common Areas.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Areas, including, but not limited to, the right and obligation of the Association to enforce all parking restrictions within the Common Areas.

(c) The right of the Association, in accordance with the Articles, By-Laws and this Declaration and with the

vote or written consent of a majority of the voting power of each class of Members, to borrow money for the purpose of improving the Common Areas and facilities and in aid thereof, and 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, provided that the rights of any such Mortgagee shall be subordinated to the rights of the Owners and the Declarant.

(d) The right of the Association to suspend any Owner's voting rights for any period during which any Assessment against the Owner and his Lot remains unpaid and delinquent or for any period such Owner is in violation of this Declaration or the By-laws or for any single infraction of the published rules and regulations of the Association; provided that any suspension of such voting rights shall be made only by the Board of Directors, after notice and an opportunity for a hearing as provided in the By-Laws, and for such period of time as specified in the By-Laws.

(e) The right of the Association to dedicate, release, alienate or transfer any portion of the Common Areas to any public agency, authority, utility or other Person for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless an instrument signed by Members entitled to cast at least a majority of the voting power of the Association, agreeing to such dedication, release, alienation or transfer has been Recorded.

(f) The right of Declarant (and its sales agents, customers and representatives) to the non-exclusive use of the Common Areas without charge, for sales, display, access, ingress, egress and exhibit purposes.

(g) Subject to Declarant's approval rights stated in Section 9.2(a) below, the right of the Association (by

action of the Board) to construct, reconstruct, replace or refinish any Improvement or portion thereof upon the Common Areas, in accordance with the original design, finish or standard of construction of such Improvement, or of the other Improvements within the Properties, as the case may be; or in accordance with such other design, finish or standard of construction as approved by the vote or written consent of Owners holding a majority of the voting power of each class of Members of the Association.

(h) The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs and ground cover upon any portion of the Common Areas.

(i) The right of the Association to grant and convey to any Person easements, licenses for use and rights of way in, on, over or under any of the Common Areas, upon the affirmative vote or written consent of two-thirds (2/3) of each class of its voting Members.

7.2 Regulation of Parking. The Association, through its officers, committees and agents is hereby empowered to establish "parking" and "no parking" areas within the Common Areas in accordance with the Master Declaration, Section 22658 of the California Vehicle Code, or any similar statute hereafter enacted, and to enforce such parking limitations by all means lawful for such enforcement on city streets, including the removal of any violating vehicles and the imposition of a fine on the responsible Owner by those so empowered.

7.3 Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association, nor release his Lot from the liens and charges hereof, by waiver of the use and enjoyment of the Common Areas or by abandonment of his Lot.

7.4 Taxes and Assessments. Each Owner shall execute such instruments and take such action as may reasonably be specified by the Association to obtain a separate real estate assessment and tax assessment of each Lot. If any taxes or assessments may, in the opinion of the Association, nevertheless be a lien on the Common Areas, or any part thereof, they may be paid by the Association and each Owner shall be obligated to pay or to reimburse the Association upon demand for the taxes and assessments assessed by the County Assessor or other taxing authority, as the case may be, against the Common Areas and attributable to such Owner's Lot. The Association may levy a Special Assessment against such Owner and his Lot for any of such taxes and assessments paid by the Association, which Special Assessment shall be subject to enforcement and collection by the Board in accordance with the Assessment lien procedure provided for in this Declaration. As used herein the term "assessment" shall mean and include, but shall not be limited to, assessments for public improvements or benefit.

7.5 Restriction on Severability of Common Areas. The interest of each Owner in the use and benefit of the Common Areas shall be appurtenant to the Lot owned by said Owner, and shall not be sold, conveyed or otherwise transferred by said Owner separately from the Lot. Any sale, transfer or conveyance of a Lot shall operate to transfer the appurtenant right to use said Common Areas without the requirement of express reference thereto, and the transferee shall thereupon be permitted the use and benefit of said Common Areas. There shall be no judicial partition of the Common Areas or any part thereof, and each Owner, whether by deed, gift, devise, or operation of law for their own benefit and for the benefit of all other Owners specifically waives and abandons all rights, interests and causes of action for a

judicial partition of any ownership interest in the Common Areas and does further covenant that no action for such judicial partition shall be instituted, prosecuted or reduced to judgment.

ARTICLE VIII

USE RESTRICTIONS

Subject to the exemption for Declarant set forth in this Declaration, all of the Properties shall be held, used and enjoyed subject to the following limitations and restrictions:

8.1 Permitted Uses. The Properties shall be used for administrative, business and professional office purposes only, except for the Common Areas, on which there may be placed landscaping, parking areas, and private Streets. All permitted uses shall be performed and carried out in such a manner so as to prevent unreasonable interference with the use and enjoyment of the Lots and Common Areas by other Owners.

8.2 Prohibited Uses. The following operations and uses are specifically prohibited:

- (a) Residential use of any type.
- (b) Trailer courts, mobile home parks and recreational vehicle campgrounds.
- (c) Hotels and motels.
- (d) Munitions-related storage activities.
- (e) Concrete batch plant.
- (f) Manufacturing activities.
- (g) Any use or operation prohibited by law.
- (h) Those uses specifically prohibited in the Master Declaration during the term thereof.
- (i) All operations and uses not specifically permitted by Section 8.1.

