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ALAMEDA COUNTY ON 06/21/1996

Under Recorder's Serial No. 96-151430

Old Republic Title Company

BY M. B. B. B.

FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
UNIVERSITY TERRACE BERKELEY HOMES

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE
FOR RECORDING INFORMATION

(Government Code 27361.6)
(Additional recording fee applies)

**FIRST AMENDMENT
TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF
UNIVERSITY TERRACE BERKELEY HOMES**

The Regents of the University of California, a California public corporation, ("the Declarant") hereby makes this First Amendment to the Declaration of Covenants, Conditions and Restrictions of University Terrace Berkeley Homes on the terms and conditions herein stated.

RECITALS:

Declarant makes this First Amendment based on the following facts and intentions:

A. Declarant is the owner of all the real property and Improvements thereon located in the City of Berkeley, County of Alameda, State of California, described as

Lot 1 of tract 6417 filed October 3, 1994, Map Book 214
Page 39, Alameda County Records.

B. The Declaration of Covenants, Conditions and Restrictions of University Terrace Berkeley Homes was recorded on October 11, 1994 as Recorder Series Number 94-329463 in the Official Records of the County of Alameda, state of California ("the Declaration").

C. Declarant now desires to amend the Declaration.

THEREFORE, Declarant hereby declares the following:

1. Article 1, Section 1.1 of the Declaration is hereby amended by deleting subsections (j), (l), (p), and (r) thereof and replacing it with the following:

(j) "Condominium" means an estate in real property, as defined in section 783 and 1351(f) of the California Civil Code, consisting of (i) a unit; (ii) a 1/75th undivided fractional interest in the Common Areas; (iii) any exclusive or non-exclusive right of entry, right of possession, easement or easements appurtenant to such Unit over the Common Areas or other areas as described in this Declaration, the Condominium Plan and the deed to the Condominium; and (iv) a membership in the Association. Whenever reference to a Condominium is made in this Declaration, the Condominium Plan, any deed, or elsewhere, it shall be assumed that such reference is made to the Condominium as a whole, including each of its component elements.

(l) "Condominium Plan" means the Condominium Plan for the Project attached hereto as **Exhibit B**.

(p) "Declarant Control Period" means the period of time extending from the recordation of this Declaration to the earliest of (i) that date upon which more than seventy-five percent (75%) of the Condominiums which may be included in the Project have been conveyed to Owners other than Declarant; (ii) the date three (3) years after the first Condominium has been conveyed to an owner other than Declarant; or (iii) the date upon which Declarant notifies the Owners that Declarant relinquishes its rights under this Declaration and the Bylaws to appoint and remove a majority of the members of the Board of Directors or to exercise powers and responsibilities otherwise assigned by the Condominium Instruments to the Association, the Board of Directors, or any officer of the Association.

(r) "Exclusive Use Common Areas" means those portions of the Common Areas which are for the exclusive use of the Owners of particular Units in accordance with the California Civil Code, section 1351 (i), as described in Article 3 of this Declaration. Such Exclusive Use Common Areas include parking stalls, balconies, private yards, storage closets and storage spaces. Each portion of an Exclusive Use Common Areas, other than parking spaces, is identified on the Condominium Plan by the Identifying Number of the Condominium whose Owner enjoys an easement for the use of such Exclusive Use Common Area, preceded by the letter designation of "B" for balcony, "PY" for private yard, "SC" for storage closet and "S" for storage spaces. Parking spaces shall be assigned pursuant to the assignments specified on **Exhibit C - Parking Assignments**.

2. Article 1, Section 1.1 of the Declaration is hereby amended by deleting subsection (z) thereof.

3. Article 2, Section 2.3 of the Declaration is hereby amended by deleting it in its entirety and replacing it with the following:

Section 2.3 Assignment of Fractional Interest: Each owner of a Condominium in the Project shall have a 1/75th undivided fractional interest in the Common Areas. Each such owner's fractional interest may not be altered or changed and shall be specified in the deed from Declarant to each such Owner.

4. Article 13, Section 13.5 of the Declaration is hereby amended by deleting it in its entirety and replacing it with the following:

Section 13.5 Qualified Person. A "Qualified Buyer" is a person determined to be eligible either individually or as a member of a class by the Chancellor of UCB in accordance with the employee housing policy and criteria of UCB, as amended from time to time. That policy and those criteria are intended and dedicated to further the educational purpose of UCB by enhancing the quality of education through retention and recruitment of faculty and senior staff members (as defined by the Chancellor of UCB); therefore, the Chancellor of UCB may, in his or her sole discretion, from time to time designate as Qualified Persons, those employees of Declarant who are an integral part of the UCB community, and with respect to whom the Chancellor of UCB shall have determined that providing adequate housing is a priority. The Chancellor of UCB may, in his or her sole discretion, also designate as Qualified Persons current faculty and staff, and academic and staff, and academic and staff retirees from UCB, Office of the President, UC San Francisco, Lawrence Berkeley Laboratory and other UC facilities.

5. Article 13, Section 13.6 is hereby amended by deleting its paragraphs (a), (e), and (f) and replacing them with the following:

Section 13.6 Conditionally Qualified Persons. The following persons ("Conditional Qualified Persons") shall be considered to be Qualified Persons only upon the conditions and for the periods of time specified in this Section:

(a) Any Qualified Owner shall continue to be qualified until the expiration of two (2) years following the date on which such person shall cease to have been a Qualified Person as defined in Section 13.5, above;

(e) A Qualified Owner's spouse who acquires the sole rights of occupancy of a Unit pursuant to any marital settlement, proceeding or decree shall be a Qualified Person for a period of two (2) years from the date of such settlement, proceeding or decree;

(f) A co-Owner of a fifty percent (50%) or less undivided interest in a Condominium who resides in such Condominium during the lifetime of a Qualified Owner shall be a Qualified Person for a period of two (2) years from the death of such Qualified Person;

6. Article 14 is hereby amended by deleting its paragraphs (d) and (e) and replacing them by the following:

- (d) If Declarant rejects said offer or does not respond with fifteen (15) calendar days, an Owner wishing to sell or transfer an interest in the Condominium may, by appropriate notices or advertisement, documentation of which shall be promptly delivered to Declarant, offer the Condominium for sale for a period of sixty (60) calendar days, at the price and on the terms and conditions set forth in Section 14.2, to any Qualified Person as defined in Section 13.5. An offer made pursuant to this Section shall remain open until accepted or, in the absence of an acceptance, for sixty (60) calendar days from the date of publication of the original notice or advertisement.
- (e) If an Owner's offer pursuant to Section 14.1 (d) above, is not accepted within sixty (60) calendar days after it is made, and if the owner still wishes to sell or transfer an interest in the Condominium the Owner shall give notice to Declarant of his or her intention and provide Declarant with the opportunity to agree to purchase the Condominium for a period of fifteen (15) calendar days at a price and on terms which are not more favorable to the Owner than Owner's original offer made pursuant to Section 14.1 (a) above. After the expiration of the fifteen (15) calendar day period, the Owner may offer the Condominium for sale on the open market at any price, and on any terms. Such an offer by an Owner following expiration of not fewer than ninety (90) calendar days from the receipt of the initial notice to Declarant given by Owner pursuant to the Section may be made to any person, without respect to "qualification" under Article 13. Any such person who purchases the Condominium shall, however, be bound by all the provisions of this Article 14 respecting subsequent resale of the Condominium.

7. Exhibit B to the Declaration, the Condominium Plan, shall be amended by replacing the existing page 9 thereof with a new page 9 in the form attached to this Amendment to correct the designation of storage closet 47. Additionally, page 17 (Parking Assignments) corrects the locations of parking spaces 55 and 56.

8. Exhibit C is hereby amended by deleting it in its entirety and replacing it with Exhibit C attached and made a part hereof.

9. Except as expressly stated herein, all of the provisions of the Declaration are restated and affirmed and shall remain in full force and effect.

10. This First Amendment to Declaration of Covenants, Conditions and Restrictions shall be effective upon the date of its recordation in the Official Records of the County of Alameda, state of California.

IN WITNESS WHEREOF, the undersigned has executed this First Amendment to Declaration of Covenants, Conditions and Restrictions of University Terrace Berkeley Homes on this 19th day of June, 1996.

DECLARANT

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA
A California public corporation

By: 

Steven M. Mathews

Its: Director - Office of Loan Programs

APPROVED AS TO FORM



UNIVERSITY COUNSEL
OF THE UNIVERSITY OF CALIFORNIA

CERTIFICATION OF BALLOTS

THE UNDERSIGNED hereby certifies receipt of a sufficient number of ballots in the affirmative from Class A and Class B Owners of University Terrace Berkeley Homes in the matter of amending Articles 1, Section 1.1, Subsections (j), (l), (p), (r), (z); Article 2, Section 2.3; Article 13, Sections 13.5 and 13.6; Article 14, Subsections (d) and (e); Exhibit B, page 9 and page 17; and, Exhibit C of the CC & Rs. The number of ballots cast by each class of Owners exceeds the required 75% majority vote by each class of Owners, per Article 17.2 of the CC & Rs.

Dated: 06/20/96

By 

Julia Badal-Chamaki

Secretary

University Terrace Berkeley

Homeowners Association

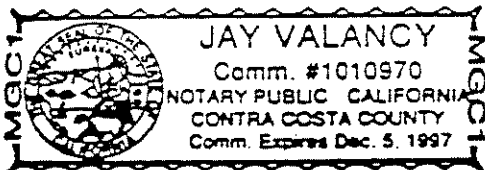
ALL-PURPOSE ACKNOWLEDGMENT

State of California)
County of Alameda) ss.

On June 19th, 1996, before me, Jay Valancy,
personally appeared Sharon M. Matthews,
personally known to me (or proved to me on the basis of satisfactory evidence) 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.

(Seal)



State of CALIFORNIA
County of Alameda

On June 20, 1996, before me, the undersigned, a Notary Public in and for said County and State,
personally appeared

Julia Badal-Chamaki

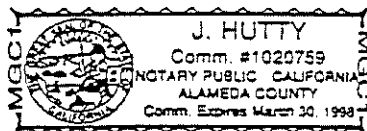
☒ personally known to me

OR

☐ proved to me on the basis of satisfactory evidence

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 per-
son(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



[Seal]

A large, stylized handwritten signature in dark ink, appearing to read 'J. Hutty'.

Notary Public

J. Hutty

(Printed Name)

My commission expires: 3-30-98

**DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS**

FOR

UNIVERSITY TERRACE BERKELEY HOMES

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- EXHIBIT B - Condominium Plan
- EXHIBIT C - Assignment of Percentage Interest

DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR UNIVERSITY TERRACE BERKELEY HOMES

CITY OF BERKELEY
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

THIS DECLARATION is made September 30, 1994, by THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California public corporation ("Declarant").

Declarant is the owner of that certain real property located in the City of Berkeley and County of Alameda described in Exhibit A to this Declaration (the "Land"). Declarant has improved or intends to improve the Land by constructing on it improvements containing seventy-five (75) dwelling units and other facilities in accordance with plans and specifications on file with the City of Berkeley. By this Declaration, Declarant intends to establish a plan of condominium ownership for the Project, pursuant to which an undivided fractional leasehold interest underlying each owner's fee interest in a Condominium will be transferred to each such owner.

Consistent with the requirements of section 1351(e) of the California Civil Code, Declarant has consented to the recordation of a condominium plan for the Project and has caused such Condominium Plan to be duly executed on behalf of Declarant.

DECLARATION

Declarant declares that the Project is, and shall be, held, conveyed, hypothecated, encumbered, leased, rented, used and occupied subject to the following limitations, reservations, restrictions, easements, covenants, conditions, servitudes, liens and charges, all of which are declared and agreed to be in furtherance of a plan of condominium ownership as described in California Civil Code, sections 1350 through 1372, for the subdivision, improvement, protection, maintenance, and sale of Condominiums within the Project, and all of which are declared and agreed to be for the purpose of enhancing, maintaining and protecting the value and attractiveness of the Project. All of the limitations, restrictions, easements, reservations, covenants, conditions, servitudes, liens and charges shall run with the land, shall be binding on and inure to the benefit of all parties having or acquiring any right, title or interest in the Project, and shall be binding on and inure to the benefit of the successors in interest of such parties. Declarant further declares that it is the express intent that this Declaration satisfy the requirements of California Civil Code section 1355.

ARTICLE 1 - DEFINITIONS, EXHIBITS AND INTERPRETATION

Section 1.1 Definitions. As used in this Declaration:

- (a) "Act" means sections 1350 through 1372 of the California Civil Code, as now in effect and as the same may from time to time be amended, replaced or supplemented.
- (b) "Architectural Review Board" or "ARB" means the architectural review board established pursuant to Section 16.2 hereof.
- (c) "Articles" means the Association's Articles of Incorporation, as the same may from time to time be amended.
- (d) "Association" means the University Terrace Berkeley Homeowners Association, a California nonprofit mutual benefit corporation, and its successors and assigns.
- (e) "Association Rules" means the rules and regulations, adopted by the Board from time to time regulating the use and enjoyment of the Common Areas.
- (f) "Board of Directors" or "Board" means the Board of Directors of the Association.
- (g) "Bylaws" means the Association's Bylaws, as the same may from time to time be amended.
- (h) "Common Areas" means the leasehold interest in the entire Project which is created by the Common Areas Lease, excepting therefrom all Units as defined in this Declaration, as shown on the Condominium Plan. The Common Areas shall include, without limitation, the Project's structures (except for the Units), the leasehold rights in the Land upon which the structures are located, the air space above such structures, all bearing walls, columns, floors, roofs, slabs, foundations, common stairways and hallways, reservoirs, tanks, pumps, air ducts, and other central services equipment, pipes, ducts, flues, chutes, conduits, wires, and other utility installations, wherever located, servicing more than one Unit (except the outlets thereof when located within and servicing only a particular Unit), lawns, pavement, trees, all other landscaping on the Land on which the Project's structures are located, parking and storage spaces, if any, and the structures, railings and enclosures of balconies, decks, private yards and entryways.
- (i) "Common Areas Lease" means that certain Common Areas Lease dated September 30, 1994, by and between The Regents of the University of California and the Association as lessee subject to various conditions, including the Association's consent to this Declaration, a copy of which Common Areas Lease was recorded on _____, 1994, as Instrument No. _____, Official Records, Alameda County Recorder, Alameda County, California.

(j) "Condominium" means an estate in real property, as defined in sections 783 and 1351(f) of the California Civil Code, consisting of (i) a Unit; (ii) a Percentage Interest in the Common Areas; (iii) any exclusive or nonexclusive right of entry, right of possession, easement or easements appurtenant to such Unit over the Common Areas or other areas as described in this Declaration, the Condominium Plan and the deed to the Condominium; and (iv) a membership in the Association. Whenever reference to a Condominium is made in this Declaration, the Condominium Plan, any deed, or elsewhere, it shall be assumed that such reference is made to the Condominium as a whole, including each of its component elements.

(k) "Condominium Instruments" means this Declaration, the Articles, and the Bylaws, together with any supplements, amendments, exhibits, schedules, or certifications thereto.

(l) "Condominium Plan" means the Condominium Plan for the Project recorded on October 3, 1994, as Instrument No. 94-322439, in the official records of the County Recorder of Alameda, California, pursuant to section 1351(e) of the California Civil Code. A copy of the Condominium Plan is attached as Exhibit B. In the event of any conflict between Exhibit B and the recorded Condominium Plan, the recorded document shall control.

(m) "Convey", when applied to a Condominium, means the due execution of a valid deed to a Unit by an owner and an assignment of such owner's leasehold interest in the Common Areas.

(n) "Current Dollars" means any dollar amount stated herein multiplied by the quotient obtained by dividing (i) the level of the "National Consumer Price Index for All Urban Consumers, All Items" (1982-84=100) (commonly known as the "CPI-U") prepared and published by the United States Department of Labor, Bureau of Labor Statistics, as of the date of computation by (ii), the level of the CPI-U as of the date of recordation of this Declaration; provided, however, that should the CPI-U cease to be published, the above-described computation shall be made using such other successor or reasonably comparable index as shall be determined by (A) Declarant during the Declarant Control Period, and (B) the Ground Lessor following termination of the Declarant Control Period.

(o) "Declarant" means The Regents of the University of California, a California corporation, and its successors and assigns, if such successors and assigns are duly assigned the rights of Declarant pursuant to Section 19.2 of this Declaration.

(p) "Declarant Control Period" means the period of time extending from the recordation of this Declaration to the earliest of (i) that date upon which more than seventy-five percent (75%) of the Condominiums which may be included in the Project have been conveyed to owners other than Declarant; (ii) the date two (2) years after the first Condominium has been conveyed to an owner other than Declarant; or (iii) the date upon which Declarant notifies the owners that Declarant relinquishes its rights under this

Declaration and the Bylaws to appoint and remove a majority of the members of the Board of Directors or to exercise powers and responsibilities otherwise assigned by the Condominium Instruments to the Association, the Board of Directors, or any officer of the Association.

(q) "Declaration" means this Declaration of Covenants, Conditions, and Restrictions and includes, as the context requires, its amendments, modifications, or supplements.

(r) "Exclusive Use Common Areas" means those portions of the Common Areas which are for the exclusive use of the owners of particular Units in accordance with the California Civil Code, section 1351(i), as described in Article 3 of this Declaration. Such Exclusive Use Common Areas include parking stalls and storage spaces. Each such Exclusive Use Common Area is identified on the Condominium Plan by the Identifying Number of the Condominium whose owner enjoys an easement for the use of such Exclusive Use Common Areas, followed by the letter designation of "P", "P-1," or "P-2" for parking stalls, "GP" for guest parking spaces, "S" for storage spaces, and "Y" for yards.

(s) "Ground Lessor" means The Regents of the University of California, its successors or assigns, in its capacity as Lessor under the Common Areas Lease.

(t) "Identifying Number" means one or more letters or numbers included in the Condominium Plan that identify only one Condominium in the Project.

(u) "Land" means the real property, exclusive of any improvements thereon, as described in Exhibit A to this Declaration, leased for the purpose of creating leasehold interests to be submitted to this Declaration.

(v) "Member" means every person or entity holding a membership in the Association.

(w) "Mortgage" means a mortgage or deed of trust encumbering a Condominium or other portion of the Project. A "First Mortgage" means a Mortgage having priority of security over all other Mortgages encumbering the same Condominium.

(x) "Mortgagee" includes the beneficiary under a deed of trust. An "Institutional Mortgagee" means a Mortgagee that is (i) a bank or savings and loan association or mortgage company, or other entity chartered or licensed under federal or state laws whose principal business is lending money on the security of real property or investing in such loans; (ii) any insurance company; (iii) any private or governmental agency or instrumentality, including without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, engaged in secondary market transactions with respect to real estate loans; and (iv) Declarant. A "First

Mortgage," "First Mortgagee," or "First Institutional Mortgagee" means the beneficiary of a First Mortgage.

(y) "Owner" means each person or entity holding a record ownership interest in a Condominium, including Declarant. "Owner" shall not include any person or entity who holds an interest in a Condominium merely as security for the performance of an obligation.

(z) "Percentage Interest" means the percentage of undivided leasehold interest in all or a portion of the Common Areas pursuant to the provisions of Section 2.3 of this Declaration.

(aa) "Person" means a natural person, corporation, partnership, association, trust, or other entity capable of holding title to real property, or any combination thereof.

(bb) "Project" or "Development" means the Land and all improvements on the Land, as subjected to the Common Areas Lease, collectively known as University Terrace Berkeley Homes, reserving therefrom Declarant's reversionary interest in the Land and improvements, as further described in Section 2.1 of this Declaration.

(cc) "Rules and Regulations" means those rules and regulations adopted by the Association or its Board, including any amendments thereto governing the use and occupancy of the Project.

(dd) "Single Family" means one or more persons, each related to the other by blood, marriage or adoption, or a group of not more than six (6) persons, not so related, together with his, hers, or their domestic servants, maintaining a common household.

(ee) "Unit" means a separate estate in space as defined in California Civil Code section 1351(f) and as described in Section 3.1 of this Declaration. A Unit consists of all those component elements bearing the same Identifying Number designation in the Condominium Plan. The Identifying Number designation of a component element coincides with the number of that Unit of which it is a part. Whenever reference is made to any of the Units, it shall be construed that reference is made to the Unit as a whole and to each and all of its component elements. The Units and their respective boundaries are further described in Section 3.1 of this Declaration, in the Condominium Plan, and in deeds conveying Condominiums, except that in interpreting deeds and plans, the existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plan shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan, regardless of minor variance between boundaries shown on the Condominium Plan, or in the deed and those of the building and regardless of settling or lateral movement of the building.

Section 1.2 Exhibits. All exhibits to this Declaration and all attachments thereto are hereby incorporated by reference in this Declaration.

Section 1.3 Interpretation of Declaration. The terms, covenants, conditions, and restrictions set forth in this Declaration, the Bylaws, and the Articles are intended to be construed to be consistent with the terms, covenants, conditions, and restrictions set forth in the Common Areas Lease. In the event of any conflict in interpretation, the terms, covenants, conditions and restrictions contained in the Common Areas Lease shall control.

ARTICLE 2 - ESTABLISHMENT OF THE CONDOMINIUM

Section 2.1 Submission of Property and Division into Estates.

(a) Declarant does hereby submit and subject the leasehold estate in the Common Areas created by the Common Areas Lease, together with all improvements, easements, and rights created pursuant thereto, to the provisions of the Act and to this Declaration, and hereby creates with respect to such property Condominiums to be known as "University Terrace Berkeley Homes."

(b) An Owner shall not be entitled to sever his or her Condominium from membership in the Association and shall not be entitled to sever his or her Condominium and membership from his or her undivided interest in all or a portion of the Common Areas for any purpose. None of the component interests in a Condominium can be severally sold, conveyed, encumbered, hypothecated, or otherwise dealt with, and no violation or attempted violation of this provision shall be effective. No Owner can sever any easement appurtenant to his or her Unit over the Common Areas from his or her Condominium, and any attempt to do so shall be void. It is intended by this provision to restrict severability under section 1358 of the California Civil Code, as now in effect or as hereinafter amended or replaced.

(c) Any conveyance of a Unit or any portion of it by an Owner shall be presumed to convey the entire Condominium of which such Unit is an element.

(d) Every contract of sale, deed, lease, mortgage, deed of trust, or other instrument recorded in the Official Records of the County Recorder of Alameda County, California, and affecting any Condominium created hereby shall describe it by its Identifying Number, followed by the name "University Terrace Berkeley Homes," followed by specific reference to this Declaration, and followed by specific reference to the Condominium Plan. Every such contract or sale, deed, lease, mortgage, deed of trust, or other instrument shall expressly indicate that it is subject to and subordinate to this Declaration. As used in this subsection (d), "specific reference" means book and page recording data from the Official Records of the County Recorder of Alameda County, California.

Section 2.2 Recordation of Condominium Plan. Prior to conveyance of any Condominium, Declarant shall cause the Condominium Plan to be recorded in the Official Records of the County Recorder of Alameda County, California, pursuant to the

requirements of section 1351(e) of the California Civil Code. Such Condominium Plan shall contain all of the information required by and otherwise conform to the requirements of said section 1351(e).

