



WHEN RECORDED RETURN TO:

Heritage Commons Homeowners Association
c/o Law Offices of John D. Royal
9 Crow Canyon Court, Ste. 205
San Ramon, CA 94583

BV 3
48

**TABLE OF CONTENTS OF
AMENDED DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS OF
HERITAGE COMMONS HOMEOWNERS ASSOCIATION**

	<u>Page No.</u>
ARTICLE I DEFINITIONS	3
1.1 Architectural Committee	3
1.2 Additional Charges	3
1.3 Articles	3
1.4 Association	3
1.5 Board of Directors	3
1.6 Building Common Area.....	3
1.7 By-Laws.....	3
1.8 Common Area.....	4
1.9 Condominium	4
1.10 Condominium Building	4
1.11 Condominium Plan	4
1.12 County	4
1.13 Declaration.....	4
1.14 Eligible Holder Mortgages	4
1.15 Eligible Mortgage Holder	4
1.16 Exclusive Use Common Area	5
1.17 Family	5
1.18 First Mortgage	5
1.19 First Mortgagee	5
1.20 Governing Documents.....	5
1.21 Improvement.....	5
1.22 Maintenance	5
1.23 Map.....	5
1.24 Member	6
1.25 Member in Good Standing	6

1.26	Mortgage	6
1.27	Mortgagee	6
1.28	Owner	6
1.29	Project	6
1.30	Repair	6
1.31	Replacement	6
1.32	Resident.....	6
1.33	Rules.....	6
1.34	Unit	7
ARTICLE II	PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT.....	7
2.1	Common Area Ownership.....	7
2.2	Ownership of Condominium.....	8
2.3	Owners' Non-Exclusive Easements of Enjoyment.....	8
2.4	Delegation of Use	9
2.5	Common Area.....	10
2.6	Common Area Construction.....	10
2.7	Mechanic's Liens.....	10
2.8	No Partition.....	11
ARTICLE III	EASEMENTS	11
3.1	Easements in General.....	11
3.2	Easements of Encroachment.....	11
3.3	Utility Easements	12
3.4	Owners' Rights and Duties for Utilities and Maintenance Easement	12
3.5	Maintenance Easement	13
3.6	Patio Easement.....	13
3.7	Easements Granted by Association.....	13
ARTICLE IV	USE RESTRICTIONS	14
4.1	Residential Use.....	14
4.2	Residential Use and Rental of Units	14
4.3	Restriction on Businesses	17
4.4	Offensive Conduct, Nuisances	17
4.5	Hazards	17
4.6	Storage	17
4.7	Clothes Lines	17
4.8	Window Coverings.....	18
4.9	Antennae	18
4.10	Animals	18
4.11	Trash Disposal	18

4.12	Signs.....	19
4.13	Vehicles and Parking	19
4.14	Parking Enforcement	20
4.15	Power Equipment and Car Maintenance.....	21
4.16	Outbuildings	21
4.17	Wiring.....	21
4.18	Roofs	21
4.19	Garages	21
ARTICLE V	HOMEOWNERS ASSOCIATION.....	22
5.1	Management and Operation.....	22
5.2	Membership.....	22
5.3	Voting	22
5.4	Board of Directors	22
5.5	Association Rules	22
5.6	Manager and Other Personnel.....	23
5.7	Assessments	23
5.8	Insurance	23
5.9	Capital Improvements.....	23
5.10	Dedication.....	23
5.11	Acquisition of Property	23
5.12	Access	23
ARTICLE VI	ASSESSMENTS AND LIENS	24
6.1	Covenant of Owner.....	24
6.2	Creation of Lien	24
6.3	Purpose of Annual Assessments.....	25
6.4	Annual Assessments	25
6.5	Special Assessments.....	26
6.6	Reimbursement Assessments	27
6.7	Enforcement Assessments	27
6.8	Failure to Fix Assessments	27
6.9	Offsets	28
6.10	Delinquent Assessments	28
6.11	Power of Sale.	29
6.12	Certificate of Satisfaction	29
6.13	Priority	29
6.14	Association Funds	30
6.15	Waiver of Exemptions.....	30
6.16	Property Exempt From Assessments	30

ARTICLE VII	DAMAGE OR DESTRUCTION OF BUILDINGS	31
7.1	Damage and Destruction.....	31
7.2	Insured Losses	31
7.3	Uninsured or Insufficiently Insured Losses.....	32
7.4	Full Insurance Settlement.....	32
7.5	Emergency Repairs	32
7.6	Decision Not to Rebuild.....	32
7.7	Condemnation of Common Area.....	33
7.8	Appraisals.....	33
ARTICLE VIII	MAINTENANCE OF PROPERTY	33
8.1	Association Responsibility Common Area.....	33
8.2	Exclusive Use Common Area Balconies.....	34
8.3	Authority for Entry of Unit or Exclusive Use Common Area	35
8.4	Owner Responsibility.....	35
8.5	Interior Decorations.....	36
8.6	Owner Liability	37
ARTICLE IX	ARCHITECTURAL COMMITTEE.....	37
9.1	Establishment	37
9.2	Duties.....	37
9.3	Meetings.....	37
9.4	Rules.....	38
9.5	Submission of Plans and Specifications.....	38
9.6	Application.....	38
9.7	Grant of Approval	38
9.8	Form of Approval	39
9.9	Board Review	39
9.10	Commencement	39
9.11	Completion	39
9.12	Inspection	40
9.13	Preliminary Approval.....	41
9.14	Non-Waiver.....	42
9.15	Estoppel Certificate	42
9.16	Liability.....	42
9.17	Compliance With Governmental Requirements.....	43
ARTICLE X	ENFORCEMENT.....	43
10.1	Violations as Nuisance.....	43
10.2	Violation of Law	43

10.3	Owners' Responsibility	43
10.4	Rights and Remedies of the Association.....	44
10.5	Disciplinary Rules	45
10.6	Emergency Situations.....	45
10.7	Non-Waiver.....	46
10.8	Notices	46
10.9	Costs and Attorney's Fees	47
10.10	Alternative Dispute Resolution.....	47
ARTICLE XI	FIRST LENDER RIGHTS AND PROTECTION.....	50
11.1	Mortgage Permitted.....	50
11.2	Subordination	50
11.3	Amendment	51
11.4	Rights of Institutional Lenders	51
11.5	Consent to Action.....	53
11.6	Distribution of Insurance and Condemnation Proceeds.....	54
ARTICLE XII	AMENDMENT.....	55
12.1	Procedure	55
ARTICLE XIII	GENERAL PROVISIONS	55
13.1	Headings.....	55
13.2	Severability	55
13.3	Liberal Construction	55
13.4	Number / Gender.....	55
13.5	Easements Reserved and Granted.....	55
13.6	Power of Attorney.....	55

AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HERITAGE COMMONS HOMEOWNERS ASSOCIATION

This Amended Declaration of Covenants, Conditions, and Restrictions is made on the date hereinafter set forth by Heritage Commons Homeowners Association, a California Nonprofit Mutual Benefit Corporation (hereinafter referred to as the "Association").

RECITALS

WHEREAS, the Association is the successor in interest to Coast Savings and Loan Association, as Declarant, executed a Declaration of Covenants, Conditions and Restrictions of Heritage Commons Homeowners Association, recorded on December 13, 1984 as Instrument/Series No 84-245734, in the Official Records of Alameda County, State of California ("Original Declaration"); and

WHEREAS, a First Amendment to Declaration of Covenants, Conditions and Restrictions of Heritage Commons Homeowners Association, was recorded on January 9, 1985, as Instrument/Serial No. 85-003439 in the Official Records of Alameda County, California; and

WHEREAS, an Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Commons Homeowners Association, dated January 16, 1985, was recorded on February 13, 1985, as Instrument/Serial No. 85-32543 of the Official Records of Alameda County, California; and

WHEREAS, the aforesaid February 13, 1985 Amended and Restated Declaration of Covenants, Conditions and Restrictions 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 Alameda State of California, and more particularly described as follows:

All of that certain real property as shown in that Subdivision Map entitled "Lot 1 Tract 4950 (amended)" filed and

recorded in the Office of the Recorder of Alameda County, State of California, on December 6, 1984 in Map Book 148 at Pages 75 et seq.

WHEREAS, this Amended Declaration has been approved pursuant to the Court Order Granting Petition to Reduce Voting Percentage (Civil Code Section 1356) issued in the Alameda County Superior Court, Case No. 2002046161, dated May 31, 2002 which is attached hereto as Exhibit "D" and made a part hereof; and

WHEREAS, Owners having more than fifty percent (50%) of the total voting power, voted in favor of this Amended Declaration of Covenants, Conditions, and Restrictions Heritage Commons Homeowners Association.

NOW, THEREFORE, pursuant to the Court Order Granting Petition to Reduce Voting Percentage (Civil Code Section 1356) issued in the Alameda County Superior Court, Case No. 2002046161, the Members of Heritage Commons Homeowners Association constituting more than fifty percent (50%) of the total voting power do hereby declare that the aforesaid Amended and Restated Declaration of Covenants, Conditions, and Restrictions, dated January 16, 1985 and recorded February 13, 1985 as Instrument No. 85-32543, in the Alameda County Official Records be, and it is hereby, AMENDED to read in full as follows:

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 I

DEFINITIONS

- 1.1 **Architectural Committee.** "Architectural Committee" shall mean the Committee created pursuant to Article IX of this Declaration and Article X of the By-Laws.
- 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 **Articles.** "Articles" shall mean the Articles of Incorporation of Heritage Commons Homeowners Association, as they may be amended from time to time, and as filed with the Office of the Secretary of State of California.
- 1.4 **Association.** "Association" shall mean Heritage Commons Homeowners Association, its successors and assigns.
- 1.5 **Board of Directors.** "Board of Directors" or "Board" shall mean the governing body of the Heritage Commons Homeowners Association.
- 1.6 **Building Common Area.** "Building Common Area" shall mean the exterior boundaries of Condominium Buildings A through I, as shown on the Map, excluding Lot 1 and the individual Condominium Units. Each Condominium Building shall be owned in common by the Owners of Units within that particular building, according to the schedule attached hereto as Exhibit "A" and made a part hereof. The "Building Common Area" shall include exterior walls, bearing walls, columns, girders, subfloors, unfinished floors, roofs, foundations, exterior ducts, flues and chutes, garage ventilation system, conduits, pipes, plumbing, wires and other utility installations (except the outlets thereof when located within the Unit; only utility installations, pipes and plumbing located within the walls of the building shall be part of the Building Common Area) required to provide power, light, water, sewerage, drainage, sprinkler pipes and sprinkler heads which protrude into the airspace of a Condominium Unit.
- 1.7 **By-Laws.** "By-Laws" shall mean the Amended By-Laws of the Heritage Commons Homeowners Association, as they shall be adopted by the Board of Directors and Members and any duly-

adopted Amendments thereof.