8.3 Other Operations and Uses. Operations and uses that are not specifically permitted by this Declaration may be permitted in a specific case if: (a) such operations or uses are consistent with applicable laws or regulations of the City of Santa Clara or such other governmental entity then having jurisdiction thereof; and (b) written operational plans and specifications for such operations or uses, containing such information as may be requested by the Architectural Committee, are submitted to and approved by the Architectural Committee, which approval shall be based upon analysis of the anticipated effect of such operations or uses upon other Lots, upon other real property in the vicinity of the Properties, and upon the occupants thereof, but shall be in the sole discretion of the Architectural Committee.

8.4 Nuisances. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot or the Common Areas other than normal accumulation and storage of trash in connection with a confined and reasonably prompt trash disposal or pick-up program. No noxious or offensive activity shall be carried on or upon any Lot or the Common Areas or any part of the Properties, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to other Owners, or to Persons on adjacent real property, or which shall in any way interfere with the quiet enjoyment of each of the Owners of his respective Lot, or which shall in any way increase the rate of insurance for any other Lot.

8.5 Signs. No sign, poster, billboard or other advertising of any kind shall be permitted on any portion of the Properties, except signs which are approved in writing by the Architectural Committee. The size, content, location, design, color, style and illumination of all signs shall be specifically approved in writing by the Architectural Committee.

in accordance with a sign program to be adopted by the Architectural Committee.

8.6 Drainage. There shall be no interference with the established drainage pattern and slope ratios over any portion of the Properties unless adequate provision is made for proper drainage and is approved by the Architectural Committee. For the purposes hereof, established drainage or slope means the drainage or slope which exists at the time of Close of Escrow for the sale of each Lot by Declarant, or that which is shown on any plans approved by the Architectural Committee. Each Owner shall be responsible for the costs of making adequate provision for drainage in the event he changes the established drainage over his Lot.

8.7 Occupancy Leases. This Declaration is intended to be binding upon any lessee or tenant of any Owner. In order to insure the binding effect on tenants and lessees, each Owner agrees, by acceptance of a deed to his Lot, not to rent, lease or sublease all or any portion of his Lot to any person, except pursuant to a written lease or rental agreement that: (a) expressly refers to this Declaration and contains a covenant by the lessee or tenant that he accepts the leasehold estate subject to this Declaration; and (b) contains either a covenant that the lessee or tenant agrees to perform and comply with the restrictions herein, or provisions which permit the lessor to enter the leased premises and take such other actions as necessary to perform and comply with this Declaration.

ARTICLE IX

ARCHITECTURAL AND LANDSCAPING PROVISIONS

9.1 Architectural Committee. An Architectural Committee consisting of three (3) members is hereby created with the rights and powers set forth in this Declaration. The initial members of the Committee shall be representatives appointed

by Declarant. For purposes of notices hereunder, the address of each initial member is c/o Stafffield Interest, Inc., 3375 Scott Boulevard, Suite 438, Santa Clara, California 95051 which may be changed from time to time by the Committee. Committee members shall not be entitled to compensation for their services hereunder, but shall be entitled to reimbursement from the Association for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Committee function. Declarant shall have the right and power, but not the obligation, at all times to appoint or remove a majority of the members of the Committee, or to fill any vacancy of such majority until the "turnover date", which shall be the date on which all of the Lots subject to this Declaration have been sold by Declarant; provided, however, that Declarant may accelerate the turnover date by Recording a notice transferring Declarant's right of appointment to the Board of Directors. Until the turnover date, the Board of Directors may appoint and remove one member of the Committee. After the turnover date, the Board of Directors shall have the power to appoint and remove a majority of the members of the Committee. After the turnover date, Declarant shall have the right, but not the obligation, to appoint and remove one member of the Committee. Members of the Committee appointed by Declarant pursuant to this Section 9.1 need not be Members of the Association. Any member of the Committee appointed by the Board of Directors may not be a member of the Board at the time of appointment or at any time such Person is a member of the Committee. Any member of the Architectural Committee may at any time resign from the Committee upon written notice delivered to Declarant or to the Board of Directors, whichever then has the right to appoint the majority of the members. Vacancies on the Architectural Committee, however caused, shall be filled by the Declarant

or the Board of Directors, whichever then has the right to appoint the majority of the members.

9.2 Mechanics of Operation.

(a) Required Approvals. Subject to the provisions of Article XII and Section 14.4 of this Declaration, no demolition, removal, construction, improvement, repair, excavation or other work which in any way alters the exterior appearance of any Lot from its natural or improved state existing on the date such Lot was sold by Declarant to an Owner, shall be commenced, erected or maintained upon the Properties, until the plans and specifications showing all elevations of any buildings including dimensions, materials and color schemes, the nature, kind, grading scheme, shape, height, materials and location of the same, and such additional information as the Committee and Declarant may require shall have been submitted to and approved in writing by the Architectural Committee and Declarant as to harmony of external design, color and location in relation to surrounding structures on the Properties and topography; provided, however, that Declarant's approval rights pursuant to this Section 9.2 shall apply only to substantial alterations, modifications or reconstruction of buildings in the Properties affecting the structure or foundation of such buildings and then, in regard to any one Lot, only for so long as Declarant owns the Lot. Subject to the provisions of Article XII and Section 14.4 hereof, no trees, bushes, shrubs or landscaping Improvements shall be removed, replaced, planted or placed on any Lot until a request for the removal, or the plans and specifications for the species and placement thereof have been submitted to and approved in writing by the Architectural Committee. The plans as submitted in regard to such landscaping Improvements shall show in detail the proposed elevations and locations of such trees, bushes, shrubs or landscaping

Improvements including their location and elevation in relation to all other Lots in the Properties. The Committee shall establish reasonable procedures, including at the discretion of the Committee rules and regulations, for the granting of the approvals herein required. The vote or written consent of any two (2) members of the Committee taken with or without a meeting shall constitute an act of the Committee.