Section 2.3 Assignment of Percentage Interest. Each Owner of a Condominium in the Project shall have a percentage of undivided leasehold interest in the Common Areas that shall be determined by dividing the total square footage of floor space in such Unit by the total square footage of floor space of all Units, such result to be carried to the fourth decimal place, as set forth in Exhibit C hereto. Each such Owner's percentage of undivided leasehold interest in the Common Areas may not be altered or changed, and shall be specified in the deed from Declarant to each such Owner.

ARTICLE 3 - UNITS, EASEMENTS AND RESERVATIONS

Section 3.1 Units.

(a) The boundaries of each Unit (including any sub-elements thereof as may be designated on the Condominium Plan) shall be the interior surfaces of the perimeter walls, floors, ceilings, windows and doors, where they exist and otherwise to the inclined, vertical or horizontal planes, or curved surfaces, as the case may be, at the limits of the dimensions shown on the Condominium Plan. The Unit includes both the portions of the building so described, and not excluded in Section 3.1(c) hereof, and the air space so encompassed. The Unit includes all fixtures, outlets, appliances, heaters, air conditioners, if any, and similar devices located within and servicing only the particular Unit, or such device, wherever located, if designated on the Condominium Plan as a part of the Unit.

(b) The boundaries of that portion of a Unit designated on the Condominium Plan as a balcony, deck, private yard, patio or entryway, if any, shall be the adjoining exterior surfaces of the walls, windows, doors, overhangs and ceilings of the structure of the Common Area and where the balcony, deck, patio or entryway is not so adjoined, the boundaries are the inclined, vertical or horizontal planes, or curved surfaces, as the case may be, at the limits of the dimensions for the particular balcony, deck, patio or entryway shown on the Condominium Plan. The balcony, deck, patio or entryway shall include only the air space and finished floor or ground surface within, but not the other portions of the Project, Common Areas and surfaces thereof described by or contained within the boundaries of the balcony, deck, patio or entryway.

(c) The following are not part of a Unit: bearing walls, columns, floors, roofs, slabs, foundations, common stairways and hallways, reservoirs, tanks, pumps, air ducts and other central services equipment, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, servicing more than one Unit (except the outlets thereof when located within and servicing only a particular Unit), parking spaces

and storage spaces, if any, and the railings and enclosures of balconies, decks, patios or entryways.

Section 3.2 Nonexclusive Easements.

(a) Every Owner has a nonexclusive easement of use, enjoyment, ingress, egress, and support in, to, and throughout the Common Areas and any improvements or facilities on those Common Areas. Such nonexclusive easements, however, shall be subordinate to, and shall not interfere with, exclusive easements over the Exclusive Use Common Areas. Each such nonexclusive easement shall be appurtenant to the respective Unit and shall pass, as part of the Condominium, with the title to the Unit. Nonexclusive easements also shall be subject to the following rights and restrictions:

(i) The right of the Association to adopt and to enforce the Association Rules and Regulations, including but not limited to, rules regulating the number of guests in and the use of the Common Areas, subject to Sections 4.1 and 7.5 of this Declaration.

(ii) Subject to the provisions of this Declaration, the right of the Association to borrow money to improve, repair, or maintain the Common Areas.

(iii) The right of the Association to assign, rent, license, or otherwise designate and control use of any unassigned parking and storage spaces within, and any recreational facility situated upon, the Common Areas, and to charge reasonable fees for admission and use.

(iv) The right of the Association to suspend the right of an Owner to use any recreational or other facility in the Common Areas as provided in Section 7.6 of this Declaration.

(v) The rights of Declarant, until termination of the Declarant Control Period, and thereafter the Association, to assign or delegate to Declarant or any governmental entity, including Declarant, or to contract with any private security patrol company to provide police or security service in the Project, or to maintain any driveways or paved areas within the Common Areas.

(b) Each Condominium (including specifically the Unit) or the Common Areas, as the case may be, shall be subject to the following rights of entry and use:

(i) The right of Declarant or its designees to enter upon any portion of the Project to construct the improvements thereon and to make repairs and remedy construction defects, provided that such entry shall not unreasonably interfere with the use or occupancy of any occupied Unit unless authorized by its Owner, which authorization shall not be unreasonably withheld. This right of entry shall be immediate in the case of an emergency originating upon or threatening any Unit, whether or not its Owner is present.

(ii) The right of Declarant to modify, alter, remove, or improve defective, obsolete, or nonfunctional portions of the Common Areas, including without limitation, any equipment, fixtures and appurtenants, when in Declarant's sole judgment it is necessary or desirable to do so, until the later of the expiration of any applicable warranty period or the Declarant Control Period.

(iii) The right of the Association, or its agents, to enter any Unit to cure any violation or breach of this Declaration, the Bylaws, or the Association Rules and Regulations, provided that (except in cases of emergency) at least fifteen (15) calendar days prior to such entry, written notice of such violation or breach has been given to the Owner and such Owner has not cured such violation or breach within the fifteen (15) day period after notice is given. The Association shall be entitled to levy a special assessment for its costs of effecting such cure against the Owner in accordance with the procedures set forth in Section 9.7 of this Declaration. These rights of entry and cure shall be immediate in case of an emergency originating upon or threatening any Unit, whether or not its Owner is present.

(iv) The right of the Association, or its agents, to enter any of the Units or the Common Areas to perform its obligations and duties under this Declaration, including obligations or duties with respect to construction, maintenance, or repair of facilities located in the Common Areas, or that affect more than one Unit; watering, planting, cutting, removing, and otherwise caring for the landscaping upon the Common Areas; and cleaning, repairing, replacing, and otherwise maintaining or causing to be maintained utility lines serving each Unit. Such entry shall not unreasonably interfere with the use or occupancy of any occupied Unit unless authorized by its Owner, which authorization shall not be unreasonably withheld. This right of entry shall be immediate in the case of an emergency originating upon or threatening any Unit, whether or not its Owner is present.

Section 3.3 Exclusive Use Common Areas.

(a) Each Owner whose Condominium's Identifying Number appears on a parking space or storage area designated on the Condominium Plan shall have an exclusive easement for vehicular parking purposes if designated as a parking space and for storage of personal property if designated as a storage area over that portion of the Common Areas designated on such plan. Each Owner having such an exclusive easement shall, at his or her own expense, keep his or her space or spaces in a neat, clean, attractive, and safe condition at all times.

(b) Each Owner shall have an exclusive easement to use and enjoy that portion of the Common Areas, if any, adjacent to his or her Unit designated on the Condominium Plan as a "Private Yard" or "Balcony", and bearing his or her Condominium's Identifying Number. Each such Owner shall, at his or her own expense, keep each such patio or balcony in a neat, clean, attractive, and safe condition at all times. The Association shall maintain, repair and replace any wall or fence which surrounds or adjoins any Private Yard and shall assess each Owner of a Unit which is

appurtenant to such Private Yard for the cost of such maintenance, repair or replacement, as an addition to the regular assessment of such Unit. Two or more Owners may share responsibility, in the proportion determined by the Board, for such cost.

Section 3.4 Encroachments. If any portion of a Unit encroaches on the Common Areas, except if such encroachment is caused by the willful act of the Owner of such Unit, or if any portion of the Common Areas encroaches on any Unit, a valid easement exists for each such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Areas are made subject to such easements. If any structure containing a Unit is partially or totally destroyed and then rebuilt and any encroachment on the Common Areas results, a valid easement exists for such encroachment and for the maintenance of it as long as it remains, and all Units and the Common Areas are made subject to such easements.

Section 3.5 Power to Grant Easements. Until termination of the Declarant Control Period, Declarant, and thereafter the Association, shall have the power to grant and convey in the name of all the Owners as their attorney-in-fact (or in the name of the Association as to any property to which the Association holds title) to any Owner or other party easements, licenses, permits, and rights-of-way in, on, over, or under the Common Areas as follows:

- (i) In the case of an Owner, for the purpose of establishing Exclusive Use Common Areas in favor of an Owner.
- (ii) In the case of other parties:
 - (A) For the purpose of constructing, erecting, operating, or maintaining lines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, and other services.
 - (B) For public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities.
 - (C) For emergency access.

Each Owner, by accepting a deed to a Condominium, expressly consents to such easements, licenses, permits, and rights-of-way and authorizes and appoints Declarant, until termination of the Declarant Control Period, and thereafter the Association, as attorney-in-fact of such Owner to execute any and all instruments conveying or creating such easements, licenses, permits, or rights-of-way, provided that no such easement may be granted if it would permanently interfere with the occupancy by any Owner of his or her Unit. Each Owner is subject to all rights and duties assigned

to Owners hereunder, except as specifically provided to the contrary in the Common Areas Lease with respect to Declarant.

Section 3.6 Reservations for Sales and Management Purposes.

(a) Declarant reserves the right to use any Unit owned or leased by Declarant as a model, management office, sales office, or customer service office for the Project. Declarant may also, from time to time, relocate such model, management office, sales office, or customer service office within the Project and, upon such relocation, may remove the furnishings thereof.

(b) Declarant reserves the right to maintain on the Common Areas no more than six (6) signs for the purposes set forth in Section 3.6(a) of this Declaration, each having a maximum face area of four (4) square feet, which signs may be placed at any location on the Common Areas and may be relocated or removed at the sole discretion of Declarant, provided that any such sign is not located so as to restrict unreasonably the access of Owners to the Common Areas or their Units.

(c) The reservations set forth in this Section 3.6 shall remain in effect until the time that Declarant has conveyed all Condominiums to Unit Owners other than Declarant.

Section 3.7 Reservation for Rental Purposes. Declarant reserves the right, for itself and its successors and assigns, to own one or more Condominiums for rental purposes and to lease such Condominiums to tenants acceptable to Declarant.

ARTICLE 4 - USE RESTRICTIONS

In addition to all other covenants, restrictions and limitations contained herein, the use of the Project, each Unit therein, and the Common Areas is subject to the following restrictions:

Section 4.1 Business Usage Prohibited. Except as expressly permitted herein, no Unit shall be used for other than Single Family residential purposes. Residential purposes could include family child day care, or other children's activity facility located within the Project, approved by the Association, and serving children of University Terrace residents. No part of the Project or any Unit shall ever be used or allowed, authorized or caused to be used in any way, directly or indirectly, for business, commercial, manufacturing, mercantile, storage, or other nonresidential purpose, except for business usage permitted under the City of Berkeley Ordinance 3018 N.S. "General Conditions for Home Occupation Use Permits" as adopted April 11, 1979, and professional or academic endeavors not requiring the continuing presence of any employee or business invitee, provided an Owner applies for, and receives, the appropriate permits required under Berkeley Ordinance 3018 N.S., Declarant, its successors or assigns, may use the Units owned by it as models, management offices,

sales offices, or customer service offices during the construction and sales period of the Project. However, gainful employment consisting of individual use by an Owner of telecommunications devices shall not violate the restriction in this Section.

Section 4.2 Liquid Furniture. No waterbed or other item of liquid-filled furniture shall be placed in any portion of any Unit unless such item shall conform to the pounds per square inch weight limitation and placement required by the structural specifications for the Unit and unless, at the option of the Association, the Owner shall provide evidence of insurance as described in section 1940.5 of the California Civil Code.

Section 4.3 Hardwood Floors. Each Owner of a Unit which is immediately above another Unit shall install and/or maintain carpeting or other padded floor covering on all areas of the floor (including stairways) in his or her Unit on which foot traffic normally takes place.

Section 4.4 Signs and Flags. Except for signs approved by the ARB for the benefit of the Project, political campaign signs displayed within forty-five (45) calendar days prior to an election, or temporary signs approved in advance by the Board, no signs of any kind shall be displayed in public view on or about the exterior of any Unit, except signs not larger than is reasonable and customary in the area advertising such Unit for sale or lease. Display of a flag shall be subject to the Association's Rules and Regulations. The Association shall have the right to remove an item displayed in violation of this Section 4.4.

Section 4.5 Children. Each Owner shall be accountable to the remaining Owners, their families, servants, guests, tenants and invitees for the conduct and behavior of his or her children and other children residing in or visiting his or her Unit.

Section 4.6 Pets. No Owner shall maintain or keep more than two usual and ordinary pets (exclusive of fish but including caged birds). No pet shall exceed one hundred (100) pounds in weight. Such pets shall not be allowed in the Common Areas except as permitted by the Rules and Regulations adopted by the Board. Each Owner shall be absolutely liable to each and all remaining Owners, their families, servants, guests, tenants and invitees for any damage to person or property caused by any pet brought into or kept upon or in the Project by an Owner or his or her family, servants, guests, tenants and invitees. Except as provided in this Section 4.6, no animals of any kind shall be brought within the Project or kept in or on any Unit. The Association may prohibit the keeping of any animal that in the sole and exclusive opinion of the Board constitutes a nuisance to any other Owner.

Section 4.7 Offensive Activities. No Owner shall permit or suffer anything to be done or kept upon or in his or her Unit or in the Common Areas which will increase the rate of insurance thereon or will obstruct or interfere with the rights of other Owners, their families, servants, guests, tenants and invitees, nor annoy them by unreasonable noises, vibrations, bright or flashing lights or otherwise, nor shall in any way interfere with the quiet enjoyment of each of the Owners of his or her respective

Unit, nor will he or she commit or permit any nuisance, noxious, illegal or offensive activity to be permitted thereon or therein.

Section 4.8 Owner Negligence. Each Owner shall be liable to the Association for any damage to the Common Areas or any equipment thereon which may be sustained by reason of the negligence or intentional acts or omissions of any said Owner, his or her family, servants, guests, tenants and invitees, to the extent that any such damage shall not be covered by insurance.

Section 4.9 Trash Disposal. Trash, garbage, recyclable materials, or other waste shall be kept only in sanitary containers. No Owner shall permit or cause any trash or refuse to be kept within any portion of the Project other than in customary receptacles. These receptacles shall be located only in places specifically designated for such purpose.

Section 4.10 Outside Laundering and Drying. No exterior clothesline shall be erected or maintained, and there shall be no exterior drying or laundering of clothes on balconies, patios, porches, or other outside areas other than on drying "trees" or other removable apparatus specifically approved by the ARB.

Section 4.11 Prohibited Restrictions. No Owner shall execute or file for record any instrument which imposes restrictions upon the sale, leasing or occupancy of his or her Unit other than as set forth in this Declaration, including, but not limited to restrictions based on race, color, religion, sex, sexual orientation, age, marital status, or national origin.

Section 4.12 Storage. No Owner shall park or store machinery, equipment, baby carriages, playpens, bicycles, wagons, benches or chairs on any part of the Common Areas, except that such personal property may be stored in storage areas, if any, that may be designated by the Association for that purpose. Sun decks and other recreational areas may be used for their customary purposes.

Section 4.13 Antenna and Clothesline. No television or radio poles, antenna, satellite transmission or reception equipment, flagpoles, exterior alarms, or external fixtures other than those originally installed by Declarant or approved by the ARB, and any replacements thereof, shall be constructed, erected or maintained on or within the Project or any structures on it. No wiring, insulation, air conditioning or other machinery or equipment other than that originally installed by Declarant or approved by the ARB, and any replacements thereto shall be constructed, erected or maintained on or within the property or any structures on it. Each Owner shall have the right to maintain television or radio antenna within completely enclosed portions of his or her Unit. The location of common antenna or connection facilities for cable television shall be solely as designated by the ARB.

Section 4.14 Personal Business Records Permitted. No restriction contained in this Article shall be construed in such a manner as to prohibit any Owner from the

use of a Unit to (a) maintain his or her personal, professional library; (b) keep his or her personal business records or accounts; or (c) handle his or her personal or professional telephone calls or correspondence. Such uses are expressly declared to be customarily incident to the residential use of the Project and not in violation of any provision of this Article.

Section 4.15 Vehicles and Parking. Unless otherwise specifically permitted by the Association, no motor vehicle shall be parked or left within the Project other than in an assigned or appurtenant parking space or in any designated guest parking space or area. No boat, trailer, recreation vehicle, camper, or commercial vehicle shall be parked or left within the Project other than in a parking area designated by the Association for the parking or storage of such vehicles, and no such vehicles may be used for habitation or recreation while within the Project. No truck or recreation vehicle may be stored within the Project unless it is the Owner's principal means of transportation. No vehicular repairs shall be undertaken within the Project.

Section 4.16 Restrictions Applicable to Guests, etc. The use of any Unit or of the Common Areas or any portion thereof by any guest, invitee or tenant of any Owner shall be subject to all of the provisions of this Declaration, including, without limitation, all of the use restrictions imposed under this Article, the Bylaws and the Rules and Regulations of the Association, and the Association may proceed directly against such guest, invitee or tenant in the enforcement of the provisions of this Declaration, the Association's Bylaws or the Association's Rules and Regulations.

Section 4.17 Fences and Screens. Except as may from time to time be provided in the Property Use and Maintenance Regulations, no fences, awnings, ornamental screens, screen doors, sunshades or walls of any nature shall be erected or maintained on or around any portion of any structure or elsewhere within the Project, except those that are installed in accordance with the original construction of the Project, and their replacements or as are authorized and approved by the ARB.

Section 4.18 Gas or Liquid Storage. No tank for the storage of gas or flammable liquid shall be installed upon or in the Project unless such installation is done by Declarant, the Association, or has been approved by the Board.

Section 4.19 Potted Plants. No potted plants shall be placed on stucco surfaces.

Section 4.20 Diseased Plants. No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown or maintained within the Project.

Section 4.21 Climbing Vines. No Owner shall plant vines or creepers to climb or entwine any portion of any structure or elsewhere within the Project, including, but not limited to, deck railings and fencing.

Section 4.22 Plants in Common Areas. No Owner shall plant, cut, trim, prune, remove, replace or otherwise alter or affect the appearance or location of any tree, plant or other vegetation located in any portion of the Common Areas without the prior written consent of the ARB. The Association may recover from any Owner violating this Section 4.22 the cost of restoring or replacing any such vegetation. The ARB shall not permit the removal of any trees in the Common Areas, except in the case where a qualified landscape architect or arborist has certified that the tree is dead, dying, or creates a condition which poses a significant hazard to life or property and which cannot be corrected by measures, such as pruning, which fall short of total removal. In any event, the Association shall consult with Declarant prior to taking any action to remove any of the trees in the Common Areas.

Section 4.23 Alterations. No Owner shall make any alterations or modifications to the exterior of the buildings, fences, railings or walls of the Project's structure without the prior written consent of the ARB. Any structural, plumbing or electrical modification, alteration or addition to or of a Unit shall (a) conform to the standards for construction contained in the Berkeley Building Code or, if applicable, the California Administrative Code, as amended from time to time, and (b) be approved, in advance, by the ARB.

Section 4.24 Effect on Insurance. No Owner shall permit anything to be done or kept in his or her Unit or in the Common Areas which will result in any increase in the Association's insurance premiums or in the cancellation of insurance on any part of the Project or which would violate any law or the Common Areas Lease.

Section 4.25 Delegation of Use. Any Owner may delegate his or her rights of use and enjoyment of the Project, including any recreational facilities, to the members of his or her family, servants, guests, tenants and invitees (to the extent permitted hereby), and invitees, and to such other persons as may be permitted by the Bylaws and the Association Rules and Regulations, subject however, to this Declaration. Nevertheless, if an Owner has leased or rented a Unit, the Owner, and members of the Owner's family, servants, guests, tenants and invitees shall not be entitled to use and enjoy any of such rights in the Project while the Owner's Unit is occupied by the tenant. Instead, the tenant, while occupying such Unit, shall be entitled to use and enjoy such rights, including any recreational facilities, and can delegate the rights of use and enjoyment in the same manner as if tenant were an Owner during the period of his or her occupancy. Each Owner shall notify the secretary of the Association within five (5) calendar days after the entry into a lease for a Condominium of the period for which the lease will be effective and of the names of each tenant of such Owner's Condominium. Each Owner or tenant shall also notify the secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment and the relationship that each such person bears to the Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as are the rights of Owners. No such delegation shall relieve an Owner from liability to the Association or to other Owners for payment of assessments or performance of the covenants, conditions, and restrictions contained in this Declaration.

Section 4.26 Single Family Use. No Unit shall be occupied by more than a Single Family as defined herein.

Section 4.27 Indemnification. Each Owner shall be liable to the remaining Owners for any damage to the Common Areas or to Association-owned property resulting from any intentional act or negligence of that Owner, that Owner's family, servants, guests, tenants, or invitees, but only to the extent that such damage is not covered by casualty insurance in favor of the Association. Each Owner, by accepting a Condominium deed, agrees to indemnify each and every other Owner (the "Indemnitees"), and to hold each Indemnatee harmless from, and to defend him or her against any claim of any person for personal injury or property damage occurring within the Unit of the indemnifying Owner, including Exclusive Use Common Areas, except to the extent that (i) such injury or damage is compensated by liability insurance in favor of the Association or the Indemnatee, or (ii) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or the Indemnatee.

Section 4.28 Enforcement and Remedies. The objective of this Declaration shall be to promote and seek voluntary compliance by Owners with the environmental standards and property use restrictions contained herein rather than the use of the sanctions in Section 7.6. Accordingly, in the event that the Association becomes aware of an architectural or property use infraction that does not necessitate immediate corrective action under Section 7.6 hereof, the Owner responsible for the violation shall receive written notice thereof and shall be given a reasonable opportunity to comply voluntarily with the pertinent provision(s) of this Declaration. Such notice shall describe the noncomplying condition, request that the Owner correct the condition within a reasonable time specified in the notice, and advise the Owner of his or her appeal rights. The failure of any Owner to comply with any provision of this Article 4, or with an order or decision of the Association, shall result in creation of a cause of action of the Association, and of any aggrieved Owner for the recovery of damages or for injunctive relief or both.

ARTICLE 5 - MAINTENANCE AND ALTERATIONS

Section 5.1 Owner's Responsibilities.

(a) Each Owner of a Condominium shall be responsible for repairing and maintaining his or her Unit, including the equipment and fixtures in the Unit and the interior walls, ceilings, windows, and doors of the Unit, and shall maintain his or her Unit in a clean, sanitary, workable, and attractive condition. However, each Owner has complete discretion as to the choice of furniture, furnishings, and interior decorating, except that windows can be covered only by drapes, shutters, blinds or shades and cannot be painted or covered by foil, cardboard, or other similar materials. Each Owner also shall be responsible for repair, replacement, and interior cleaning of the windows, skylights and other interior glass of his or her Unit.

(b) Each Owner shall, at his or her own expense, clean, maintain, and repair any Exclusive Use Common Areas over which the Owner has an easement. In any case in which two or more Owners have easements to use and enjoy the same Exclusive Use Common Areas, such Owners will share equally in expenses incurred for such cleaning, maintenance and repair.

Section 5.2 Association's Responsibilities. Subject to the provisions of the Common Areas Lease, and as set forth more fully in Section 7.9 of this Declaration, the Association shall be responsible for repairing and maintaining the Common Areas in a clean, sanitary, workable, and attractive condition.