- 1.8 Common Area. "Common Area" shall mean and refers to Lot 1, excluding the individual Units and Building Common Area, as defined in Article I of this Declaration. Title to Lot 1 is held by the Association. The "Common Area" includes, without limitation, exterior parking, driveway areas and streets.
- 1.9 Condominium. "Condominium" shall mean an estate in real property as defined in California Civil Code section 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.
- 1.10 Condominium Building. "Condominium Building" shall mean a residential structure containing Units, designated "building" (followed by its respective letter) on the Map. Each Condominium Building includes the Units within and the Building Common Area of the building.
- 1.11 Condominium Plan. "Condominium Plan" shall mean a Plan recorded pursuant to California Civil Code section 1351 with respect to the Project and any amendments thereto which identified the Common Area and each separate interest in the Project, a copy of which Condominium Plan was recorded on December 6, 1984 in Book 148, Page 75 et seq. in the Office of the Recorder of Alameda County, California and attached as Exhibit "A" to the Original Declaration recorded on December 13, 1984.
- 1.12 County. "County" shall mean the County of Alameda.
- 1.13 Declaration. "Declaration" shall mean this Amended Declaration of Covenants, Conditions and Restrictions of Heritage Commons Homeowners Association, recorded in the Office of the County Recorder of Alameda County, California, and any Amendments thereof.
- 1.14 Eligible Holder Mortgages. "Eligible Holder Mortgages" shall mean mortgages held by "Eligible Mortgage Holders."
- 1.15 Eligible Mortgage Holder. "Eligible Mortgage Holder" shall mean a First Lender who has requested notice of certain matters from the Association in accordance with Section 11.4(a) of this Amended

Declaration.

- 1.16 **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; provided, however, that failure of any such Deed to set forth such grant of easement shall not invalidate the exclusive easement herein granted.
- 1.17 **Family.** "Family" shall mean two or more persons who live together and maintain a common household in a Residence whether or not they are all related to each other by birth, marriage, or legal adoption.
- 1.18 **First Mortgage;** "First Mortgage" shall mean a Mortgage, which has priority under the recording statutes of the State of California over all other Mortgages encumbering a specific Condominium.
- 1.19 **First Mortgagee.** "First Mortgagee" shall mean the Mortgagee of a First Mortgage.
- 1.20 **Governing Documents.** "Governing Documents" shall mean the Articles, By-Laws, Declaration and Rules, and the policies and resolutions duly adopted by the Board and distributed to the Members.
- 1.21 **Improvement.** "Improvement" includes, without limitation, the construction, installation, alteration, or remodeling of any buildings, walls, balconies, fences, swimming pool, landscaping, landscape structures, antennas, utility lines or structure of any kind. In no event shall the term "Improvement" be interpreted to include projects or items which are restricted to the Unit interior and which do not involve the roof of any load-bearing wall thereof.
- 1.22 **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, nonstructural upkeep.
- 1.23 **Map.** "Map" refers to that certain Subdivision Map entitled "Lot 1, Tract 4950 (amended) filed December 6, 1984, in Map Book 148 pages 75, Alameda County Records.

- 1.24 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.
- 1.25 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 By-Laws.
- 1.26 Mortgage. "Mortgage" shall mean a Deed of Trust as well as a Mortgage in the conventional sense.
- 1.27 Mortgagee. "Mortgagee" shall mean a beneficiary under a Deed of Trust as well as under a Mortgage.
- 1.28 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.
- 1.29 Project. "Project" shall mean all of the real property comprising the Heritage Commons Homeowners Association Condominium Project, as described in the Declaration.
- 1.30 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.
- 1.31 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 usable or serviceable in its current condition.
- 1.32 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 1.28 above.
- 1.33 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.

- 1.34 Unit: "Unit" shall mean the elements of a Condominium that are not owned by the Association or in common with the Owners of the other Condominiums in the Project, which Units are shown as separately designated and numbered areas on the Condominium Plan. Each Unit consists of the interior space bounded by and contained within the interior unfinished surfaces of the perimeter walls, floors, ceilings, windows and window frames, doors, exterior front and/or rear utility doors exclusive to the Unit, door frames and trim, of each of such interior spaces including the interior garage area; provided, however, that bearing walls located within the aforesaid boundaries of a Unit (except for the finished surfaces thereof) are Common Area and not part of the Unit. Each Unit includes the utility installations, fixtures, and appliances located within its boundaries and/or which exclusively serve the Unit including, without limitation, oven, range and fans, garbage disposal unit, dishwasher unit, hot water heaters, space heaters, lighting fixtures, carpet, heating conduits, any air conditioning units, condensers and equipment serving such Unit, bathtubs, sinks and wash basins, toilets, shower stalls, and other plumbing fixtures, and interior partitions which are located entirely in the Unit they serve. Each Unit includes both the portion of the building so described and the air space so encompassed. In interpreting deeds, the Declaration and the Condominium Plan, the then existing physical boundaries of a Unit, shall be conclusively presumed to be 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 II PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

2.1 Common Area Ownership.

(a) The Common Area. The Common Area consists of that portion of the Project defined in Article I, Section 1.8 of this Declaration, title to which is held by the Association.

(b) Building Common Area. Each Condominium Owner shall have, as appurtenant to his or her Unit, an equal undivided interest in the Building Common Area for the particular building of the Project in

which his or her Unit is located. The Building Common Area interest appurtenant to each Unit is declared to be permanent in character and cannot be changed. The undivided interests in the Common Area and the undivided Building Common Area interests established in this Amended Declaration cannot be separated from a Unit, and each such undivided interest is to be deemed conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit. Any purported severance or separate conveyance of an undivided interest in the Building Common Area apart from a conveyance of the respective Unit shall, for all purposes, be null, void, and unenforceable.

(c) Exclusive Use Common Area. Certain portions of the Building Common Area, referred to as "Exclusive Use Common Areas," are subject, as the servient tenements, to exclusive easements in favor of the Units to which they are attached or assigned, as the dominant tenements, and such exclusive easements shall be appurtenant to those designated Units. Exclusive Use Common Area shall include patio and balcony area(s) as delineated on the Condominium Plan.

- 2.2 Ownership of Condominium; Exclusive Easements. Ownership of each Condominium within the Project shall include a designated Unit, the respective undivided interest the Building Common Area where a particular Unit is located, a Membership in the Association and 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.
- 2.3 Owners' Non-Exclusive Easements of Enjoyment. Every Owner of a Condominium shall have a non-exclusive easement of use and enjoyment in, to and throughout the Common Area of the Project for ingress, egress, and support over and through the Common Area and Building Common Area where a particular Unit is located; 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 to determine that a Member is a Member Not in Good Standing or to suspend an Owner's 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, after prior notice and the right to a hearing by the Board of Directors, as more particularly provided in the By-Laws;

(d) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to any restrictions and limitations that may be set forth in the By-Laws;

(e) The right of the Association to borrow money and to mortgage, pledge, encumber, or otherwise hypothecate the Common Area, Building Common Area and facilities thereon as security for money borrowed by the Association subject to approval of three-fourths (3/4) of a quorum of the Members; and

(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;

2.4 Delegation of Use. Any Owner may delegate in writing his or her rights of use and enjoyment of the Project, including easements, to the members of his or her family, tenants, contract purchasers, guests and invitees, and to such other persons as may be permitted by the Governing Documents and subject to the terms thereof; provided, however, that 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 resident contract purchasers of such Unit. Each Owner shall notify the Secretary of the Association or the Association's management company, in writing, 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 persons to whom such Owner, tenant or contract purchaser has delegated any rights of use and 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 hereto are subject to suspension to the same extent that rights of Owners are subject thereto as provided in the Declaration.

- 2.5 Common Area. Subject to the provisions of the Declaration, the Common Area shall be held, maintained, and used to meet the common interests of the Members of the Association, and their families, tenants, resident contract purchasers and guests as provided in the Governing Documents, and there shall be no use of the Common Area except by such persons. Except as otherwise provided in this Declaration, there shall be no obstruction of the Common Area nor shall anything be altered, constructed, placed, kept, stored, parked, planted on or removed from the Common Area without the prior written consent of the Board. 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 and shall be liable to the Association for any such damage and shall reimburse to the Association all costs incurred by reason of any damage to the Common Area and improvements thereon, including landscaping, which is caused by an Owner or an Owner's family, pets, tenants, contract purchasers, guests, invitees, agents, or representatives as more particularly set forth in Article X, Section 10.3. Nothing shall be done or kept upon the Common Area which will result in the cancellation of any insurance maintained by the Association or an increase in premiums for such insurance.
- 2.6 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.
- 2.7 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 material alleged to have been furnished or delivered for the benefit of any Owner or his or her Condominium, the Owner of such Unit shall forthwith cause such lien to be discharged by payment, bond or otherwise. If the Owner fails to discharge the lien, the Board may send written notice to the Owner specifying that unless the Owner discharges the lien 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 the lien 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.