(b) Preparation and Submission of Plans. All plans and specifications submitted to Declarant and/or the Architectural Committee pursuant to Section 9.2(a) above shall be prepared, as appropriate, by an architect, engineer or landscape designer or landscape architect, said person to be employed by and at the expense of the Owner making the application. Plans and resubmittals thereof shall be approved or disapproved by the later of: ten (10) days following approval thereof by declarant under the Master Declaration; or thirty (30) days after receipt by Declarant and the Committee, and Declarant and the Committee shall use due diligence in responding to the applicant upon receipt of all necessary information. All approvals given by the Committee and Declarant shall be in writing. Failure of Declarant and/or the Committee to respond to a submittal or resubmittal of plans within such period shall be deemed to be disapproval of the plans as submitted or resubmitted. Any review fee charged by declarant under the Master Declaration shall be paid by the Owner making the application.

(c) Discretionary Powers of the Committee. The Committee and/or Declarant may withhold approval of plans and specifications submitted to it pursuant to this Section 9.2 not only because of noncompliance with any of the specific conditions, covenants and restrictions contained in this Declaration or the Master Declaration, or failure to include

information and detail in such plans and specifications as may have been reasonably requested by the Committee or Declarant, but also by virtue of the reasonable dissatisfaction of the Committee or Declarant with the location of the structure on the Lot, the elevation, the color scheme, finish, design, proportions, architecture, shape, height, style, grading plan and appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the Lot, or because of the Committee's or Declarant's reasonable dissatisfaction with any or all other matters or things which, in the reasonable judgment of the Committee or Declarant, will render the proposed item of Improvement inharmonious or out of keeping with the general plan for Improvements of the Properties.

(d) Proceeding with Work. Upon receipt of required approval from the Architectural Committee and Declarant pursuant to this Section 9.2, the Owner making the application shall, as soon as practicable, diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, landscaping and alterations pursuant to said approval; said commencement to be, in all cases, within one (1) year from the date of such approval. If the Owner shall fail to comply with this Section 9.2(d), any approval given pursuant to this Section 9.2 shall be deemed revoked unless the Architectural Committee and Declarant, if Declarant has approval rights in regard thereto, upon written request of the Owner made prior to the expiration of said one (1) year period, extends, in writing, the time for such commencement. No such extension shall be granted except upon a finding by the Architectural Committee and Declarant that there has been no change in the circumstances upon which the original approval was granted.

(e) Failure to Complete Work. The Owner shall in any event complete the construction, reconstruction, refinishing, landscaping or alteration of any such Improvement within one (1) year after commencing construction thereof, except and for so 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 9.2(e), such failure shall be treated as a failure to complete the Improvements in compliance with approved plans.

(f) Violations. If, after plans and specifications for Improvements have been approved; pursuant to this Section 9.2, by the Committee and Declarant, if Declarant has approval rights in regard thereto, any Improvements are altered, constructed, or maintained upon the Lot otherwise than as approved, such alteration, construction or maintenance shall be deemed to have been undertaken without approval having been obtained as required by this Declaration. In the event any work requiring approval pursuant to the terms hereof, shall have been undertaken or shall be deemed to have been undertaken without such approval, then the Committee or Declarant (if Declarant has approval rights in regard thereto) may elect to notify the Owner of such noncompliance, specifying particulars of noncompliance, and to require the Owner to remedy such noncompliance. If the Owner shall have failed to remedy such noncompliance within sixty (60) days following notice from the Committee or Declarant, as the case may be, the Committee or Declarant may elect to notify the Board of Directors in writing of such failure. The Board shall then set a date, in accordance with the By-Laws, on which a hearing before the Board shall be held regarding the alleged noncompliance. At the hearing the Owner,

Declarant and/or the Committee and, in the Board's discretion, any interested person may present information relevant to the question of the alleged noncompliance. After considering all such information, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance 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 ruling. If the Owner does not comply with the Board 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 noncomplying Improvement or remedy the noncompliance and the Owner shall reimburse the Association for all expenses incurred in connection therewith upon demand. If such expenses are not promptly repaid by the Owner to the Association, the Board shall levy a Special Assessment against such Owner.