ARTICLE 6 - TAXES AND ASSESSMENTS

Section 6.1 Separate Assessments. To the extent allowed by law, all Condominiums in the Project, including their pro rata undivided interests in all the Common Areas and the membership of an Owner in the Association, shall be separately assessed and taxed so that all taxes, assessments, payments-in-lieu of taxes, and charges that may become liens prior to First Mortgages under local law shall relate only to the individual Condominium and not to the Project as a whole. Each Owner shall be obligated to pay any such taxes or assessments against his or her Condominium and against his or her personal property. In the event, however, that any Owner fails to pay any such taxes or assessments, the Association may make payment of them, provided that any such Owner shall promptly repay to the Association the full amount of such taxes or assessments, including amounts required to compensate the Association for its administrative costs and interest at the rate of ten percent (10%) per annum or at such other rate as the Board may lawfully impose from time to time. Nothing herein shall prevent any Owner from contesting the imposition of any tax or the amount of the assessment of his or her Unit.

Section 6.2 Payment Prior to Segregation. If real property taxes or payments-in-lieu of taxes are to be imposed on the Project, until such time as such taxes or payments-in-lieu of taxes have been segregated by the Alameda County Assessor, they shall be paid by the respective Owners. The proportionate share of the taxes or payments for a particular Condominium shall equal the Percentage Interest of a Condominium. If, and to the extent that, any taxes are not paid by any Owner of a Condominium and are allowed to become delinquent, they may be paid by the Association and shall be collected from the delinquent Owner by the Association as provided in Section 6.1, above.

ARTICLE 7 - THE ASSOCIATION

Section 7.1 Incorporation. The Association shall be a nonprofit mutual benefit corporation formed under the laws of the State of California. At the recording of the first Condominium sale to an Owner other than Declarant, the Association shall

be charged with the duties and invested with the powers set forth in the Articles, the Bylaws, and this Declaration.

Section 7.2 Action By Board, Officers, and Designees. Except as to matters requiring the approval of Owners as set forth in this Declaration, the Articles, or the Bylaws, the affairs of the Association, including the exercise of its powers and duties, shall be conducted by the Board, such officers as the Board may elect or appoint, or such persons or entities with delegated authority under the provisions of Section 7.7 of this Declaration.

Section 7.3 General Statement of Powers. The Association shall have all the powers of a nonprofit mutual benefit corporation organized under the General Nonprofit Mutual Benefit Corporation Law of California, as now in effect or as hereinafter amended or replaced, subject only to such limitations on the exercise of its powers as are set forth in the Articles, the Bylaws, and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration, the Articles, and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including without limitation, the acts enumerated in Section 7.4 through 7.7 of this Declaration, and the right to be sued by an Owner.

Section 7.4 Rights of Assessment. The Association may establish, fix, and levy assessments against the Owners and collect and enforce payment of such assessments, in accordance with the provisions of this Declaration.

Section 7.5 Right To Establish Rules. The Association may, subject to the retained rights of the Ground Lessor, adopt, amend, and repeal Association Rules and Regulations as it considers appropriate. The Association Rules and Regulations shall regulate the use and enjoyment of the Common Areas. A copy of the Association Rules and Regulations as adopted, amended, or repealed shall be mailed or otherwise delivered to each Owner and a copy shall be posted in a conspicuous place within the Project. If any provision of this Declaration, the Articles, the Bylaws, or the Common Areas Lease, is inconsistent with or materially alters any Association rule or regulation, the Declaration, the Articles, the Bylaws, or the Common Areas Lease, shall control to the extent of any such inconsistency.

Section 7.6 Right To Impose Sanctions.

(a) In addition to any other enforcement rights described in this Declaration and the Bylaws, or authorized by law, and subject to any restrictions on the Association's enforcement rights, including any due process requirements, imposed by this Declaration, the Bylaws, or by law, the Association may take any of the following actions against any person or entity whose act or failure to act violates or threatens to violate any provision of this Declaration, the Bylaws, the Common Areas Lease, or the Association Rules and Regulations:

- (i) Impose monetary penalties, including late charges and interest.
- (ii) Suspend voting rights in the Association.
- (iii) Suspend use privileges for the Common Areas.
- (iv) Commence a legal action for declaratory judgment, damages, or injunctive relief, or any combination of the foregoing.

(b) The determination whether to impose any of the sanctions set forth in Section 7.6(a) shall be within the sole discretion of the Association. Any legal action may be brought in the name of the Association on its own behalf and on behalf of any Owner who consents, and the prevailing party in any such action shall be entitled to recover costs and reasonable attorneys' fees.

(c) The Association may take more than one of the foregoing enforcement actions against any one violation or threatened violation, provided that a suspension of use privileges shall not exceed thirty (30) calendar days (unless the suspension is for delinquent assessments) and no monetary penalty shall exceed that permitted by to section 1366.1 of the California Civil Code, as it shall hereafter be amended.

(d) The Association, in its sole discretion, may resolve or settle any dispute to which it is a party, including any legal action, on its own behalf and under such terms and conditions as it considers appropriate.

(e) The enforcement of monetary penalties is subject to the restrictions described in Section 9.7 of this Declaration.

(f) If an Owner fails to cure a default or any violation of the Condominium Instruments within sixty (60) calendar days after written notice to that Owner, the Association shall give the notice required in Section 15.9 of this Declaration.

Section 7.7 Right of Delegation. The Association may delegate any of its powers and duties to its officers, employees, committees, or agents, including The Regents of the University of California, or a professional management agent.

Section 7.8 General Statement of Duties. In addition to any duties described in the Articles or Bylaws, the Association shall have the duties set forth in Sections 7.9 through 7.15 of this Declaration.

Section 7.9 Repair and Maintenance of Common Areas and Exclusive Use Common Areas. Subject to the provisions of the Common Areas Lease, the Association shall manage and maintain in good condition and repair the Common Areas, including the facilities, improvements, landscaping, and other personal and real property acquired by or subject to the control of the Association, and shall clean, maintain and repair all Exclusive Use Common Areas, if not properly cleaned, maintained or repaired by an

Owner pursuant to Section 5.1(b) of this Declaration. The Association shall create and maintain a reserve fund out of regular assessments for the replacement of all elements of the Common Areas. Subject to the provisions of Section 9.7(c) of this Declaration, the Association may levy a special assessment against any Owner who has an easement to use any Exclusive Use Common Areas on which the Association performs such cleaning, maintenance or repair to reimburse the Association for any costs incurred therein.

Section 7.10 Contracts for Goods and Services.

(a) Except as expressly limited by this Declaration, the Association shall enter into such contracts for services or materials as may be necessary to perform its duties, including contracts with Declarant.

(b) Any agreement between the Association and Declarant pursuant to which Declarant agrees to provide services, and any agreement for professional management by any other manager, shall provide for termination by either party without cause or payment of a termination fee on thirty (30) calendar days' written notice and shall have a maximum contract term of one (1) year, provided that the Association can renew any such contract on a year-to-year basis. If the Project is professionally managed, the Association shall not terminate professional management and assume self-management without the consent of sixty-seven percent (67%) of the voting rights of Owners, or of each class of Owners if a two-class voting system is in effect, and of fifty-one percent (51%) of First Mortgagees.

Section 7.11 Payment of Taxes and Assessments. If taxes or assessments authorized by law are levied against the Common Areas or any property owned by the Association, the Association shall pay such taxes or assessments. Such taxes and assessments may be contested or compromised by the Association, provided that they are paid or that a bond insuring payment is posted before the sale or the disposition of any property to satisfy the payment of such taxes.

Section 7.12 Furnishing of Utilities. The Association shall acquire, provide, and pay for water, sewer, garbage disposal, refuse and rubbish collection, electrical, telephone, gas, and other necessary utility services for the Common Areas and the Condominiums to the extent that such services are not separately billed.

Section 7.13 Securing Insurance. The Association shall obtain and maintain the insurance described in Article 10 of this Declaration.

Section 7.14 Preparation and Distribution of Financial Information and Governing Instruments. The Association shall prepare and distribute the following financial statements, reports, and copies of the governing instruments as indicated:

- (i) A pro forma operating budget for each fiscal year, including:
 - (A) estimated revenues and expenses on an accrual basis;

- (B) identification of the total cash reserves currently set aside;
- (C) identification of the estimated remaining life and the methods of funding used to defray the future repair, replacement, or additions to major components for which the Association is responsible; and
- (D) a general statement addressing the procedures used for the calculation and establishment of reserves to defray the future repair, replacement, or additions to major components for which the Association is responsible.

A copy of the pro forma operating budget shall be distributed to each Owner and to any Mortgagee, if such Mortgagee has requested a copy, not less than forty-five (45) nor more than sixty (60) calendar days prior to the beginning of each fiscal year.

(ii) An annual report consisting of a balance sheet rendered as of the last day of the fiscal year, an operating statement for the fiscal year, and a statement of changes in financial position for the fiscal year. A copy of the annual report shall be distributed to each Owner and to any Mortgagee, if such Mortgagee has requested a copy, within one hundred twenty (120) calendar days after the close of the fiscal year. So long as there are more than fifty (50) units in the Project or in any fiscal year in which the gross income of the Association exceeds the amount stated in section 1365(b) of the California Civil Code, a review of the annual report shall be prepared by a licensee of the California State Board of Accountancy in accordance with generally accepted accounting principles. If the annual report is not reviewed by an independent accountant, the report shall be accompanied by the certificate of an authorized officer of the Association that the report was prepared from the books and records of the Association without independent audit or review.

(iii) A statement of the Association's policies and practices in enforcing its remedies against Owners for delinquent regular or special assessments, including the recording and foreclosing of liens against a delinquent Owner's Condominium. A copy of this statement shall be distributed to each Owner and to any Mortgagee that has requested a copy within sixty (60) calendar days prior to the beginning of each fiscal year.

(iv) Copies of this Declaration, the Articles, the Bylaws, the Association Rules and Regulations, the most recent annual report and other financial materials distributed pursuant to Section 7.14(ii) above, and the statement regarding delinquent assessments as described in Section 9.11 of this Declaration to any Owner within ten (10) calendar days of the mailing or delivery of a written request. The Board may impose a fee to provide these materials that is not to exceed the Association's reasonable costs in preparing and reproducing the materials.

Section 7.15 Other Duties. The Association shall perform such other acts as may be reasonably necessary to exercise its powers or perform its duties under any of the provisions of this Declaration, the Articles, the Bylaws, the Common Areas Lease, the Association Rules and Regulations, or Board resolutions.

Section 7.16 Limitations on Authority of Board and the Association. Except with the vote or written consent of the Owners holding fifty-one percent (51%) of the voting rights of each class of Owners, if two classes exist, or, if only one class exists, fifty-one percent (51%) of the voting rights of Owners (including Declarant) and fifty-one percent (51%) of the voting rights of Owners other than Declarant, the Board shall not take any of the following actions:

- (i) Except as permitted by law, incur aggregate expenditures for capital improvements other than budgeted and reported capital expenditures to the Common Areas in any fiscal year in excess of fifteen percent (15%) of the budgeted gross expenses of the Association (including budgeted capital expenses) for that fiscal year.
- (ii) Sell during any fiscal year property of the Association having an aggregate fair market value greater than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.
- (iii) Pay compensation to members of the Board of Directors or to officers of the Association for services performed in the conduct of the Association's business, provided that the Board may reimburse expenses incurred in carrying on the business of the Association.
- (iv) Enter into a contract with a third person to furnish goods or services for the Common Areas or the Association for a term longer than one (1) year, with the following exception: enter into any contracts which bind it or the Association for a period in excess of one (1) year, provided that any management agreement for the Project shall further provide that it can be cancelled upon thirty (30) calendar days' written notice by the Association, except for the following:
 - (1) a management contract, the terms of which have been approved by the Federal Housing Administration or Veteran's Administration;
 - (2) the contract of a public utility company if the rates charged for the materials or services are regulated by the California Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract for the regulated rate;

- (3) prepaid casualty and/or liability insurance policies for a term not to exceed three (3) years' duration provided that the policy permits a short rate cancellation by the insured;
- (4) lease agreements for fixtures and equipment, which shall not exceed five (5) years' duration, provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more; or
- (5) agreements for cable or microwave communication services and equipment, which shall not exceed five (5) years' duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

Section 7.17 Limitation on Liability of Directors and Officers. No director, officer, committee member, employee, or other agent of the Association, including Declarant or any agent of Declarant when acting in such capacity, shall be liable to any Owner or any other party, including the Association, for any damage, loss, or prejudice suffered or claimed on account of any act, omission, error, or negligence of any such person if such person is found, pursuant to the procedures set forth in the Bylaws, to have complied with the standards of care as set forth in the Bylaws or in the relevant provisions of the California Corporations Code if more stringent than those set forth in the Bylaws, or to otherwise be entitled to be indemnified pursuant to the Bylaws.

Section 7.18 Inspection of Books and Records.

(a) Any Owner, or that Owner's duly appointed representative, shall have access to the Association's membership register, books of account, and minutes from any meeting of the Owners, the Board, or any committee of the Board in order to inspect and copy such records for any purpose reasonably related to his or her interest as an Owner. Any Owner may, at his or her own expense, cause an audit or inspection to be made of the books and financial records of the Association. Access shall be at any reasonable time at the office of the Association or such other place within the area of the City of Berkeley as the Board prescribes. The Board shall establish rules regarding the notice the Owner must give to the custodian of the records or the Board to obtain access, the hours and days of the week when the records may be inspected and copied, and the charges to be imposed by the Association for copying records requested by the Owner.

(b) Any member of the Board may at any reasonable time inspect, copy, or make extracts of any books, records, or documents of the Association and inspect for physical properties owned or controlled by the Association.

(c) The provisions of this Section 7.18 shall be further governed by sections 8330, 8333, and 8334 of the California Corporations Code, as now in effect or as hereinafter amended or replaced.

ARTICLE 8 - ASSOCIATION MEMBERSHIP AND VOTING

Section 8.1 Membership Appurtenant to Ownership.

(a) Each Owner, including Declarant, shall be a Member of the Association. Membership shall be appurtenant to each Condominium in the Project, and the holding of an ownership interest in a Condominium in the Project shall be the sole qualification for membership, provided that no Owner shall hold more than one membership even though such Owner owns an interest in more than one Condominium. Membership shall terminate automatically when the Owner no longer holds any ownership interest in any Condominium in the Project. Membership may not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on a transfer of title to a Condominium and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Condominium shall transfer automatically the appurtenant membership to the transferee. Any party that holds an interest in a Condominium merely as security for performance of an obligation shall not be a Member of the Association.

(b) Each Member of the Association shall have the rights, duties, and obligations set forth in this Declaration, the Articles, the Bylaws, and the Association Rules and Regulations.

(c) Notwithstanding any other provision of this Declaration, the Articles, or the Bylaws, throughout the Declarant Control Period, Declarant shall be deemed to be the Class B Owner in the Association, as defined in Section 8.3(a) below, regardless of the number of Condominiums that it owns at any point during that Period.

Section 8.2 Approval by a Specified Percentage of Owners. Except as required by law or as otherwise provided in this Declaration, the Articles, or the Bylaws, and subject to the provisions of Section 8.3 of this Declaration, all matters requiring the approval of a majority or a specified percentage of Owners or of the voting rights or voting power of Owners shall be deemed approved if approved at any duly called regular or special meeting at which a quorum is present, either in person or by proxy, by Owners holding the specified percentage of the total voting power of Owners present, either in person or by proxy, or if approved by written ballot in the absence of a meeting, in accordance with provisions, if any, of the Bylaws duly permitting the use of a written ballot.

Section 8.3 Voting.

(a) The Association shall have two classes of voting membership as follows:

(i) Class A: Class A Owners are all Owners, with the exception of Declarant. Each Class A Owner shall be entitled to one vote for each Condominium in which he or she owns an interest. If more than one Owner owns an interest in the Condominium, only one vote may be cast with respect to that Condominium.

(ii) Class B: The Class B Owner shall be Declarant, who shall be entitled to three votes for each Condominium it owns or has the right to create in any phase of the Project pursuant to Section 17.2 of this Declaration. Class B membership shall cease and be converted to Class A membership on the expiration of the Declarant Control Period.

(b) As long as two classes of voting memberships exist, except as expressly provided otherwise in this Declaration, any action by the Association that requires approval by the Owners or by the voting rights or voting power of a specified percentage of Owners shall require the approval by the designated percentage of voting power in each class. Except as required by law, or as otherwise provided in this Declaration, the Articles or the Bylaws, matters which require the approval or vote of Class A Owners will be deemed approved by Class A Owners if approved by the specified percentage of Class A Owners present, either in person or by proxy, at a duly called regular or special meeting at which at least thirty-three and one-third percent (33-1/3%) of the voting power of Class A Owners is present, either in person or by proxy, or if approved by written ballot by the specified percentage of Class A Owners if the number of such votes cast by ballot equals or exceeds thirty-three and one-third percent (33-1/3%) of the voting power of Class A Owners.

(c) Voting rights shall vest at the time of conveyance of any Condominium.

(d) Voting for the members of the Board of Directors shall be by secret written ballot, and all Owners, excluding the Class B Owner during the Declarant Control Period, shall be entitled to exercise cumulative voting rights as provided in Section 8.5 of this Declaration.

Section 8.4 Joint Ownership Votes. The vote that is attributed to each Condominium may not be cast on a fractional basis. If a Condominium has more than one Owner and the Owners are unable to agree as to how the vote should be cast, the vote shall be forfeited on the matter in question. If one Owner casts the vote attributed to a Condominium, the vote shall conclusively bind all the Owners of that Condominium. If more than one Owner casts the vote attributed to a Condominium in any matter in which only one vote can be cast for that Condominium, the votes cast by such Owners shall not be counted and shall be considered void.

Section 8.5 Cumulative Voting.

(a) The election of members to the Board of Directors may be by cumulative voting as described herein, provided that a candidate's name has been placed in nomination prior to the voting and at least one (1) Owner has given notice at the meeting prior to the voting of his or her intention to cumulate votes. If any such Owner has given such notice, then all Owners shall have the right to cumulate their votes for candidates in nomination.

(b) Under cumulative voting, each Owner, either in person or by proxy, may give a single candidate the number of votes equal to the number of Directors for whom the Owner is entitled to vote multiplied by the number of votes the Owner is entitled to exercise under this Declaration, or the Owner may distribute these cumulated votes among any two or more candidates as the Owner desires. Subject to the provisions of the Bylaws, the candidates receiving the highest number of votes, up to the number of Directors to be elected, shall be elected.

(c) Unless the entire Board is removed by a vote of the Owners, an individual director may not be removed prior to the expiration of his or her term if the votes against removal would have been sufficient to elect that director if cast cumulatively at an election at which the same total number of votes were cast and all Directors authorized at the time of the most recent election of that director were being elected, except that this provision shall not apply to Declarant during the Declarant Control Period.

(d) These cumulative voting provisions may not be applied to deny Owners other than Declarant the right, as set forth in the Bylaws, to elect two of the Directors during the Declarant Control Period.

(e) Notwithstanding the foregoing provisions of this Section 8.5, the Class B Owner shall not be entitled to exercise cumulative voting rights during the Declarant Control Period.

ARTICLE 9 - ASSESSMENTS

Section 9.1 Payment of Assessments.

(a) Declarant covenants and agrees for each Condominium owned by it in the Project, and each Owner by acceptance of a deed, covenants and agrees for each Unit owned, to pay to the Association the initial working capital payment and the regular and special assessments levied in accordance with the provisions of this Declaration, and to allow the Association to enforce any assessment lien established in accordance with the provisions of this Declaration by nonjudicial proceedings under a power of sale or by any other means authorized by law.

(b) Notwithstanding the provisions of Section 9.1(a), Declarant reserves the right, for a period of up to one (1) year following the date of conveyance of the first Condominium, to pay both the operating expenses of the Association and funds necessary to establish adequate reserves in lieu of imposition of assessments by the Association.

Section 9.2 Initial Working Capital Payment.

(a) Each Condominium in the Project shall be liable for an initial working capital payment in an amount equal to two (2) months' regular assessment (as estimated by Declarant at the time of sale). Such payment is in addition to any assessments imposed pursuant to this Declaration. Declarant, as the agent of the Board of Directors, will collect such payment from each initial purchaser other than Declarant at the time of closing and will deliver the funds collected to the Board of Directors for deposit in a segregated account. Such funds may be used for prepaid expenses, initial equipment, supplies, organizational costs, other start-up costs, and for such other purposes as the Board may determine.

(b) If a deed transferring title to the last Condominium to an Owner other than Declarant has not been recorded within sixty (60) calendar days of the recordation of a deed conveying title to the first Condominium sold, Declarant shall pay the initial working capital payment to the Association for each unsold Condominium. Declarant shall be entitled to reimbursement of such payment at the time of recordation of a deed conveying title to each Condominium for which Declarant made the payment.

Section 9.3 Limited Exemption During Construction. Notwithstanding the provisions of Section 9.1 of this Declaration, Declarant or any other Owner shall not be obligated to pay any portion of a regular or special assessment that is for the purpose of defraying expenses and establishing reserves directly attributable to the existence and the use of any Condominium until occupancy for the Unit of that Condominium has been authorized by the State Fire Marshall or his or her delegate. This assessment exemption includes, but is not limited to, assessments levied for the following purposes: roof replacement, exterior maintenance, walkway and common area lighting, refuse disposal, cable television, and domestic water supplied to occupied Units.

Section 9.4 Personal Obligation of Owner. Each assessment or installment, together with any late charge, interest, collection costs, and reasonable attorneys' fees, shall be the personal obligation of the Owner at the time such assessment or installment becomes due and payable. If there is more than one Owner of a particular Condominium, each Owner shall be jointly and severally liable. The personal obligation for any delinquent assessments or installments and related sums shall not pass to an Owner's successor in interest unless expressly assumed by that successor in interest, provided that any lien held by the Association, if properly recorded in accordance with Section 9.13 of this Declaration, shall not be affected by this provision. No Owner may be relieved from the obligation to pay assessments or installments by waiving the use or

enjoyment of all or any portion of the Common Areas or the Owner's Condominium, or by abandoning the Condominium.

Section 9.5 Scope of Assessment Authority.

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the members of the Association; to improve, replace, repair, operate, and maintain the Common Areas and the improvements and personal property in the Common Areas that are owned, leased or maintained by the Association; to provide funds necessary for the performance of the duties of the Association as set forth in this Declaration; and to further any other purpose that is for the common benefit of the Owners in their use and enjoyment of the Project.

(b) The Association shall establish and maintain a reserve fund adequate for it to perform its responsibilities, as set forth in this Declaration, the Articles or the Bylaws, with regard to the periodic maintenance, repair and replacement of improvements to the Common Areas. Such reserve fund shall be maintained out of regular assessments for common expenses.

Section 9.6 Regular Assessments.

(a) Not more than ninety (90) calendar days nor less than sixty (60) calendar days before the beginning of each fiscal year of the Association, the Board, without the requirement for a vote of the Owners, shall establish the regular assessment for the forthcoming fiscal year.

(b) Except as permitted by law, no regular assessment shall be set in an amount that is more than ten percent (10%) greater than the amount of the regular assessment for the preceding fiscal year without the consent of a majority of the voting rights of Owners, or of the voting rights of each class of Owners if a two-class voting system is in effect.