- 2.8 **No Partition.** There shall be no judicial partition of the Project or any part thereof, nor shall any Owner or any person acquiring any interest in the Project or any part thereof seek any judicial partition thereof; provided, however, that if any Condominium shall be owned by two or more cotenants as tenants in common, or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition by sale as between such cotenants.

ARTICLE III EASEMENTS

- 3.1 **Easements in General.** There are hereby specifically reserved and granted for the benefit of the Units and Unit Owners in common and for each Unit and Unit Owner severally, and for the Association, as their respective interests shall obtain, in addition to all easements, if any, reserved and granted on the Map applicable to the Project, the easements, reciprocal negative easements, secondary easements and rights of way as particularly identified in this Article III.
- 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, 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. In addition, each Unit and its Owner are hereby declared to have an easement for retaining walls, footings, roofs, balconies, eaves, and all other encroachments as originally constructed over each adjoining Unit and/or Common Area for the maintenance thereof, together with an easement for the drainage of water from such roofs, gutters, balconies, eaves, and all other encroachments over each such adjoining Unit, and/or Common Area.

- 3.3 **Utility Easements.** Easements over, under and through the Project or any portion thereof for the installation, maintenance, repair, reconstruction or replacement of electric, telephone, water, gas and sanitary sewer lines and facilities, heating facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown on the recorded map of the Project, 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 as otherwise provided in this Declaration and except for those installations maintained by utility companies, public, private or municipal and those utility installations serving individual Units which are to be maintained by the Owners pursuant to Article 3, Section 3.4 and Article VIII, Section 8.3 of this Declaration. The Association shall pay all charges for utilities supplied to the Project except those metered or charged separately to the Units.
- 3.4 **Owners' Rights and Duties for Utilities and Maintenance Easement.** The rights and duties of the Owners of Condominiums within the Project with respect to sanitary sewer, water, electricity, gas, television reception, telephone lines or connections, heating and airconditioning facilities, ducts, flues and conduits (hereinafter referred to, collectively, as "Utility Facilities") shall be as follows:
 - (a) Whenever Utility Facilities are installed within or upon Condominiums owned by other than the Owner of a Condominium served by said connections, the Owners of any Condominium served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Condominiums to repair, replace and generally maintain said connection as and when necessary.

(b) Whenever Utility Facilities are installed within the Project which connections serve more than one (1) Condominium, the Owner of each Condominium served by said Utility Facilities shall be entitled to the full use and enjoyment of said Utility Facilities as service his or her Condominium.

(c) In the event of a dispute between Owners with respect to the repair or rebuilding of said Utility Facilities, or with respect to the sharing of the cost thereof, then, upon the written request of one (1) Owners addressed to the other Owner(s) and the Association, the matter shall be submitted first to the Board for mediation, and thereafter, if the dispute remains unsolved, to binding arbitration within sixty (60) days pursuant to the procedures set forth in Section 10.10 (d) of this Amended Declaration.

3.5 Maintenance Easement. The Association has an easement through each Building Common Area, Common Area, and Unit for the maintenance, repair, replacement, and reconstruction, and for the exercise of the powers and responsibilities of the Association and its Board as provided in the Association's Governing Documents; provided that any entry by the Association or its agents into any Unit shall only be undertaken in strict compliance with Article VIII, Section 8.2 of this Declaration.

3.6 Patio Easement. 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 patio (garden area) bearing the same number as the Unit, as designated on the Condominium Plan. The exclusive easement shall be subject, however, to the right of the Association to enter in and upon such area for the purposes of maintaining and repairing the same, pursuant to this Declaration, and enforcing the terms hereof. The grant of any such easement includes such area beneath the surface of the earth as is reasonable and necessary for the cultivation, landscaping and drainage of the subject area.

3.7 Easements Granted by Association.

(a) The Association 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 quasipublic improvements or facilities, and each purchaser, in accepting a Deed to a Unit, expressly consents thereto.

(b) Notwithstanding any other provisions of the Governing Documents, the Board shall have the power to grant and convey easements, licenses for use and rights of way in, over or under the Common Area or any portion thereof, to Unit Owners for such purposes as the Board deems to be appropriate and not inconsistent with the purposes and interest of the Association; provided that no such easement, license or right of way shall be effective unless it has been approved by at least a majority of the total Membership.

ARTICLE IV USE RESTRICTIONS

- 4.1 **Residential Use.** Units shall be occupied and used for single-family residential purposes only. In no event shall a Unit be occupied by more individuals than permitted by applicable zoning laws or governmental regulations.
- 4.2 **Residential Use and Rental of Units.** Any leasing or renting of any Unit within the Project shall be subject to all the provisions of the Governing Documents and of this Section 4.2.

Not more than twenty-five percent (25%) of the Units within the Project shall, at any particular time, be leased or rented or occupied by anyone other than an Owner, members of his or her household, or temporary guests, except and subject to the following:

(a) **Restrictions on Leasing.** The restrictions on leasing and renting contained in this Section 4.2 shall not apply to any Member who is an Owner of a Unit on the date this Amended Declaration is recorded. Notwithstanding the foregoing, the restrictions on leasing and renting contained in this Section 4.2 shall apply to any Unit or Units upon transfer of title to such Unit subsequent to the date this Amended Declaration is recorded.

(b) **Exceptions.** The Board of Directors shall have the right to waive some or all of the provisions of this Section 4.2 either in cases of deserving and unusual hardship or for a limited term not to exceed one (1) year upon written request of an Owner representing that he or she will retake possession and occupancy

of the Unit as a Resident thereof upon the expiration of such limited term. The Board shall have the right to review and approve the lease for such limited term. In addition, upon written request from a First Mortgagee, there shall be an exception granted by the Board from these rental restrictions to allow the First Mortgagee in possession of a Unit following a default in a First Mortgage, a foreclosure proceeding or acceptance of a deed or other arrangement in lieu of foreclosure to temporarily rent such a Unit prior to its sale. Exceptions as authorized by the Board shall take precedence over the order of priority established pursuant to Subsection (c) vii, below.

(c) Procedure.

(i) Any Owner desiring to lease or rent his or her Unit shall submit an application in writing to the Board of Directors, which shall state: the name, mailing address, Unit address, and record ownership date of the Owner; the proposed lease term; the number of tenants; and such other information which the Board of Directors may reasonably require from time to time.

(ii) Each record Owner shall have the further right, upon written request delivered to the Association, to appear in person before the Board of Directors and to discuss the request to lease or rent his or her Unit.

(iii) Within thirty (30) days after receipt of such application to lease or rent, the Board of Directors shall review such application, and approve or disapprove it in a written notice transmitted to the requesting Owner, which notice shall specify the exact reason or reasons therefor if the application is disapproved; provided that the Board shall grant the application, unless doing so will increase the number of Units leased or rented within the Project to more than allowed under this Section 4.2 or will otherwise result in the violation of any provision of this Section 4.2.

(iv) If the application is disapproved, the record Owner concerned shall have a right to rehearing upon written request to the Board of Directors, at its next regular meeting, or as otherwise agreed between the parties. The Owner shall have the right to appear at the rehearing and present his or her case, and on termination of such rehearing, the Board shall transmit its written determination to the requesting Owner within ten (10) days thereafter, and,

if again disapproved, shall specify the reasons for such disapproval.

(v) The decision of the Board of Directors in approving or disapproving an application of a record Owner to lease his or her Unit shall be absolute and conclusive, unless in clear violation of this Section 4.2.

(vi) The Board of Directors shall prepare a list of all record Owners currently leasing or renting a Unit, which list shall include the Owner's name, mailing address, Unit address, date of record of ownership and term of the lease. Such list shall be made available to any Owner upon payment of a reasonable administrative charge to be set by the Board of Directors.

(vii) The Board shall establish and maintain a priority list, identifying the name, mailing address, address of Unit, record date of ownership, and date of application of each Owner who has submitted a written request to the Board to lease or rent his or her Unit. When the number of Units leased or rented in the Project is less than the number allowed under this Section, the Board shall authorize the Owner who submitted the earliest application to lease or rent his or her Unit; provided, however, that once an Owner obtains permission to lease or rent, he or she may do so to consecutive lessees or renters without interruption or may reoccupy his or her Unit for a period not to exceed thirty (30) days, without having to reapply to the Board for permission to lease or rent.

(d) Owner Responsibility. Each Owner leasing a Unit pursuant to this Section 4.2 shall be strictly responsible and liable to the Association for the actions of such Owner's tenant(s) in or about all Units and Common Area and for each tenant's compliance with the provisions of all Association Governing Documents. An Owner leasing or renting a Unit shall provide the tenant(s) with copies of the Governing Documents and all subsequent Amendments.

(e) Requirements of Lease or Rental Agreement. Any lease or rental of any Unit within the Project shall be by written instrument, a copy of which shall be provided to the Board upon request, which shall expressly provide that its terms are subject to all of the provisions of the Governing Documents, that the tenants and lessees of such Unit shall comply with all said provisions, and that any violation of any of said provisions shall constitute a breach and

default of the terms of such lease or rental agreement. Any Lease or Rental Agreement entered into between an Owner and a lessee or renter shall be for an initial minimum term of one (1) year. The respective Units shall not be rented by the Owners thereof for transient or hotel purposes, which shall be defined as (i) rentals for any period less than thirty (30) days; or (ii) any rental if the occupants of a Unit are provided customary hotel services, such as room service for food or beverage, maid service, furnishing of laundry and linen or bell boy service. In no event shall any Unit Owner lease less than his or her entire Unit.

- 4.3 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 provided that there shall be no external evidence thereof.
- 4.4 Offensive Conduct, Nuisances. No noxious, harmful or offensive activities shall be carried on, 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, harassment (as defined in *Civil Code of Procedure* Section 527.6), 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 Building Common Area or Common Area.
- 4.5 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.
- 4.6 Storage. There shall be no woodpiles nor storage piles accumulated upon any patio or balcony assigned to any Unit within the Project.
- 4.7 Clothes Lines. No exterior clothes lines or facilities shall be erected or maintained and there shall be no outside laundering,

drying or airing of clothes in the Project.