(g) Compliance Deemed. After the expiration of one (1) year from the date of completion of any Improvement, addition or alteration, said Improvement, addition or alteration shall, in favor of purchasers and encumbrancers in good faith and for value, be deemed to comply with all of the provisions hereof, unless a notice of noncompliance, executed by one member of the Committee or Declarant in regard to such additions or alterations concerning which Declarant has approval rights, shall have been Recorded or legal proceedings shall have been instituted to enforce compliance with these provisions. Upon approval of the Committee and Declarant (in regard to work for which Declarant has approval rights), it shall be conclusively presumed that the location and exterior configuration of any building, structure or other Improvement placed or constructed on a

Lot in accordance with plans and specifications so approved does not violate the provisions of this Declaration.

(h) Waiver. The approval of the Committee or Declarant of any plans or specifications submitted for approval as herein specified shall not be deemed to be a waiver by the Committee or Declarant of its right to object to any of the features or elements embodied in such plans and specifications, if or when the same features or elements are embodied in any subsequent plans and specifications submitted, nor shall its approval be deemed approval of any plan or design from the standpoint of structural safety or conformance with building or other codes.

9.3 Variance. The Committee and Declarant, if Declarant has approval rights in regard thereto, may authorize variances from compliance with any of the architectural provisions of this Declaration or any rules, regulations or guidelines promulgated in relation thereto or pursuant to the By-Laws, including without limitation restrictions upon height, size or placement of structures, or similar restrictions, as the Committee and Declarant may determine, in their sole discretion, on the basis of topography, natural obstructions, hardship, aesthetic or environmental considerations and the like; provided, however, such variances shall not materially alter or be inconsistent with the general plan and intent of this Declaration. Such variances shall be granted in a written document signed by Declarant (if Declarant has approval rights) and at least two (2) members of the Committee and shall become effective upon Recordation. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this

Declaration for any purpose except as to the particular property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of his Lot, including but not limited to zoning ordinances and Lot setback lines or requirements imposed by the Master Declaration, City, County or any other governmental authority.

9.4 Liability. Neither Declarant nor the Architectural Committee 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: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any Lots within the Properties; provided, however, that Declarant or such member has acted in good faith on the basis of such information as may be possessed by him. Every person who submits plans or specifications to the Architectural Committee for approval agrees, by submission of such plans or specifications, and every Owner agrees, that he will not bring any action or suit against Declarant or the Architectural Committee or any member thereof to recover any such loss or damage.

ARTICLE X

INSURANCE

10.1 Duty of Association to Insure.

(a) Comprehensive General Liability Insurance.

The Board of Directors shall have the power to and shall obtain and maintain comprehensive general liability insurance (including medical payments) with a combined single limit of not less than Three Million Dollars (\$3,000,000) covering all claims for personal injury and property damage arising

out of a single occurrence on the Common Areas or from the activities of the Association. The policy limit set forth herein may be increased by the Board of Directors when it deems it advisable and prudent for the best interests of the Association and its Members. The liability insurance referred to herein shall include as separately protected insureds, Declarant, the Association, the Board of Directors, the Architectural Committee, and their representatives, members and employees, and the Members of the Association (as a class), with respect to any liability arising out of the maintenance and use of the Common Areas or any other property under the jurisdiction of the Association.

(b) Property Insurance. The Board shall also obtain and maintain a blanket policy or policies of "all risk" property insurance containing coverage, terms and conditions comparable to those in the standard ISO Form Policy and covering the Building on the Lot excluding the Improvements referred to in paragraph 10.2(a) below, and all Improvements on the Common Areas. Such coverage shall be in an amount as near as possible to the full replacement cost of such Improvements as originally constructed, without deduction for depreciation or coinsurance. Such insurance shall name the Association as a separately protected insured with respect to all Improvements on the Common Areas and Improvements on the Lots and shall name the respective Owners of the Lots and the Mortgagees of the respective Lots or any part thereof as separately protected insureds in regard to such Improvements, and the proceeds thereof shall be payable to the Association and said Owners for the purposes set forth herein. The premiums for any such insurance shall constitute a portion of the Common Expenses. The Board shall have the right to carry such other hazard insurance as the Board may deem desirable. Insurance on the

contents of Improvements on the Lots and for any additions to or alterations thereof which increase the value thereof above the value of the Improvements as originally constructed shall not be the responsibility of the Association.

(c) Other Insurance. The Board of Directors shall purchase such other insurance, as necessary, including but not limited to, errors and omissions, medical payments, malicious mischief, earthquake, flood and vandalism insurance, fidelity bonds and worker's compensation and insurance covering such other risks as shall customarily be covered with respect to planned developments similar in construction, location and use to the Properties.

10.2 Duty of Owners to Insure.

(a) Property Insurance. Each Owner shall obtain and maintain "all risk" property insurance on that portion of the Building not covered in paragraph 10.1(b), including but not limited to the Tenant Improvements and on his personal property and fixtures within all Improvements located on his Lot, and on any additions or alterations to such Improvements which increase the value thereof above the value of the Improvements as originally constructed.

(b) Comprehensive General Liability Insurance. Each Owner shall obtain and maintain comprehensive general liability insurance insuring against liabilities for damage to person or property occurring upon his Lot or within the Properties and in any manner arising out of the condition or use of such Owner's Lot or the operations of the insured. Such insurance shall be in an amount not less than Three Million Dollars (\$3,000,000) for personal injury and property damage arising out of a single occurrence, or in such other minimum amount as the Board may determine.

(c) Business Interruption Insurance. Each Owner shall obtain and maintain business interruption insurance in an amount adequate to insure payment and performance of such

Owner's obligations under this Declaration.