(c) Unless the Association is exempt from federal or state income taxes, including without limitation an exemption under section 528 of the Internal Revenue Code and section 23701t of the California Revenue and Taxation Code, as now in effect or as hereinafter amended or replaced, all reserve funds, to the extent possible, shall be designated and accounted for as capital contributions to the Association, and the Board shall take such steps as may be reasonably necessary under federal and state tax laws to prevent the reserve funds from being taxed as income of the Association, including, if necessary, maintaining the reserve funds in segregated accounts and not commingling the fund with general operating funds.

Section 9.7 Special Assessments.

(a) The Board may levy a special assessment if the Board, in its discretion, determines that the Association's available funds are or will become inadequate to meet the estimated expenses of the Association, including the maintenance of appropriate reserves, for a particular fiscal year for any reason, including, but not limited to, unanticipated delinquencies, costs of construction, unexpected repairs or replacements of capital improvements or otherwise. The Board shall determine the amount necessary to meet the estimated expenses, and if the amount is approved by a majority vote of the Board, it shall become a special assessment, except that the Board may not, except as permitted by law, impose special assessments which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association (including budgeted capital expenses) for that fiscal year without the consent of a majority of the voting rights of Owners or of the voting rights of each class of Owners if a two-class voting system is in effect. The Board, in its discretion, may levy the entire assessment immediately or levy it in installments over a period it considers appropriate.

(b) Unless the Association is exempt from federal or state income taxes, including without limitation an exemption under section 528 of the Internal Revenue Code and section 23701t of the California Revenue and Taxation Code, as now in effect or as hereinafter amended or replaced, the Board shall take such steps as may be reasonably necessary to prevent the special assessment from being included in the Association's income for federal and state income tax purposes, including, if necessary, depositing funds in a segregated account, not commingling the funds with any other funds of the Association, and using the funds solely for the purpose for which they were levied.

(c) After compliance with the due process requirements in the Bylaws, the Board may impose a monetary penalty and levy a special assessment against a particular Condominium to reimburse the Association for any taxes, assessments or other expenses paid by the Association on behalf of the Owner(s) of the Condominium assessed; costs incurred in repairing damage to the Common Areas, or any improvements or personal property located thereon, for which the Owner(s) of the Condominium assessed was allegedly responsible; costs incurred in cleaning, maintaining or repairing any Exclusive Use Common Areas not properly cared for by an Owner pursuant to Section 5.1(b) of this Declaration; or costs incurred in bringing the Owner or the Owner's Condominium into compliance with this Declaration, the Articles, the Bylaws, or the Association Rules and Regulations, provided that, except as permitted by law, a special assessment related to a monetary penalty may not become a lien against the responsible Owner's Condominium that is enforceable by a power of sale under sections 2924, 2924b and 2924c of the California Civil Code. This restriction on enforcement is not applicable to late payment penalties for delinquent assessments or to charges imposed to reimburse the Association for loss of interest or for collection costs, including reasonable attorneys' fees, for delinquent assessments.

Section 9.8 Allocation of Assessments. Subject to the provisions of Section 9.4 of this Declaration, the regular and special assessments levied by the Board shall be allocated in accordance with the Percentage Interest of each Unit, except that special assessments levied against a particular Condominium pursuant to Section 9.7(c) of this Declaration shall not be subject to this allocation provision.

Section 9.9 Assessment Period. Unless the Board determines otherwise, the Association's fiscal year shall commence on July 1 of each year and shall terminate on June 30 of the next year, provided that the first regular assessment period for all Condominiums in any phase shall commence on the first day of the calendar month following the date of the closing of the first conveyance of a Condominium, and shall terminate on June 30 of that year. The regular assessment shall be payable in equal monthly installments unless the Board adopts some other method for payment. The first regular assessment and all special assessments shall be adjusted according to the number of months remaining in the fiscal year and shall be payable in equal monthly installments unless the Board adopts some other method for payment.

Section 9.10 Due Date, Late Charges, and Interest.

(a) At least ten (10) calendar days prior to the date on which any regular or special assessment is due, the Board shall give each Owner written notice of the amount of assessment and the due date (or if paid in installments, the due dates and the amount of each installment). The notice need be given only once, at the beginning of each fiscal year for any regular assessment paid in installments, and once for any special assessment paid in installments. Unless the Board specifies otherwise, the installment due dates shall be the first day of each month.

(b) Any assessment payment, including any installment payment, shall become delinquent if payment is not received by the Association within fifteen (15) calendar days after its due date. There will be a late charge of Ten Dollars (\$10.00) or ten percent (10%) of the delinquent assessment payment, if greater, or at the option of the Board, such higher amount on each delinquent payment as may be permitted by law. A late charge may not be imposed more than once on any delinquent payment, shall not eliminate or supersede any charges imposed on prior delinquent payments, and shall constitute full compensation to the Association for any additional bookkeeping, billing, or other administrative costs resulting from the delinquent payment. Nothing in this provision shall affect the right of the Association to recover its costs of collection and enforcement, as well as reasonable attorneys' fees, if it prevails in an action brought to collect delinquent payments pursuant to the provisions of Section 9.12 of this Declaration.

(c) Interest shall also accrue on any delinquent payment at the rate of ten percent (10%) per annum or at such rate as the Board may lawfully impose from time to time. Interest shall accrue from a date thirty (30) calendar days after the due date of the assessment through and including the date full payment is received by the Association.

Section 9.11 Estoppel Certificates.

(a) Within ten (10) calendar days of the mailing or delivery of a written request by an Owner, the Board shall provide the Owner with a written statement containing the following information: (i) whether, to the knowledge of the Association, the Owner or the Owner's Condominium is in violation of any of the provisions of this Declaration, the Articles, the Bylaws, or the Association Rules and Regulations; (ii) the amount of regular and special assessments, including installment payments, paid by the Owner during the fiscal year in which the request is received; and (iii) the amount of any delinquent assessments, penalties, interest, attorneys' fees, and other charges on the Owner's Condominium as provided by this Declaration, the Articles, the Bylaws, or the Association Rules and Regulations.

(b) The Board may charge the Owner a fee to recover its reasonable costs in preparing the statement.

(c) Any prospective purchaser or Mortgagee of the Owner's Condominium may rely on the information in this written statement, provided that reliance may not extend to any violation of the Declaration, the Articles, the Bylaws, or the Association Rules and Regulations of which the Association does not have actual knowledge.

Section 9.12 Enforcement of Assessments. The Association has the right to collect and enforce assessments. In addition to the enforcement powers described in Section 7.6 of this Declaration, and subject to the restriction on the enforcement of monetary penalties described in Section 9.7 of this Declaration, the Association may enforce delinquent assessments, including delinquent installments, by suing the Owner directly on the debt established by the assessment, or by establishing a lien against the Owner's Condominium as provided in Section 9.13 of this Declaration and foreclosing the lien through either judicial proceedings or nonjudicial proceedings under a power of sale as provided in Section 9.14 of this Declaration. The Association may commence and maintain a lawsuit directly on the debt without waiving its right to establish a lien against the Owner's Condominium for the delinquent assessment. In any action instituted by the Association to collect delinquent assessments, accompanying late charges, or interest, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

Section 9.13 Creation of Assessment Lien.

(a) A delinquent assessment or installment, together with any accompanying late charges, interest, costs (including reasonable attorneys' fees), and penalties as may be authorized under this Declaration shall become a lien on the Condominium against which the assessment was levied upon recordation in the Official Records of the County Recorder of Alameda County, California. The notice shall describe the amount of the delinquent assessment or installment, the related charges authorized by this Declaration, a description of the Condominium, the name of the Owner, and the name and address of any trustee authorized by the Association to conduct a foreclosure sale, and shall be

signed by any officer of the Association, or by any employee or agent of the Association authorized to do so by the Board.

(b) Unless the Board considers the immediate recording of the notice to be in the best interest of the Association, the notice shall not be recorded until at least fifteen (15) calendar days after the Association has delivered to the delinquent Owner a written notice of default and a demand for payment, provided that payment has not been made prior to recordation of the notice. If the delinquent assessment or installment and related charges are paid or otherwise satisfied, the Association shall record a notice of satisfaction and release of lien.

(c) Within thirty (30) calendar days after the Association has delivered to a delinquent Owner a written notice of default and a demand for payment, or within fifteen (15) calendar days after the date the Association records a lien on any Condominium against which a delinquent assessment was levied, whichever is sooner, the Association shall give to Declarant and to any Mortgagee who holds a Mortgage on the affected Unit and who has filed a request for notices with the Board of Directors pursuant to Section 15.2 of this Declaration, notice of the delinquency. Declarant, as well as any Mortgagee, shall have the right, but shall not be under any obligation, to pay such delinquent assessment and any costs, penalties, or interest assessed thereon, to avoid foreclosure of any lien under the provisions of Section 9.14 of this Declaration.

Section 9.14 Foreclosure Under Assessment Lien. Within two (2) years after the recording of a notice of assessment, but not less than fifteen (15) calendar days after the recording of the notice of assessment, the Board shall enforce any assessment lien established under Section 9.13 of this Declaration by filing an action for judicial foreclosure or by recording a notice of default in the form described in section 2924c(b)(1) of the California Civil Code to commence a nonjudicial foreclosure. Any nonjudicial foreclosure shall be conducted in accordance with the requirements of sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h of the California Civil Code, as now in effect or as hereinafter amended or replaced, that are applicable to nonjudicial foreclosures of Mortgages or deeds of trust, provided that the Association may, in accordance with the provisions of section 2924a of the California Civil Code, if applicable, appoint its attorney, any officer or director, or any title insurance company authorized to do business in California to conduct the sale. The Association may bid on the Condominium at the sale, and may hold, lease, mortgage, and convey the acquired Condominium, subject to compliance with the Common Areas Lease underlying such Condominium. If the default is cured before the sale, or before completing a judicial foreclosure, including payment of all costs and expenses incurred by the Association, the Association shall record a notice of satisfaction and release of lien and, on receipt of a written request by the Owner, a notice of rescission rescinding the declaration of default and demand for sale.

Section 9.15 Waiver of Homestead Protection. Each Owner, to the extent permitted by law, waives the protection of any declared homestead or homestead

exemption under the laws of California as applied to any action to enforce the assessments levied by the Association.

Section 9.16 Common Areas Interest. Following any sale or other transfer of ownership of a Condominium in conformity with the provisions of this Declaration, the Association shall, upon request of the new Owner, provide to such Owner, an instrument, in recordable form, evidencing such Owner's undivided leasehold interest in the Common Areas.

ARTICLE 10 - INSURANCE

Section 10.1 Liability Insurance. The Association shall obtain and maintain comprehensive public liability insurance insuring the Association, the Board, the Ground Lessor (unless waived thereby), any manager, Declarant, and the Owners and occupants of Condominiums, and their respective family members, guests, invitees, agents and employees, against any liability incident to the ownership or use of the Common Areas or any other Association-owned or maintained real or personal property, and including a cross-liability or severability of interest endorsement insuring each insured against liability to each other insured. The general aggregate limit of such insurance shall be not less than Two Million Current Dollars (\$2,000,000.00) (which amount shall be adjusted not less frequently than every third year after the date hereof, to reflect both inflationary changes and changes in the prudent level of insurance coverage) per person for personal or bodily injury, death or property damage and Two Million Current Dollars (\$2,000,000.00) (subject to adjustment as aforesaid) for any one accident or occurrence; and with limits of not less than One Million Current Dollars (\$1,000,000.00), as adjusted, per occurrence with respect to property damage. Such insurance shall also include coverage against water damage liability, liability for owned, non-owned and hired automobiles, liability for the property of others and against other liability or risk customarily covered with respect to projects similar in construction, location and use. Such insurance shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of named insureds because of any neglect or other act or omission of another named insured. At their respective option, the Declarant and the Ground Lessor shall be named as an additional insured with respect to any such insurance.

Section 10.2 Fire and Casualty and Demolition Insurance.

(a) The Association shall obtain and maintain a master or blanket policy of fire and casualty insurance and coverage for the full replacement insurable value of all of the improvements within the Project that covers one hundred percent (100%) of the current replacement cost of such improvements. The policy shall contain an "Agreed Amount" endorsement and a one hundred percent (100%) co-insurance clause and shall include coverage of all perils included in a standard "all risk" endorsement. The policy shall also contain, to the extent required by law or the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation, an increased cost of

construction endorsement, and, to the extent available at reasonable cost, an inflation guard endorsement or its equivalent; vandalism and malicious mischief coverage; and a determinable cash adjustment clause or a similar clause to permit cash settlement covering full value of the improvements in case of partial destruction and a decision not to rebuild. The maximum deductible on such policy shall be the lesser of Ten Thousand Current Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy, and the maximum deductible related to proceeds to be paid with regard to any individual Unit shall be the lesser of One Thousand Current Dollars (\$1,000.00) or one percent (1%) of the Unit's replacement cost.

(b) The Association may obtain and maintain demolition insurance in adequate amounts to cover demolition, in case of total or partial destruction of the Project and a decision not to rebuild, and may obtain blanket policies of earthquake or flood insurance to the extent such coverage is customarily available to similar operations at reasonable cost, or is required by law or the Federal National Mortgage Association and/or the Federal Home Loan Mortgage Corporation.

(c) The insurance policies required under this Section shall name as insured the Association, the Owners, and all Mortgagees as their respective interests may appear, and may contain loss payable endorsements in favor of the trustee described in Section 10.3 of this Declaration. In addition, the policies shall provide that the insurance coverage provided by the policies will not be prejudiced by any acts or omissions of individual Owners that are not under the control of the Association, and that the policies will be primary, even if an Owner has other insurance that covers the same loss. Further, the policies shall provide that any insurance trust agreement established pursuant to Section 10.3 of this Declaration will be recognized.

Section 10.3 Appointment of a Trustee. All insurance proceeds payable to the Association under Section 10.2 of this Declaration for losses to real property and improvements, subject to the rights of Mortgagees under Section 10.7 of this Declaration, may, at the direction of the Association, be paid to a trustee, to be held and expended for the benefit of the Owners, Mortgagees, and others, as their respective interests shall appear. The trustee may be the Association or a commercial bank or other financial institution with trust powers in the County of Alameda, that agrees in writing to accept such trust.

Section 10.4 Owner's Insurance.

(a) Except as provided in this Section 10.4, no Owner shall separately insure his or her Unit against loss by fire or other casualty covered by any insurance carried under Section 10.2 of this Declaration. If any Owner violates this provision, any diminution in insurance proceeds otherwise payable under policies described in Section 10.2 of this Declaration that results from the existence of such other insurance will be chargeable to the Owner who acquired other insurance, and such Owner will be liable to the Association to the extent of any such diminution. An Owner may insure his or her personal property against loss. In addition, any improvements made by an Owner within

his or her Unit may be separately insured by the Owner, provided that the insurance is to be limited to the type and nature of coverage commonly known as "tenant's improvements," and further provided that any improvements constructed with funds derived from a Mortgage on the Owner's Unit are to be covered by the insurance carried under Section 10.2 of this Declaration so long as such insurance is obtained. All such insurance that is individually carried must contain a waiver of subrogation rights by the insurer as to other Owners, the Association, Declarant, and other Institutional First Mortgagees of such Condominium, if such waiver is customarily obtainable.

(b) An Owner may carry whatever personal liability and property damage liability insurance with respect to his or her Condominium he or she desires. However, any such policy shall include a waiver of subrogation clause acceptable to the Board and to any Institutional First Mortgagees, if such a waiver is customarily obtainable.

Section 10.5 Workers' Compensation and Other Association Insurance.

(a) The Association shall purchase and maintain workers' compensation insurance, to the extent that it is required by law, for all employees or uninsured contractors of the Association.

(b) The Association shall purchase and maintain fidelity bonds or insurance or, if it has employed an outside management agent, will require such agent to obtain fidelity bonds or insurance. In either case, the Association shall be named as obligee in such fidelity bonds or insurance. Such fidelity bonds or insurance shall be in an amount not less than twenty-five percent (25%) of each year's estimated annual operating expenses and reserves. In the case of fidelity bonds or insurance purchased by the Association, such bonds or insurance shall contain an endorsement of coverage of any person who may serve without compensation.

(c) The insurance policies required under this Section shall name as insured the Association, the Owners, and all Mortgagees as their respective interests may appear, and may contain loss payable endorsements in favor of the trustee described in Section 10.3 of this Declaration. In addition, the policies shall provide that the insurance coverage provided by the policies will not be prejudiced by any acts or omissions of individual Owners that are not under the control of the Association, and that the policies will be primary, even if an Owner has other insurance that covers the same loss. Further, the policies shall provide that any insurance trust agreement established pursuant to Section 10.3 of this Declaration will be recognized.

(d) The Association shall purchase and maintain insurance on personal property owned by the Association and may obtain and maintain any other insurance that it deems necessary.

Section 10.6 Adjustment of Losses. The Association is authorized to negotiate and agree on the value and extent of any loss under any policy carried pursuant to the provisions of this Article 10. The Association is granted full right and authority to

compromise and settle any claim or enforce any claim by legal action or otherwise and to execute releases in favor of any insurer. These provisions shall not apply to policies carried by an Owner pursuant to Section 10.4 of this Declaration.

Section 10.7 Distribution to Mortgagees. Subject to Section 11.6 of this Declaration, any Mortgagee, pursuant to an agreement with its mortgagor, may apply insurance proceeds payable on account of a Condominium to reduce its Mortgagor's obligation under the Mortgage secured by the Condominium.

Section 10.8 Director and Officer Liability Insurance. To the extent such insurance is available at reasonable cost, the Association shall purchase and maintain insurance in an amount of no less than One Million Current Dollars (\$1,000,000.00) on behalf of any director, officer, or member of a committee of the Association (collectively, the "agents") against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, regardless of whether the Association would have the power to indemnify the agent against such liability under applicable law.

Section 10.9 Fidelity. A fidelity bond for Directors, officers, trustees, and employees responsible for handling funds collected and held for the Association or for the Owners, naming as an insured the Association for an amount sufficient to cover at least twenty-five percent (25%) of the Association's estimated annual operating expenses and reserves.

Section 10.10 Limitation of Liability for Failure to Obtain Insurance. Neither the Association, the Board, Declarant, nor any managing agent shall be liable for failure to obtain any coverages required by this Article 10, or for any loss or damage resulting from such failure, if such failure is due to the unavailability of such coverages from reputable insurance companies, or if such coverages, in the judgment of the Board, are so available only at unreasonable cost.

Section 10.11 Notice to Owners. The Board of Directors shall promptly furnish to each Owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the Association, or of any decision not to procure any insurance coverages described in this Article 10.

Section 10.12 Generally Applicable Requirements.

(a) Each insurance policy or fidelity bond obtained by the Association shall provide that:

(i) The insurer waives any right to claim by way of subrogation against the Ground Lessor, Declarant, the Association, the Board of Directors, any managing agent, or the Owners and their respective invitees, agents, employees, tenants, and, in the case of Owners, members of their households.

(ii) Such policy shall not be cancelled, invalidated, or suspended as a result of the conduct of any Owner (including his or her invitees, agents, employees and tenants) or any member of the Board of Directors, or any managing agent, or any officer or employee of the Association, unless a prior demand in writing that the Board of Directors or the managing agent cure the defect has been given and neither the Board of Directors nor the managing agent has cured such defect within sixty (60) calendar days after such demand.

(iii) Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) calendar days' prior written notice to the Association and any managing agent and, in the case of liability and physical damage insurance and fidelity bonds or insurance, to all First Mortgagees.

(b) Declarant shall be covered by each policy obtained by the Association, provided that such coverage is customarily available at reasonable cost.

(c) All policies of insurance shall be written by reputable companies licensed to do business in the State of California.

(d) The deductible, if any, on any insurance policy purchased by the Association shall be a common expense, provided that the Association may assess as a special assessment against an Owner any deductible amount necessitated by the negligence, misuse, or neglect of such Owner.

Section 10.13 Umbrella Liability Insurance. The Association shall obtain and maintain a policy of umbrella liability insurance to supplement all other insurance policies maintained by the Association. The limits of such insurance policy shall not be less than that amount that is required to ensure that the total liability insurance carried by the Association will equal Five Million Current Dollars (\$5,000,000.00).

Section 10.14 Increases in Coverage. Subject to the provisions of Section 9.6(b) of this Declaration, the Board may, when in its best judgment it deems it advisable, increase the amount of any coverages carried pursuant to this Article 10.

ARTICLE 11 - DESTRUCTION OF IMPROVEMENTS

Section 11.1 Minor Repair and Reconstruction. The Association shall have the duty to repair and reconstruct any structure or other improvement in the Project, without the consent of Owners and irrespective of the amount of available insurance proceeds, in all cases of partial destruction when the estimated cost of repair and reconstruction does not exceed One Hundred Thousand Current Dollars (\$100,000.00).

Section 11.2 Destruction When Insurance Proceeds Exceed Eighty-Five Percent (85%) of Reconstruction Costs. If (i) there is a total or partial destruction of any

structure or other improvement in the Project, (ii) the estimated cost of repair and reconstruction of such improvements exceeds One Hundred Thousand Current Dollars (\$100,000.00), and (iii) the available proceeds of the insurance carried pursuant to Article 10 of this Declaration are sufficient to cover at least eighty-five percent (85%) of the estimated cost of repair and reconstruction, the Association shall promptly rebuild such improvement. The Association shall execute, acknowledge, and record in the Official Records of the County Recorder of Alameda County, California, not later than one hundred twenty (120) calendar days from the date of destruction, a certificate declaring the intention of the Association on behalf of the Owners to rebuild.

Section 11.3 Destruction When Insurance Proceeds Are Less Than Eighty-Five Percent (85%) of Reconstruction Costs. If (i) there is a total or partial destruction of any of the structures or other improvements in the Project, (ii) the estimated cost of repair and reconstruction of such improvements exceeds One Hundred Thousand Current Dollars (\$100,000.00), and (iii) the available proceeds of the insurance carried pursuant to Article 10 of this Declaration are less than eighty-five percent (85%) of the estimated cost of repair and reconstruction, the Association shall promptly rebuild such improvements unless, within ninety (90) calendar days from the date of destruction, Owners then holding at least seventy-five percent (75%) of the total voting power of Owners (excluding Declarant during the Declarant Control Period) present and entitled to vote, in person or by proxy, at a duly constituted meeting, determine that repair and reconstruction shall not take place, and First Mortgagees of Condominiums that have at least sixty-seven percent (67%) of the votes of all Condominiums encumbered by First Mortgages of which the Association has notice and Declarant, during the Declarant Control Period, give their written consent that repairs and reconstruction shall not take place. If such a meeting of Owners is called, the Association shall solicit and obtain bids from at least two reputable contractors to repair and reconstruct the improvements in accordance with the original plans and shall present this information to the Owners at the meeting. If repair and reconstruction are to take place, the Association shall execute, acknowledge, and record in the Official Records of the County Recorder of Alameda County, California, not later than one hundred twenty (120) calendar days from the date of destruction a certificate declaring the intention of the Owners to rebuild.