- 4.8 Window Coverings. Drapes, window shades, and other window coverings installed in the windows of any Unit shall be white or off-white and shall comply with any rules adopted by the board or the Architectural Committee. In no event shall aluminum foil, reflective materials, cardboard or paper be used as window coverings.
- 4.9 Antennae. Except for those erected, constructed or maintained by the Association, no outside mast, tower, pole, antennae or satellite dish shall be erected, constructed or maintained on the Common Area. Any Owner wishing to install a mast, tower, pole, antennae or satellite dish (hereinafter collectively referred to as "antennae") upon any Exclusive Use Common Area shall first notify the Association in writing of his or her intent to install such an antennae and comply with all Rules concerning antennae. All current and pertinent State and Federal laws and regulations will be considered by the Board or Architectural Committee when adopting Rules.
- 4.10 Animals. No animals or pets of any kind shall be kept, maintained or bred in any Unit or elsewhere within the Project, except that domestic dogs, cats, birds, fish and other customary household pets may be kept in reasonable numbers, subject to City ordinances and the Rules, provided they are not kept, bred or raised therein for commercial purposes. As used in this Declaration, "reasonable numbers" shall be deemed to limit the total number of all pets kept in a Unit to two (2), unless otherwise provided in the Rules. While in the Common Area each dog must be restrained on a leash held by a responsible person capable of controlling it. Each Owner, Resident, and any person bringing or keeping a pet within the Project must immediately clean up and properly dispose of animal waste from the Common Area and the Exclusive Use Common Area. 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. Each Owner, Resident, and any person bringing or keeping a pet 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 any pet brought upon or kept upon the Project by such person or by members of his or her family, tenants, guests or invitees. The Board may adopt and enforce Pet Rules in addition to the provisions of this Section 4.10.
- 4.11 Trash Disposal. No trash, garbage or other waste shall be allowed to accumulate outside of any Unit. Trash, garbage, accumulated

waste plant material, or other waste and refuse shall be stored entirely within appropriate covered disposal containers and facilities located within designated garbage areas within the Common Areas. Except for the trash collection day, each Resident must store their trash receptacles out of sight of the Common Area (stored trash receptacles shall not be visible from the Common Area). Trash receptacles shall be removed by Owners from the Common Area no later than the evening immediately following trash collection. 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. No portion of the Project shall be used for the storage of building materials other than in connection with approved construction.

4.12 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) Such signs as may be required by legal proceedings;
- (b) Signs the prohibition of which is precluded by law;
- (c) A single identification sign which has been approved by the Board or Architectural Committee located on a Condominium or Unit identifying the number or address of the Residence and/or the names of the occupants;
- (d) A single sign of customary and reasonable dimension and design, complying with the provisions of any applicable ordinance and reasonably located on a Condominium advertising a Unit for sale or rent;
- (e) Such signs as have been approved by the Association located at or near any entrance to the Project identifying the Project;
- (f) Such signs as may be required for traffic control and regulation of streets or open areas within the Project; and
- (g) Such signs on the Common Area as may be approved by the Board for a purpose reasonably related to the affairs of the Association.

4.13 Vehicles and Parking. The following parking and vehicle restrictions shall apply within the Project:

- (a) All unmarked Common Area parking spaces are for the use

of Residents or their guests, as indicated. Any vehicle parked in a Common Area parking space for more than 24 hours shall be subject to towing at the vehicle Owner's expense. No vehicle shall be permitted to block or to park on sidewalks within the Project. Any vehicle parked in a fire lane within the Project shall be subject to immediate towing, without notice.

(b) No trailer, camper, mobile home, recreational vehicle boat or similar equipment or commercial vehicle, truck other than a standard size pickup truck, or 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. The term "commercial vehicles" shall not include sedans or standard size pickup trucks (under one and three-quarter tons in gross weight) which are used both for 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 unregistered vehicles shall be permitted to be parked or kept in the Common Area. No unreasonably noisy and no smoky vehicles shall be operated within the Project. Off-road and/or unlicensed or registered vehicles shall not be operated within the Project and/or stored on the Common Area. Maintenance of vehicles in driveways and/or any portion of the Common Area, except for emergency repair, is strictly prohibited. Each Owner shall be responsible for the prompt clean-up of any oil, grease or other stains or spills in their driveway. The Association may, after written notice to the Owner, have the stains or spills cleaned up and assess the Owner a Reimbursement Assessment for the costs of such clean-up.

4.14 Parking Enforcement. In addition to the provisions of Section 4.13 above, the Board shall have the power and authority to adopt, promulgate and enforce Parking Rules and the power to impose fines and other sanctions for violations of provisions of the Governing Documents relating to vehicles and parking, and such power shall include the power and authority to cause the towing of vehicles at the vehicle owner's expense 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 against the Unit Owner responsible or whose household members, tenants, contract purchasers or guests are responsible for the presence of such vehicle as a Reimbursement Assessment, and

such assessment may be enforced against the Unit Owner in the same manner as provided in this Declaration relative to the recording and foreclosure of liens for non-payment of assessments. The Board shall have the power to adopt Parking Rules that require parking permits or stickers be placed or attached on authorized vehicles within the Project and to limit the number of such permits or stickers issued per Unit.

- 4.15 Power Equipment and Car Maintenance. No power equipment, hobby shops, or vehicle maintenance (other than emergency work) shall be permitted on the Project, except with prior written approval of the Board. Approval shall not be unreasonably withheld and in deciding whether to grant approval the Board may consider among other things the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception and similar objections.
- 4.16 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, and in no event shall any such structure or any garage be used as a residence or for residential purposes, either temporarily or permanently.
- 4.17 Wiring. No Owner shall overload the electric wiring in the building containing his or her Unit. No Owner, resident or tenant shall install wiring for electrical, telephone installation, television antennae, machines or air conditioning units, etc. on the exterior of the building of the Project or that protrude through the walls or the roof on the buildings, except as authorized in writing by the Association.
- 4.18 Roofs. No air conditioning unit or heating unit or other machinery may be located on any roof with the exception of solar heating systems that may be specifically permitted by California law. Subject to limitations imposed by California law, the Architectural Committee shall be entitled to adopt, as part of the Architectural Rules, reasonable regulations regarding the installation of such solar heating systems.
- 4.19 Garages. Each Owner and Resident shall keep his or her garage in a sanitary and safe condition. Garages are to be used for the parking of standard authorized vehicles, and shall not be used primarily for storage or converted into living quarters.

ARTICLE V 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, including provisions of law applicable to a non-profit mutual benefit corporation and to a common interest Project. 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 non-profit 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 per issue shall be cast for each Condominium, as more particularly set forth in the By-Laws.
- 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 By-Laws, and the members of the Board shall be elected as provided in the By-Laws. 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 any 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; the

personal conduct of persons 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 By-Laws.
- 5.7 Assessments. The Board shall have the power and duty to levy and collect assessments, as more particularly set forth in Article VI of this Amended 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 By-Laws.
- 5.9 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.
- 5.10 Dedication. The Board of Directors shall have the power and authority to dedicate, sell, or transfer any interest in or to all or any part of the Common Area to any person or entity, including, without limitation, 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 no such dedication, sale, or transfer shall be effective unless the terms of such dedication, sale, or transfer has been approved by at least three-fourths (3/4) of a quorum of the Members.
- 5.11 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 provided that any acquisition of additional real property shall first be approved by at least three-fourths (3/4) of a quorum of the Members, who shall be Members in good standing.
- 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 obligations and authority, except that in the case of any emergency, notice shall be given as the exigencies of the situation permit.

ARTICLE VI 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: (a) Annual Assessments; (b) Special Assessments; (c) Reimbursement Assessments and (d) 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 charges and for the enforcement of the liens hereinafter provided for. Each assessment levied by the Association under this Article, together with all additional charges, shall be a separate, distinct, and personal debt and obligation of any 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 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 personally liable to pay all such assessments and charges assessed during the time he or she is record Owner of such Condominium. After a record Owner transfers, of record, any Condominium he or she owns, he or she shall not be personally 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 applicable charges accruing until time of collection. A contract seller of any Condominium shall continue to be liable for all assessments and charges until a conveyance by deed of such Condominium is recorded in the Office of the Recorder of Alameda County.

- 6.2 **Creation of Lien.** Each assessment levied by the Association pursuant to this Article, 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 charges as may be levied under this Article. 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, as long as 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 charges on such Condominium for succeeding months.

- 6.3 Purpose of Annual Assessments. The Annual Assessments levied by the Board shall be used exclusively to pay for the costs of management and operation of the Project, of conducting the business and affairs of the Association, to promote the recreation, health, safety, welfare, benefit and interests of the Owners and Residents in the Project, and for the improvement and maintenance of the Common Area and, to the extent provided for in the Governing Documents or by law, of the Condominiums 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. The Annual Assessments shall include an amount to be allocated for 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.

6.4 Annual Assessments.

- (a) Not less than forty-five (45) days nor more than sixty (60) 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 reserves, to manage, administer, operate, and maintain the Project, to conduct the affairs of the Association and to perform all of its duties in accordance with this Declaration. The Board shall allocate and assess the amount of said estimated funds equally among the

Condominiums by dividing the said amount by the number of Condominiums within the Project.

(b) If, as of the end of any fiscal year, a surplus of cash results 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.

(c) 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 such increase, provided that the number of such Members voting thereon shall be sufficient to at least constitute a quorum of more than 50% of the Members of the Association, notwithstanding any lower quorum requirement which may be set forth in the By-Laws.

(d) 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. The Annual Assessments shall be levied equally against all Units, except for insurance premiums and reserves for repair and replacements of roofs and painting of the Building Common Areas, which shall be pro rated in accordance with Exhibit "B" of this Amended Declaration.