(d) Policy Terms. All policies of property insurance required to be obtained and maintained by an Owner pursuant to this Section 10.2 shall give the insured the right to waive and the insured agrees to waive any claim for subrogation against Declarant, the Association, the Board of Directors, the officers of the Association and all other Owners. All policies of liability insurance required to be obtained and maintained by an Owner pursuant to this Section 10.2 shall: (i) provide that the coverage is primary and that any coverage maintained by Declarant or the Association shall be in excess thereto; (ii) provide for a cross-liability or severability-of-interest endorsement or an equivalent thereof; and (iii) include Declarant and the Association as separately protected additional insureds. Each Owner shall furnish the Association with a current certificate or policy evidencing such liability insurance. All policies of insurance required to be obtained and maintained by an Owner pursuant to this Section 10.2 shall provide that each such policy cannot be cancelled or modified without thirty (30) days' prior written notice to Declarant and the Association. Each Owner shall review annually the limits of his insurance coverage and increase such limits as appropriate. If any loss insured against by policies carried by the Association shall occur, and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of the insurance carried by him to the Association to the extent of such reduction, and such proceeds shall be applied by the Board of Directors for the same purposes as the reduced proceeds are to be applied.

10.3 Notice of Expiration Requirements. All of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be cancelled, terminated or modified without thirty (30)

days' prior written notice to the Board of Directors, Declarant, the Owners and their respective first Mortgagees (provided that such Mortgagees have filed written requests with the carrier for such notice) and every other person with an interest therein who shall have requested such notice from the insurer.

10.4 Insurance Premiums. Insurance premiums for any of the insurance policies obtained by the Association or the Board of Directors pursuant to this Article X shall be a Common Expense to be included in the Common Assessments levied by the Association and collected from the Owners.

10.5 Trustee for Policies. The Association, acting through its Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all included insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies shall be paid to the Board of Directors as trustee. The Board of Directors shall have full power to receive and receipt for such proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried, or shall be otherwise disposed of as provided in Article XI of this Declaration. The Board of Directors is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers. Any two directors of the Board may sign a loss claim form and release form in connection with the settlement of a loss claim, and such signatures shall be binding on all the named insureds.

10.6 Actions as Trustee. Except as otherwise expressly provided in this Declaration, the Board of Directors, acting on behalf of the Association and all Owners, shall have the exclusive right to bind such parties in respect to all

matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance carried by the Association and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all Mortgagees who have requested the same in writing.

10.7 Annual Insurance Review. The Board of Directors shall review the insurance carried by the Association at least annually, for the purpose of evaluating the limits of the insurance referred to in Section 10.1 above. The Board of Directors may, at its option, obtain a current appraisal of the full replacement cost of the structural portions of the Improvements on the Lots and/or of the Common Areas and structural Improvements thereon, without deduction for depreciation, by a qualified independent insurance appraiser, prior to each such annual review. Such appraisal shall be a Common Expense.

10.8 Required Waiver. The policies of insurance required to be carried by each Owner and the Association shall provide, if reasonably possible, for the waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers: (a) subrogation of claims against the tenants of the Owners; (b) any defense based on co-insurance; (c) any right of set-off, counterclaim, apportionment, proration or contribution by reason of other insurance carried by the Association; (d) any invalidity, other adverse effect or defense on account of any breach of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; (e) any right of

the insurer to repair, rebuild or replace, and, in the event a damaged or destroyed building or other structure is not repaired, rebuilt or replaced following loss, any right to pay under the insurance, an amount less than the replacement cost of the Improvements insured or the fair market value thereof; (f) notice of the assignment of any Owner of its interest in the insurance by virtue of a conveyance of any Lot; and (g) any right to require any assignment of any Mortgage to the insurer. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Committee, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

ARTICLE XI

DAMAGE TO OR LOSS OF IMPROVEMENTS

11.1 Restoration of Common Areas and Improvements.

Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Areas or any other Improvements insured by the Association, it shall be the duty of the Association to cause the same be restored and repaired to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article X hereof shall be used for such purpose, unless otherwise provided herein. The Common Areas and all other Improvements insured by the Association shall be reconstructed or rebuilt substantially in accordance with the original construction plans or the original standard of construction thereof, with such changes as are recommended

or approved by the Architectural Committee and Declarant (if Declarant has approval rights in regard thereto pursuant to Section 9.2(a) above). If the estimated cost of such restoration and repair is in excess of the insurance proceeds payable to the Association, a Reconstruction Assessment shall be levied by the Board of Directors upon the Owners and their Lots to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose. Reconstruction Assessments shall be borne by the Owners in the same proportions as Common Assessments, unless all or a portion of the damage or destruction is to Improvements on Lots, in which event the Reconstruction Assessment (or portion thereof representing costs to repair such Improvements in excess of the available insurance proceeds) shall be borne proportionately by the Owners of such damaged or destroyed Improvements. Such Reconstruction Assessments shall be due and payable by Owners in such installments and at such time as the Board shall designate.

