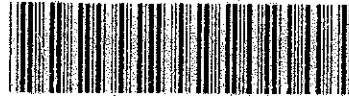


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FIRST RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF
WILLOW GLEN CREEK

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CONDITIONS AND RESTRICTIONS OF
WILLOW GLEN CREEK**

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**FIRST RESTATED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
WILLOW GLEN CREEK**

This First Restated Declaration of Covenants, Conditions and Restrictions is made on the date hereinafter set forth by WILLOW GLEN CREEK HOMEOWNERS ASSOCIATION, a California nonprofit mutual benefit corporation (hereinafter referred to as the "Association").

RECITALS

WHEREAS, the Association is the successor in interest to HEFLIN CORPORATION, a California Corporation, which, as Declarant, executed that certain "Declaration of Covenants Conditions and Restrictions of Willow Glen Creek Condominiums--A Condominium Project," recorded on January 3, 1984, as Instrument/Series No. 7937661, Official Records of Santa Clara County, State of California (hereinafter referred to as the "1984 Declaration"); and

WHEREAS, a First Amendment to the 1984 Declaration was recorded on April 13, 1984, in Book 455, Pages 474 through 481, inclusive, as Series No. 8033245, Official Records of Santa Clara, County, California; and

WHEREAS, a Second Amendment to the 1984 Declaration was recorded on May 17, 1984, as Series No. 8067149, Official Records of Santa Clara, County, California; and

WHEREAS, the 1984 Declaration, as amended, establishes certain limitations, easements, covenants, restrictions, conditions, liens, and charges which run with and are binding upon all parties having or acquiring any right, title, or interest in that certain parcel of real property located in the County of Santa Clara, State of California, and more particularly described as follows:

All of that certain real property described as Lot 1 and Lot 2 shown on that certain Subdivision Map entitled "Tract No. 7254," recorded in the Office of the Recorder of Santa Clara County, State of California, on

the 19th day of April 1983, in Book 511 of Maps at Pages 17 and 18 (herein after referred to as "the Map").

and

WHEREAS, the Members, constituting at least sixty-seven percent (67%) of the Members of the Association, desire to amend, modify, and otherwise change the 1984 Declaration, as amended, pursuant to Article XI, Section 11.03, thereof;

NOW, THEREFORE, pursuant to Article XI, Section 11.03, of the 1984 Declaration, as amended, the Members constituting at least sixty-seven percent (67%) of the Members of the Association, do hereby declare that the aforesaid 1984 Declaration, as amended, be and it is hereby, AMENDED AND RESTATED IN ITS ENTIRETY as set forth in the within First Restated Declaration of Covenants, Conditions and Restrictions of Willow Glen Creek; and

IT IS FURTHER HEREBY DECLARED that all of the real property described herein constitutes a Condominium Project within the meaning of section 1351(f) of the California *Civil Code*; and

IT IS FURTHER HEREBY DECLARED that all of the real property described herein is held and owned and shall be held, owned, operated, managed, conveyed, hypothecated, encumbered, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan and purpose of protecting, preserving, and enhancing the value, desirability, and attractiveness of the said real property and every part thereof, and of fostering the development, management, improvement, enjoyment, and sale of the said real property and any part thereof; and

IT IS FURTHER HEREBY DECLARED that all of the covenants, conditions, and restrictions herein set forth shall constitute enforceable equitable servitudes as provided in section 1354 of the California *Civil Code*, shall constitute covenants that shall run with the said real property, and shall be binding upon and inure to the benefit of each Owner of any portion of the said real property or of any interest therein and their heirs, successors, and assigns.

ARTICLE 1 DEFINITIONS

- 1.1 Absolute Majority. "Absolute Majority" shall mean a majority of the Total Voting Power of the Association.
- 1.2 Additional Charges. "Additional Charges" shall mean all costs, fees, charges, and expenditures, including without limitation, interest, late charges, attorneys' fees, recording and filing fees, and all other costs actually incurred by the Association in collecting and/or enforcing payment of Assessments, fines, and/or penalties.
- 1.3 Annual Assessments. "Annual Assessments" shall have the meaning set forth in Section 6.5.
- 1.4 Articles. "Articles" shall mean the Articles of Incorporation of Willow Glen Creek Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.5 Assessments. "Assessments" shall mean any or all of the following: Annual Assessments, Special Assessments, Reimbursement Assessments, and Enforcement Assessments.
- 1.6 Association. "Association" shall mean Willow Glen Creek Homeowners Association, its successors and assigns.
- 1.7 Balconies. "Balconies" shall mean those portions of the Common Area adjacent to a Unit and separately designated on the Condominium Plan as individual numbered parcels preceded by the letter "B." The boundary lines of each Balcony are to be the dimensions shown on the Condominium Plan, including the airspace encompassed within said boundaries.
- 1.8 Board of Directors. "Board of Directors" or "Board" shall mean the governing body of the Association.
- 1.9 Bylaws. "Bylaws" shall mean the Bylaws of the Association as they shall be adopted by the Board of Directors and Members and any duly-adopted amendments thereof.

- 1.10 Carports. "Carport" shall mean the parking space indicated by the Carport number or numbers designated on the individual grant deed conveying a Unit to a Unit Owner(s).
- 1.11 City. "City" shall mean the City of San Jose.
- 1.12 Common Area. "Common Area" shall mean all of the property comprising the Project which is owned by all of the Owners in common, but excluding the Units.
- 1.13 Contract Purchaser/Contract Seller. "Contract Purchaser" and "Contract Seller" shall mean the purchaser and the seller, respectively, under an installment land contract in which title to the property is transferred after the final installment payment is made.
- 1.14 Condominium. "Condominium" shall mean an estate in real property as defined in California *Civil Code* sections 783 and 1351(f), consisting of an undivided interest in common in the Common Area, and a separate fee interest in a Unit together with any easements or other interests in the Project or any portion thereof as are described in the Declaration, in the Condominium Plan, or in the deed conveying a Condominium.
- 1.15 Condominium Plan. "Condominium Plan" or "Plan" shall mean a plan recorded pursuant to California *Civil Code* section 1351 with respect to the Project and any amendments thereto which identifies the Common Area and each separate interest in the Project.
- 1.16 County. "County" shall mean the County of Santa Clara.
- 1.17 Declaration. "Declaration" shall mean this First Restated Declaration of Covenants, Conditions and Restrictions of Willow Glen Creek, recorded in the Office of the County Recorder of Santa Clara County, California, and any amendments thereof.
- 1.18 Enforcement Assessment. "Enforcement Assessment" shall have the meaning set forth in Section 6.8.
- 1.19 Exclusive Use Common Area. "Exclusive Use Common Area" shall mean any portion of the Common Area the exclusive use of which is set aside, allocated, assigned, and restricted to the exclusive use or possession of the Residents of a particular Unit. An exclusive easement to such Exclusive Use Common Area

may be specifically granted in each individual grant deed conveying a Condominium; however, the failure of any such deed to set forth such grant of easement shall not invalidate the exclusive easement herein granted.

- 1.20 Governing Documents. "Governing Documents" shall mean the Articles, Bylaws, Declaration, and Rules, and the policies and resolutions duly adopted by the Board and distributed to the Members.
- 1.21 Maintenance. "Maintenance" shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, caulking, cleaning, and minor, non-structural upkeep.
- 1.22 Member. "Member" shall mean each person or entity who is a record owner of a fee or undivided fee interest in any Condominium within the Project, except any such person or entity who holds an interest in a Condominium merely as security for the performance of an obligation.
- 1.23 Member in Good Standing. "Member in Good Standing" shall mean a Member of the Association who is current in the payment of all dues, assessments, fines, penalties, and other charges imposed in accordance with the Governing Documents, and who is in compliance with all of the provisions of the Governing Documents, as more particularly set forth in the Bylaws.
- 1.24 Mortgage. "Mortgage" shall mean a deed of trust as well as a mortgage in the conventional sense.
- 1.25 Mortgagee. "Mortgagee" shall mean a beneficiary under a deed of trust as well as under a Mortgage.
- 1.26 Owner. "Owner" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Condominium which is a part of the Project, including Contract Sellers, but excluding Contract Purchasers and excluding those having such interest merely as security for the performance of an obligation.
- 1.27 Parking Space. "Parking Space" shall mean and refer to that portion of the Common Area shown on the Plan as a parcel bearing the number of the individual Unit preceded by the

letter "P." Such Parking Spaces shall be available for use by all Owners, subject to the Rules. The boundary lines for each Parking Space shall be as set forth on the Plan.