- 6.5 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, which amount shall be allocated in the same manner as Annual Assessments, except as may be otherwise provided in Article VII of the Amended Declaration; and provided that any Special Assessment to raise funds for the repair, replacement or addition of a portion of a Condominium Building shall be levied on the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all Units in that Condominium Building, as referenced in Exhibit "C"

attached hereto and made a part hereof. Notwithstanding the above, except in the case of an emergency situation as defined in section 1366 of the California Civil Code and except in the case of restoring funds temporarily transferred from a reserve fund to the Association's operating fund as provided by law, in any fiscal year the Board may not levy such Special Assessments which, in the aggregate, exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year without the vote or written assent of Members casting a majority of the votes at a Meeting of the Association at which a quorum is present. For purposes of this Section 6.5, a "quorum" means more than fifty percent (50%) of the Members of the Association.

- 6.6 Reimbursement Assessments. The Association shall levy a Reimbursement Assessment against an Owner and his or her Condominium for: (1) any damage to the Common Area and improvements thereon, including landscaping, which is caused by such Owner or such Owner's family, pets, tenants, guests, invitees, agents, or representatives or (2) the failure of an Owner to perform a work of maintenance, repair or replacement to a Unit or the Common Area which is the responsibility of that Owner as set forth in this Declaration. A Reimbursement Assessment shall include any costs to repair such damage to the Common Area or perform a work of maintenance an Owner is obligated to perform, including any attorneys' fees incurred by the Association associated with such matters, and shall be due and payable to the Association when levied.
- 6.7 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 and any Enforcement Assessment shall include any costs, including attorneys' fees, incurred by the Association in connection with such violation and shall be due and payable to the Association when levied. Except as specifically prohibited by California law, it is the intent of this Declaration that Enforcement Assessments shall be subject to same collection procedures as the other assessments permitted under this Declaration.
- 6.8 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.

- 6.9 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.
- 6.10 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 applicable 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. Before the Association may place a lien upon an Owner's Condominium to collect a delinquent assessment, the Association shall notify the Owner in writing by certified mail of the fee and penalty procedures of the Association, provide an itemized statement of the charges owed by the Owner, including items on the statement which indicate the principal owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the Association, including the right of the Association to the reasonable costs of collection. In addition, any payments toward such a debt shall first be applied to the principal owed, and only after the principal owed is paid in full shall such payments be applied to interest or collection expenses. No procedures shall be initiated to foreclose the Lien securing any assessment levied under this Article until after the expiration of thirty (30) days following the recording, in the Office of the Recorder of Alameda County, California, of a Notice of Delinquent Assessment, duly signed by a designated officer or agent of the Association. Said Notice of Delinquent Assessment: (1) shall state the amount of the assessment, together with all accrued additional charges as of the date of such Notice; a legal description of the Condominium against which the same has been assessed; the name or names and mailing addresses of the Record Owner or Owners thereof;

and the name and address of the Trustee authorized by the Association to enforce the Lien by foreclosure and sale and (2) shall be mailed by certified or registered mail to all record Owners of the subject Condominium no later than ten (10) calendar days after its recordation. Upon the recording of the Notice 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.

- 6.11 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 3, Part 4, Title XIV, 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.
- 6.12 Certificate of Satisfaction. Upon payment in full of a delinquent assessment, including any 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.
- 6.13 Priority. Except as otherwise expressly provided by law, the Lien securing each of the assessments provided for under this Article VI 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 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 charges thereafter becoming due, nor from the lien of any such subsequent assessment.

- 6.14 Association Funds. Unless otherwise determined by the Board, the assessments collected by the Association shall be properly deposited into at least two separate accounts in such bank or other depository selected by the Board, which accounts shall be clearly designated Heritage Commons Homeowners Association OPERATING ACCOUNT and Heritage Commons Homeowners Association RESERVE ACCOUNT. 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 of this Article VI. 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, deferred maintenance, repair and replacement 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.
- 6.15 Waiver of Exemptions. To the extent permitted by law, each Owner does hereby waive, to the extent of any Liens created pursuant to this Article VI, 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 hereof.
- 6.16 Property Exempt From Assessments. The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:
- (a) All property dedicated to and accepted by the City or County or other local public authority and devoted to public use; and
- (b) Any Condominium which is owned by the Association as a result of the Association having acquired such Condominium through foreclosure; provided, however, that such exemption shall be applicable only during the period in which the Association is record owner of such Condominium; and

(c) All Common Area.

ARTICLE VII DAMAGE OR DESTRUCTION OF BUILDINGS; CONDEMNATION

- 7.1 **Damage and Destruction:** In the event of damage or destruction of the Project, or any part or improvement thereof, it shall be the responsibility of the Association subject to the terms and conditions set forth in the Governing Documents to repair or replace the same in substantial accordance with the original plans and specifications of the Project.
- 7.2 **Insured Losses:** If the damage or destruction to the Project improvements is an insured loss the loss shall be handled as follows:
 - 7.2.1 **Minor Casualties.** If the insurance proceeds initially offered or paid by the insurer do not exceed Fifty Thousand Dollars (\$50,000) such insurance proceeds shall be paid to the Association pursuant to the insurance provisions set forth in the By-Laws and Declaration. The Board shall then contract to repair or rebuild the damaged portions of the Project improvements in substantial accordance with the original plans and specifications of the Project, obtain bids in accordance with the following paragraphs, and the insurance funds held by the Association shall be used for such reconstruction.
 - 7.2.1 **Major Casualty.** If the insurance proceeds initially offered or paid by the insurer exceed Fifty Thousand Dollars (\$50,000), then:
 - (1) All insurance proceeds shall be paid to the Association and deposited in a newly created account, and held for the benefit of the Owner(s) of the relevant Unit and their Mortgagees as their respective interests may appear.
 - (2) The Board shall obtain firm bids from two or more responsible contractors to rebuild the relevant portion of the Project in accordance with its condition prior to damage and destruction, modified at the direction of the Board to comply with the building codes and construction standard in effect at the time of the rebuilding. To be considered, any contractor's bid shall include the premium payable for a performance, labor and material payment bond from a reputable bonding company;

- (3) The Board shall then call a meeting of all Owners whose Units have been damaged to review all such submitted bids. A simple majority vote of these affected Owners will be required to accept or reject any bid. The failure by such Owners to either accept a bid or reject all bids shall authorize the Board to accept an unrejected bid it considers most favorable, or seek further bids.
- 7.3 Uninsured or Insufficiently Insured Losses. Except as provided in Section 8.5 (b) of this Declaration, if any damage or destruction is uninsured or if the insurance proceeds are insufficient to cover the cost of repairs or replacement of the property damaged or destroyed, the Board will make a Special Assessment, in accordance with the provisions outlined in Article VI, Section 6.5 of this Declaration, to cover such cost. Such Special Assessment is in addition to any other regular assessments and is subject to the provisions herein relating to Special Assessments. Any Special Assessment for the rebuilding or major repair work of the Condominium Buildings in the Project due to damage or destruction shall be levied on the basis of the ratio of the square footage of the floor area of the Unit to be assessed to the total square footage of floor area of all the Units in the Project that have been damaged or destroyed.
- 7.4 Full Insurance Settlement. Notwithstanding any provision of this Article VII, if the insurance carrier offers the full amount required to repay and restore all of the damage, then the Board shall contract to repair or rebuild the damaged portions of all affected Condominium Units and the buildings containing same in the manner provided in this Article VII, Section 7.2 (a) for a minor casualty.
- 7.5 Emergency Repairs. Without waiting to obtain insurance settlements or bids, the Board may undertake such emergency repair work after a casualty as it may deem necessary or desirable under the circumstances, and the Board may charge the operating accounts for the cost thereof. In the event of a casualty, there is a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions and to comply with applicable laws, ordinances and regulations, pending settlement of insurance claims and prior to procuring bids for performance of restoration work.
- 7.6 Decision Not to Rebuild. The decision not to rebuild will require the affirmative vote or written assent of seventy-five percent (75%) of

all of the Members. In the event the membership elects not to rebuild, the proceeds received by the Association as a result of such decision shall be distributed by the Association among the Owners of Units and their respective Mortgagees according to the respective fair market values of the Units at the time of destruction. The respective fair market values of the Units at the time of the destruction shall be determined by an independent appraisal.

- 7.7 **Condemnation of Common Area:** If at any time all or any portion of any Common Area or Building 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 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 Owners in any proceedings relating to such condemnation to the extent such Owners have any interest in the Building Common Area or Common Area.
- 7.8 **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.

ARTICLE VIII MAINTENANCE OF PROPERTY

- 8.1 **Association Responsibility Common Area:** The Association shall provide maintenance, repair and replacement of the Common Area, the Building Common Areas and all facilities, improvements and landscaping thereon, including private streets, private driveways, walks and utility facilities (to the extent described in Section 3.3), except for those utility facilities which are maintained by public or private utility companies or agencies, and all other real and/or personal property that may be acquired by the Association, keeping such property in good condition and repair; provided, however, the Association shall not be responsible for maintenance, repair or replacement of Exclusive Use Common Area and other portions of the Common Area and Building Common Area to the extent the responsibility therefor is expressly assigned to one or

more Owners, as set forth in this Article VIII or elsewhere in this Amended Declaration.

The Association shall, without limitation, be further responsible for providing:

- (i) lighting, landscaping and gardening services for the Common Area, as needed;
- (ii) the maintenance of the Common Area and Building Common Area in first-class condition and repair;
- (iii) the painting of the exterior surfaces of the buildings and such other portions of the Common Area as the Board, in its discretion, determines to be necessary;
- (iv) the maintenance, repair, and replacement of Common Area and Building Common Area: siding; roof covers; roof structure; gutters and downspouts; sewer, water and electrical lines that are located outside of Units and Exclusive Use Common Area; swimming pool; poolside and restrooms;
- (v) the repair and replacement of fences in the Common Area, Building Common Area or Exclusive Use Common Area provided Owners shall be responsible for the maintenance of fences enclosing any Exclusive Use Common Area appurtenant to their Unit;
- (vi) the replacement or refinishing of private Common Area streets and parking areas; and
- (vii) the repair and replacement of balconies as set forth in Section 8.2 below.