11.2 Restoration Obligation of Owners. In the event of damage to or destruction of any portion of the Properties which is not insured by the Association ("Destroyed Properties") it shall be the duty of the Owner of each portion of the Destroyed Properties, as soon as may be practical, to repair and replace the Destroyed Properties or such portion thereof as will render such damage or destruction indiscernible from the exterior of the Destroyed Properties. The insurance proceeds paid to the Owner of Destroyed Properties, or the Mortgagees thereof, as their interest may appear, shall be used to rebuild or repair such damage. In the event that the insurance proceeds are insufficient to complete such rebuilding or repair, the Owner shall pay in advance such additional sums as may be necessary to complete such rebuild-

ing or repair. In the event the Owner does not commence such rebuilding or repair within a reasonable time, the Board of Directors may bring suit for an injunction to compel the Owner to perform such rebuilding or repair. Any reconstruction, replacement or repair required by this section shall be in accordance with the original plans and specifications of the Properties or plans and specifications approved by the Architectural Committee, Declarant (if Declarant has approval rights in regard thereto) and the Mortgagee of the first Mortgage of record which encumbers such portion of the Destroyed Properties.

11.3 Condemnation.

(a) Lots. In the event of a taking or partial taking of any Lot, by condemnation proceedings or by private purchase in lieu of such proceedings, the Owner thereof, together with the Mortgagees, shall have exclusive rights to prosecute the proceedings for the respective condemnation awards.

(b) Common Areas. In the event of a taking or partial taking of all or part of the Common Areas by condemnation proceedings or by private purchase in lieu of condemnation proceedings, the Association shall have the exclusive right to prosecute the proceedings for the respective condemnation awards.

ARTICLE XII

PROTECTION OF MORTGAGEES AND DECLARANT

12.1 General. A breach of any of the provisions, covenants, restrictions or limitations hereof, or the Recordation of any Notice of Assessment or the pursuit of any remedy hereunder, shall not defeat or render invalid the lien against a Lot of any Recorded Mortgage made in good faith and for value. All of the provisions herein shall be binding upon and effective against any Owner whose Lot is hereafter acquired through foreclosure or trustee sale.

12.2 Inspection of Books and Records. The Owners, their Mortgagees and Declarant may examine the books and records of the Association during all normal business hours, upon serving written notice to the Board of such examination.

12.3 Notice of Default. The Mortgagee of any Recorded Mortgage, made in good faith and for value against the Lot of such Owner, may file with the Board a written request for written notification from the Association in the event of any default by the Owner of such Lot of its obligations under this Declaration which is not cured within thirty (30) days, and the Board of Directors shall give notice thereof to each such Mortgagee and to Declarant.

12.4 Non-liability for Unpaid Assessments. Each Mortgagee of a Mortgage made in good faith and for value and encumbering any Lot who obtains title to such Lot pursuant to the remedies provided in such Mortgage, or by judicial foreclosure or by deed or assignment in lieu of foreclosure, shall take title to such Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time such holder acquired title to such Lot. In the event that Declarant obtains title to a Lot by judicial or non-judicial foreclosure, or by deed or assignment in lieu of foreclosure, then Declarant shall take title to the Lot free and clear of any claims for unpaid Assessments or charges against such Lot which accrued prior to the time Declarant acquired title to it.

ARTICLE XIII

DURATION AND AMENDMENT

13.1 Duration. This Declaration shall continue in full force until the date which is fifty-six (56) years from the date hereof, unless a Declaration of Termination is Recorded meeting the requirements of an amendment to this Declaration as set forth in Section 13.2 below. There shall be no

severance by sale, conveyance, encumbrance or hypothecation of a Lot separate from the appurtenant Membership in the Association, as long as this Declaration shall continue in full force and effect.

13.2 Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. Such notice shall be given to the Santa Clara City Council. A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of Members of the Association. The resolution shall be adopted by the vote, in person or by proxy, or written consent of seventy-five percent (75%) of the voting power of the Association, and shall be subject to the prior approval of the City of Santa Clara. A copy of each amendment shall be certified by at least two (2) officers of the Association and the amendment shall be effective sixty (60) days after notice of such amendment is given to the City of Santa Clara as aforesaid and when the Certificate of Amendment is Recorded. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by the record holders of seventy-five percent (75%) of the aggregate value of Mortgages made in good faith and for value and encumbering the Properties at the time of such amendment:

(a) Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protection granted to encumbrancers as provided in Section 3.4, Section 4.2, Article XII hereof and this Section 13.2;

(b) Any amendment which would necessitate an encumbrancer, after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid

Assessment or Assessments accruing after such foreclosure;
or

(c) Any amendment which would or could result in an encumbrance being cancelled by forfeiture.

A certificate, signed and sworn to by two (2) officers of the Association that the Owners holding seventy-five percent (75%) of the voting power of the Association have either voted for or consented in writing to any amendment adopted as above provided and, in regard to any amendment which requires the written consent of any of the record holders of Mortgages, that seventy-five percent (75%) of the aggregate value of Mortgages made in good faith and for value and encumbering the Properties at the time of such amendment have consented in writing to such amendment ("Certificate" or "Certificate of Amendment"), when Recorded, shall be conclusive evidence of such fact.

13.3 Protection of Declarant. The prior written approval of Declarant as developer of the Properties will be required before any amendment shall become effective which would impair the protection furnished Declarant as developer or diminish the rights of Declarant to complete development of the Properties, including without limitation, Section 14.4 of this Declaration.