- 1.28 Patio. "Patio" shall mean and refer to those portions of the Common Area adjacent to a Unit and separately designated on the Plan as a parcel bearing the number of the individual Unit preceded by the letters "PT."
- 1.29 Project. "Project" shall mean all of the real property described in this Declaration which comprises the Willow Glen Creek Condominium Project, including all structures and other improvements located at any time upon said real property.
- 1.30 Reimbursement Assessment. "Reimbursement Assessment" shall have the meaning set forth in Section 6.7.
- 1.31 Repair. "Repair" shall mean the minor restoration of property that is torn, broken, or otherwise damaged, or has sustained wear, tear, or deterioration such that minor restoration is necessary.
- 1.32 Replacement. "Replacement" shall mean substantial reconstruction, restoration, or substitution of the whole or a substantial part of property that has been damaged or destroyed through usage or through hazard or catastrophe such that it is no longer useable or serviceable in its current condition.
- 1.33 Resident. "Resident" shall mean any person who resides on a Unit within the Project whether or not such person is an Owner as defined in Section 1.26 above.
- 1.34 Rules. "Rules" shall mean the rules and regulations governing the use, occupancy, management, administration, and operation of the Project or any part thereof as adopted and published by the Board of Directors from time to time.
- 1.35 Simple Majority. "Simple Majority" shall mean a majority of the votes represented and voting at a meeting at which a quorum is present or by written ballot in conformity with *Corporations Code* section 7513 in which the number of votes cast by ballot equals or exceeds the number required to establish a quorum.
- 1.36 Special Assessment. "Special Assessment" shall have the meaning set forth in Section 6.6.

- 1.37 Storage Space. "Storage Space" shall mean and refer to that portion of the Common Area shown on the Plan as a parcel bearing the number of the individual Unit preceded by the letter "S." An exclusive appurtenant easement for use and possession of each Storage Space shall be granted to each Unit in the Grant Deed conveying such Unit to the Owner. The boundary lines for each Storage Space shall be as set forth on the Plan and shall include the air space encompassed within said boundaries.
- 1.38 Total Voting Power. "Total Voting Power" shall mean the total number of votes of all Members entitled to vote at a particular time, calculated on the basis of one vote for each Unit, excluding any Units as to which an Owner is not then a Member in Good Standing.
- 1.39 Unit. "Unit" shall mean the elements of a Condominium that are not owned in common with the other Owners of Condominiums within the Project, which Units are shown as separately designated and numbered areas on the Condominium Plan. The boundaries of each Unit shall be the following: the interior unfinished surfaces (exclusive of paint, shingles, siding or other finishes) of the floors, ceilings, interior beams and columns, perimeter walls, bearing walls, doors, door frames, and trim, and the interior unfinished surfaces and/or exposed surfaces of the fireplaces, if any, of said Unit. The Unit shall include the airspace so encompassed by said boundaries, excluding all load bearing walls and all walls containing any utility conduit to the unfinished surfaces of any such walls. Each Unit specifically includes the oven, garbage disposal unit, dishwasher, heating conduits, range and fans, interior partitions, fireplaces and plumbing fixtures installed therein, and specifically excludes any foundations under first floor Units and attics above second floor Units, both of which are Common Area and not part of the Unit. In interpreting deeds, the Declaration, and the Condominium Plan, it shall be conclusively presumed that the then existing physical boundaries of a Unit are its boundaries, rather than the metes and bounds or other description expressed in the deed, the Declaration, or the Condominium Plan, regardless of any settling or lateral movement of buildings and regardless of minor variance between the boundaries shown on the deed, the Declaration, or the Condominium Plan and the actual existing physical boundaries.

ARTICLE 2

PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

2.1 Ownership of Condominium; Exclusive Easements. Ownership of each Condominium within the Project shall include (i) a designated Unit, (ii) the respective one one-hundred-thirty-sixth (1/136) interest as tenant in common in the Common Area, (iii) a Membership in the Association, and (iv) any exclusive easements or easements appurtenant to such Unit upon the Exclusive Use Common Area and such other easements as are applicable, all as described in the Declaration, in the deed to the Unit, or in the Condominium Plan. The undivided interests in the Common Area established in this First Restated Declaration cannot be changed. The undivided interests in the Common Area shall not be severed or conveyed separately from the respective Units to which they are appurtenant and each such undivided interest shall in all cases be deemed to be conveyed or encumbered along with the respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Unit. Any purported severance or separate conveyance of an undivided interest in the Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.

2.2 Owners Non-Exclusive Easements of Enjoyment. Every Owner of a Condominium shall have a non-exclusive easement of use of and enjoyment in, to, and throughout the Common Area of the Project for ingress, egress, and support over and through the Common Area; provided, however, such non-exclusive easements shall be subordinate to, and shall not interfere in any way with the exclusive easements, if any, appurtenant to Units over Exclusive Use Common Area. Each such non-exclusive easement shall be appurtenant to and pass with the title to every Condominium, subject to the following rights and restrictions:

- (a) The right of the Board of Directors to establish and enforce reasonable rules and regulations governing the use of the Common Area and facilities thereon;
- (b) The right of the Board to charge reasonable admission and other fees for the use of any facilities situated upon the Common Area;

- (c) The right of the Board, as more particularly addressed in the Bylaws, to suspend an Owner's rights and privileges as a Member, including voting rights and right to use the recreational facilities for any period during which any Assessment against such Owner's Condominium remains unpaid and/or for infraction of the Governing Documents of the Association;
- (d) The right of the Board, as set forth in Section 3.4, to grant easements and rights of way in, on, over, or under the Common Area subject to such conditions as may be agreed to by the Board;
- (e) The right of the Board, subject to approval of the Members as set forth in Section 5.11, to sell property owned by the Association;
- (f) The right of the Association or its authorized agents, as provided in this Declaration, to perform its obligations under this Declaration, including obligations with respect to construction, maintenance, repair, or replacement for the benefit of the Common Area or the Owners in common;

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

- 2.4 Common Area Construction. Except as may be authorized by the Board, no person or entity, other than the Association or its duly-authorized agents, shall construct, reconstruct, refinish, alter, or maintain any improvement upon the Common Area, or shall make or create any excavation or fill upon the Common Area, or shall change the natural or existing drainage of the Common Area, or shall plant, remove, or destroy any seed, plant material, tree, shrub, or other vegetation upon the Common Area.
- 2.5 Mechanic's Liens. In the event there shall be filed against the Common Area a Notice of Mechanic's Lien for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Owner within the Project or his or her Condominium, such Owner shall forthwith cause such lien to be discharged by payment, bond, or otherwise. If the Owner fails to cause the lien to be discharged, the Board may send written notice to the Owner specifying that unless the Owner causes the lien to be discharged within five (5) days from the date of such notice, the Board may cause the lien to be discharged. Within such five (5) day period, the Owner shall be permitted a hearing before the Board regarding the validity of such lien and any offsets or defenses thereto. At that time, the Board shall determine whether the lien adversely and improperly affects and encumbers the rights and interests of the Association or the other Owners. If the Board of Directors determines that the lien does adversely and improperly affect and encumber such rights and interests and that adequate protection of such rights and interests has not been provided, the Board may cause the lien to be discharged by payment, bond, or otherwise. The Board shall have the right to levy a Reimbursement Assessment against the Owner responsible for causing the lien to be discharged in an amount equal to all amounts paid by the Association together with interest thereon at the legal rate and all costs and expenses paid or incurred in connection therewith, including reasonable attorneys' fees.

ARTICLE 3 EASEMENTS

- 3.1 Easements in General. In addition to all easements reserved and granted on the Subdivision Map(s) and the easement provided in Section 2.3, there are hereby specifically reserved and granted for the benefit of the Lots and Lot Owners in common

and for each Lot and Lot Owner severally, and for the Association, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article 3.

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

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

- 3.3 Utility Easements. Easements over and under the Project or any portion thereof for the installation, repair, maintenance, and replacement of electric, telephone, water, gas, and sanitary sewer lines and facilities, heating and air-conditioning facilities, cable or master television antenna lines, drainage facilities, walkways, and landscaping as shown on the Condominium Plan, and as may be hereafter required or needed to service the Project, are reserved by and shall exist in favor of the Association, together with the right to grant and transfer the same. The Association shall maintain all utility installations located in the Common Area except for (i) those installations maintained by utility companies, public, private, or municipal and (ii) utility installations which are within a Unit as defined in Section 1.39. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.