- 8.2 Exclusive Use Common Area Balconies: Each Unit that is assigned a balcony area as delineated on the Condominium Plan shall be responsible for its general maintenance and cleaning including the caring for the balcony and preserving it from failure, caulking, cleaning and minor, non-structural upkeep. Owners shall keep their balconies clean and free from debris or storage items. Owners shall be responsible for any damage to balconies caused by negligence or overwatering of plants. All plants set out on balconies shall have saucers with feet placed under them to prevent direct water contact with the floor of a balcony. The Association shall be responsible for the structural upkeep of the balconies in Project including the repair and replacement of the

balconies.

8.3 Authority for Entry of Unit or Exclusive Use Common Area. The Association or its agents may enter any Unit or any portion of Exclusive Use Common Area which has been designated or assigned for the exclusive use of the residents of a particular Unit, whenever such entry is necessary, in the Board's sole discretion, in connection with the performance of any maintenance, repair, construction or replacement for which the Board is responsible. 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.

8.4 Owner Responsibility:

8.4.1 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 VIII. Each Owner shall also be responsible for the cleaning, maintenance, repair and replacement of all doors, exterior front and/or rear utility doors exclusive to the Unit, door frames, windows, window frames, screens and glass serving his or her Unit, both interior and exterior. The replacement, repair, maintenance and/or painting of exterior doors by Owners shall be subject to the Architectural Rules concerning, without limitation, the color of paint and model of exterior door which may be used. 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, ranges, refrigerators, freezers, dishwashers, and other kitchen appliances, light fixtures, heating, ventilating and air conditioning units, condensers and equipment, light bulbs and light fixtures, plumbing lines or facilities, utility facilities, showers, bathtubs, sinks, toilets, fireplaces (fireboxes, chutes and flues), telephone lines or facilities, television cable, electrical wiring and any other accessories within the boundaries of the Unit or telephone and cable facilities and lines designed to serve a single Unit. Each Owner shall be responsible for the maintenance, repair and replacement of the interior of his or her garage area, garage doors, garage door frames and automatic garage door opener. Doorbell systems and

all exterior light fixtures that are controlled from the interior of a Unit are the sole responsibility of the Owner to maintain, repair and replace. The provisions of this Subparagraph shall not be construed to permit any interference with or damage to the structural integrity of the building in which a Unit is located.

8.4.2 Exclusive Use Common Area. With the exception of those Exclusive Use Common Areas expressly described in Section 8.1 above, 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 the patio that has been assigned to such Owner and including any landscaping located within such areas. All planting and landscaping in patios to which the Owners of a Unit have been assigned or granted a right of exclusive use shall be installed and maintained by the Owner of such Unit at the Owner's expense in conformity with the Rules. No Owner shall build, place or cause to be built or placed within his or her balcony or patio any structure without the prior written consent of the Architectural Committee or the Board, as the case may be, and where applicable written consent of the City. Owners shall be responsible for the maintenance, planting and landscaping of the strip of planter area along the front walkway leading to the front door to their Unit. Owners shall be responsible for the general maintenance of their balcony as provided for in Section 8.2 of this Declaration. Airconditioning units located on the Common Area serving a Unit shall be considered Exclusive Use Common Area and shall be the sole responsibility of the Owner to maintain, repair and replace.

8.5 Interior Decorations. Except as otherwise provided herein, 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, and doors bounding his or her Unit, and to substitute new finished surfaces for the finished surfaces existing on said walls, ceilings, 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; 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, reflective material, cardboard, paper or other similar materials.

8.6 Owner Liability.

(a) 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 it 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.

(b) In the event damage or destruction to the Project improvements is caused by an item that is an Owners' responsibility to maintain, and such damage or destruction to the Project improvements is not fully covered or paid for by Association insurance policies or any liability insurance maintained by the responsible Owner, the cost of such maintenance, repair or replacement of such damage or destruction, including the cost of materials, labor, supplies, services and any insurance policy deductibles shall be charged to, and paid by, such Owner. Such charges may be recovered by the Association through the imposition of a Reimbursement Assessment against the offending Owner.

ARTICLE IX ARCHITECTURAL COMMITTEE

- 9.1 Establishment. The Board shall appoint an Architectural Committee consisting of three (3) persons. The Board may also appoint one (1) alternate committee member who may be designated by the Committee to act as substitute on the Committee in the event of absence or disability of any committee member. If at any time there shall not be a duly-constituted Architectural Committee, the Board shall exercise the functions of said Committee in accordance with the terms of this Article IX.
- 9.2 Duties. It shall be the duty of the Architectural Committee to consider and act upon such proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee Rules, to perform other duties delegated to it by the Association and to carry out all other duties imposed upon it by this Declaration.
- 9.3 Meetings. The Architectural Committee shall meet as necessary

to properly perform its duties hereunder. The vote or written consent of any two (2) shall constitute an act by the Committee unless the unanimous decision of its Members is otherwise required by this Declaration. The Committee shall keep and maintain a record of all actions taken by it at such meetings or otherwise. The Architectural Committee and its Members shall be entitled to reimbursement for reasonable out-of-pocket expenses incurred by them in the performance of any Architectural Committee function.

- 9.4 Rules. The Architectural Committee may, from time to time, and subject to the Board's approval, adopt, amend and repeal, by unanimous vote, rules and regulations to be known as "Architectural Rules." Said rules shall interpret and implement the provisions hereof by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, placement of buildings and other structures, landscaping in the Common Areas, color schemes, exterior finishes and materials and similar features which are recommended for use in the Project; provided, however, that said rules shall not be in derogation of the minimum standards required by this Declaration.
- 9.5 Submission of Plans and Specifications. No building, fence, wall or other structure or improvement, including hot tubs and spas, shall be commenced, erected, or maintained within the Project nor shall any exterior addition to or change or alteration therein, including antennae and patio covers, be made until two (2) sets of the plans and specifications, showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Committee.
- 9.6 Application. Any Owner proposing to perform any work of any kind whatever, which requires prior approval pursuant to this Article IX, shall apply for approval by notifying the Association, in writing, of the nature of the proposed work and furnishing such information as the committee or Board may require.
- 9.7 Grant of Approval. The Architectural Committee shall grant the requested approval only if:
 - (a) The Owner shall have complied with the provisions of Section 9.5 above; and
 - (b) The Owner shall have provided evidence satisfactory to the Committee that such Owner has obtained all required

governmental permits.

(c) The Committee shall find that the plans and specifications conform to this Declaration and to the Architectural Committee Rules in effect at the time such plans were submitted to such Committee; and

(d) The Members of the Committee 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 and materials, as to harmony of exterior design with the existing structures and as to location with respect to topography and finished grade elevations.

- 9.8 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 rejected within sixty (60) days from the date of submission thereof to the Association shall be deemed approved.
- 9.9 Board Review. The Committee shall submit a copy of its findings and determinations to the Board, which may review any decision of the Committee, upon its own initiative, or upon the written request of the Committee or of any Association Member.
- 9.10 Commencement. Upon receipt of approval pursuant to Sections 9.7 and 9.8 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.
- 9.11 Completion. The Owner shall, in any event, complete the construction, reconstruction, refinishing or alteration of any such improvement within one hundred and eighty (180) days 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 or her agents. If Owner fails to comply with this Section 9.11, the Architectural Committee shall notify the Board of such failure, and the Board shall proceed in accordance with the provisions of Section 9.12, below, as though the failure to complete the improvements was a noncompliance with approved plans.

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

- (a) Upon the completion of any construction, reconstruction, alteration or refinishing of the exterior of any improvements, or upon the completion of any other work for which approved plans are required under this Article, the Owner shall give written notice thereof to the Architectural Committee.
- (b) Within sixty (60) days thereafter, the Committee, 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 Committee 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 Committee shall notify the Board in writing of such failure. 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 notice of the non-compliance is given to the Board by the Architectural Committee. Notice of the hearing date shall be given at least ten (10) days in advance thereof by the Board to the Owner, to the Architectural Committee and, in the discretion of the Board, to any other interested party.
- (d) At the hearing, the Owner, the Architectural Committee 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, for any reason, the Architectural Committee fails to notify the Owner of any non-compliance within sixty (60) days after receipt of said notice of completion from the Owner, the improvement shall be deemed to be in accordance with said approved plans.

9.13 Preliminary Approval. Any Owner proposing to construct improvements requiring the prior approval of the Architectural Committee may apply to the Committee for preliminary approval by submission of preliminary drawings of the proposed improvements in accordance with the Architectural Committee 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 Architectural Committee shall consider and act upon such request. The Committee shall grant the approval only if the proposed improvement, to the extent its nature and characteristics are shown by application, would be entitled to a final approval on the basis of a full and complete application. In granting or denying approval, the Committee 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 Architectural Committee 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 Architectural Committee.

- (c) In no event shall any preliminary approval be deemed to be an approval authorizing construction of the subject improvements.
- 9.14 **Non-Waiver.** The approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Committee 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.
- 9.15 **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 based on the date thereof, either: (a) all improvements made and other work completed by said Owner comply with this Declaration, or (b) 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 said Condominium through him or her, shall be entitled to rely on said estoppel 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.
- 9.16 **Liability.** Neither the Architectural Committee nor any Member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed on account of: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (c) the development of any property within the Project; or (d) the execution and filing of an estoppel certificate pursuant to Section 9.15, whether or not the facts therein are correct; provided, however, that such Member has acted in good faith on the basis of such information as may be possessed by him or her. Without in any way limiting the generality of the foregoing, the Architectural Committee, 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 Architectural Committee.