13.4 Amendment by Declarant. Until the first Close of Escrow for the sale of a Lot, Declarant shall have the right to terminate or modify this Declaration by Recordation of a supplement hereto setting forth such termination or modification.

ARTICLE XIV

GENERAL PROVISIONS

14.1 Legal Proceedings. Failure to comply with any of the terms of this Declaration, the Articles and By-Laws or regulations adopted pursuant thereto, by the Association,

the Board or by an Owner, his guests, employees, invitees or tenants shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought by Declarant, the Board of Directors, the City of Santa Clara as a third party beneficiary or, if appropriate, by an aggrieved Owner. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision, or any other provision hereof. The Association, any Owner (not at the time in default hereunder), the City of Santa Clara as a third party beneficiary, or Declarant shall be entitled to bring an action for damages against the Association, the Board or any defaulting Owner, and in addition may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant thereto shall include a sum for attorneys' fees in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, together with interest, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

14.2 Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

14.3 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of an administrative, business and professional office development and for the maintenance of Common Areas, and any violation

of this Declaration shall be deemed to be a nuisance. The article and section headings, titles and captions herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context otherwise requires, as used herein, the singular and the plural shall each include the other and the masculine, feminine and neuter shall each include the masculine, feminine and neuter. All exhibits attached hereto are incorporated herein by this reference as if fully set forth herein.

14.4 Construction and Sales by Declarant. Nothing in this Declaration shall limit, and no Owner shall do anything which shall interfere with, the right of Declarant to subdivide or resubdivide any portion of the Properties not yet sold to an Owner, or the right of Declarant to complete any construction of Improvements on the Lots not yet sold to an Owner or on the Common Areas, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements on such Lots and Common Areas as Declarant deems advisable prior to the sale of the last Lot in the Properties and the completion of the Improvements thereon. Each Owner by accepting a deed to a Lot hereby acknowledges that the activities of Declarant may constitute a temporary inconvenience or nuisance to the Owners and hereby consents to such inconvenience or nuisance. Each Owner hereby grants, effective upon acceptance of a deed to a Lot, an irrevocable, special power of attorney to Declarant to execute and Record all documents and maps necessary to allow Declarant to exercise its rights under this Section 14.4. Such rights shall include, but shall not be limited to, erecting, constructing and maintaining on the Properties such structures and displays as may be reasonably necessary for the conduct of the business of completing the development

of the Properties and disposing of the same by sale, lease or otherwise. Declarant may use any Lots not yet sold to an Owner as models or real estate sales or leasing offices. This Declaration shall not limit the right of Declarant to establish on the Lots and on the Common Areas additional easements, reservations and rights-of-way to itself, to utility companies, to governmental entities, or to other persons as may from time to time be reasonably necessary to the proper development and disposal of the Properties. Such easements may be created for the construction, installation, maintenance, removal, replacement, operation and use of utilities, including without limitation sewers, water and gas pipes and systems, drainage lines and systems, electric power and conduit lines and wiring, telephone conduits, lines and wires, and other utilities, public or private, beneath the ground surface and vaults, vents, access structures and other facilities required to be above ground surface by good engineering practice. In the performance of any work in connection with such utilities, Declarant shall make adequate provision for the safety and convenience of all persons using the surface of said area, shall not unreasonably interfere with or disrupt the use of the Lots and Common Areas, including the parking areas and the facilities located thereon, and shall replace and restore the areas and facilities as nearly as possible to the condition in which they were prior to the performance of such work. All or any portion of the rights of Declarant hereunder may be assigned to any successor or successors to all or part of Declarant's interest in the Properties, by an express written Recorded assignment. Declarant need not seek or obtain the approval of the Architectural Committee, Board of Directors or Members in connection with any Improvements constructed or altered by Declarant.

14.5 Hold Harmless and Indemnification. Each Owner shall be liable to the Association for any injury to any person or damage to the Common Areas or any equipment thereon which may be sustained by reason of the negligence of said Owner or of his guests, employees, invitees or tenants, to the extent that any such damage shall not be covered by insurance. The costs incurred by the Association as a result of such damage shall be deemed a Special Assessment of such Owner and his Lot, and shall be subject to levy, enforcement and collection by the Board of Directors in accordance with the Assessment lien procedure provided for in this Declaration. The Association further reserves the right to levy a Special Assessment equal to the increase, if any, in the insurance premium payable by the Association, directly attributable to the damage or injury caused by such Owner or by the use of his Lot. The Association shall hold each Owner safe and harmless from liability for loss or injuries occurring on the Common Areas to the extent that such loss or injuries are covered by insurance to be maintained by the Association.

14.6 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants, conditions and restrictions established by this Declaration governing the Properties, together with the covenants and restrictions established upon any other property, as one plan.

14.7 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Properties to the public, or for any public use.

14.8 Nonliability and Indemnification. Except as provided herein, no right, power, or responsibility conferred on the Board, or the Architectural Committee by this Declaration, the Articles or the By-Laws shall be construed as a duty, obligation or disability charged upon the Board, the Committee, any member of the Board or of the Committee, or any other officer, employee or agent of the Association. No such person shall be liable to any party (other than the Association or a party claiming in the name of the Association) for injuries or damages resulting from such person's acts or omissions within what such person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damages result from such person's willful or malicious misconduct. No such person shall be liable to the Association (or to any party claiming in the name of the Association) for injuries or damages resulting from such person's Official Acts, except to the extent that such injuries or damage result from such person's negligence or willful or malicious misconduct.