- 3.4 Easements Granted by The Board. The Board shall have the power to grant and convey to any person or entity easements and rights of way, in, on, over, or under the Common Area for the purpose of constructing, erecting, operating, or maintaining

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

- 3.5 Balconies, Patios and Storage Spaces. Each Unit and Unit Owner shall have an exclusive easement, and such exclusive easement is hereby granted for the use, possession, and enjoyment of any Balcony and/or Patio and Storage Space directly adjacent to said Unit, bearing the same number as the Unit as designated and delineated on the Plan. Said exclusive easements shall be subject, however, to the right of the Association to enter in and upon said Balcony and/or Patio and Storage Space for the purpose of maintaining and repairing the same, pursuant to this Declaration and enforcing the terms hereof. The grant of Patio easement shall include such areas beneath the surface of the earth as is reasonable and necessary for the cultivation, landscaping and drainage of the subject Patio. However, nothing shall be planted, stored, placed or otherwise located on any Balcony, Patio, or Storage Space which would violate any restriction on use of a Unit or the Common Area contained in the Declaration.
- 3.6 Carports. Each Unit and Unit Owner shall have an exclusive easement and such exclusive easement is hereby granted for the use, possession and enjoyment of the Carport bearing the number or numbers designated on the individual grant deed conveying a Unit to such Unit Owner. Such exclusive easement shall be subject to the right of the Association to enter in and upon such Carport for the purpose of maintenance and repair or to enforce the terms of this Declaration.

ARTICLE 4

USE RESTRICTIONS

- 4.1 Residential Use. Units shall be occupied and used for residential purposes only.
- 4.2 Leasing of Units. With the exception of a lender in possession of a Condominium following a default in a first mortgage, a foreclosure proceeding or any deed or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Unit for transient or hotel purposes. No Owner may lease less than the entire Unit. All leases must be in writing and be expressly subject to this Declaration and to the Bylaws. The breach of any provision hereof or of the Bylaws shall be a default under the Lease.
- 4.3 Time-Share Arrangements. No Unit or Units shall be leased, subleased, occupied, rented, let, sublet, or used for or in connection with any time sharing agreement, plan, program or arrangement, including, without limitation, any so called "vacation license," "travel club," "extended vacation," or other membership or time interval ownership arrangement. The term "time sharing" as used herein shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess any Unit or Units in the Project rotates among various persons, either corporate, partnership, individual, or otherwise, on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time. This section shall not be construed to limit the personal use of any Unit in the Project by any Owner or his or her or its social or familial guests.
- 4.4 Restriction on Businesses. No business of any kind shall be established, maintained, operated, permitted, or conducted within the Project except such professional and administrative professions as may be permitted by applicable governmental ordinances and provided that there shall be no external evidence thereof.
- 4.5 Family Day Care Centers. No family day care center for children shall be permitted within the Development except as specifically authorized by California Health and Safety Code §1597.40 and other applicable state statutes. The owner/operator of any permitted day care facility shall provide the Association with

prior written notice as to its operation, and comply with all local and state laws regarding the licensing and operation of a day care center and, in addition, shall:

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of the day care center, as provided under Health & Safety Code section 1597.531. This Section 4.5, subparagraph (a) is intended to be and shall be conclusively deemed to be the written notice to the operator or owner from the Association as specified in Health and Safety Code Section 1597.231;
- (b) Defend, indemnify and hold the Association harmless from any claim, demand, loss, liability action or cause of action arising out of the existence and operation of the day care center;
- (c) Abide by and comply with all of the Association's Rules;
- (d) Supervise and be completely responsible at all times for children for whom day care services are provided while they are within the Development; and
- (e) Cooperate with the Association if the Association's insurance agent or carrier requires proof of insurance, proof of the agreement of the owner or operator of the center to these conditions, or other reasonable requests.

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

- (a) Name the Association as an additional insured on the liability insurance policy or bond carried by the owner/operator of such a community care facility;

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

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

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

4.9 Hazards. There shall be no obstruction of any part of the Common Area. Nothing shall be done, placed, or kept within

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

- 4.10 Requirement of Architectural Approval. As addressed in greater detail in Article 10, construction, installation, modification, or alteration of buildings, outdoor structures, landscaping, and outdoor lighting are subject to approval of the Board.
- 4.11 Sports Apparatus. No basketball standards (including so-called portable basketball standards) or fixed sports apparatus shall be placed upon or attached to any portion of the Project without the written permission of the Board.
- 4.12 Mailboxes and Exterior Newspaper Tubes. Mailboxes shall comply with all applicable postal regulations, and Architectural Rules, if any. There shall be no free-standing exterior mailboxes or newspaper tubes.
- 4.13 Outside Drying and Laundering. No outside clothesline or other outside clothes washing, drying, or airing facilities shall be maintained in the Project.
- 4.14 Antennas. No outside mast, tower, pole, antenna, or satellite dish shall be erected, constructed, or maintained on the Common Area including the outside of any Unit, except (i) those erected, constructed, or maintained by the Association, (ii) those expressly approved by the Board, (iii) those initially installed during the construction of the buildings, or (iv) as specifically permitted by law.
- 4.15 Animals.
 - 4.15.1 Limitation on Pets. No dogs, cats, birds, or other animals of any kind shall be kept, maintained, or bred in any Unit or within the Project except that domestic dogs not exceeding 25 pounds, cats and other customary household pets may be kept in reasonable numbers and size, subject to the Rules, provided they are not kept, bred, or raised for commercial

purposes. Unless otherwise provided in the Rules, "reasonable numbers" shall be deemed to limit the total number of all dogs, cats, and birds kept in a Lot to two (2). While in Common Areas each dog must be restrained on a leash held by a responsible person capable of controlling it.

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

4.15.3 Pet Rules. The Board may adopt and enforce Pet Rules in addition to the provisions of this Section 4.15. The Association shall have the right to prohibit the keeping of any animal which constitutes, in the sole and exclusive opinion of the Board, a nuisance to any other person.

- 4.16 Trash Disposal. Trash, garbage, accumulated waste plant material, or other waste and refuse shall be deposited only in containers in designated areas in the Common Area. No Owner or Resident shall permit or cause any garbage, trash, or other waste or refuse to be kept upon any portion of the Project, except in such containers.
- 4.17 Construction Materials, Construction Debris. No portion of the Project shall be used for the storage of building materials other than in connection with approved construction. All construction debris shall be picked up and deposited daily in an appropriate container.
- 4.18 Machinery and Equipment. Except as approved by the Board, no machinery or equipment of any kind shall be maintained or operated within the Project except as is customary and necessary in connection with approved construction.

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

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

4.20 Vehicles and Parking. Vehicles of Residents shall not be parked anywhere in the Project except wholly within the Carport conveyed to the Unit Owner and in undesignated Parking Spaces in the Common Area. No trailer, camper, mobile home, recreational vehicle, boat, golf cart or similar equipment or any commercial vehicle or truck other than a standard size pickup truck, and no dilapidated, inoperable, or abandoned vehicle shall be parked, kept, stored, or permitted to remain upon any area within the Project, other than temporarily in accordance with the Rules, unless placed or maintained in an area designated by the Board for that purpose. The term "commercial vehicles" shall not include sedans or standard size pickup trucks which are used for both business and personal uses, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board.

No unreasonably noisy and no smoky vehicles shall be operated within the Project. No overnight parking is permitted in

driveways. Owners and their guests may not park their vehicles in Common Area parking spaces, excluding carports, in excess of seventy-two (72) hours.

- 4.21 Parking Enforcement. In addition to the provisions of Section 4.20 above, the Board shall have the power and authority to adopt, promulgate, and enforce parking rules and shall have the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking. Such power shall include the power and authority to cause the towing, at the vehicle owner's expense, of vehicles which are parked within the Project in violation of any of the provisions of the Governing Documents, provided that towing of vehicles of guests and other non-Residents of the Project shall be subject to the provisions of applicable law. Costs incurred by the Association relating to the towing and/or storage of any vehicle parked in violation of any provision of the Governing Documents shall be assessed as a Reimbursement Assessment against the Condominium Owner responsible or whose household members, tenants, contract purchasers, or guests are responsible for the presence of such vehicle.
- 4.22 Carport. Each Owner and Resident shall keep his or her Carport in a neat, orderly, sanitary, and safe condition.
- 4.23 Window Coverings. Drapes, window shades, and other window coverings installed in the windows of any Unit shall comply with any rules adopted by the Board. Only neutral-colored window coverings shall be installed in windows. In no event shall aluminum foil be placed in windows.
- 4.24 Outbuildings. No outbuilding, tent, shack, trailer, shed, or temporary building of any kind shall be located within the Project, except in strict compliance with the provisions of this Declaration, including Article 10 concerning approval by the Board.