9.17 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 shall lie solely with the respective Owner.

ARTICLE X ENFORCEMENT

10.1 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.

10.2 Violation of Law. Any violation of a state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation 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.

10.3 Owners' Responsibility.

(a) Responsibility for Conduct of Others. Each Owner shall be fully responsible for informing members of his or her family and his or her other tenants, contract purchasers and guests of the provisions of the Governing Documents, and shall be fully responsible for any violation of the provisions of the Governing Documents by members of his or her family or his or her tenants, contract purchasers or guests. Each Owner shall further be fully responsible for the conduct and activities of his or her pets or those of members of his or her family or of his or her tenants, contract purchasers and guests.

(b) Responsibility for Damage. If any damage results to any portion of the Project from the negligent or intentional conduct of any Owner or Resident, or his or her family, contract purchasers, tenants, guests, or household pets, or from the utilities located within such person's Residence, or from vegetation placed or planted in the Project by or on behalf of any such person, the cost

of making any necessary repairs shall be the responsibility of the Owner of the particular Condominium involved in said negligent or intentional conduct. If the Owner of such Condominium does not promptly repair such damage to the satisfaction of the Board, the Board may have the damage repaired and charge the Owner therefor in the form of a Reimbursement Assessment.

10.4 Rights and Remedies of the Association.

(a) Rights Generally. 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.

(b) 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 to be a Member not in good standing. Such Member shall be deemed to be a Member not in good standing until such time as the Board shall determine in writing that the violation which resulted in the Board's determination that the Member was not in good standing 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 of the Association in good standing.

(c) 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 Subsection 10.3(a) 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 By Laws. Any monetary penalty imposed pursuant to this Section shall not exceed one hundred dollars (\$100.00) for each violation, as more particularly set forth in the By Laws. Each Owner shall be obligated to pay Reimbursement Assessments levied by the Board pursuant to Article VI, 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 as provided for in Article VI of this Declaration.

(d) Inadequacy of Legal Remedy. Except for the non-payment of any assessment levied pursuant to the provisions of Article VI of this Amended 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.

(e) 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 Residence 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 VI of this Amended Declaration; provided, however, that the provisions of this Subsection 10.4 (e) 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.

10.5 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.

10.6 Emergency Situations. Notwithstanding any other provisions of

the Governing Documents, under circumstances involving conduct that constitutes an emergency including (a) an immediate and unreasonable infringement of or threat to the safety or peaceful enjoyment of residents of the Project, or (b) a traffic or fire hazard, or (c) a threat of material damage to or destruction of the Project or any portion thereof, or (d) 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) 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 Owner desires a hearing, a 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. 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.

- 10.7 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.
- 10.8 Notices. Any notices required or given under this Article X 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.

10.9 Costs and Attorney's 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 VI of this Amended Declaration.

10.10 Alternative Dispute Resolution. Prior to instituting any civil action arising out of any dispute between: (1) the Association and an Owner or a member of his or her family, or (2) Members of the Association or their family members relating to the rights, duties and obligations arising out of or in any way connected with a claimed violation of the Governing Documents or the Board's interpretation or enforcement of the Governing Documents (hereinafter collectively referred to as "Association Dispute"), the Association Dispute shall be submitted to alternative dispute resolution procedures as herein described. Notwithstanding the foregoing; except as provided in Civil Code Section 1366.3 or successor statutes, the power and duty of the Board of Directors to levy and collect assessments through lien foreclosure proceedings or an action at law, shall not be subject to alternative dispute resolution or procedures and provided, further, if the Association Dispute is entirely within the Small Claims Court's jurisdiction, any party to the dispute shall have the right to file a claim in Small Claims Court and have a matter determined therein in lieu of alternative dispute resolution procedures. The requirements of this Section 10.10 shall also not apply under circumstances where a party is entitled to a temporary restraining order or preliminary injunction in order to avoid irreparable harm or injury or in the case where the applicable time limitation for commencing the action would run within one hundred and twenty (120) days, prior to the filing of a civil action by either the Association, Owner or Member.

(a) Civil Code Section 1354(b). Prior to instituting a civil action solely for declaratory relief or injunctive relief, or for declaratory relief or injunctive relief in conjunction with a claim for monetary damages not in excess of five thousand dollars (\$5,000),

concerning an Association Dispute, the parties shall endeavor to first submit their dispute to a form of alternative dispute resolution, as provided in *Civil Code Section 1354(b)* or any successor statute. Any mediation or arbitration chosen by the parties shall follow the procedure set forth in subsection 10.10 (c) or (d).

(b) Claims over \$5,000. Any civil claim concerning an Association Dispute in excess of five thousand dollars (\$5,000) shall first be submitted to mediation or arbitration pursuant to subsections (c) and (d) hereof. Any party subject to such a dispute may initiate this process by serving on another party to the dispute a Request for Resolution. The Request for Resolution shall include: (1) a brief description of the dispute between the parties, (2) a request for mediation, non-binding arbitration or binding arbitration and (3) a notice that the party receiving the Request for Resolution is required to respond thereto within thirty (30) days of receipt or it will be deemed rejected. Service of the Request for Resolution shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the third day after mailing, if mailed, by first class mail, certified, postage prepaid, and if addressed to Association, care of its current manager or if addressed to a homeowner, at his or her last known address. Parties receiving a Request for Resolution shall have 30 days following service of the Request for Resolution to accept or reject mediation or arbitration. If not accepted within the thirty (30) day period by a party, that party shall be deemed to have rejected such proposed mediation or arbitration. If the proposed arbitration or mediation is accepted by the party upon whom the Request for Resolution is served, the mediation or arbitration shall be completed within ninety (90) days of receipt of the acceptance by the party initiating the Request for Resolution, unless extended by written stipulation signed by both parties. The costs of the mediation or arbitration shall be borne by the parties.

(c) 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. The Board may maintain a list of mediators who are acceptable to the Board and who have indicated their willingness to serve as mediator and whose fees for such services have been established by the Board. The parties to a dispute may agree upon any mediator, including a mediator obtained from a list maintained by the Board or provided by any recognized mediation service. 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. If the parties are unable to agree upon a mediator within ten (10) days from the responding party's acceptance of the Request for Resolution by mediation, then the parties shall ask the American Arbitration Association or another mutually agreeable organization to choose the mediator. A mediator may be, but shall not be required to be, a Member of Heritage Commons Homeowners Association.

(i) 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.

(ii) The mediator may provide the parties in the dispute with a recommendation as to resolution of the dispute, and the parties shall be notified of any such recommendation. The costs of mediation shall be borne equally by the parties.

(d) Arbitration. Any dispute subject to this Section 10.10 which is submitted to arbitration shall be arbitrated in accordance with this Section and with the applicable rules of the American Arbitration Association or in accordance with such other arbitration procedure as may be mutually agreed upon by the parties. Arbitration may be binding or nonbinding at the option of the parties.

(i) Selection of Arbitrator. Unless the parties shall mutually agree to have three (3) arbitrators, there shall be one (1) arbitrator. All arbitrators shall be either attorneys or retired judges. If the parties are unable to agree upon an arbitrator within ten (10) days from the responding party's acceptance of the Request for Resolution an arbitrator shall be selected as provided in the applicable rules of the American Arbitration Association or in accordance with such other procedure as may be mutually agreed upon by the parties.

(ii) Governing Rules and Procedures. The arbitration

hearing shall take place in Alameda County, California, at the time and place selected by the arbitrator(s). The arbitrator(s) 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 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 at the sole discretion of the arbitrator(s).

(iii) 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; 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.

(iv) Decision. In the event there are three (3) arbitrators, the decision of any two (2) arbitrators shall constitute the decision of the arbitrators. The award of the arbitrator(s) shall be accompanied by a written statement of the basis for such judgment. In the event the parties have elected binding arbitration, judgment on the award may be entered by the Superior Court in the County of Alameda and the decision shall be conclusive and binding upon all the parties.

ARTICLE XI FIRST LENDER RIGHTS AND PROTECTION

Notwithstanding any other provisions of this Declaration to the contrary:

- 11.1 Mortgage Permitted. Any Condominium Owner may encumber his or her Condominium with a mortgage. The terms "Mortgage," "Mortgagee," "Eligible Mortgage Holder" and "First Mortgage" are defined in the Article I of this Declaration.
- 11.2 Subordination. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage that encumbers all or a portion of the Project, or any Condominium, made in good faith and for value, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such First Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien.

- 11.3 Amendment. No amendment to this Declaration, the Articles, or the By-Laws shall affect the rights of any Mortgagee under any Mortgage made in good faith and for value and recorded before the recordation of any such amendment unless the Mortgagee either joins in the execution of the amendment or approves it in writing as a part of such amendment.
- 11.4 Rights of Institutional Lenders. No breach of any of the Covenants, Conditions and Restrictions herein contained nor the enforcement of any lien provisions herein, shall render invalid the lien of any First Mortgage on any Unit made in good faith and for value, but all of said Covenants, Conditions and Restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale or otherwise. Notwithstanding any provision in the Declaration to the contrary, institutional lenders shall have the following rights:
- (a) All institutional lenders that have filed with the Association a request for notice of default, shall be entitled to receive written notice from the Association of any default by the trustor of any deed of trust on a Unit (the beneficial interest in which is held by said institutional lender) in the performance of such trustor's obligations under the Governing Documents, which is not cured within thirty (30) days.
 - (b) The Association shall discharge its obligation to notify institutional lenders by sending written notices required herein to the lender or lenders requesting notice, at the address given on the current request for notice.
 - (c) First Mortgagees of individual Units may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any Association common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property and First Mortgagees making such payment shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement shall be reflected in an agreement in favor of all First Mortgagees of Units duly executed by the Association.