The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any person as a result of any action or threatened action against such person to impose liability on such person for his Official Acts, provided that:

(a) The Board determines that such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Association;

(b) In the case of a criminal proceeding, the Board determines that such person had no reasonable cause to

believe his conduct was unlawful; and

(c) In the case of an action or threatened action by or in the right of the Association, the Board determines that such person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Any determination of the Board required under this Section 14.8 must be approved by a majority vote of a quorum consisting of directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the person to be indemnified shall not be entitled to vote.

Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 14.8 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees, or devisees of any person entitled to such indemnification.

14.9 Notices. Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more co-owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any

officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Lot. Such notice shall be deemed delivered forty-eight (48) hours after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors in which case the notice provisions of the By-Laws of the Association shall control. Any notice to be given to the Association may be delivered personally to any member of the Board of Directors, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

14.10 Limitation of Liability. Neither Declarant nor the Association shall be liable to any Owner, lessee, licensee or occupant of the Properties by reason of any mistake in judgment, negligence, nonfeasance, action or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner, lessee, licensee or occupant of any of the Properties, by acquiring his interest therein, agrees that he or it will not bring any action or suit against Declarant or the Association to recover any such damages or to seek equitable relief. Notwithstanding any contrary provision in this Declaration, neither Declarant nor any officer, director or shareholder of Declarant shall be personally or individually liable for any of the monetary obligations of Declarant arising pursuant to this Declaration.

14.11 City Sanitary Sewer Line. The City of Santa Clara's public 10 inch sanitary sewer line (with manhole) extending approximately 48 feet into a public utility easement

area located on the southeast corner of Properties shall be maintained by the City of Santa Clara; provided any lateral connecting to said sanitary sewer line shall be privately maintained.

ARTICLE XV

PARTY WALLS

15.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Improvements upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

15.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners of the Lots connected by such party walls.

15.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner whose Lot is affected thereby may restore it, and the other Owner whose Lot is connected thereto shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

15.4 Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

15.5 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this

Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

15.6 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, then such dispute shall be submitted to and determined by arbitration. Each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator. The decision shall be by a majority of all the arbitrators, in accordance with the American Arbitration Association Commercial Rules of Arbitration.

This Declaration has been executed on the date first written above.

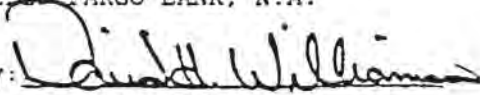
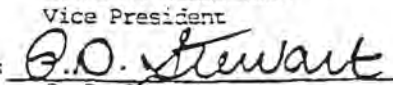
DECLARANT

AINA NUI CORPORATION, a
Hawaii corporation

By 
Its PRESIDENT
By 
Its Secretary

Wells Fargo Bank, N.A., a national banking association, as beneficiary under a deed of trust dated July 13, 1981, and recorded August 6, 1981 in Book G259, page 204 of the Official Records of Santa Clara County, California, hereby approves and consents to the recording of this Declaration and subordinates the beneficial interest under said deed of trust to this Declaration.

WELLS FARGO BANK, N.A.

By: 
David H. Williamson
Vice President
By: 
P. D. Stewart
Assistant Secretary

[ACKNOWLEDGEMENTS]

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS.

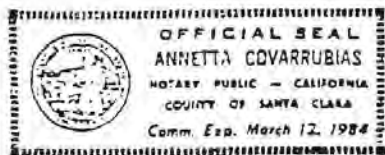
On this 22nd day of July, 1982, before me
appeared G. S. Oliva
and _____, to me ^{u.p.}
personally known, who, being by me duly sworn did say that ~~that~~ ^{he} ^{u.p.}
~~is~~ the Secretary and _____ ^{u.p.}
~~respectively~~ of AINA NUI CORPORATION ^{u.p.}
a Hawaii corporation, and that the seal
affixed to the foregoing instrument is the corporate seal of said
corporation, and that the instrument was signed and sealed in
behalf of said corporation by authority of its Board of Direc-
tors, and said G. S. Oliva and _____ ^{u.p.}
~~severally~~ acknowledged the instrument to be the free ^{u.p.}
act and deed of said corporation.

Lidia L. Hannemann
Notary Public, State of Hawaii

My Commission expires: Feb. 11, 1984

G947-766

STATE OF CALIFORNIA)
COUNTY OF Santa Clara) ss.



On this 23rd day of July, in the year one thousand nine
hundred and eighty-two, before me, Annetta Covarrubias,
a Notary Public, State of California, duly commissioned and sworn, personally
appeared Carlyle MacKerg,
known to me to be the President of the corporation described
in and that executed the within instrument, and also known to me to be the
person who executed the within instrument on behalf of the corporation
therein named, and acknowledged to me that such corporation executed the
same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official
seal in the _____ County of Santa Clara, the day and
year in this certificate first above written.

Annetta Covarrubias
Notary Public, State of California