ARTICLE 5

HOMEOWNERS ASSOCIATION

- 5.1 Management and Operation. The Association shall manage and operate the Project in accordance with the applicable provisions of the Governing Documents and the applicable provisions of California law. The Association shall have all of the powers set

forth in the Governing Documents together with general power to do any and all things that a nonprofit mutual benefit corporation may lawfully do under the laws of the State of California, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Governing Documents.

- 5.2 Membership. Every Owner of a Condominium within the Project shall be a Member of the Association and shall remain a Member thereof until such time as his or her Condominium ownership ceases for any reason. Membership shall be appurtenant to and may not be separated from ownership of a Condominium and shall not be transferred, encumbered, pledged, alienated, or otherwise hypothecated in any way, except in connection with the sale or encumbrance of the Condominium to which it is appurtenant.
- 5.3 Voting. Only Members in Good Standing shall be entitled to vote, and only one vote shall be cast for each Condominium, as more particularly set forth in the Bylaws.
- 5.4 Board of Directors. The affairs of the Association shall be managed by or under the direction of a Board of Directors. The number and qualifications of Directors shall be as established in the Bylaws, and the members of the Board shall be elected as provided in the Bylaws. The Board of Directors shall have all of the powers and duties set forth in any provision of the Governing Documents, including without limitation such powers and duties as may be expressly set forth in this Declaration.
- 5.5 Association Rules. The Board of Directors shall have the power and the authority to establish, promulgate, amend, repeal, and enforce such Rules as the Board deems necessary for the management and operation of the Project and the conduct of business and affairs of the Association. Such Rules may concern, but need not be limited to, matters pertaining to use of the Common Area, including Exclusive Use Common Area; pets; signs; collection and disposal of refuse; minimum standards for maintenance of property; use of recreation facilities; parking and traffic regulations; rental or leasing of Units within the Project; and any other subject matter within the jurisdiction of the Association as provided in the Governing Documents or by law.
- 5.6 Manager and Other Personnel. The Board of Directors shall have the power and authority to employ a manager and such other

persons or entities as the Board shall deem appropriate to assist it in managing the Project and conducting the business and affairs of the Association, as more particularly set forth in the Bylaws; however, the Board shall not delegate to any manager its authority to levy Enforcement Assessments, hold hearings, or impose discipline.

- 5.7 Assessments. The Board shall have the power and duty to levy and collect Assessments, as more particularly set forth in Article 6 of this First Restated Declaration.
- 5.8 Insurance. The Board shall procure and maintain liability insurance and property insurance as it shall deem proper and as more particularly set forth in the Bylaws.
- 5.9 Acquisition of Property. The Board acting on behalf of the Association shall have the power to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, and maintain real or personal property in connection with the affairs of the Association.
- 5.10 Capital Improvements. The Board of Directors shall have the power and authority, to provide for the construction, reconstruction, installation, or acquisition of capital improvements upon the Common Area, provided that in any fiscal year expenditures for capital improvements shall not exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year except upon the approval of a majority of Members voting on any such expenditures, provided that a quorum is established.
- 5.11 Dedication. The Board of Directors shall have the power and authority to dedicate, sell, mortgage, grant easements in, on, under, across, over, above, or through any portion of the Common Area, or transfer any interest in or to all or any part of the Common Area to any public agency, authority, or utility, to be used for such purposes and subject to such conditions as the Board shall deem necessary, appropriate, or beneficial to the Association and not inconsistent with its purposes and interests; provided, however, that any such dedication, sale, or transfer to any person or entity other than a public agency, authority, or utility shall only be effective if the terms of such dedication, sale, or transfer have been approved by at least a majority of the total voting power of the Association.

- 5.12 Access. The Board and its duly authorized agents or representatives shall have the right, after reasonable notice to the Owner thereof, to enter any Unit for the purpose of performing the maintenance authorized herein or for any other purpose reasonably related to the performance by the Association or the Board of their responsibilities.

ARTICLE 6 ASSESSMENTS AND LIENS

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

Condominium is recorded in the Office of the County Recorder of Santa Clara County.

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

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

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

6.5 Annual Assessments.

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

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

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

6.5.4 Increases in Annual Assessment. Except as otherwise provided by law, the Board shall not increase the Annual Assessment for any fiscal year above the amount of the Annual Assessment for the preceding fiscal year by more than the maximum amount permitted by law, except upon the affirmative vote or written consent of a majority of Members voting on any such increase in the Annual Assessment, provided that a quorum is established. For purposes of the preceding sentence, a quorum shall mean more than 50% of the Members of the

Association, notwithstanding any lower quorum requirement which may be set forth in the Bylaws.

6.6 Special Assessments.

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

6.6.2 Allocation of Special Assessments. Special Assessments shall be allocated and assessed among the Condominiums in the same manner as Annual Assessments.

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

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

- 6.8 Enforcement Assessments. The Board may levy an Enforcement Assessment (and any fine imposed by the Board in accordance with the provisions of the Governing Documents shall be deemed to be such an Enforcement Assessment), for violation of any of the provisions of the Governing Documents. Any Enforcement Assessment shall be due and payable to the Association when levied.
- 6.9 Failure to Fix Assessments. The failure or omission by the Board to fix or levy any Annual Assessment provided for by the terms of this Declaration before the expiration of any fiscal year, for that fiscal year or the next fiscal year, shall not be deemed either a waiver or a modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay Assessments or any installment thereof for that or any subsequent year, but the amount of the Annual Assessment fixed for the preceding fiscal year shall be the amount of the Annual Assessment for the ensuing fiscal year until a new Annual Assessment is levied.
- 6.10 Offsets. All Assessments levied by the Board shall be payable in the full amount specified, including any Additional Charges imposed as provided by the terms of this Declaration, and no offsets against any such amounts shall be permitted for any reason whatsoever, including without limitation a claim that the Association has failed to properly exercise its duties of maintenance or enforcement.
- 6.11 Delinquent Assessments. Any installment or other portion of an Assessment not paid within fifteen (15) days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other Additional Charges. The Board, on behalf of the Association, may enforce the payment of any delinquent Assessment plus Additional Charges by bringing an action at law against any Owner personally obligated to pay the same, or by foreclosing the lien against the Owner's Condominium by judicial or non-judicial foreclosure, except as prohibited by law. Prior to recording a Notice of Delinquent Assessment, the Association shall provide notice to the Owner as required by *Civil Code* section 1366.3 or other applicable statute. No procedures shall be initiated to foreclose the lien securing any Assessment levied under this Article 6 until at least ten (10) days following the mailing of a Notice of Delinquent Assessment, duly signed by a designated officer or agent of the Association, to the Owner or

Owners of the subject Condominium, and the recording of such Notice in the Office of the Recorder of Santa Clara County, California. Said Notice of Delinquent Assessment shall state the amount of the Assessment, together with all accrued Additional Charges; a description of the Condominium against which the same has been assessed; the name or names and mailing addresses of the Owner or Owners thereof; and the name and address of the trustee authorized by the Association to enforce the lien by foreclosure and sale. Except as prohibited by law, upon the recording of the Notice of Delinquent Assessment referred to above, the Association may, at its option, declare the entire balance of all sums then due or to become due from the Owner, immediately due and payable, which total sum may then be included in any suit, action, or other procedure initiated to collect said sums, including all Additional Charges.