Section 11.4 Repair and Reconstruction of Improvements.

(a) In any case in which improvements are to be repaired or rebuilt:

(i) Each Owner shall be obligated to contribute his or her Percentage Interest of the cost of repair and reconstruction over and above available insurance proceeds. If any Owner fails to pay his or her proportionate share, the Board may enforce the assessment pursuant to the provisions of Sections 9.12 through 9.14 of this Declaration.

(ii) The Association shall, after having obtained bids from at least two reputable contractors, award the repair and reconstruction work to the bidder that best meets the requirements for the performance of such work as set forth by the Association.

The Association shall have the authority to enter into a written contract with the contractor for the repair and reconstruction, and the insurance proceeds held by the Association or a trustee, as applicable, shall be disbursed to the contractor according to the terms of the contract.

(iii) Each Owner shall be further obligated to execute any amendments to the Condominium Plan necessary to conform such Plans to the Project as then rebuilt. If any Owner fails to execute the necessary documents, Declarant, during the Declarant Control Period, and thereafter the Association, or individuals authorized by the Board, shall act as attorney-in-fact of all Owners to execute such documents on his or her behalf.

(b) In any case in which improvements are to be repaired or rebuilt, such repaired or rebuilt improvements will be reasonably compatible in terms of quality, materials and architectural style with the improvements, including Units and Common Areas, remaining in the Project.

Section 11.5 Purchase in Case of an Election Not To Rebuild: Restoration of Site.

(a) If (i) the estimated cost of repair and reconstruction exceeds One Million Current Dollars (\$1,000,000.00), (ii) the available insurance proceeds are less than eighty-five percent (85%) of such estimated cost, and (iii) the Owners, with the consent of the applicable number of First Mortgagees and Declarant, during the Declarant Control Period, elect not to rebuild, the Association shall have the right, after obtaining the consent, by affirmative vote of seventy-five percent (75%) of the total voting power of Owners present and entitled to vote, in person or by proxy, at a duly constituted meeting, to purchase the Condominiums of which the Units were damaged or destroyed.

(b) The price for any such Condominium which shall be paid by the Association to its Owner shall be the lesser of (i) the replacement cost of the Condominium, as determined by the Board based on bids to repair or restore the Condominium received from at least two (2) reputable contractors, less the insurance proceeds payable to the Owner, or (ii) the purchase price as established pursuant to Section 14.2(b) to be established as of a date ninety (90) calendar days after the date of the damage or destruction.

(c) Each Owner, other than those whose Condominiums are purchased, shall be obligated to contribute his or her proportionate share, based on 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 the Project other than the Units to be purchased, of the cost, over and above available insurance proceeds, to purchase the Condominiums of which the Units were damaged or destroyed and to restore the site on which such Condominiums were located pursuant to Section 11.5(g). If any Owner fails to pay his or her proportionate share, the Board may enforce the assessment pursuant to the provisions of Sections 9.12 through 9.14 of this Declaration.

(d) Any payment of the purchase price to an Owner whose Condominium is purchased by the Association shall be made jointly to such Owner and all Mortgagees of such Owner's Condominium.

(e) By accepting a deed to a Condominium, each Owner agrees to be bound by the provisions of this Section 11.5 and to sell his or her Condominium and to convey it by grant deed to the Association as provided in this Section 11.5.

(f) Concurrently with any such purchase, each Owner agrees to execute any documents required to effectuate such purchase, including any amendments to the Condominium Plan and any appropriate supplemental Condominium Plan necessary to eliminate from the Project the purchased Condominiums as Common Areas. If any Owner fails to execute the necessary documents, Declarant, during the Declarant Control Period, and thereafter the Association, or individuals authorized by the Board, shall act as attorney-in-fact of all Owners to execute such documents on such Owner's behalf.

(g) The Association shall cause to be removed, at its expense, any debris or rubble remaining after the total or partial destruction of any Condominiums that it purchases and shall restore the site upon which such Condominiums were located to a condition compatible with the continuation of the rest of the Project.

Section 11.6 Application of Insurance Proceeds. Except in any case in which improvements are not to be repaired or reconstructed pursuant to this Article 11, all insurance proceeds, including those payable to Mortgagees, shall be applied to the repair and reconstruction of damaged improvements. If improvements are not to be repaired or replaced, the insurance proceeds shall be apportioned among the Owners and their respective Mortgagees in proportion to the relative value of the Units, as determined pursuant to the procedure set forth in Section 12.1, below.

Section 11.7 Termination of Partition Waiver. In the event of damage or destruction which (a) renders more than fifty percent (50%) of the Units uninhabitable, or (b) results in an estimated cost of repair and reconstruction that exceeds One Million Current Dollars (\$1,000,000.00), and if the Owners decide not to repair or rebuild, either by calling a meeting and rejecting all bids and estimates presented, or by failing to call a meeting, or by failing to commence the work of repair or rebuilding within twelve (12) months or to complete the work of repair or rebuilding within twenty-four (24) months from the date of damage or destruction, the prohibition against judicial partition of the Project pursuant to California Civil Code section 1359 shall terminate, and the Board shall, or if it does not, any Owner, or the Mortgagee of any Owner may, record a sworn declaration setting forth such decision and stating that the prohibition against judicial partition set forth in this Declaration has terminated. On recordation of such declaration, the right of any Owner to bring an action for judicial partition shall revive immediately.

Section 11.8 Distribution of Excess Insurance Proceeds. Any amount in excess of the insurance proceeds necessary to repair and reconstruct damaged improvements

pursuant to Section 11.2 of this Declaration or to purchase Condominiums pursuant to Section 11.5 of this Declaration shall be obtained by the Association for distribution to all of the Owners who were Members of the Association at the time that the improvements were totally or partially destroyed. Each qualifying Owner's proportionate share of any excess proceeds shall be determined by applying the Percentage Interest of each Owner to such proceeds or to reduction of assessments.

ARTICLE 12 - CONDEMNATION; PARTITION

Section 12.1 Condemnation. Any taking of all or part of the Project by eminent domain shall be governed by Section 19 of the Common Areas Lease, as that section may from time to time be amended. In the event of a taking of all or any part of the Project by any authority under the power of eminent domain, all compensation and damages relating to the Project shall be payable to the Association as trustee for all Condominium Owners according to the relative value of their respective interests, as they may appear. For purposes of this Section 12.1, "relative value" shall mean the fair market value of each Unit, determined by an independent appraisal, as of the date of the condemnation. Such independent appraisal shall be made by an appraiser who shall (i) have a minimum of at least three (3) years experience in evaluation of residential property in the Berkeley/Oakland area; (ii) be currently certified by the American Institute of Real Estate Appraisers, or a successor organization of equal or superior stature; (iii) not be or have been an employee or agent of Declarant or any financial institution with an interest in a Condominium; and (iv) be selected by a majority of Members of the Association and the Declarant. The Association shall give prompt written notice of condemnation proceedings to any Mortgagee of a Condominium who has filed a request for notices pursuant to Section 15.2 herein. Any compensation and damages payable to an Owner of a Condominium shall be subject to (i) the rights of each Mortgagee holding a Mortgage encumbering such Unit to be paid from the compensation and damages apportioned to such Unit, as their interests may appear, and (ii) all unpaid regular and/or special assessments together with any interest charges attributable thereto.

Section 12.2 Waiver of Right to Partition. To the maximum extent permitted by law, an Owner shall have no right to partition or divide his or her ownership of the Common Areas, provided that any partition of a co-tenancy in a Condominium shall be by sale or appraisal and not by partition in kind.

**ARTICLE 13 - SPECIAL RESTRICTIONS UPON
POSSESSION, OCCUPANCY AND USE OF UNITS**

Section 13.1 Purpose. The intent of this Article 13 is to create and perpetuate a stock of affordable housing available to the faculty of the University of California at Berkeley ("UCB"), in order to support and enhance the educational community at UCB. The provisions of this Article 13 shall apply to and bind all Condominiums in the Project and shall be construed liberally to effectuate such purpose.

Section 13.2 [RESERVED].

Section 13.3 [RESERVED].

Section 13.4 Qualified Use. No person other than Declarant shall possess, occupy or use any Condominium unless such person is a "Qualified Person" a "Conditionally Qualified Person" as defined in this Article 13. A person shall be deemed to possess, occupy or use a Condominium for purposes of this Article if he or she resides in a Condominium or otherwise regularly or from time to time physically occupies or uses it.

Section 13.5 Qualified Person. A "Qualified Person" is a person determined to be eligible either individually or as a member of a class by the Chancellor of UCB in accordance with the employee housing policy and criteria of UCB, as amended from time to time. That policy and those criteria are intended and dedicated to further the educational purposes of UCB by enhancing the quality of education through retention and recruitment of faculty and senior staff members (as defined by the Chancellor of UCB); therefore, the Chancellor of UCB may, in his or her sole discretion, from time to time designate as Qualified Persons, those employees of Declarant who are an integral part of the UCB community, and with respect to whom the Chancellor of UCB shall have determined that providing adequate housing is a priority.

Following designation as a Qualified Person, a person shall continue to be a Qualified Person until his or her employment by The Regents terminates, at which time he or she will no longer be a Qualified Person; provided, however, that no Owner who is a Qualified Person (a "Qualified Owner") shall lose his or her status as a Qualified Person because of a termination of employment as a result of disability or retirement. "Disability" includes, but is not limited to, the following: (i) A physical or mental impairment that substantially limits one or more of a person's major life activities. (ii) A record of having, or being perceived as having, a physical or mental impairment, but not including current illegal use of, or addition to, a controlled substance (as defined by section 102 of the federal Code of Controlled Substance Act, 21 U.S.C. § 802). "Retirement" shall mean termination of employment at a time when a person shall be eligible to receive retirement benefits from the University of California Retirement System, or any other retirement system used by Declarant.

Section 13.6 Conditionally Qualified Persons. The following persons ("Conditionally Qualified Persons") shall be considered to be Qualified Persons only upon the conditions and for the periods of time specified in this Section:

- (a) Any Qualified Owner shall continue to be qualified until the expiration of six (6) months following the date on which such person shall cease to have been a Qualified Person as defined in Section 13.5, above;
- (b) The spouse of a Qualified Owner who shall possess, occupy and use a Unit as of the date of death of such Qualified Owner shall continue to be a Qualified Person for as long as he or she maintains the Unit as his or her principal place of residence or until remarriage, if earlier;
- (c) The dependent child of a Qualified Owner who shall possess, occupy and use a Unit as of the date of death of such Qualified Owner shall continue to be a Qualified Person for three (3) years from such date or, if earlier, until the then current Owner sells or disposes of the Unit or, in the case of a minor dependent child, until such child attains the age of twenty-one (21) years;
- (d) An heir or legatee (other than a spouse or dependent child) of a Qualified Owner who shall acquire ownership of a Condominium from the estate of such Qualified Owner shall be a Qualified Person for one (1) year from the date such heir or legatee shall acquire record ownership of such Condominium;
- (e) A Qualified Owner's spouse who acquires the sole rights of occupancy of a Unit pursuant to any marital settlement, proceeding or decree shall be a Qualified Person for a period of one (1) year from the date of such settlement, proceeding or decree;
- (f) A co-Owner of a fifty percent (50%) or less undivided interest in a Condominium who resides in such Condominium during the lifetime of a Qualified Owner shall be a Qualified Person for a period of one (1) year from the death of such Qualified Person;
- (g) Any lessee of a Condominium pursuant to Section 14.7 of this Declaration during the term of a lease thereunder; and
- (h) Any purchaser of a Condominium who purchased such Condominium on the open market pursuant to Section 14.1(e), or who purchased it at a sale by or on behalf of a Mortgagee pursuant to Section 14.4(a) for so long as such purchaser shall occupy such Condominium as his or her principal residence.

A Conditionally Qualified Person, as defined in this Section, may continue to possess, occupy and use a Condominium until the expiration of his or her Conditionally Qualified status pursuant to this Section. No spouse, heir or legatee of a Conditionally

Qualified Person shall also become a Conditionally Qualified Person by reason of the death or marital dissolution of such Conditionally Qualified Person.

Section 13.7 Offer or Sale by Conditionally Qualified Person.

(a) Any Conditionally Qualified Person who owns a Condominium may, at any time during the period of conditional qualification, either:

(i) Offer to sell such Condominium to Declarant at the price and on the terms set forth in Section 14.2 hereof; or

(ii) Sell or transfer his or her entire ownership interest in the Condominium to an Approved Purchaser designated pursuant to Section 14.2, to be eligible to purchase such Unit at the price and on the terms set forth in Section 14.2 hereof.

Section 13.8 Qualified Users. "Qualified User" means a person who owns a Condominium, and is either a Qualified Person or a Conditionally Qualified Person. Use of a Condominium by a person who is (a) related by marriage, blood, adoption, guardianship or foster care to a Qualified User, (b) co-owner of a fifty percent (50%) or less undivided interest in a Condominium, the remainder of which is owned by a Qualified User, (c) an invitee or guest of a Qualified User, or (d) a domestic or nurse employed by a Qualified User, during any period during which such Qualified User uses the Condominium as his or her principal place of abode shall be deemed to be a use thereof by the Qualified User. Use of a Condominium by a person pursuant to a lease approved by Declarant between such person and a Qualified Person shall also be deemed to be use thereof by the Qualified Person.

Section 13.9 Enforcement of Qualified Use Restriction. Declarant, as well as any Owner or the Association, may enforce the provisions of this Article by appropriate action, including, but not limited to, any remedy or remedies provided in Section 4.28 of this Declaration. All the rights and remedies available to the Association under Article 7 with respect to any violation of this Article are also available to Declarant.

ARTICLE 14 - LIMITATIONS ON TRANSFER OF CONDOMINIUMS

Section 14.1 Right of First Refusal. Declarant shall have a right of first refusal with respect to the sale or other transfer of any Condominium by an Owner other than Declarant, as follows:

(a) If at any time an Owner shall intend to sell or assign his or her Condominium or any interest therein in excess of a fifty percent (50%) undivided interest, or to reduce his or her ownership interest therein to less than a fifty percent (50%) undivided interest, such Owner shall first offer to sell said Condominium to Declarant at the price and on the terms set forth in Section 14.2; provided, however, that

an offer by an Owner to sell or assign his or her Condominium to an Approved Purchaser, as that term is defined in Section 14.5, and an acceptance thereof by the offeree, at the price and on the terms and conditions set forth in Section 14.2, shall be deemed to satisfy all obligations of such Owner pursuant to Section 14.1(a).

(b) Each offer to sell a Condominium pursuant to this Section 14.1 shall be made in a written notice delivered to Declarant.

(c) Declarant shall have the right, but not the obligation, to assign its right of acceptance of any offer made pursuant to this Section 14.1 to an Approved Purchaser, as hereinafter defined.

(d) If Declarant rejects said offer or does not respond within forty-five (45) calendar days, an Owner wishing to sell or transfer an interest in the Condominium may, by appropriate notices or advertisement, documentation of which shall be promptly delivered to Declarant, offer the Condominium for sale for a period of thirty (30) calendar days, at the price and on the terms and conditions set forth in Section 14.2, to all persons who are members of the Academic Senate of UCB. Thereafter, an Owner wishing to sell or transfer the Condominium shall extend such offer, by appropriate notices or advertisement, documentation of which shall be promptly delivered to Declarant, for an additional thirty (30) calendar day period, to all of UCB's faculty, academic staff, and salaried employees. An offer made pursuant to this Section shall remain open until accepted or, in the absence of an acceptance, for sixty (60) calendar days from the date of publication of the original notice or advertisement.

(e) If an Owner's offer pursuant to Section 14.1(d), above, is not accepted within sixty (60) calendar days after it is made, and if the Owner still wishes to sell or transfer an interest in the Condominium the Owner shall give notice to Declarant of his or her intention and provide Declarant with the opportunity to agree to purchase the Condominium for a period of fifteen (15) calendar days at a price and on terms which are not more favorable to the Owner than Owner's original offer made pursuant to Section 14.1(a), above. After the expiration of the fifteen (15) calendar day period, the Owner may offer the Condominium for sale on the open market at any price, and on any terms. Such an offer by an Owner following expiration of not fewer than one hundred twenty (120) calendar days from the receipt of the initial notice to Declarant given by Owner pursuant to this Section may be made to any person, without respect to their "qualification" under Article 13. Any such person who purchases the Condominium shall, however, be bound by all the provisions of this Article 14 respecting subsequent resale of the Condominium.

(f) Any written notice of acceptance given by Declarant or an assignee of Declarant to an Owner who shall have made an offer under this Section 14.1 shall constitute a binding acceptance of such offer at the price and on the terms set forth in Section 14.2 hereof.

(g) Any purported offer or sale of a Condominium other than in conformance with this Section 14.1, shall be void and of no effect, except that such purported offer, sale or other transfer shall constitute an irrevocable offer to Declarant to sell Owner's Condominium at the price and on the terms set forth in Section 14.2, below, which offer shall be deemed to be delivered to Declarant thirty (30) calendar days following the date Declarant receive actual notice of such purported offer, sale or transfer.

Section 14.2 Purchase Price and Terms. The purchase price of any Condominium offered or sold by a person other than Declarant pursuant to this Article 14 shall be the lesser of:

(a) The fair market value of the Condominium as mutually determined by the Owner and Declarant; or

(b) The sum of: (i) the purchase price of the Condominium paid by the Owner, plus (ii) the product of the purchase price of the Condominium paid by Owner and the larger of either (x) the fractional change in the Consumer Price Index (as defined below), or (y) the Faculty Salary Index which is that index published and maintained by Declarant's Office of Real Estate Management and Loan Programs, each as issued or in effect for the month immediately preceding the date on which the Owner purchased the Condominium and said Index or level as issued or in effect for the month preceding the date of the offer made pursuant to Section 14.1, plus (iii) the cost of all capital improvements less depreciation to the Condominium made by the Owner, but only to the extent that each such capital improvement exceeded \$1,000 in cost and to the extent that the value of such alteration and its reasonable life for depreciation purposes was certified by the ARB prior to completion of such improvement following submission by the Owner of cost documentation in such form as the ARB may prescribe, which documentation shall be subject to audit and proof, less (iv) the reasonable cost to cure any failure to maintain the Unit or waste or destruction thereof in excess of normal wear and tear. As used in this Section, "Consumer Price Index" means the National Consumer Price Index for All Urban Consumers, All Items (1982-84=100) ("CPI-U") as published by the United States Department of Labor, Bureau of Labor Statistics, or, if such index ceases to be published, then any comparable successor index as determined by Declarant which measures changes in the prices of consumer items.

"Fair market value" for purposes of Section 14.2(a) above, may, for purposes of this Section 14.2 be determined by an appraisal conducted by an appraiser mutually satisfactory to Owner and Declarant, or in the absence of a mutually satisfactory appraiser, the fair market value shall be the average of appraisals conducted by two (2) appraisers each of which shall meet the requirements set forth Section 12.1 (i)-(iii) above, one selected by the Owner and one selected by Declarant. All appraisers shall consider the effect of the resale restrictions of this Declaration, including Section 14.2 above and the duration of the term of the Common Areas Lease.

No offer subject to this Article 14, other than an open market offer pursuant to Section 14.1(e) shall require an earnest money deposit of more than two percent (2%) of

the purchase price nor require the closing of escrow for the sale of a Unit or final payment therefor in fewer than forty-five (45) calendar days from the date of acceptance by the purchaser.

All sales of Condominiums by Declarant shall be exempt from this Section 14.2.

Section 14.3 Closing Payment. If any offer made pursuant to Section 14.1 of this Article is accepted by Declarant or an Approved Purchaser, as defined in Section 14.5, the closing thereon shall occur within ninety (90) calendar days of acceptance of Owner's offer, and the purchase price shall be paid in cash as follows:

- (a) To the Association, for due and unpaid assessments, if any, to the date of closing;
- (b) To Owners' First and subsequent Mortgagees, if any, as their respective interests may appear, or by assumption of the First or Second Mortgages as arranged by the purchaser;
- (c) In payment of necessary closing costs customarily charged to sellers, including by way of example, but not limitation, broker fees, title insurance premiums, documentary transfer tax and escrow fees; and
- (d) The remainder to Owner.

Real property taxes and assessments are to be prorated to the date of closing. The purchase, possession, occupancy and use of the Condominium shall be subject to all the terms and conditions of this Declaration.

Section 14.4 Secured Parties.

(a) Except as provided in this Section 14.4, this Article shall not apply to a transfer to or a purchase by a Mortgagee or an Institutional Mortgagee which acquires its title as a result of holding a Mortgage upon the Condominium concerned, and this exception shall be effective whether the title is acquired (i) by deed from the Owner or his or her successor in title, or (ii) through foreclosure proceedings. However, any Condominium Mortgagee or other acquirer of a Condominium of an Owner pursuant to foreclosure, assignment in lieu of foreclosure or other, substantially similar proceedings may assign or transfer the same only in accordance with the terms and conditions of Article 14 of the Common Areas Lease.

(b) Except as provided in this Section 14.4, this Article 14 shall not apply to an acquisition of a Condominium by a purchaser, other than those described in Section 14.4(a) above, who acquires title to a Condominium at a duly advertised public sale with open bidding which is provided by law, such as, but not limited to, execution sales, foreclosure sales, judicial sales or tax sales, nor to the heirs, successors or assigns of such a purchaser.

Section 14.5 Approved Purchasers. Declarant, or by designation of Declarant, the Chancellor of UCB, may compile a list of Qualified Persons who shall be determined by Declarant or by the Chancellor of UCB to be eligible, in descending order of priority, as listed, to purchase a Condominium from an Owner at a price not to exceed the price calculated for such Condominium pursuant to Section 14.2 above (such persons to be "Approved Purchasers"). No person shall be deemed to be an Approved Purchaser with respect to any offer, sale or transfer of a Condominium unless an offer to sell such Condominium has, in good faith, been made to each Approved Purchaser having a higher priority as determined by Declarant or the Chancellor of UCB.

Section 14.6 Certification of Status. Upon written request of any respective transferee or purchaser, tenant or an existing or prospective Mortgagee, transferee or beneficiary of any Condominium, Declarant shall, within fifteen (15) calendar days thereof, issue a written and acknowledged certificate in recordable form, evidencing if such be the case:

(a) With respect to a proposed sale under this Article 14, that the proper offers were made by the selling Owner and that Declarant did not elect to exercise its right to purchase;

(b) With respect to a sale to an Approved Purchaser, that proper notice was given by the Owner and that such sale was permissible hereunder; or

(c) That a deed-in-lieu of foreclosure was, in fact, given in lieu of foreclosure and is not subject to this Article 14, except as provided in Section 14.4 hereof.

Section 14.7 Leasing. An Owner other than Declarant may lease or rent a Condominium only on the following terms and conditions:

(a) No Condominium shall be leased or rented except in accordance with this Section 14.7.

(b) Owners may freely enter into any lease or rental agreement of a Condominium which does not have a term longer than twelve (12) months or which, when added to the term of any prior lease or rental agreement, would result in occupancy by tenants of more than thirteen (13) months within the preceding thirty-six (36) months without prior written consent of Declarant; provided, however, that if such lease or rental agreement shall be entered in conjunction with an academic leave of Owner approved by the Chancellor of UCB, the occupancy of the Condominium by tenants may extend for the duration of such leave.