- (d) Any institutional lender will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, and (b) receive an annual audited financial statement of the Association within ninety (90) days following the end of the fiscal year of the Association, and (c) written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.
- (e) Association dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those Common Area Improvements that must be replaced on a periodic basis, and shall be payable in regular installments rather than Special Assessments.
- (f) Each holder of a First Mortgage lien on a Unit who comes into possession of the Unit by virtue of foreclosure of the Mortgage, or any purchaser at a foreclosure sale under a first Deed of Trust, will take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit, except for claims from a pro rata reallocation of such assessments or charges to all Project Units including the mortgaged Unit, and except for assessment liens recorded prior to the Mortgage.
- (g) Any agreement for professional management of the Project, or any other contract providing for services of the developer, sponsor or builder, may not exceed one (1) year. Any such agreement must provide for termination by either party for cause on thirty (30) days written notice or without cause and without payment of a termination fee on ninety (90) days or less written notice.
- (h) The Project Governing Documents except for rental restrictions contain no provisions creating a "right of first refusal," but should any such rights be created in the future, any such rights shall not impair the rights of any institutional lender to: (1) foreclose or take title to a Condominium Unit pursuant to the remedies provided in the Mortgage, or (2) accept a deed (or assignment) in lieu of foreclosure in the event of a

default by a Mortgagor, or (3) interfere with a subsequent sale or lease of a Unit so acquired by the Mortgagee.

11.5 **Consent to Action.** Except as provided by statute or by other provision of the Governing Documents in case of substantial destruction or condemnation of the Project:

(a) The consent of at least sixty-seven percent (67%) of the Members and the approval of at least fifty-one (51%) of the Eligible Mortgage Holders, shall be required to terminate the legal status of the Project as a Condominium Project.

(b) The vote required to terminate the legal status of the Project after substantial destruction or condemnation of the Project shall be at least sixty-seven (67%) of the total voting power of the Association and fifty-one (51%) of the votes allocated to Units which are subject to First Mortgages held by Eligible Mortgage Holders.

(c) The consent of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of Eligible Mortgage Holders holding Mortgages on Units which at least fifty-one percent (51%) of the votes of the Units subject to Eligible Holder Mortgages, shall be required to all or amend any material provisions of the Governing Documents which establish, provide for or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens or subordination of such liens;
- (iii) reserves for maintenance, repair and replacement of the common area(s) (or Units if applicable);
- (iv) responsibility for maintenance and repair of the several portions of the Project;
- (v) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project;
- (vi) boundaries of any Unit
- (vii) the interests in the general or Exclusive Use Common Areas;

- (viii) Convertibility of Units into Common Areas or of Common Areas into Units;
 - (ix) Leasing of Units;
 - (x) Imposition of any right of first refusal or similar restriction on the right of a Unit owner to sell, transfer, or otherwise convey his or her Unit
 - (xi) Any provisions which are for the express benefit of Mortgage holders, Eligible Mortgage Holders or Eligible Insurers or Guarantors of First Mortgages on Units.
- (d) An addition or amendment to such document shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. An Eligible Mortgage Holder who receives a written request to approve additions or amendment who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.
- 11.6 Distribution of Insurance and Condemnation Proceeds. No Condominium Owner, or other party, shall have priority over any right of First Mortgagees of Units pursuant to their Mortgages in case of a distribution to Condominium Owners of insurance proceeds or condemnation awards for losses to or a taking of Condominium Units or any Common Area. Any provision to the contrary in this Declaration or in the By-Laws or other documents relating to the Project is to such extent void. All applicable fire and all physical loss or extended coverage insurance policies shall contain loss payable clauses acceptable to the affected Mortgagees naming the Mortgagees, as their interests may appear.

ARTICLE XII AMENDMENT

- 12.1 Procedure. Except as provided in Article XI or otherwise in this Declaration, this Declaration may be amended by the affirmative vote or written consent of Members representing at least a majority of a quorum of the Members of the Association. 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 Alameda County Recorder.

ARTICLE XIII 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.

IN WITNESS WHEREOF, we, the Members of Heritage Commons Homeowners Association, hereby affirm, approve, and adopt the foregoing Amended Declaration of Covenants, Conditions and Restrictions of Heritage Commons Homeowners Association, in accordance with the Heritage Commons Association's Declaration of Covenants, Conditions and Restrictions dated January 16, 1985 and recorded on February 13, 1985, as instrument/serial no. 85-32543 of the Official Records of Alameda County, California, by means of the signatures of the President and Secretary of heritage Commons Homeowners Association, duly authorized pursuant to the Court Order Granting Petition to Reduce Voting Percentage (Civil Code Section 1356) issued in the Alameda County Superior Court, Case No. 2002046161 (attached hereto as Exhibit "D"), dated May 31, 2002, which Amended Declaration of Covenants, Conditions and Restrictions of Heritage Commons Homeowners Association shall be recorded, along with the Court Order with the County Recorded of Alameda County, California.

DATED: 5/24/02, 2002

Heritage Commons Homeowners Association

Stephen B. Westerlund
President, Stephen B. Westerlund

Diane M. Jenkins
Secretary, Diane M. Jenkins

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Alameda

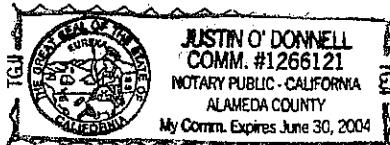
} ss.

On August 24 2002, before me, JUSTIN O'Donnell, Notary #612
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Diane M. Jenkins & Stephen B. Westlund
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory
evidence



My Comm. Exp. 6-30-04

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above


Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: CCM

Document Date: 8-24-02

Number of Pages: 2 / 1

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

Signer's Name: _____

Individual

Corporate Officer — Title(s): _____

Partner — Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other: _____

RIGHT THUMPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

EXHIBIT "A"

SCHEDULE OF UNDIVIDED INTERESTS IN BUILDING COMMON AREAS

BUILDING #	UNIT #	\$ OF UNDIVIDED INTEREST IN BUILDING COMMON AREA PER UNIT
I	1-6, inclusive	16.66
II	7-13, inclusive	14.28
III	14-20, inclusive	14.28
IV	21-26, inclusive	16.66
V	27-36, inclusive	10.00
VI	37-41, inclusive	20.00
VII	42-51, inclusive	10.00
VIII	52-58, inclusive	14.28
IX	59-73, inclusive	6.66

EXHIBIT "B"

ALLOCATION OF ANNUAL ASSESSMENTS FOR
PAINT AND ROOF RESERVES AND INSURANCE PREMIUMS

UNIT TYPE	UNIT NUMBERS	PERCENTAGE
A - 2 Bedroom	2, 3, 4, 5, 12, 13, 14, 15, 22, 23, 24, 25, 38, 39, 40, 41, 47, 48, 52, 53, 54, 56, 57, 59, 60, 67, 68, 71, 72	1.5460%
B-3 Bedroom	7, 8, 9, 10, 11, 16, 17, 18, 19, 20, 42, 43, 44	1.5633%
E- Studio	1, 21, 37	0.6374%
F - 1 Bedroom	6, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 45, 46, 49, 50, 51, 58, 61, 62, 63, 64, 65, 66, 69, 70, 73	1.1625%

EXHIBIT "B"

EXHIBIT "C"

HERITAGE COMMONS HOMEOWNERS ASSOCIATION

LIVING AREA SQUARE FOOTAGE

UNIT TYPE		LIVING AREA SQUARE FOOTAGE	# OF UNITS PER TYPE	TOTAL SQUARE FEET	PERCENT ALLOCATION
A	2-BEDROOM	1,114	30	33,420	44.10%
B	3-BEDROOM	1,224	13	15,912	21.00%
E	STUDIO/SINGLE LEVEL	467	3	1,401	1.85%
F	1-BEDROOM	928	27	25,056	33.06%
			73	75,789	100.00%

EXHIBIT "C"

Law Office of Brian T. Bonney
Attn: Bonney Esq, Brian T.
165 Lennon Lane, Suite 210
Walnut Creek, CA 94596-

**Superior Court of California, County of Alameda
Hayward Hall of Justice**

Heritage Commons Homeowners Association Plaintiff(s)	No. <u>2002046161</u> Order Motion petition to reduce required voting % Granted
Defendant(s) (Abbreviated Title)	

The Motion petition to reduce required voting % filed for Heritage Commons Homeowners Association, a California Mutual Benefit Corporation was set for hearing on 05/31/2002 at 02:00 PM in Department 514 before the Honorable Kenneth Mark Burr. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: Heritage Commons Homeowners Association's Petition to Reduce Required Voting Percentage is GRANTED. The Court finds:

1. Petitioner has given at not less than 15 days written notice of this hearing to all members. No mortgagee or beneficiary of a deed of trust or local government is entitled to notice under the terms of the current Declaration.
2. Balloting on the proposed Amended Declaration of Covenants, Conditions and Restrictions was conducted in accordance with all applicable provisions of the governing documents.
3. A reasonably diligent effort was made to permit all eligible members to vote on the proposed Amended Declaration.
4. Owners having more than 50 percent of the votes, voted in favor of the proposed Amended Declaration.
5. The proposed Amended Declaration is reasonable.
6. Granting this Petition is not improper for any reason stated in Civil Code §1356, subdivision (e).

The Court further notes that this Petition is unopposed.

Therefore, the percentage of affirmative votes necessary to approve Petitioner's Amended Declaration is hereby REDUCED to 51%, and the Amended Declaration is hereby CONFIRMED as validly approved on the basis of the affirmative votes actually received during the balloting period. Civil Code §1356.

Order

EXHIBIT "D"

Dated: 05/31/2002

Kenneth M. Burr
facsimile

Judge Kenneth Mark Burr

Order

EXHIBIT "D"

Superior Court of California, County of Alameda
Hayward Hall of Justice

Case Number: 2002046161
Findings and Order After Hearing of 05/31/2002

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 24405 Amador Street, Hayward, California.

Executed on 06/10/2002.

Executive Officer / Clerk of the Superior Court

By

Michele Woodard

Deputy Clerk

Digital