- 6.12 Power of Sale. Each Owner does hereby appoint the Association as trustee to enforce and to foreclose any lien which is established pursuant to the terms of this Declaration, by private power of sale, as provided in Division III, Part 4, Title 14, Chapter 2, Article 1, of the *Civil Code* of the State of California, and does further grant to the Board of Directors, on behalf of the Association, the authority and power to sell the Condominium of such Owner in the event of any default in payment of any Assessments or Additional Charges levied against such Condominium, for lawful money of the United States, to the highest bidder, to satisfy said lien. The Association, as trustee for the remaining Owners, or any other Owner, may purchase the Condominium at said sale. The Board may commence any procedure for the collection of delinquent Assessments upon its own decision, and it must so proceed upon the written request therefor signed by any five (5) Owners. The remedies provided in this Declaration for collection of delinquent Assessments shall be cumulative and not exclusive.
- 6.13 Certificate of Satisfaction and Release of Lien. Upon payment in full of a delinquent Assessment, including any Additional Charges, or the satisfaction thereof, the Board shall cause to be recorded, in the same manner as the Notice of Delinquent Assessment, a further certificate stating the satisfaction thereof and the release of the lien.
- 6.14 Priority. Except as otherwise expressly provided by law, the lien securing each of the Assessments provided for under this Article 6 shall have priority as of the date of recording of the

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

- 6.15 Association Funds. Unless otherwise determined by the Board, the Association shall maintain at least two separate accounts in one or more banks or other depositories selected by the Board, which accounts shall be clearly designated WILLOW GLEN CREEK HOMEOWNERS ASSOCIATION OPERATING ACCOUNT and WILLOW GLEN CREEK HOMEOWNERS ASSOCIATION RESERVE ACCOUNT. The Assessments collected by the Association shall be properly deposited into such accounts. The Assessments collected by the Association shall be held in trust by the Association for and on behalf of each Owner and shall be used for the purposes set forth in Section 6.3. The Board shall allocate a portion of said funds as collected for the annual maintenance and operation of the Project and another portion of said funds as collected as reserves for contingencies, replacement, and deferred maintenance of the capital improvements of the Project, as specified in the annual budget. Upon sale or transfer of any Condominium by any Owner, the Owner's interest in the funds held in trust by the Association shall terminate and shall be deemed automatically transferred to the successor-transferee of such Owner.
- 6.16 Waiver of Exemptions. Each Owner, to the extent permitted by law, does hereby waive, to the extent of any liens created pursuant to this Article 6, the benefit of any homestead or exemption laws of the State of California in effect at the time any Assessment or installment thereof becomes delinquent or any lien is imposed pursuant to the terms of this Article 6.
- 6.17 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the Assessments, Charges, and liens created herein:

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

**ARTICLE 7 DAMAGE OR DESTRUCTION OF BUILDINGS;
 CONDEMNATION**

7.1 Damage to Single Unit. If the Project is damaged by fire or other casualty which it is insured against, and said damage is limited to a single Unit, the insurance proceeds shall be paid to the Owner or Owners of such Unit, or the Mortgagees thereof as their respective interests appear, and such Owner or mortgagees shall use the same to rebuild or repair such Unit. In the event the insurance proceeds are insufficient to complete such work, the Unit Owner shall pay and advance such additional sums as may be necessary to complete such rebuilding and repair.

7.2 Damage to Two or More Units or Common Area. If such damage extends to two (2) or more Units or extends to any part of the Common Area, then and in that event:

7.2.1 If the amount of available insurance proceeds is at least eighty-five (85%) of the cost of repairing or rebuilding the damaged property to its original design and specifications, the insurance proceeds shall be paid to the Association, and the Board shall thereupon contract to repair or rebuild the damaged portions of the Project, including all Units, and the Common Area so damaged. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding, then the Board shall levy a special assessment against all Unit Owners, pursuant and subject to the limitation contained in Section 6.6, to make up any deficiency.

7.2.2 In the event that the amount available from such insurance proceeds is less than eighty-five percent (85%) of the cost of repairing or rebuilding, then such insurance proceeds shall be paid to a bank savings and loan association or trust company designated by the Board. Said funds shall be held for the benefit of all Unit Owners and their mortgagees, as their respective interests shall appear, pursuant to an insurance trust agreement consistent with the provisions of this Declaration, approved and executed by the Board. The Board shall obtain bids from responsible contractors to restore the Project, including all damaged Units and all damaged Common Area, to its condition immediately prior to such damage or destruction and shall, as soon as possible, call a special meeting of the Association Members and all first mortgagees of record to consider such bids. At such special meeting, the Members shall accept or reject such bids by a vote of sixty percent (60%) of each class of Members and seventy-five percent (75%) of the first mortgagees attending such meeting.

In the event a bid is accepted, the Board shall levy a special assessment against all Unit Owners pursuant to Section 6.6 to make up the deficiency, if any, between the total insurance proceeds and the contract price for such repair or rebuilding. All insurance proceeds, including any subject to liens of mortgagees or beneficiaries of deeds of trust, shall be used for such rebuilding or repair. If any bid shall be accepted to repair or rebuild, the contractor shall provide a completion bond naming the Association and each Unit Owner as Beneficiaries.

In the event all bids are rejected, the Board shall recommend such alternative reconstruction of the damaged or destroyed improvements at a lesser cost as it deems reasonable or adequate, which alternatives shall be placed to bid and voted upon as previously provided. In the event that no such alternatives are accepted by the Unit Owners and first mortgagees, the Board is hereby empowered, as the agent for all Unit Owners, to sell the entire Project, including all Units and the Common Area in its then present condition, on terms satisfactory to the Board. In the event of the sale of all Units and the Common Area, proceeds from such sale and insurance proceeds received by the Association on account of the destruction of the Common Area shall be distributed by the Association among Unit Owners and their respective mortgagees according to the respective fair market values of the Units at the

time of the destruction as determined by an independent appraisal.

- 7.3 Condemnation of Common Area. If at any time all or any portion of any Common Area, or any interest therein, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by private purchase in lieu of eminent domain, the entire award in condemnation, to the extent such award is not apportioned among the Owners by court judgment or by agreement between the condemning authority and each of the affected Owners in the Project, shall be paid to the holder or holders of the fee title to such area and their respective beneficiaries or mortgagees as their interests may appear according to the respective fair market values of the Units at the time of the destruction, as determined by independent appraisal. Any such award to the Association shall be deposited into the operating fund of the Association. The Association shall represent the interests of all Unit Owners in any proceedings relating to such condemnation to the extent such Unit Owners have any interest in the Common Area. Each Unit Owner, by accepting a deed to his Unit, appoints the Association to act as his Attorney-in-fact in connection with such representation.
- 7.4 Appraisals. Where the provisions of this Article require an independent appraisal of property, said appraisal shall be made by a qualified real estate appraiser with an M.A.I. certificate or the equivalent, which appraiser shall be selected by the Board.
- 7.5 Sale of Entire Project. In the event of the sale of all Units and the Common Area, proceeds from such sale and insurance proceeds received by the Association on account of the destruction of the Common Area shall be distributed by the Association among the Owners and their respective Mortgagees according to the respective fair market values of the Units at the time of the destruction as determined by an independent appraisal. The members of the Board are hereby authorized to execute and deliver, in behalf of all of the Owners, any instruments necessary or required to effect such a sale or sales and each Owner shall be obligated to execute and deliver such instruments and to perform such acts as may be necessary to effect such sale or sales.

ARTICLE 8

MAINTENANCE OF PROPERTY

8.1 Association Responsibility.

8.1.1 With Respect to Common Area other than Exclusive Use Common Areas. The Association shall provide maintenance, repair, and replacement of the Common Area (other than the Exclusive Use Common Areas), and all facilities, improvements, and landscaping thereon, including private streets, walks and utility facilities, except for those utility facilities which are maintained by public or private utility companies or agencies, and all other real and/or personal property that may be acquired by the Association. The Association shall further be responsible for providing lighting, landscaping, gardening, and janitorial services for the Common Area (other than the Exclusive Use Common Areas), as needed, and shall cause any and all other acts to be done which may be necessary to assure the maintenance of the Common Area (other than the Exclusive Use Common Areas), including painting of the exterior surfaces of the building(s) and such other portions of the Common Area (other than the Exclusive Use Common Areas) as the Board, in its discretion, determines to be necessary.

8.1.2 With Respect to Exclusive Use Common Area. The Association's responsibility with respect to the Exclusive Use Common Areas shall be as follows: The Association shall paint and replace the Exclusive Use Common Area Balconies and Patios. The Association shall paint and/or stain the exterior surfaces of each Storage Space and the front door of each Unit. The Association shall maintain, repair and replace the Exclusive Use Common Area Carports.

8.2 Authority for Entry of Unit or Exclusive Use Common Area. The Association or its agents may enter any Unit or any portion of Exclusive Use Common Area, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction, or replacement for which the Board is responsible or which it is authorized to perform. Such entry shall be made with as little inconvenience to the Residents as practicable and only upon reasonable advance written notice of not less than twenty-four (24) hours, except in emergency situations.