(c) Execution by an Owner of any lease or rental agreement of a Condominium in violation of Section 14.7(b), above, without the prior written consent of Declarant shall be deemed to be an irrevocable offer to sell the Condominium to Declarant at the price and on the terms set forth in Sections 14.2 and 14.3.

Section 14.8 Unauthorized Sales or Transfers. If any Owner shall attempt to sell, assign or otherwise transfer the Owner's Condominium to any person other than an eligible Qualified Person and Approved Purchaser without making the offers described in Section 14.1 hereof or without otherwise following the procedures set forth in this Article 14, such attempted or purported sale, assignment or transfer shall be wholly null and void and shall confer no title or interest whatsoever upon the purported purchaser or transferee. If any Owner shall attempt to transfer an interest in his or her Condominium to a person other than a Qualified Person and Approved Purchaser and such transfer shall (a) reduce the undivided ownership interest in the Condominium of the Owner to less than fifty percent (50%), or (b) deprive the Owner of the right of immediate occupancy at any time in the future, such transfer of estate and right to possession shall be wholly null and void and shall confer no title, interest or right of possession or occupancy whatsoever upon the purported transferee in the absence of consent thereto by Declarant.

Section 14.9 Termination of Articles 13 and 14. Articles 13 and 14 of this Declaration shall cease to have any effect or confer any power on any person with respect to a particular Unit on or after the first to occur of (a) the termination of this Declaration and any renewal thereof or (b) the election of Declarant, exercisable at any time after January 1, 2055, evidenced by recordation of a written notice of termination of Articles 13 and 14, or (c) termination of Declarant's status as Ground Lessor.

Section 14.10 Enforcement of Article 14. Declarant, as well as any Owner and the Association, may enforce the provisions of this Article by appropriate action, including, without limitation, an action for unlawful detainer or to enjoin trespass. All the rights and remedies available to the Association under Article 13 with respect to any violation of this Article 14 shall also be available to Declarant.

Section 14.11 Effect of Article 14. Nothing in this Article 14, and no act or failure to act of any person under the provisions of this Article, shall affect or work to limit, suspend or abridge the provisions of Article 13.

ARTICLE 15 - PROTECTION OF MORTGAGEES

Section 15.1 Mortgage Permitted. Any Owner may encumber his or her Condominium with a Mortgage.

Section 15.2 Notice to Board of Directors. An Owner who mortgages his or her Condominium shall promptly notify the Board of Directors of the name and address of his or her Mortgagee. In addition, any Mortgagee desiring to receive notices pursuant to Section 15.9 of this Declaration shall file a written request for such notices with the Board of Directors, stating both its name and address and the Identifying Number or address of the Condominium on which it holds a Mortgage.

Section 15.3 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, provided that such lien was not evidenced by a notice of delinquent assessment recorded prior to the recordation of such First Mortgage. On foreclosure of such Mortgage, such lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of such Mortgage, with the foreclosure-purchaser taking title to the Condominium free of such lien for assessments or installments that have accrued up to the time of the foreclosure sale. On taking title to the Condominium, the foreclosure-purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Association that become due or payable on or after the date the foreclosure-purchaser acquired title to the Condominium, provided that, if all Owners are required to pay their proportionate share, the assessments or charges that become due or payable on or after the date the foreclosure-purchaser acquired title to the Condominium may include amounts attributable to previously due but unpaid assessments.

Section 15.4 Control of Amendment or Revocation of Condominium Instruments. Unless a greater percentage is expressly required by this Declaration, the Articles, or the Bylaws, or by law, the prior written consent (or deemed consent as provided below in this clause) of sixty-seven percent (67%) of the voting power of the Association as defined in Section 8.2 of this Declaration and of First Mortgagees of Condominiums that have at least fifty-one percent (51%) of the votes of all Condominiums encumbered by First Mortgages of which the Association has notice shall be required to add or amend any material provisions of the Condominium Instruments, which establish, provide for, govern, or regulate any of the following:

- (a) Voting rights.
- (b) Increase in assessment of more than twenty-five percent (25%), collection of assessments, assessment liens, or the priority or subordination of such liens.
- (c) Relocation of reserves for maintenance, repair, and replacement of Common Areas or improvements located thereon.
- (d) Casualty and liability insurance or fidelity bonds.
- (e) Reallocation of, or changes in, the rights to use the Common Areas.
- (f) Responsibility for maintenance and repair of Condominiums and Common Areas and the improvements thereon.
- (g) Expansion or contraction of the Project, or the addition, annexation, or withdrawal of real property to or from the Project.
- (h) Boundaries of any Condominium.

- (i) The interests or rights of the Association or Owners in and to the Common Areas.
- (j) The convertibility of Units into Common Areas or of Common Areas into Units.
- (k) The leasing of Condominiums.
- (l) Imposition of any additional right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium.
- (m) Destruction and restoration of improvements.
- (n) Termination of the Project following substantial destruction or condemnation of improvements.
- (o) Hazard or fidelity insurance requirements.
- (p) Any provisions that are for the express benefit of First Mortgagees or insurers or governmental guarantors of First Mortgages.

For purposes of this provision, an addition or amendment shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. Any First Mortgagee who receives a written request to consent to additions or amendments requiring consent under this provision who does not deliver or post to the requesting party a negative response within thirty (30) calendar days after such receipt shall be deemed to have consented to such request.

Section 15.5 Restrictions on Certain Changes. In addition to all other approvals and consents required to be obtained from Mortgagees under this Declaration, unless at least sixty-seven percent (67%) of First Mortgagees of Condominiums encumbered by First Mortgages of which the Association has notice, and Declarant during the Declarant Control Period have given their prior written approval, neither the Association nor the Owners shall be entitled:

- (a) By act or omission to seek to abandon or terminate the Project, except for abandonment provided by statute in case of condemnation of or substantial loss to the Units and Common Areas.
- (b) To change the pro rata interest or obligations of any Condominium in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each Condominium in the Common Areas, except with regard to the expansion of the Project as provided for by this Declaration.

(c) To partition or subdivide any Unit after a deed conveying title to the Condominium containing such Unit has been recorded.

(d) By act or omission to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas. The granting of easements, licenses, permits, or rights-of-way for public utilities or for other public or quasi-public purposes consistent with the intended use of the Common Areas by the Association, Declarant, or the Owners shall not be deemed to be a transfer within the meaning of this clause. Further, this subsection 15.5(d) shall not apply to the extent necessary to permit expansion of the Project as provided for by this Declaration.

(e) To use hazard insurance proceeds for losses to Units or Common Areas or to any other Association property, for other than the repair, replacement, or reconstruction of such improvements or property, except as provided by statute or this Declaration in case of substantial loss to the Units or Common Areas of the Project.

Section 15.6 Right to Examine Books and Records. Institutional First Mortgagees and all insurers or guarantors of First Mortgages shall have the right to examine the Condominium Instruments and the books and records of the Association and the right to require the submission of financial data concerning the Association, including annual audit reports, budgets, and operating statements, as furnished to the Owners. In addition, if an audited financial statement for an annual accounting period is not available for the Association, any First Mortgagee shall be allowed to have an audited statement prepared at its own expense.

Section 15.7 Priority in Distribution of Insurance and Condemnation Proceeds. Subject to the obligations of Mortgagees regarding rebuilding as set forth in Section 11.6 of this Declaration, no Owner, or any other party, shall have priority over any right of Institutional First Mortgagees of Condominiums pursuant to their Mortgages in case of a distribution to Owners of insurance proceeds or condemnation awards for losses to or a taking of Units or Common Areas. Any provision to the contrary in the Condominium Instruments 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 Institutional First Mortgagees, naming the Mortgagees as their interests may appear.

Section 15.8 Status of Improvements. All improvements in the Common Areas (such as recreation and service areas) shall be available for use by Owners, and all such improvements with respect to which regular or special assessments for maintenance or other uses may be levied shall constitute Common Areas. All such improvements shall be owned by the Association free of encumbrances except for the Common Areas Lease and any easements, licenses, permits, or rights-of-way granted for utilities or for other public or quasi-public purposes consistent with the intended use of such property by the Owners or by the Association.

Section 15.9 Notices to Mortgagees.

(a) Subject to the provisions of Section 9.13 of this Declaration, if any Owner is in default under any provision of this Declaration or under any provision of the Articles, the Bylaws, or the Association Rules and Regulations, and the default is not cured within sixty (60) calendar days after written notice to that Owner, the Association shall give to any Mortgagee who has filed a request for notices with the Board of Directors pursuant to Section 15.2 of this Declaration, notice of such default and of the fact that the sixty (60) calendar day period has expired.

(b) Any Mortgagee who has filed a request for notices with the Board of Directors pursuant to Section 15.2 of this Declaration also shall be sent a written notice by the Board of Directors of:

(i) Any condemnation or casualty loss that affects either a material portion of the Project or the Condominium on which such Mortgagee holds a Mortgage.

(ii) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(iii) Any proposed action that requires the consent of a specified percentage of any class of Mortgagees which includes the Mortgagee requesting notices.

Section 15.10 Lien Not Invalidated. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value; but all of the covenants, conditions, and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

Section 15.11 Status of Loan to Facilitate Resale. Any First Mortgage given to secure a loan to facilitate the resale of a Condominium after acquisition by foreclosure or by a deed-in-lieu of foreclosure or by an assignment in lieu of foreclosure shall be deemed to be a loan made in good faith and for value and the holder of such loan shall be entitled to all of the rights and protection of Mortgagees under this Declaration.

Section 15.12 Right to Appear at Meetings. Because of its financial interest in the Project, any Mortgagee may appear (but cannot vote) at meetings of Owners and the Board to draw attention to violations of this Declaration that have not been corrected or that have been made the subject of remedial proceedings or assessments.

Section 15.13 Right to Furnish Information. Any Mortgagee can furnish information to the Board concerning the status of any Mortgage.

ARTICLE 16 - ARCHITECTURAL CONTROL

Section 16.1 Architectural Restrictions. No building, fence, wall, or other structure shall be commenced, erected or maintained on or within the Project, nor shall any exterior change, addition or alteration in any structure of the Project, including fences, hedges, patio covers, landscaping, solar or heating systems, spas, pools, awnings, antennas, exterior paint or decor, be commenced, applied, constructed, erected, or maintained by any person other than the Declarant until the plans and specifications showing the nature, kind, shape, height, materials, color, location and approximate cost of the same shall have been submitted to and approved in writing as to the harmony of exterior design, location and relation to surrounding structures and topography by the Architectural Review Board (the "ARB") constituted as set forth in Section 16.2, below. No alteration involving or affecting the structural integrity of any part of the Project shall be made in any Unit or in any portion of the Common Areas surrounding any Unit and no plumbing or electrical work within any bearing or common walls shall be performed by any person until the plans and specifications for such alteration shall have been submitted to and approved in writing by the ARB. If the ARB fails to approve or disapprove such plans and specifications within forty-five (45) calendar days after all of said plans and specifications requested by the ARB have been submitted to it, such approval will not be required, and the Owner proposing such items shall be deemed to have fully complied with this Section. The standards and procedures pursuant to which the ARB shall operate may be set forth by the Ground Lessor in Rules and Regulations issued pursuant to the Common Areas Lease.

Section 16.2 Architectural Review Board. There shall be an Architectural Review Board ("ARB") consisting of five (5) members to carry out the functions set forth in this Declaration for that body. The Ground Lessor shall appoint all of the original members of the ARB. Thereafter, the Ground Lessor may, but shall not be obligated to, appoint a majority of the members of the ARB. The Board of Directors shall have the power to appoint any remaining authorized members of the ARB. Any member of the ARB appointed by the Board of Directors shall be a member of the Association. Members appointed by the Ground Lessor need not be members of the Association. All members of the ARB shall be appointed or elected for terms of two (2) years, and those appointed by the Ground Lessor may be removed by the Ground Lessor at any time, for any reason or no reason. An ARB member appointed by the Board of Directors may be removed only for cause. ARB members may be appointed to serve successive terms.

Section 16.3 No Waiver. The approval by the ARB of any plans or specifications for any work done or proposed or in connection with any other matter requiring the approval of the ARB or the Board under this Declaration shall not be deemed to be or constitute a waiver of any right to withhold approval as to any similar plan, specification or matter whenever submitted for approval. In addition, the ARB's failure to act shall not be deemed to be or constitute a waiver of any right to review any subsequent building plans without the purview of the ARB.

Section 16.4 Disclaimer of Liability. Neither the Board, the Ground Lessor, the ARB, nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of:

- (i) the approval or disapproval of plans or specifications, whether or not defective;
- (ii) the construction or performance of any work, whether or not pursuant to approved plans or specifications; or
- (iii) the development or manner of development of any property within the Project; provided, however, that such member has acted in good faith.

Section 16.5 Final Action. Any action taken by the ARB shall be final, subject only to a rehearing which may be granted by the ARB.

Section 16.6 Variances. Where circumstances, such as topography, location or property lines, location of trees, or other matters require, the ARB may allow reasonable variances as to any of the covenants, conditions or restrictions contained in this Declaration under the jurisdiction of the ARB on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Project. Such variances shall not waive the right of the ARB to require strict adherence to this Declaration in all other circumstances.

ARTICLE 17 - AMENDMENT OF DECLARATION

Section 17.1 Amendment Before Close of First Sale. Before the close of the first sale of a Condominium in the Project to a purchaser other than Declarant, this Declaration and any amendments to it may be amended in any respect or revoked by the execution of an instrument amending or revoking the Declaration by Declarant and any Mortgagee of record of the property described in the Declaration. The amending or revoking instrument shall make appropriate reference to this Declaration and, if this Declaration has been recorded, shall be acknowledged and recorded in the Official Records of the County Recorder of Alameda County, California.

Section 17.2 Amendment After Close of First Sale. After the close of the first sale of a Condominium to a purchaser other than Declarant, this Declaration may be amended or revoked in any respect by the vote or written consent of the holders of not less than seventy-five percent (75%) of all the votes entitled to be cast by each class of Owners, or if a single class of Owners is then in effect, by the vote or written consent of not less than (i) seventy-five percent (75%) of all the votes entitled to be cast by all Owners including Declarant and (ii) fifty-one percent (51%) of the votes entitled to be cast by all Owners excluding Declarant. Consent of the Ground Lessor shall be required prior to the effectiveness of any amendment to this Declaration. Such consent shall not

be unreasonably withheld and shall be deemed given if the Ground Lessor shall fail to consent to or reject a proposed amendment for forty-five (45) calendar days after notice thereof has been duly given. Also, if the consent or approval of any governmental authority, Mortgagee, or other person is required under this Declaration with respect to any amendment or revocation of any provision of this Declaration, no such amendment or revocation shall become effective unless such consent or approval is obtained. Any amendment or revocation subsequent to the close of the first sale shall be evidenced by an instrument certified by the secretary or other duly authorized officer of the Association and shall make appropriate reference to this Declaration and its amendments and shall be acknowledged and recorded in the Official Records of the County Recorder of Alameda County, California.

Section 17.3 Reliance on Amendments. Any amendments made in accordance with the terms of this Declaration shall be presumed valid by anyone relying on them in good faith.

Section 17.4 Amendments to Conform to Secondary Market Requirements. It is the intent of Declarant that the Declaration Instruments, and the Project in general, shall now and in the future meet all requirements necessary to purchase, guarantee, insure, or subsidize any Mortgage of a Declaration in the Project by the Federal Home Loan Mortgage Corporation and/or the Federal National Mortgage Association. The Association and the Owners shall, during the Declarant Control Period, adopt any resolutions required by Declarant to conform this Declaration to the requirements of any of these entities or agencies, subject to the requirements of the Common Areas Lease.

Section 17.5 Prohibited Amendments.

(a) Notwithstanding any other provisions of this Declaration, the Articles or the Bylaws, no amendment to this Declaration may, without Declarant's consent:

(i) modify the provisions of Article 10 of this Declaration relating to the amount or types of insurance the Association is required to obtain and maintain;

(ii) modify the provisions of Article 11 of this Declaration relating to the destruction of improvements and the decision to rebuild or purchase destroyed Units;

(iii) modify the provisions of Section 9.13(c) relating to the right of Declarant and any Mortgagee to pay delinquent assessments;

(iv) modify the provisions of Articles 13 or 14 relating to special restrictions on the possession, occupancy, use and resale of Condominiums; or

(v) modify this Section 17.5.

(b) No amendment to this Declaration may violate any provision of the Common Areas Lease.

ARTICLE 18 - TERMINATION OF DECLARATION

The terms, covenants, conditions and restrictions set forth in this Declaration shall continue in full force and effect until the expiration of the Common Areas Lease, including all extensions or renewals thereof, or until this Declaration is revoked pursuant to Article 17.

ARTICLE 19 - MISCELLANEOUS PROVISIONS

Section 19.1 Future Construction. Nothing in this Declaration shall limit the right of Declarant to complete construction of improvements to the Common Areas and to the Condominiums in accordance with the Condominium Plan.

Section 19.2 Assignment of Declarant's Rights. The rights of Declarant in this Declaration may be assigned by Declarant to any successor to all or any part of any of Declarant's interests in the Project by an express assignment incorporated in a recorded deed or to a Mortgagee acquiring Declarant's interest in the Project by foreclosure or by deed-in-lieu of foreclosure.

Section 19.3 Captions. The captions used in this Declaration are for convenience only and in no way define, limit, or describe the scope of this Declaration or the intent of any provision thereof.

Section 19.4 Severability. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any provision or provisions shall not invalidate any of the other provisions or part thereof.

Section 19.5 Cumulative Remedies; Waiver. Each remedy provided for in this Declaration shall be cumulative and not exclusive. Failure to exercise any remedy provided for in this Declaration shall not, under any circumstances, be construed as a waiver of the remedy.

Section 19.6 Violations as Nuisances. Every act or omission in violation of the provisions of this Declaration shall constitute a nuisance and, in addition to all other remedies set forth, may be abated or enjoined by the Association.

Section 19.7 [RESERVED].

Section 19.8 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose and shall be interpreted under the laws of the State of California. This Declaration and all of the other Condominium Instruments are intended to comply with all of the applicable provisions of the Act, and shall be so interpreted and applied.

Section 19.9 Waiver. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce the provision thereafter.

Section 19.10 Notices. All notices, demands, bills, statements, or other communications pursuant to this Declaration shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail (first class, registered or certified), postage prepaid, or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, (i) if to an Owner other than Declarant, at the address which the Owner shall designate in writing and file with the Association or its designated agent or, if no such address is designated, at the address of the Unit of such Owner, or (ii) if to Declarant, at the principal office of Declarant at the Condominium or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section. If a Condominium is owned by more than one person, each such person who so designates an address in writing to the Association shall be entitled to receive all notices hereunder.

Section 19.11 Notice of Transfer. Concurrently with the consummation of the sale of any Condominium under circumstances where the transferee becomes an Owner of the Condominium or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth the name of the transferee and his or her Mortgagee and transferor, the address of the Condominium purchased by the transferee, the transferee's and the Mortgagee's mailing address, and the date of sale. Before the receipt of such notification, any and all communications required or permitted to be given by the Association or the Board shall be deemed to be duly made and given to the transferee if duly and timely made and given to the transferee's transferor.

Section 19.12 Gender and Number. The use of the masculine gender in this Declaration shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section 19.13 Binding Effect. This Declaration shall inure to the benefit of and be binding on the successors and assigns of Declarant, and the heirs, personal representatives, grantees, tenants, successors, and assigns of all other Owners.

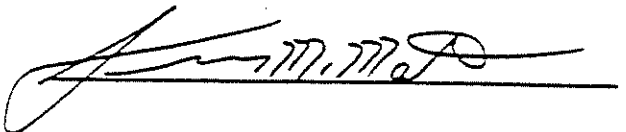
Section 19.14 Limitation on Obligations. Nothing contained in this Declaration or elsewhere in the Condominium Instruments shall be deemed to impose upon Declarant or its successors or assigns any obligation of any nature to build, construct, or provide any buildings or improvements. All obligations upon Declarant of this nature

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shall arise only from a duly executed contract of sale signed by Declarant and a prospective Owner other than Declarant.

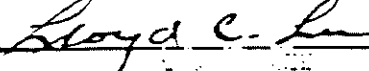
Declarant has executed this instrument as of the date first above written.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, a California public corporation

By: 

Its: Director -- Office of Loan
Programs

APPROVED AS TO FORM



UNIVERSITY OF THE REGENTS
OF THE UNIVERSITY OF CALIFORNIA

EXHIBIT A to DECLARATION OF CC&RS

Description of Land

All that certain real property situated in the City of Berkeley, County of Alameda, State of California, of Lot 1 of Tract 6417 as shown on that certain Condominium Map filed as Instrument No. 94-322439 in the Office of the County Recorder, Alameda County, California, excepting therefrom Unit 76 as shown thereon.

EXHIBIT B to DECLARATION OF CC&RS

Condominium Plan

CERTIFICATE

[CALIFORNIA CIVIL CODE SECTION 1351(e)]

THE UNDERSIGNED, BEING ALL PARTIES REQUIRED BY CALIFORNIA CIVIL CODE SECTION 1351(e) TO EXECUTE THIS CERTIFICATE, DO HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THE WITHIN CONDOMINIUM PLAN PURSUANT TO SAID SECTION 1351(e).

DATED: August 29, 1994

REGENTS OF THE UNIVERSITY OF CALIFORNIA,
a California Corporation

By: [Signature]

ACKNOWLEDGEMENT

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ON August 29, 1994, BEFORE ME Cynthia Franco
PERSONALLY APPEARED, Thomas Van
PERSONALLY KNOWN TO ME (OR PROVED TO ME ON THE BASIS OF
SATISFACTORY EVIDENCE) 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.

Cynthia Franco



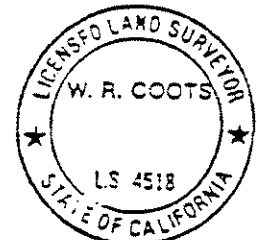
SURVEYORS CERTIFICATE

I HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR OF THE STATE OF CALIFORNIA, THAT THIS CONDOMINIUM PLAN WAS MADE UNDER MY SUPERVISION AND THAT THIS CONDOMINIUM PLAN CORRECTLY (1) REPRESENTS THE BOUNDARY OF THE LAND INCLUDED WITHIN THIS PROJECT AND (2) SUBJECT TO MINOR VARIATIONS AND TO THE NOTES AND DEFINITIONS HEREON, SHOWS THE LOCATION OF THE UNITS THEREIN.

[Signature]

W.R. COOTS - L.S. 4518 (EXP. 9/30/94)

DATE: MAY 9/94



DESCRIPTION OF PROJECT

THE LAND INCLUDED WITHIN THIS PROJECT IS ALL OF LOT 1 OF TRACT 6417 AS SHOWN ON THAT CERTAIN CONDOMINIUM MAP FILED IN _____ IN THE OFFICE OF THE COUNTY RECORDER, ALAMEDA COUNTY, CALIFORNIA.