8.3 Association Liability. Except as specifically provided in Section 8.1.2, the Association shall not be responsible or liable for any maintenance, repair, or replacement of any Unit or Exclusive Use Common Area or any improvement thereon, except to the extent that the need for such maintenance, repair, or replacement results from the negligence or fault of the Association, its employees, contractors, or agents.

8.4 Owner Responsibility.

8.4.1 With Respect to Units. Each Owner shall be responsible for providing maintenance, repair, and replacement of his or her Unit or any portion thereof, including any equipment, utility facilities, and fixtures, and appliances located therein, and the finished surfaces of the interior walls, ceilings, and floors of the Unit, in a clean, sanitary, workable, and attractive condition, subject to the provisions of this Article 8. Each Owner shall also be responsible for the cleaning, maintenance, repair, and replacement of all interior and exterior doors (except as provided in Sections 8.1.1 and 8.1.2 above), windows, and glass serving his or her Unit. Each Owner shall further be responsible for providing maintenance, repair, and replacement of the internal installations, appliances, equipment, and other features servicing his or her Unit, even though located partly outside of such Unit, including, without limitation, garbage disposals, hot water heaters, ranges, refrigerators, freezers, dishwashers, and other kitchen appliances, washing machines, dryers, light fixtures, heating, ventilating and air conditioning units, condensers and equipment, light bulbs and light fixtures, plumbing facilities, showers, bathtubs, sinks, toilets, fireplaces (fireboxes) and flues, telephone facilities, and any other accessories within the boundaries of the Unit. The provisions of this Subparagraph 8.4.1 shall not be construed to permit any interference with or damage to the structural integrity of any building.

8.4.2 With Respect to Exclusive Use Common Area. Except as expressly provided in Section 8.1.2, each Owner shall further be responsible for providing maintenance, cleaning, upkeep, repair, and replacement of any Exclusive Use Common Area which is appurtenant to his or her Unit, including without limitation any Balcony, Patio, and/or Storage Space, which has been assigned to such Owner and including any landscaping located within such areas. All planting and landscaping in Patios or Balconies to which the Residents of a Unit have been assigned or granted a right of exclusive use shall be installed and maintained by the

Resident of such Unit at the Resident's expense in conformity with plans approved by the Board.

- 8.5 Interior Decorations. Each Owner shall have complete discretion as to furniture, furnishings, and interior decorating of the interior of his or her Unit and shall have the exclusive right to paint, plaster, panel, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, ceilings, floors, and doors bounding his or her Unit, and to substitute new finished surfaces for the finished surfaces existing on said walls, ceilings, floors, and doors, including, without limiting the generality of the foregoing, substitution of paint for paper or paper for paint, substitution of any type of panel for plaster or plaster for paneling, substitution of tile for paneling or paneling for tile, or substitution of wood for linoleum or tile or of linoleum or tile for wood; provided that no Owner shall do anything in or about his or her Unit that will affect the structural integrity of the building in which it is located, and provided further that windows shall be covered only by drapes or shades and shall not under any circumstances be painted or covered by foil, cardboard, or other similar materials.
- 8.6 Board Discretion. The Board shall have the absolute discretion to determine whether any maintenance, repair, or replacement, which is the responsibility of an Owner, is necessary to preserve the appearance and value of the property within the Project or any portion thereof and may notify an Owner of the work the Board deems necessary. In the event an Owner fails to perform such work within sixty (60) days after notification by the Board to the Owner, the Board may, after written notice to the Owner, and the right of a hearing before the Board, cause such work to be done and charge the cost thereof to the Owner as a Reimbursement Assessment.
- 8.7 Owner Liability. In the event the need for any maintenance, repair, or replacement is caused by the willful or negligent act or omission of an Owner or an Owner's family, tenants, contract purchaser, guests, invitees, or household pets, the cost of such maintenance, repair, or replacement, including the cost of materials, labor, supplies, and services shall be charged to, and paid by, such Owner in the form of a Reimbursement Assessment.

ARTICLE 9

RIGHTS OF TRUST DEED BENEFICIARIES

9.1 Limitations. Unless the prior written approval of fifty-one percent (51%) of the Beneficiaries and sixty-seven percent (67%) of the Beneficiaries holding first deeds of trust or mortgages to Units owned by Unit Owners other than Declarant is first obtained, the Association shall not be entitled to:

9.1.1 Abandon or terminate the project, except for abandonment or termination as provided by statute in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation or "eminent domain";

9.1.2 Amend any provision of this Declaration or the Bylaws of the Association governing the following subjects:

- (1) Percentage interest of the Unit Owners in the Common Areas of the Project or the relative interest or obligations of the Unit Owners for the purpose of levying assessments or charges;
- (2) The fundamental purpose for which the Project was created;
- (3) Voting procedures or rights;
- (4) Assessments, assessment liens or subordination thereof;
- (5) Reserves for repair and replacement of the Common Area;
- (6) Property maintenance obligations;
- (7) Casualty and liability insurance or fidelity bonds;
- (8) Reconstruction in the event of damage or destruction;
- (9) Boundaries of Units;
- (10) Rights to use the Common Area;

- (11) Leasing of Units;
- (12) Annexation; and
- (13) The provisions of this Article 9 or of Section 6.14 of this Declaration, or any other provision of this Declaration which is expressly for the benefit of Beneficiaries.

9.1.3 Effectuate a decision to terminate professional management and assume self-management of the Project;

9.1.4 Change the pro rata interest or obligation of any individual Condominium for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Unit in the Common Area;

9.1.5 Partition or subdivide any Condominium;

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

9.1.7 Use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Area) for other than the repair, replacement or reconstruction of such Project property.

9.2 Partition of Unit. No Unit shall be partitioned or subdivided without the prior written approval of the Beneficiaries of said Unit.

9.3 Books. Any Beneficiary will, upon request, be entitled to inspect the books and records of the Project during normal business hours;

9.4 Notices. Any Beneficiary will, upon written request, be entitled to receive:

9.4.1 Financial Statements. An annual unaudited financial statement of the Project within ninety (90) days following the end of any fiscal year of the Project, provided, however that any Beneficiary shall be entitled to have an audited statement prepared at its own expense if one is not otherwise available.

9.4.2 Meetings. Written notice of all meetings of the Association and shall be permitted to designate a representative to attend all such meetings.

9.4.3 Default. Written notification from the Association of any default by the mortgagor of any Unit in the performance of such mortgagor's obligations under the Declaration, the Articles or Bylaws which is not cured within sixty (60) days.

9.4.4 Lapse of Insurance. Written notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

9.5 Damage or Destruction. In the event of substantial damage to or destruction of any Unit or any part of the Common Area, the Beneficiary on a Unit will be entitled to timely written notice of any such damage or destruction and no provision of any document establishing the Project will entitle the Owner of a Unit or other party to priority over such Beneficiary with respect to the distribution to such Unit of any insurance proceeds.

9.6 Condemnation. If any Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation of eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the Beneficiary on a Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of any document establishing the Project will entitle the Owner of a Unit or other party to priority over such Beneficiary with respect to the distribution to such Unit of the proceeds of any award or settlement.

9.7 Right of First Refusal. The right of an Owner to sell, transfer or otherwise convey to the Owner's Unit will not be subject to any "right of first refusal" or any similar restriction in favor of the Association now or hereafter contained in this Declaration, the Articles, the Bylaws or the Association Rules.