BASIS OF BEARINGS

THE BEARINGS SHOWN HEREON ARE BASED ON THE BEARING S4.35'00"E BETWEEN THE CITY MONUMENTS ON JEFFERSON STREET AS SHOWN ON THAT CERTAIN CONDOMINIUM MAP FILED IN _____ IN THE OFFICE OF THE COUNTY RECORDER, ALAMEDA COUNTY, CALIFORNIA.

VERTICAL DATUM

THE ELEVATIONS SHOWN HEREON ARE BASED ON THE CITY OF BERKELEY DATUM ELEVATION TAKEN ON THE MONUMENT PIN AT THE INTERSECTION OF ADDISON ST. AND MCGEE STREET. (ELEVATION=131.35')

2. THE BOUNDARY LINES AND UNIT CONTROL LINES OF ALL ELEMENTS AND EXCLUSIVE USE COMMON AREA INTERSECT AT RIGHT ANGLES AND ARE PARALLEL WITH THE EASTERLY AND WESTERLY BOUNDARY OF SAID COMMON AREA.

3. THE TERM "COMMON AREA" SHALL MEAN ALL OF LOT 1 OF TRACT 6417 AS SHOWN ON THAT CONDOMINIUM MAP FILED IN _____ IN THE OFFICE OF THE COUNTY RECORDER, ALAMEDA COUNTY, CALIFORNIA, TOGETHER WITH ALL STRUCTURES OR IMPROVEMENTS THEREON EXCEPTING ALL UNITS AS HEREINAFTER DEFINED

4. THE TERM "UNIT" SHALL MEAN THAT ELEMENT OF A CONDOMINIUM NOT OWNED IN COMMON WITH THE OWNERS OF OTHER CONDOMINIUMS WITHIN THE PROJECT, TO BE SOLD, CONVEYED, HELD AND OCCUPIED. THE BOUNDARIES OF EACH UNIT SHALL BE THE INTERIOR SURFACES OF THE PERIMETER WALLS, FLOORS, CEILINGS, WINDOWS, AND DOORS THEREOF, WHERE THEY EXIST, OR THE HORIZONTAL AND VERTICAL PLANES AT THE LIMITS OF THE DIMENSIONS AND ELEVATIONS AS SHOWN ON THE CONDOMINIUM PLAN. EACH UNIT SHALL INCLUDE THE INTERIOR SURFACES SO DESCRIBED (INCLUDING GYPSUM FINISHING, PLASTER PAINT, WALLPAPER OR PANELING ON THE PERIMETER WALLS AND CEILING, AND VINYL AND CARPET FINISHING, IF ANY, ON THE FLOORS). THE PORTIONS OF ANY BUILDING AND IMPROVEMENTS LYING WITHIN SAID BOUNDARIES, AND THE AIRSPACE SO ENCOMPASSED, SAID UNIT SHALL NOT INCLUDE BEARING WALLS, COLUMNS, FLOORS, (AS DISTINGUISHED FROM THE SURFACES THEREOF LOCATED WITHIN A UNIT), ROOFS, FOUNDATIONS, CENTRAL HEATING EQUIPMENT, CENTRAL VENTILATING, REFRIGERATION OR AIR CONDITIONING EQUIPMENT, RESERVOIRS, TANKS, PUMPS AND OTHER CENTRAL SERVICES, WHICH ARE UTILIZED FOR OR SERVE MORE THAN ONE UNIT OR ARE NECESSARY OR CONVENIENT TO THE EXISTENCE, MAINTENANCE, OR SAFETY OF THE PROJECT AS A WHOLE, OR PIPES, DUCTS, FLUES, CHUTES, WRES OR OTHER UTILITY INSTALLATIONS WHEREVER LOCATED (EXCLUDING FROM THIS EXCEPTION OUTLETS WITHIN THE UNIT). SAID UNIT SHALL INCLUDE ALL FIXTURES ATTACHED THERETO AND MADE A PART THEREOF, AND SHALL INCLUDE ALL HEATING EQUIPMENT, AIR CONDITIONING EQUIPMENT, AND WATER HEATING EQUIPMENT SITUATED WITHIN THE BOUNDARIES OF SAID UNIT AND UTILIZED FOR OR SERVING ONLY SAID UNIT. IN INTERPRETING DEEDS AND PLANS, THE EXISTING PHYSICAL BOUNDARIES OF A UNIT, OR OF A UNIT RECONSTRUCTED IN SUBSTANTIAL ACCORDANCE WITH THE ORIGINAL PLANS THEREOF, SHALL BE CONCLUSIVELY PRESUMED TO BE ITS BOUNDARIES, RATHER THAN THE METES AND BOUNDS OR OTHER DESCRIPTION EXPRESSED IN THE DEED OR CONDOMINIUM PLAN, REGARDLESS OF SETTLING OR OF LATERAL MOVEMENT OF THE BUILDING OF WHICH THE UNIT FORMS A PART, AND REGARDLESS OF CHANGES IN PHYSICAL BOUNDARIES WHICH MAY HEREINAFTER EXIST IN THE EVENT SAID UNIT AND BUILDING OF WHICH THE UNIT FORMS A PART IS RECONSTRUCTED IN SUBSTANTIAL ACCORDANCE WITH THE ORIGINAL PLANS THEREOF, AND REGARDLESS OF MINOR VARIANCES BETWEEN THE PHYSICAL BOUNDARIES SHOWN ON THE CONDOMINIUM PLAN OR IN THE DEED AND THOSE OF A BUILDING.

5. THOSE AREAS SHOWN BEARING THE LETTER DESIGNATION "PY" AND "B", ARE PRIVATE YARD AND BALCONY AREAS, RESPECTIVELY, THE VERTICAL LIMITS OF WHICH ARE THE GROUND OR FLOOR AND CEILING, OVERHEAD STRUCTURE, OR THE ELEVATION EQUAL TO THE FINISH FLOOR ELEVATION OF THE ABOVE UNIT, IF ANY, AND ARE EXCLUSIVE USE COMMON AREA FOR THE USE OF THE UNIT BEARING THE IDENTICAL NUMBER DESIGNATION.

6. THOSE AREAS BEARING THE LETTERS "C", "R" AND "H" ARE EXCLUSIVE USE COMMON AREA PARKING SPACES FOR COMPACT CARS, REGULAR CARS AND HANDICAP PARKING, RESPECTIVELY, FOR THE USE OF THE UNIT BEARING THE IDENTICAL NUMBER DESIGNATION.

7. THOSE AREAS SHOWN BEARING THE LETTER DESIGNATION "SC" ARE STORAGE CLOSET AREAS, THE VERTICAL LIMITS OF WHICH ARE THE GROUND OR FLOOR AND CEILING OR OVERHEAD STRUCTURE, IF ANY, AND ARE EXCLUSIVE USE COMMON AREA FOR THE USE OF THE UNIT BEARING THE IDENTICAL NUMBER DESIGNATION.

8. THOSE AREAS SHOWN BEARING THE LETTER DESIGNATION "S" ARE STORAGE AREAS THE VERTICAL LIMITS OF WHICH ARE THE GROUND OR FLOOR AND CEILING OR OVERHEAD STRUCTURE, IF ANY, AND ARE EXCLUSIVE USE COMMON AREA FOR THE USE OF THE UNIT BEARING THE IDENTICAL NUMBER DESIGNATION.

9. THIS PLAN AND THE DIMENSIONS SHOWN HEREIN ARE INTENDED TO CONFORM TO CIVIL CODE SECTION 1351 WHICH REQUIRES DIAGRAMMETRIC FLOOR PLANS OF THE BUILDING BUILT OR TO BE BUILT THEREON IN SUFFICIENT DETAIL TO IDENTIFY EACH UNIT, ITS RELATIVE LOCATION AND APPROXIMATE DIMENSIONS. THE DIMENSIONS SHOWN HEREON ARE NOT INTENDED TO BE SUFFICIENTLY ACCURATE TO USE FOR COMPUTATION OF FLOOR AREA OR AIRSPACE VOLUME IN ANY OR ALL UNITS.

10. THIS CONDOMINIUM PLAN INTENTIONALLY OMITS DETAILED INFORMATION WITHIN INDIVIDUAL UNITS OF THE FOLLOWING NATURE (IF ANY): SLOPED AND FURRED AND DROPPED CEILINGS; VARYING CEILING AND FLOOR ELEVATIONS; SKYLIGHTS; INTERNAL PARTITIONING; SOFFITS; STEPS AND STAIRWAYS; PROTRUSIONS OF VENTS, BEAMS COLUMNS, BAY WINDOWS AND WINDOW CASINGS; AND OTHER SUCH FEATURES.

CONDOMINIUM PLAN FOR TRACT 6417 - LOT 1

NOTES AND DEFINITIONS

EXHIBIT C to DECLARATION OF CC&RS

Assignment of Percentage Interest

EXHIBIT C
to Declaration of CC&R

CONDO	ADDRESS	TYPE	SQ.FT.	%OWN
1	2122 Jefferson	C	1081.57	1.1133
2	2100 Jefferson	BX/B(u)	1801.75	1.8542
3	2120 Jefferson	CR	1081.57	1.1133
4	2102 Jefferson	BR/BR	1796.21	1.8481
5	2118 Jefferson	C	1081.57	1.1133
6	2104 Jefferson	B/B(u)	1797.1	1.8491
7	2116 Jefferson	CR	1081.57	1.1133
8	2106 Jefferson	BR/BR	1796.21	1.8481
9	2114 Jeffeerson	C	1081.57	1.1133
10	2108 Jefferson	B/B(u)	1797.1	1.8491
11	2112 Jefferson	CR	1081.57	1.1133
12	2110 Jefferson	BXR/BR	1783.26	1.8347
Sub-Total			17,261.05	17.76%
13	1616 Addison	DR	1001.11	1.03
14	1608 Addison	AR/AR	1861.11	1.915
15	1614 Addison	DR	1001.11	1.03
16	1606 Addison	AR/AR	1861.11	1.915
17	1612 Addison	D	1062.63	1.0938
18	1604 Addison	A/A	1836	1.8892
19	1610 Addison	D/R	1001.11	1.03
20	1602 Addison	AR/AR	1861.11	1.915
21	1600 Addison	AM/AM	1847.74	1.9016
Sub-Total			13,333.03	13.72%
22	2117 California	DR	1001.11	1.03
23	2103 California	AR/AR	1861.11	1.915
24	2115 California	D	1062.63	1.0938
25	2105 California	A/A	1836	1.8892
26	2113 California	DR	1001.11	1.03
27	2107 California	AR/AR	1861.11	1.915
28	2109 California	E	1079.69	1.1113
29	2111 California	E2	974.87	1.0032
Sub-Total			10,677.63	9.98%
30	2119 California	ER	1079.68	1.1113
31	2121 California	E2R	826.35	0.8499
32	2129 California	DR	1001.11	1.03
33	2123 California	AR/AR	1861.11	1.915
34	2127 California	D	1062.63	1.0938
35	2125 California	A/A	1836	1.8892
Sub-Total			7,666.88	7.8892
36	2141 California	DR	1001.11	1.03
37	2131 California	AR/AR	1861.11	1.915
38	2139 California	DR	1001.11	1.03

ASSIGNMENT OF PERCENTAGE INTEREST

39	2133 California	AR/AR	1861.11	1.915
40	2137 California	D	1062.63	1.0938
41	2135 California	A/A	1836	1.8892
		Sub-Total	8,623.07	8.87%
42	2153 California	DR	1001.11	1.03
43	2143 California	AR/AR	1861.11	1.915
44	2151 California	D	1062.63	1.0938
45	2145 California	A/A	1836	1.8892
46	2147 California	E	1079.69	1.1113
47	2149 California	E2	974.87	1.0032
		Sub-Total	7,815.41	8.04%
48	2168 Jefferson	D	1062.63	1.0938
49	2166 Jefferson	A/A	1836	1.8892
50	2170 Jefferson	DR	1001.11	1.03
51	2164 Jefferson	AR/AR	1861.11	1.915
52	2172 Jefferson	DR	1001.11	1.03
53	2162 Jefferson	AR/AR	1836	1.8892
		Sub-Total	7,697.96	8.85%
54	1607 Allston	BXR/BXR	1782.74	1.8347
55	1609 Allston	E	1079.69	1.1113
56	1611 Allston	E2	974.87	1.0032
		Sub-Total	3,837.30	3.95%
57	2124 Jefferson		1393.08	1.4335
58	2126 Jefferson		1238.16	1.274
59	2128 Jefferson		1256.64	1.2931
60	2142 Jefferson		1142	1.1751
61	2136 Jefferson		1185	1.2193
62	2130 Jefferson		1378	1.4179
63	2132 Jefferson		852	0.8767
64	2134 Jefferson		1008	1.0372
65	2138 Jefferson		691	0.711
66	2140 Jefferson		948	0.9755
67	2144 Jefferson		964	0.9919
68	2158 Jefferson		1167.28	1.2011
69	2152 Jefferson		1177.93	1.2121
70	2146 Jefferson		1383.38	1.4231
71	2148 Jefferson		900.32	0.9264
72	2150 Jefferson		993.6	1.0228
73	2154 Jefferson		686	0.7059
74	2156 Jefferson		959.56	0.9874
75	2160 Jefferson		943.46	0.9708
		Sub-Total	20,267.41	20.85%
		GRAND TOTAL	97,179.74	99.92%

BYLAWS
OF
UNIVERSITY TERRACE BERKELEY HOMEOWNERS ASSOCIATION

ARTICLE 1
PURPOSES AND DEFINITIONS

1.1 Formation and Purposes. This Association has been formed under the California Nonprofit Mutual Benefit Corporation Law (Corp. Code, §§ 7110-8970) exclusively for the purposes of the University Terrace Berkeley Homeowners Association (the "Association") as set forth in the Articles of Incorporation of the Association.

1.2 Definitions. All definitions contained in that Declaration of Covenants, Conditions and Restrictions recorded on _____ as Instrument No. _____ of the Official Records of Alameda County, California (herein "Declaration"), are hereby incorporated by reference.

ARTICLE 2
PRINCIPAL OFFICE

The principal office for the transaction of the business of the Association shall be located within the Project or as close thereto as practicable and shall from time to time be specified by the Board by resolution.

ARTICLE 3
ASSOCIATION MEMBERSHIP AND VOTING

3.1 Membership Appurtenant to Ownership.

(a) Each owner, including Declarant, shall be a member of the Association. Membership shall be appurtenant to each Unit in the Project, and the holding of an ownership interest in a Unit in the Project shall be the sole qualification for membership. Membership shall terminate automatically when the owner no longer holds any ownership interest in any Unit in the Project. Membership may not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on a transfer of title to a Unit and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Unit shall transfer automatically the appurtenant membership to the transferee. Any party that holds an interest in a Unit merely as security for performance of an obligation shall not be a member of the Association.

(b) Each member of the Association shall have the rights, duties, and obligations set forth in the Declaration, the Articles, the Bylaws, and the Rules and Regulations.

(c) Notwithstanding any other provision of these Bylaws, the Declarant shall be deemed to be the Class B Owner of the Association, so long as there is a Class B membership, as defined in subsection 3.3(a) below, regardless of the number of Units that it owns.

3.2 Approval By a Specified Percentage of Owners. Except as required by law or as otherwise provided in the Declaration, the Articles, or these Bylaws, and subject to the provisions of

Section 3.3 of these Bylaws, all matters requiring the approval of a majority or a specified percentage of owners or of the voting rights or voting power of owners shall be deemed approved if approved at any duly called regular or special meeting at which a quorum is present, either in person or by proxy, by owners holding the specified percentage of the total voting power of owners present, either in person or by proxy, or if approved in accordance with Section 4.12 of these Bylaws.

3.3 Voting.

(a) The Association shall have two classes of voting membership as follows:

(i) Class A: Class A Owners are all owners, with the exception of Declarant. Each Class A Owner shall be entitled to one vote for each Unit in which he or she owns an interest. If more than one Owner owns an interest in the Unit, only one vote may be cast with respect to that Unit.

(ii) Class B: The Class B Owner shall be Declarant, who shall be entitled to three votes for each Unit it owns. Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership.

(b) As long as two classes of voting memberships exist, (1) the cumulative voting procedure described in Section 5.4 shall be modified to permit the election by the Class A Owners/members of a minimum of two (2) directors, and (2) except as expressly provided otherwise in the Declaration or these Bylaws, any action by the Association that requires approval by the owners or by the voting rights or voting power of a specified percentage of owners shall require approval by the designated percentage of voting power in each class. Except as required by law, or as otherwise provided in the Declaration, the Articles or these Bylaws, matters which require the approval or vote of Class A Owners will be deemed approved by Class A Owners if approved by the specified percentage of Class A Owners present, either in person or by proxy, at a duly called regular or special meeting at which at least thirty-three and one-third percent (33-1/3%) of the voting power of Class A Owners is present, either in person or by proxy, or if approved by written ballot by the specified percentage of Class A Owners if the number of such votes cast by ballot equals or exceeds thirty-three and one-third percent (33-1/3%) of the voting power of Class A Owners.

(c) Voting rights shall vest at the time of conveyance of any Unit.

(d) Joint Ownership Votes. If the ownership of a Unit is vested in more than one (1) person, or in an entity other than a natural person, such owner or owners shall, from time to time, designate one (1) natural person in writing to vote and exercise all of the rights of membership; in the case of ownership of a Unit by a number of persons, including Units held in joint tenancy or in a tenancy in common, the person so designated must be one of such joint owners. In the case of a contract of sale of a Unit, the contract purchaser of such Unit shall be entitled to the membership for such Unit effective upon the transfer of possession to him of such Unit. Any owner of an interest in any Unit, even though not designated as the voting member, shall nevertheless be jointly and severally responsible for the dues, assessments and charges levied against, incurred by or attributed to the membership derived from the Unit in which such owner has an interest. If a Unit has more than one owner, and if the owners fail to designate a voting member, such owners shall lose their right to vote on the matter in question. If any owner casts a vote attributable to a Unit without a prior designation, it will be conclusively presumed that the person voting was the designated voter for the

owners of such Unit. If more than one vote attributable to a Unit is cast, none of such votes shall be counted, and all of such votes shall be void.

(e) Majority Rule. Any provision in these Bylaws or in the Declaration calling for approval by "a majority of the Members" or a "majority of the voting power of the Association" shall require the vote or written assent of each class of membership. Except as expressly provided elsewhere in these Bylaws and in the Declaration, a simple majority of the members present, if constituting a quorum, shall prevail on all questions.

ARTICLE 4 MEETINGS OF MEMBERS

4.1 Place of Meeting. All annual and other meetings of members shall be held at the Project or at such other place as close thereto as practicable. Any meeting is valid wherever held, if held by the written consent of all members entitled to vote thereat, given either before or after the meeting and filed with the Secretary of the Association.

4.2 Annual Meeting. Annual meetings of the members shall be held within a period of thirty (30) days before or thirty (30) days after the anniversary date of the first annual meeting at 8:00 o'clock p.m. local time.

Written notice of each annual meeting shall be given by the Secretary of the Association to each member entitled to vote, either personally or by sending a copy of the notice through the mail or by telegraph, charges prepaid, to the member's address appearing on the books of the Association or supplied by the member to the Association for the purpose of the notice. If a member supplies no address, notice shall be deemed to have been given if mailed to the address of the Unit affected, or published at least once in some newspaper of general circulation in the County of Alameda. All such notices shall be sent to each member entitled thereto not less than ten (10) days nor more than sixty (60) days before each annual meeting, and shall specify the place, the date and the hour of such meeting.

4.3 Organizational Meeting. An organizational meeting of the owners shall be held either (i) within six (6) months from the date of sale by the Declarant of the first Unit in the Project or (ii) within forty-five (45) days after fifty-one percent (51%) of the Units in the Project have been sold, whichever first occurs. The term "sale," as used herein, shall mean in addition to purchase and sale as connoted thereby the transfer of possession by sublease with an option to purchase or by contract of sale.

4.4 Special Meetings. Special meetings of members for any purpose or purposes whatsoever shall be called at any time by the President or by the Board, or by a majority of a quorum of directors, or by receipt of a written request therefor signed by members representing not less than six (6) members of the Association. Except in special cases where other expressed provision is made by statute, notice of such special meetings shall be given in the same manner as for the annual meetings of members. Notices of any special meeting shall specify, in addition to the place, the date and the hour of such meeting, the general nature of the business to be transacted thereat.

4.5 Record Date and Closing Membership Register. The Board may fix a time in the future not exceeding fifteen (15) days preceding the date of any meeting of members, as a record date for the determination of the members entitled to notice of and to vote at such meeting, and in such

case, only members of record on the date so fixed shall be entitled to notice of and to vote at such meeting, notwithstanding any transfer of any memberships on the books of the Association after any record date fixed as aforesaid. The Board may close the books of the Association against transfers of membership during the whole or any part of any such period.

4.6 Adjourned Meetings. Any members' meeting, annual or special, in the absence of a quorum, may be adjourned from time to time by the vote of a majority of the voting power of the Association represented at such meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called. In the absence of a quorum, which at such adjourned meeting shall be not less than one-fourth (1/4th) of the voting power of the Association, no other business may be transacted at any such meeting. It shall not be necessary to give any notice of such adjournment or of the business to be transacted at an adjourned meeting other than by announcement at the meeting at which the adjournment is taken. If for any reason a time and place for the adjourned meeting is not fixed by those in attendance at the meeting at which the adjournment is taken or a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to members in the same manner as for the annual meetings of members.

4.7 Entry of Notice. Whenever any member who is entitled to vote has been absent from any meeting of members, whether annual or special, an entry in the minutes to the effect that notice has been duly given shall be conclusive and incontrovertible evidence that due notice of such meeting was given to each member as required by law and the Bylaws.

4.8 Quorum. Except as provided in Section 4.6 relative to adjourned meetings, the presence in person or by proxy of members entitled to cast in excess of one-third (1/3) of the voting power of the Association shall constitute a quorum for the transaction of business. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum; provided, however, that there shall be deemed a quorum if there are present at the meeting when reconvened pursuant to Section 4.6 at least one-fourth (1/4th) of the voting power of the Association.

4.9 Consent of Absentees. The transaction of business at any meeting of members, either annual or special, however called and noticed, shall be as valid as though it was done at a meeting duly held after regular call and notice, if a quorum be present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy, sign a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the records of the Association or made a part of the minutes of the meeting.

4.10 Proxies. Every person entitled to vote or execute consent shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his or her duly authorized agent and filed with the Secretary of the Association; provided, that no such proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the member executing it specifies therein the length of time for which such proxy is to continue in force, which in no case shall exceed two (2) years from the date of its execution.

4.11 Balloting. On all questions where a majority of the voting power of the Association deems it necessary, and in any event in the election or removal of members of the Board, ballots shall be cast secretly and in writing, folded in such a manner that the way in which the ballot is marked cannot be seen, and deposited into a receptacle. The ballots shall be counted immediately upon

collection thereof by two (2) members selected by the Chairman of the meeting. The Chairman shall announce the results of the balloting immediately, and the ballots may be inspected by any member.

4.12 Action Without a Meeting. Any action which may be taken by the vote of members at a regular or special meeting, except the election of governing body members where cumulative voting is a requirement, may be taken without a meeting in accordance with Corporations Code section 7513.