- 9.8 Leases. With the exception of a lender in possession of a Condominium following a default in a first mortgage, a foreclosure proceeding or any deed of other arrangement in lieu of foreclosure, no Owner shall be permitted to lease this Unit for transient or hotel purposes. No Owner may lease less than the entire Unit. All leases must be in writing and be expressly subject to this Declaration and to the Bylaws. The breach of any provision hereof or of the Bylaws shall be a default under the Lease.
- 9.9 Foreclosure. Any Beneficiary who comes into possession of the Unit by virtue of a foreclosure of the mortgage or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid Assessments and charged against the Unit which accrue prior to the time such Beneficiary comes into possession of the Unit, except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such Assessments or charges to all Project Units including the mortgaged Unit.
- 9.10 Reserve Fund. Condominium dues or charges (Regular Assessments) shall be established by the Association and shall include an adequate reserve fund for repairs, replacement and maintenance of those portions of the Common Area that must be replaced on a periodic basis; such charges shall be funded by regular monthly assessments of Unit Owners rather than by special assessments, provided, however, this provision shall not in any way limit the Board's power to impose Special Assessments or any other Assessment as provided in this Declaration.
- 9.11 Management. Any agreement for professional management of the Project or any contract providing for services of the Declarant shall provide that the contract may be terminated without cause by either party on thirty (30) days written notice, without payment of a termination fee, and the term of any such contract shall be exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

ARTICLE 10 ARCHITECTURAL CONTROL

- 10.1 Submission of Plans and Specifications. Except for improvements made or constructed by or on behalf of the

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

- 10.2 Rules. The Board may, from time to time, adopt, amend, and repeal rules and regulations to be known as "Architectural Rules." Said Rules shall interpret and implement the provisions of this Article 10 by setting forth the standards and procedures for Board review and guidelines for architectural design, placement of buildings and other structures, and landscaping, color schemes, exterior finishes and materials, and similar features which are recommended for use in the Project; provided, however, that said Architectural Rules shall not be in derogation of the minimum standards required by this Declaration.
- 10.3 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article 10, shall apply for approval by notifying the Board, in writing, of the nature of the proposed work and furnishing such information and documentation as the Board may require.
- 10.4 Grant of Approval. The Board shall grant the requested approval only if:
- (a) The Owner shall have complied with the provisions of Section 10.1 above;
 - (b) The Board shall find that the plans and specifications conform to this Declaration and to the Architectural Rules in effect at the time such plans were submitted to the Board; and
 - (c) The Board shall determine that the proposed improvements would be consistent with the standards of the Project and the purposes of this Declaration as to quality of workmanship, design and materials, as to

harmony of exterior design with the existing structures, and as to location with respect to topography and finished grade elevations.

- 10.5 Form of Approval. All approvals and rejections of requests for approval shall be in writing; provided, however, that any request for approval which has not been acted upon within forty-five (45) days from the date of submission thereof to the Board shall be deemed approved.
- 10.6 Commencement. Upon receipt of approval pursuant to Sections 10.4 and 10.5 above, the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations, and excavations pursuant to said approval, said commencement to occur, in all cases, within ninety (90) days from the date of such approval. If the Owner shall fail to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon written request of the Owner made prior to the expiration of said ninety (90) day period, extends the time for such commencement. No such extension shall be granted except upon a finding by the Board that there has been no change in the circumstances upon which the original approval was granted.
- 10.7 Completion. The Owner shall, in any event, complete the construction, reconstruction, refinishing, or alteration of any such improvement within one (1) year after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, or other supervening forces beyond the control of the Owner or his agents. If an Owner fails to comply with this Section 10.7, the Board shall proceed in accordance with the provisions of Section 10.12, below, as though the failure to complete the improvements was a non-compliance with approved plans.
- 10.8 Inspection. Inspection of work and correction of defects therein shall proceed as follows:
- (a) Upon the completion of any construction, reconstruction, alteration, or refinishing of the exterior of any improvements, or upon the completion of any other work

for which approved plans are required under this Article 10, the Owner shall give written notice thereof to the Board.

- (b) Within sixty (60) days thereafter, the Board, or its duly authorized representative, may inspect such improvement to determine whether it was constructed, reconstructed, altered, or refinished to substantial compliance with the approved plans. If the Board finds that such construction, reconstruction, alteration, or refinishing was not done in substantial compliance with the approved plans, it shall notify the Owner in writing of such non-compliance within such sixty (60) day period, specifying particulars of non-compliance and shall require the Owner to remedy such non-compliance.
- (c) If the Owner shall have failed to remedy such non-compliance upon the expiration of thirty (30) days from the date of such notification, the Board shall then set a date on which a hearing before the Board shall be held regarding the alleged non-compliance. The hearing date shall be not more than thirty (30) nor less than fifteen (15) days after the expiration of the 30-day remediation period. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner and, in the discretion of the Board, to any other interested party.
- (d) At the hearing the Owner and, in the Board's discretion, any other interested person, may present information relevant to the question of the alleged non-compliance. After considering all such information, the Board shall determine whether there is a non-compliance, and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a non-compliance exists, the Board shall require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's ruling. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board, at its option, may either remove the non-complying improvement or remedy the non-compliance and all expenses incurred in connection therewith shall be

assessed against the Owner as a Reimbursement Assessment.

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

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

- (a) Within thirty (30) days after proper application for preliminary approval, the Board shall consider and act upon such request. The Board shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by the preliminary application, would be entitled to a final approval on the basis of a full and complete application. In granting or denying approval, the Board may give the applicant such directions concerning the form and substance of the final application for approval as it may deem proper or desirable for the guidance of the applicant.
- (b) Any preliminary approval granted by the Board shall be effective for a period of ninety (90) days from the date of the issuance thereof. During said period, any application for final approval which consists of proposed improvements in accordance with the provisions of the preliminary approval, and is otherwise acceptable under the terms of this Declaration, shall be approved by the Board.
- (c) In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.

- 10.10 Non-Waiver. The approval by the Board of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring the approval of the Board under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification, or matter subsequently submitted for approval.
- 10.11 Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Board), the Board shall cause to be recorded an estoppel certificate, certifying (with respect to any Condominium of said Owner) that as of the date thereof, either: (i) all improvements made and other work completed by said Owner comply with this Declaration, or (ii) such improvements or work do not so comply, in which event the certificate shall also identify the non-complying improvements or work and set forth with particularity the basis of such non-compliance. Any purchaser from the Owner, or from anyone deriving any interest in a Condominium through him, shall be entitled to rely on said certificate with respect to the matters therein set forth, such matters being conclusive as between the Association and all Owners and such persons deriving any interest through them.
- 10.12 Notice of Noncompliance. If any improvements are installed within the Project that are not in conformance with this Declaration, the Association is authorized to record or cause to be recorded against the Owner's Unit a Notice of Noncompliance which shall provide: (i) a legal description of the Unit affected, (ii) the name of the record Owner as most recently reported to the Association, and (iii) a description of the general nature of the noncompliance. If and when such Unit is brought into compliance with this Declaration, as determined by the Board, the Association shall record or cause to be recorded an Estoppel Certificate in accordance with Section 10.11.
- 10.13 Liability. Neither the Board nor any member thereof shall be liable to the Association or to any Owner for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development of any property within the Project; or (iv) the execution and filing of an estoppel certificate pursuant to Section 10.11, whether or not the facts

therein are correct; provided, however, that the Board or such member has acted in good faith on the basis of such information as may be possessed by it or him. Without in any way limiting the generality of the foregoing, the Board or any member thereof may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Board.

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

ARTICLE 11 ENFORCEMENT

- 11.1 Violations as Nuisance. Every act or omission constituting or resulting in a violation of any of the provisions of the Governing Documents shall be deemed to constitute a nuisance and, in addition to any other remedies which may be available, such nuisance may be abated or enjoined by the Association or its Officers or Board of Directors or by any Owner; provided, however, that the Board shall not be obligated to take action to abate or enjoin a particular violation if, in the exercise of its discretion, the Board determines that acting to abate or enjoin such violation is not likely to foster or protect the interests of the Association and its Members as a whole.
- 11.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupancy, or use of any property within the Project is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.
- 11.3 Owners' Responsibility for Conduct of Others and Damages. Each Owner shall be fully responsible for informing members of his or her family and his or her tenants, contract purchasers, and guests of the provisions of the Governing Documents, and shall be fully responsible for the conduct, activities, any Governing Document violation of any of them, and for any damage to the Development or the Association resulting from the negligent or

intentional conduct of any of them or any household pets. If a Condominium is owned jointly by two or more persons, the liability of each Owner in connection with the obligations imposed by the Governing Documents shall be joint and several.

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

11.5 Rights and Remedies of the Association.

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

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

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

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

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

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

11.6 Disciplinary Rules. The Board or a committee appointed by the Board for that purpose may adopt rules and regulations that

further elaborate upon and refine procedures for conducting disciplinary proceedings and otherwise imposing sanctions upon Members of the Association for violation of provisions of the Governing Documents. Such rules, when approved and adopted by the Board, shall be deemed to be a part of the Association Rules provided for in and constituting a part of the Governing Documents.