ARTICLE 5 DIRECTORS

5.1 Powers. Subject to limitations of the Articles of Incorporation or the Bylaws or the California Corporations Code as to the action to be authorized or approved by the members and subject to the duties of directors as prescribed by the Bylaws, all corporate powers shall be exercised by or under authority of, and the business and affairs of the Association shall be controlled by, the Board of Directors; without prejudice to such general powers, but subject to the same limitations, it is hereby expressly declared that the directors shall have the following powers:

(a) To elect and remove all officers, agents and employees of the Association, prescribe such powers and duties for them as may not be inconsistent with law, with the Articles of Incorporation or these Bylaws, fix their compensation and require from them security for faithful service.

(b) To conduct, manage and control the affairs and business of the Association, to provide for internal security, fire protection and such other common services and utilities as they may deem necessary and advisable, to maintain the common areas and common facilities of the Association, including any real or personal property owned or leased by the Association, and to make such rules and regulations therefor not inconsistent with law, the Articles of Incorporation or the Bylaws as they may deem best.

(c) To contract and to levy assessments for the activities herein authorized including such acts as may be incidental to the stated powers and authorities and affairs of the Association.

(d) To adopt, make and use a corporate seal, and to prescribe the forms of certificates of membership, and to alter the form of such seal and of such certificates from time to time as in their judgment they may deem best, provided such seal and such certificates shall at all times comply with the provisions of law.

(e) To authorize the issuance of memberships to such persons as shall be eligible for membership as provided in Article III of the Bylaws.

(f) To appoint an executive committee and to delegate to such committee, subject to the control of the Board, any of the powers and authority of the Board.

(g) To enforce the provisions of these Bylaws, the Articles of Incorporation and the Declaration of Covenants, Conditions and Restrictions described in Article I hereof, and/or to seek recovery of damages for any breach thereof that causes injury or loss to other owners or the Association.

(h) To exercise all the powers and authorities set forth in the Declaration including, without limitation, the assessment powers therein.

(i) To contract and to pay for maintenance, gardening, utilities, materials and supplies and services relating thereto within the Project and to employ personnel reasonably necessary for the operation of the Project including lawyers and accountants where appropriate.

(j) To enter the Units as necessary in connection with construction, maintenance or emergency repair for the benefit of the Common Areas or of the owners in common.

(k) To pay taxes and special assessments which are or would become a lien on the property of the Association, if any.

(l) To contract and pay premiums for fire, casualty, liability and other insurance, including directors' and officers' liability coverage and indemnity and other bonds, as required by the Declaration or the Bylaws or as deemed advisable by the Board.

(m) To delegate its powers.

(n) To fill vacancies on the Board.

(o) Pursuant to uniform rules, to suspend the voting rights or any other privileges of membership herein of an owner for any period during which any assessment against his or her Unit remains unpaid or for any period during which any infraction by an owner, his or her family or guests for this Declaration, the Bylaws, Articles of Incorporation or rules continues and up to thirty (30) days after the procedures hereafter enumerated are followed:

(i) Written notice of the proposed suspension and the reasons therefor is given to the owners at least fifteen (15) days prior to the effective date of the Board action.

(ii) The owner is given an opportunity to submit to the Board his or her oral or written response to the notice not less than five (5) days prior to the effective date of the proposed suspension.

(iii) The notice required above shall be given by first-class mail or registered mail sent to the last address of the owner on the Association's records.

(p) To impose reasonable monetary penalties for any failure to comply with the Declaration, Bylaws or Association rules, provided that such penalty shall be imposed only after notice and an opportunity to be heard are given in the manner prescribed in Section 5.1(o).

5.2 Limitation of Powers. Notwithstanding any or all of the powers set forth in Section 5.1, without the prior vote or written consent of (1) a majority of the total voting power of the Association; and (2) a majority of the members other than the Declarant, the Board shall not:

(a) Enter into any contracts which bind it or the Association for a period in excess of one (1) year, provided that any management agreement for the Project shall further provide that it can be cancelled upon thirty (30) days' written notice by the Association, except for the following:

(i) A management contract, the terms of which have been approved by the Federal Housing Administration or Veteran's Administration;

(ii) The contract of a public utility company if the rates charged for the materials or services are regulated by the California Public Utilities Commission; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract for the regulated rate; or

(iii) Prepaid casualty and/or liability insurance policies for a term not to exceed three (3) years' duration provided that the policy permits a short rate cancellation by the insured.

(iv) Lease agreements for fixtures and equipment, which shall not exceed five (5) years' duration, provided that the lessor under the agreement is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(v) Agreements for cable television services and equipment, which shall not exceed five (5) years' duration, provided that the supplier is not an entity in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(vi) Agreements for sale or lease of burglar alarm or fire alarm equipment, installation and services of not to exceed five (5) years duration, provided that the supplier or suppliers are not entities in which the Declarant has a direct or indirect ownership interest of ten percent (10%) or more.

(b) During any one (1) fiscal year sell property of the Association or incur aggregate expenditures for capital improvements to the Common Areas having an aggregate fair market value greater than fifteen percent (15%) of the budgeted gross expenses of the Association for that fiscal year.

(c) Pay compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business except that such persons may be reimbursed for expenses incurred in carrying on the Association's business.

5.3 Number and Qualification of Directors; Quorum. The Board shall consist of at least three (3) and no more than five (5) directors until changed by appropriate amendment. The exact number of directors shall be determined by the members at any annual meeting of members, provided that no incumbent director shall have his or her term shortened by such action. The presence of a majority of directors shall constitute a quorum for the conduct of business.

5.4 Election, Term of Office and Removal. All directors shall be elected at the organizational meeting of members and at each subsequent annual meeting of members to serve for a term of one (1) year, but if any such annual meeting is not held or the director is not selected thereat, the directors may be elected at any special meeting of members held for that purpose. All directors, unless removed, shall hold office until their respective successors are elected. In any vote for the election of or removal of more than one (1) director, no member shall be entitled to cumulate votes for a candidate or candidates unless such candidate's name or candidates' names have been placed in nomination prior to the voting and at least one (1) member has given notice at the meeting

prior to the voting of his or her intention to cumulate votes. If any such member has given such notice, all members may cumulate their votes for candidates in nomination; that is, all or any part of the total number of votes that each member has (based upon one vote per member for each vacancy to be filled or director to be removed) may be cast for the election of or removal of any one (1) director. However, unless the entire Board is removed from office by the vote of members of the Association, no individual director shall be removed prior to the expiration of his or her term of office if the votes cast against removal would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast and the entire Board authorized at the time of the most recent election of the director were then being elected. The first election shall be held either (i) within six (6) months from the date of sale by the Declarant of the first Unit, or (ii) within forty-five (45) days after fifty-one percent (51%) of the Units in the Project have been sold, whichever first occurs. When cumulative voting does not permit the owners other than the Declarant to elect two (2) directors, then such owners shall nevertheless be permitted to elect two (2) directors. When a director elected by the owners other than the Declarant is to be removed, the consent or vote of a majority of owners other than the Declarant must be obtained to effect such removal, subject to the above requirements for removal.

5.5 Vacancies. Vacancies in the Board may be filled by a majority of the remaining directors, though less than a quorum, and each director so elected shall hold office until his or her successor is elected at an annual meeting of members or at a special meeting called for that purpose. A vacancy or vacancies shall be deemed to exist in case of the death, resignation or sale of his or her Unit by any director, or if the members shall increase the authorized number of directors but fail at the meeting at which such increase is authorized, or at an adjournment thereof, to elect the additional directors so provided for, or in case the members fail at any time to elect the full number of authorized directors, or if a director is removed by the members. The members may at any time elect directors to fill any vacancy not filled by the directors, and may elect the additional directors at the meeting at which an amendment of the Bylaws is voted authorizing an increase in the number of directors. If any director tenders his or her resignation to the Board, the Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. No reduction of the number of directors shall have the effect of removing any director prior to the expiration of his or her term in office.

5.6 Place and Notice of Meeting; Right to be Heard. Unless otherwise permitted by law, all meetings of the Board shall be held at such time and at any such place or places within the Project or the campus of University of California at Berkeley as designated at any time by resolution of the Board or by written consent of all members of the Board. Notice of all regular meetings of the Board shall be posted at a prominent place in the Common Areas and communicated to each director at least four (4) days prior to the meeting; provided, however, that notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. Subject to the provisions of Section 5.12, *infra*, all regular and special meetings of the Board shall be open to all members of the Association; however, such members who are not on the Board shall not have the right to speak unless authorized by a majority of a quorum of the Board.

5.7 Organizational Meeting. Immediately following each annual meeting of members, the Board shall hold a regular meeting for the purpose of organization, election of officers and the transaction of other business. Notice of such meetings is hereby dispensed with.

5.8 Other Regular Meetings. Other regular meetings of the Board may be held at such place and day and hour as may be fixed from time to time, subject to the notice requirements contained in Section 5.6, *supra*. Regular meetings of the Board shall be held at least every three (3)

months and more frequently when the business to be transacted by the Board justifies more frequent meetings.

5.9 Special Meetings. Special meetings of the Board for any purpose or purposes whatsoever may be called at any time by the President or any two (2) directors and upon written notice being delivered to each director and posted in the manner prescribed for notice of regular meetings and specifying, in addition to the place, the date and the hour of such meeting, the general nature of the business to be transacted thereat; provided, however, that notice need not be given to any director who has signed a waiver of notice or consent to holding the meeting.

5.10 Majority Rule. Except as expressly provided elsewhere in these Bylaws, a simple majority of the directors present at any meeting duly held at which a quorum is present shall prevail on all questions.

5.11 Election of Officers. All officers shall be chosen by vote of the Board, except such officers as may be appointed in accordance with Sections 6.3 and 6.4.

5.12 Executive Sessions. Upon the vote of a majority of a quorum of the Board, it may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved and business of similar nature, provided that the nature of such business to be discussed in executive session is first announced in open session.

5.13 Action Without a Meeting. The Board may take actions without a meeting if all directors consent in writing to the action to be taken. An explanation of any such action to be taken by unanimous written consent shall be given by the Board to the members of the Association in the manner provided in Section 5.6 hereof for the giving of notice of regular meetings of the Board within three (3) days after all written consents have been obtained.

ARTICLE 6 OFFICERS

6.1 Officers. The officers of the Association shall be President, Vice-President, Secretary and Treasurer.

6.2 Election. The officers of the Association, except such officers as may be appointed in accordance with the provisions of Sections 6.3 and 6.4, shall be chosen annually by the Board, and each shall hold his or her office until he or she shall resign or shall be removed or otherwise disqualified to serve, or until the election and qualification of his or her successor.

6.3 Subordinate Officers, etc. The Board may appoint such other officers as the business of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in the Bylaws or as the Board may determine from time to time.

6.4 Removal and Resignation. Any officer may be removed, either with or without cause, by a majority of the directors at the time in office, at any regular or special meeting of the Board, or, except in the case of an officer chosen by the Board, by any officer upon such power of removal as may be conferred by the Board. Any officer may resign at any time by giving written notice to the Board or the President or the Secretary of the Association. Any such resignation shall take effect at

the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.5 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in the Bylaws for the regular appointments to such office.

6.6 President. Subject to such supervisory powers, if any, as may be given by the Board to the Chairman of the Board, if there be such an officer, the President shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of the business and officers of the Association. He or she shall preside at all meetings of the members in the absence of the Chairman of the Board, or, if there be none, at all meetings of the Board. He or she shall be ex-officio a member of all the standing committees including the executive committee, if any, and shall have the general powers and duties of management usually vested in the office of president of an association and shall have such other powers and duties as may be prescribed by the Board or by the Bylaws.

6.7 Vice-President. In the absence or disability of the President, the Vice-Presidents in order of their rank as fixed by the Board or, if not ranked, the Vice-President designated by the Board, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice-Presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board or by the Bylaws.

6.8 Secretary. The Secretary shall keep, or cause to be kept, at the principal office or such other place as the Board may order, a book of minutes of all meetings of directors and members, with the time and place of holding, whether regular or special, and if special, how authorized, the notice thereof given, and the names of those present or represented. The Secretary shall keep, or cause to be kept, at the principal office or at the office of the Association's transfer agent, a membership register, or a duplicate membership register showing the names of the members and their addresses, and the property to which each membership relates, the number of memberships, the number and date of certificates issued for the same and the number and date of cancellation of every certificate surrendered for cancellation. The Secretary shall give, or cause to be given, notice of all meetings of the members and of the Board required by the Bylaws or by law to be given, and he or she shall keep the seal of the Association in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

6.9 Chief Financial Officer--Treasurer. The Chief Financial Officer, herein called the Treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association. The Treasurer shall deposit all monies and other valuables in the name and to the credit of the Association with such depositories as may be designated by the Board. He or she shall disburse the funds of the Association as may be ordered by the Board, shall render to the President and directors, whenever they request it, an account of all his transactions as Treasurer and of the financial condition of the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or the Bylaws.

ARTICLE 7
MISCELLANEOUS

7.1 Inspection of Corporate Records. The membership register or duplicate membership register, the books of account and minutes of proceedings of the members, directors and committees shall be open to inspection upon the written demand of any member, at any reasonable time, for a purpose reasonably related to his interests as a member. Such inspection may be made in person or by an agent or attorney, and shall include the right to make extracts. Demands of inspection other than at a members' meeting shall be made in writing upon the President or Secretary. Every such demand, unless granted, shall be referred by such officer to the Board. The Board shall adopt reasonable and uniform rules respecting (1) the notice to be given to the custodian of the particular records to be inspected by a member; (2) the hours and days of the week when such inspection may be made; and (3) payment of the cost of reproducing copies of documents requested by a member. Each director shall have the right at any reasonable time to inspect all books, records and documents of the Association and physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and copies of documents.

7.2 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Association, shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by resolution of the Board.

7.3 Contract, etc. How Executed. The Board, except as otherwise provided in the Bylaws, may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by a contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

7.4 Balance Sheets, Operating Statements and Budgets. The following financial information shall be regularly prepared and distributed by the Association to all members:

(a) A budget for each fiscal year consisting of at least the following information shall be distributed not less than forty-five (45) days and not more than sixty (60) days prior to the beginning of the fiscal year:

- (i) Estimated revenue and expenses on an accrual basis.
- (ii) The amount of the total cash reserves of the Association currently available for replacement, or major repair of common facilities, and for contingencies.
- (iii) An itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement, or additions to major components of the Common Areas and facilities for which the Association is responsible.
- (iv) A general statement setting forth the procedures used by the Association in the calculation and establishment of reserves to defray the costs of repair, replacement, or additions to major components of the Common Areas and facilities for which the Association is responsible.

(b) A balance sheet, as of an accounting date which is the last day of the month closest in time to six (6) months from the date of closing of the first sale of a Unit, and an operating statement for the period from the date of the first closing to the said accounting date, shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the address of the Unit and the name of the entity assessed.

(c) A report consisting of the following shall be distributed within one hundred twenty (120) days after the closing of the fiscal year.

(i) A balance sheet as of the end of the fiscal year.

(ii) An operating (income) statement for the fiscal year.

(iii) A statement of changes in financial position for the fiscal year.

(iv) For any fiscal year in which the gross income to the Association exceeds Seventy-Five Thousand Dollars (\$75,000), a copy of the review of the annual report prepared in accordance with generally accepted accounting principles by a licensee of the California State Board of Accountancy.

(v) The information required by section 8322 of the California Corporations Code.

If the report referred to in subparagraph (c), above, is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statement was prepared from the books and records of the Association without independent audit or review.

In addition to financial statements, the Association shall annually distribute within sixty (60) days prior to the beginning of the fiscal year a statement of the Association's policies and practices in enforcing its remedies against members for defaults in the payment of regular and special assessments including the recording and foreclosing of liens against members' Units.

ARTICLE 8 AMENDMENTS

The Bylaws may be amended or repealed by the vote at a duly called meeting or by written consent of not less than a fifty-one percent (51%) vote of the voting power of the Association which includes at least a fifty-one percent (51%) vote of all members other than the Declarant, and which includes the affirmative votes (or deemed consent as provided in the CC&Rs) of at least fifty-one percent (51%) of all first mortgagees of Units. Notwithstanding the above, the percentage of a quorum or of the voting power of the Association or of members necessary to amend a specific clause or provision in the Articles or Bylaws shall not be less than a prescribed percentage of affirmed votes required to be taken under that clause.

CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify: that I am the duly elected and acting Secretary of the University Terrace Berkeley Homeowners Association, a California mutual benefit corporation; and that the foregoing Bylaws consisting of the eight (8) Articles and _____ () pages, constitute the Bylaws of said corporation as duly adopted by the incorporators of said corporation, on _____, 19__, at Berkeley, California.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____,
199__.

EXHIBIT "A" TO ARCHITECTURAL GUIDELINES

ARB FEE SCHEDULE

Plan/Design Review for General Home
Improvements

No Charge

Review of Landscaping Plans

No Charge

Plan/Design Review for Construction of
Improvements Not Submitted Prior
to Commencement of Work*

\$ 50.00

* The fee does not include any costs which may be incurred by UCB or the ARB in pursuing various remedies available under the Regulations, or the Common Areas Lease (including costs associated with the required removal of any unauthorized structure). All such costs may be separately assessed against an Owner violating the provisions of the Regulations and Guidelines.

Exhibit C

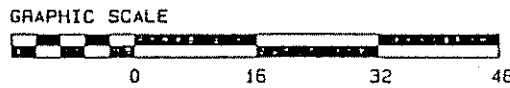
University Terrace Berkeley Homes

<u>Unit</u>	<u>Address</u>	<u>PS/PLAN</u>	<u># on parking space</u>
1	2122 Jefferson Street	C1	66
2	2100 Jefferson Street	C2	65
3	2120 Jefferson Street	C3	64
4	2102 Jefferson Street	C4	63
5	2118 Jefferson Street	C5	62
6	2104 Jefferson Street	C6	61
7	2116 Jefferson Street	C7	60
8	2106 Jefferson Street	C8	55
9	2114 Jefferson Street	C9	58
10	2108 Jefferson Street	C10	56
11	2112 Jefferson Street	C11	59
12	2110 Jefferson Street	C12	57
13	1616 Addison Street	R13	72
14	1608 Addison Street	R14	70
15	1614 Addison Street	R15	71
16	1606 Addison Street	R16	73
17	1612 Addison Street	R17	69
18	1604 Addison Street	R18	75
19	1610 Addison Street	R19	68
20	1602 Addison Street	R20	74
21	1600 Addison Street	R21	67
22	2117 California Street	R22	78
23	2103 California Street	R23	76
24	2115 California Street	R24	79
25	2105 California Street	R25	77
26	2113 California Street	R26	80
27	2107 California Street	R27	85
28	2109 California Street	R28	83
29	2111 California Street	R29	84
30	2119 California Street	R30	81
31	2121 California Street	R31	82
32	2129 California Street	R32	25
33	2123 California Street	R33	23
34	2127 California Street	R34	26
35	2125 California Street	C35	88
36	2141 California Street	R36	27
37	2131 California Street	C37	89
38	2139 California Street	R38	28
39	2133 California Street	R39	24
40	2137 California Street	R40	19
41	2135 California Street	C41	90
42	2153 California Street	R42	18
43	2143 California Street	C43	91
	2151 California Street	R44	17
	2145 California Street	R45	20
	2147 California Street	R46	16
47	2149 California Street	R47	15

	<u>Address</u>	<u>PS/PLAN</u>	<u># on parking space</u>
48	2168 Jefferson Street	R48	32
49	2166 Jefferson Street	R49	31
50	2170 Jefferson Street	C50	33
51	2164 Jefferson Street	R51	29
52	2172 Jefferson Street	C52	34
53	2162 Jefferson Street	R53	22
54	1607 Allston Way	R54	1
55	1609 Allston Way	R55	2
56	1611 Allston Way	R56	3
57	2124 Jefferson Street	C57	35
58	2126 Jefferson Street	C58	38
59	2128 Jefferson Street	C59	36
60	2142 Jefferson Street	C60	41
61	2136 Jefferson Street	C61	45
62	2130 Jefferson Street	C62	42
63	2132 Jefferson Street	C63	43
64	2134 Jefferson Street	C64	44
65	2138 Jefferson Street	C65	46
66	2140 Jefferson Street	C66	39
67	2144 Jefferson Street	C67	37
	2158 Jefferson Street	C68	40
	2152 Jefferson Street	C69	54
	2146 Jefferson Street	C70	50
71	2148 Jefferson Street	C71	47
72	2150 Jefferson Street	C72	48
73	2154 Jefferson Street	C73	49
74	2156 Jefferson Street	C74	53
75	2160 Jefferson Street	R75	30

L LOWER LEVEL OF 2 STORY UNIT
U UPPER LEVEL OF 2 STORY UNIT
B BALCONY
PY PRIVATE YARD
SC 3' X 5' STORAGE CLOSET ON GROUND LEVEL
() UNIT TYPE - SEE SHEETS 15 AND 16.

FINISH FLOOR ELEV. = 133.8



FINISH FLOOR ELEV. = 124.3
(STORAGE CLOSETS ON GROUND FLOOR LEVEL)

FINISH FLOOR ELEV. = 114.8

CORNER "D"
SEE PAGE 3



LOCATION & EXTERIOR DIMENSIONS
UNITS 42 THRU 47

CONDOMINIUM PLAN
FOR TRACT 6417 - LOT 1

PAGE 9 OF

SVS

10	03	61	64	63	62	60	68	168	28	6	29	3	32	30	48	49	5	31
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[illegible]

EASEMENT LINE &
EAST LINE BLOCK &

.....EASUREMENT LINE

UNIT 75 SOUTH

U1 c U2 up	U3 c U4 up	U5 c U6 up	U7 c U8 up	U9 c U10 up	U11 c U12 up
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UNITS 57 THRU 75

R3B	R47
R36	R46
R34	R44
R32	R42
R39	R40
R33	R45
R53	SV

R47
R46
R44
R42
R40
R45
SV

100

UNIT 76

UNIT 76 RIGHT

UNIT
76
RIGHT

PROPERTY LINE

LOT 1
164,719 SQ. FT.

PROPERTY LINE

ALLSTON WAY

CORNER "D"

CALIFORNIA STREET

CORNER

LEGEND

NOTES:
PARKING SPACE DIMENSIONS ARE AS FOLLOWS:
COMPACT CAR SPACES = 8.5' X 16.0 FT.
REGULAR C. SPACES = 9.0' X 18.0 FT.
HANDICAP PARKING SPACES = 9.0' X 18.00 FT.
SEE PAGE 2 FOR DEFINITIONS AND NOTES.

GRAPHIC SCALE



C	COMPACT PARKING SPACE-EUCA
R	REGULAR PARKING SPACE-EUCA
H	HANDICAP PARKING SPACE-EUCA
HC	HANDICAP PARKING SPACE
SV	SERVICE/VISITOR SPACE
EUCA	EXCLUSIVE USE COMMON AREA

PARKING LAYOUT

CONDOMINIUM PLAN
FOR TRACT 6417 - LOT 1