- 11.7 Emergency Situations. The following shall constitute emergency situations: (i) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of Residents of the Development, (ii) a traffic or fire hazard, (iii) a threat of material damage to or destruction of the Development or any portion thereof, (iv) a violation of any provision of the Governing Documents that is of such a nature that there is no material question regarding the identity of the violator or whether the violation has occurred (such as parking violations). Notwithstanding any other provisions of the Governing Documents, under circumstances involving conduct that constitutes an emergency, the Board or its duly authorized agents may undertake immediate corrective or disciplinary action and, upon request of the Owner as to whom such corrective or disciplinary action has been taken, or on its own initiative, conduct a hearing as soon thereafter as reasonably possible. If the Association acts on its own initiative to schedule a hearing, notice of the date, time and location of the hearing shall accompany the notice of the disciplinary action which is transmitted to the Owner. If the Board has not scheduled a hearing and the Owner desires a hearing, the Owner's written request therefor shall be delivered to the Association no later than five (5) days following the date when the notice of the Board's disciplinary action is transmitted to the Owner. The hearing shall be held not later than fifteen (15) days following the date of the Board's notice of the disciplinary action or fifteen (15) days following the receipt of the Owner's request for a hearing, whichever is later. If a hearing is scheduled or requested, any sanctions imposed or other disciplinary action taken by the Board shall be held in abeyance and shall become effective only if affirmed at the hearing.

- 11.8 Alternative Dispute Resolution. Any dispute which is subject to California *Civil Code* section 1354(b) shall be submitted to alternative dispute resolution procedures ("ADR") as herein described. The power and duty of the Board of Directors to levy and collect assessments through lien foreclosure proceedings

shall not be subject to ADR; however, any underlying dispute resulting in the imposition of a Reimbursement Assessment or an Enforcement Assessment shall be submitted to ADR prior to foreclosure upon the request of any party to the dispute. In the case of any claim, dispute, or controversy which is not otherwise subject to California *Civil Code* section 1354(b), involving a sum of money not in excess of the jurisdiction of the Small Claims Court, any party to the dispute shall have the right to file a claim in Small Claims Court and have the matter determined therein in lieu of ADR.

11.8.1 Procedure. To the extent that prior notice and an opportunity for a hearing by the Board is required under the Governing Documents, such notice and an opportunity for a hearing shall be provided before any dispute is submitted to ADR. Prior to filing an action seeking judicial resolution of any dispute subject to the provisions of this Section 11.8, the Association or any Member who is a party to such dispute and who desires to obtain resolution of such dispute shall serve upon all other parties to the dispute a Request for Resolution. The form of the Request for Resolution shall conform to the requirements of *Civil Code* section 1354 and service shall be in the manner provided in that section. If all parties agree, the matter shall be submitted to binding arbitration. If all parties do not agree to binding arbitration, the matter shall be submitted to mediation.

If a judicial action to resolve a dispute subject to the provisions of this Section 11.8 has been commenced but the dispute has not been submitted to ADR, then upon demand by any party to the action the dispute shall be submitted to ADR as provided in this Section 11.8 or a reference shall be ordered in accordance with the terms of California *Code of Civil Procedure* section 638(1) or any successor provision of law. The provisions of this Section 11.8 shall not be deemed to prohibit a party to a dispute from seeking preliminary or temporary injunctive relief where such relief is necessary, provided that the substance of the dispute shall be submitted to ADR.

The ADR process shall be completed within one hundred twenty (120) days after the date of service of the Request for Resolution or after the date a court orders the dispute submitted to ADR or orders a reference, as the case may be.

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

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

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

11.8.3 Non-Binding Arbitration. Any dispute submitted to non-binding arbitration in accordance with this Section 11.8 shall be resolved in accordance with the provisions of the California Arbitration Act (Section 1280 et seq. of the California *Code of Civil Procedure* [hereinafter the "Act"]) or in accordance with such other arbitration procedures as may be mutually agreed upon by the parties.

- (a) Selection of Arbitrator. Unless the parties shall mutually agree to have three (3) arbitrators, there shall be one (1) arbitrator. If the parties are able to agree upon the selection of an arbitrator or arbitrators, such person or persons shall serve as

arbitrator(s). If the parties are unable to so agree, an arbitrator shall be selected as provided in the Act or in accordance with such other procedure as may be mutually agreed upon by the parties.

- (b) Governing Rules and Procedures. The arbitration hearing shall take place in the County of Santa Clara, California, at the time and place selected by the arbitrator(s). The arbitrator(s) may, but shall not be required to, employ the applicable rules of the American Arbitration Association, Judicial Arbitration & Mediation Services, Inc. (JAMS), or another similar organization as a guide in conducting the arbitration proceedings and shall have absolute discretion to determine whether or not and to what extent the parties shall be permitted to pursue discovery procedures.

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

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

11.8.4 Admissibility of Evidence; disclosure. Unless mutually agreed to by the parties to the dispute, evidence of anything said or of admissions made in the course of the ADR process shall not be admissible in evidence and testimony referring to or disclosure of any such statement or admission may not be compelled in any civil action; and documents prepared for the purpose of, in the course of, or pursuant to ADR procedures shall not be admissible in evidence and disclosure of such documents may not be compelled in any civil action. Nothing in this section shall limit the Association's ability to admit any other documents, including but not limited to the Association's Governing Documents, in any such civil action that were not specifically prepared for the purpose of, in the course of, or pursuant to ADR procedures.

- 11.9 Non-Waiver. Failure to enforce any provision of the Governing Documents at any time shall not be deemed a waiver of the right to do so thereafter with respect to the same or any other violation of any provision of the Governing Documents.
- 11.10 Notices. Any notices required or given under this Article 11 shall, at a minimum, set forth the date, time, and location of any hearing, a brief description of the act or omission constituting the alleged violation of the Governing Documents, a reference to the specific Governing Document provision or provisions alleged to have been violated, and the sanction, disciplinary action, or other enforcement action being contemplated by the Board, if any. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice to the affected Member; provided, however, that if notice is given by mail, it shall be sent by first-class mail, postage prepaid, sent to the most recent address for the affected Member as shown on the records of the Association.
- 11.11 Costs and Attorneys' Fees. In the event the Association shall take any action to enforce any of the provisions of the Governing Documents or shall determine that any Member or members of his or her family or his or her tenants, contract purchasers, guests, invitees or household pets have violated any provision of the Governing Documents, and whether or not legal or judicial proceedings are initiated, the Association shall be entitled to recover the full amount of all costs including attorney's fees incurred by the Association in responding to such a violation and/or in enforcing any Governing Document provision. The remedies of the Association to recover the

amount of such costs and attorney's fees shall include, but shall not necessarily be limited to, the imposition of a Reimbursement Assessment as provided in Article 6 of this First Restated Declaration.

ARTICLE 12 AMENDMENT

- 12.1 Procedure. This Declaration may be amended by the affirmative vote or written consent of Members representing at least an Absolute Majority of the Members. Any amendment of the Declaration shall be signed and acknowledged by the duly authorized officer(s) of the Association and recorded in the Office of the Santa Clara County Recorder.

ARTICLE 13 GENERAL PROVISIONS

- 13.1 Headings. The headings used in this Declaration are for convenience only and are not to be used in interpreting the meaning of any of the provisions of this Declaration, or otherwise.
- 13.2 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision hereof shall not invalidate any other provisions hereof.
- 13.3 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of fostering a plan of community ownership and occupancy and of management of the Project for the benefit of the community.
- 13.4 Number; Gender. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine, and neuter shall each include the masculine, feminine, or neuter, as the context requires.
- 13.5 Easements Reserved and Granted. Any and all easements referred to herein shall be deemed reserved or granted, or both reserved and granted, as appropriate, by reference to this Declaration in a deed to any Condominium.

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

IN WITNESS WHEREOF, we, the Members of WILLOW GLEN CREEK HOMEOWNERS ASSOCIATION, constituting at least sixty-seven percent (67%) of the record Owners, other than Declarant, of said Association, hereby affirm, approve, and adopt the foregoing First Restated Declaration of Covenants, Conditions and Restrictions of WILLOW GLEN CREEK HOMEOWNERS ASSOCIATION, in accordance with Article XI, Section 11.03, of the 1984 Declaration, as amended, recorded on January 3, 1984, as Instrument/Series No. 7937661 in Santa Clara County Official Records, by means of the signatures of the President and Secretary of Willow Glen Creek Homeowners Association, duly authorized by written consent of at least sixty-seven percent (67%) of the record Owners, other than Declarant, of the Association, which