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FIRST RESTATED AND AMENDED COVENANTS, CONDITIONS & RESTRICTIONS
OF
FREMONT VISTA HOMEOWNERS' ASSOCIATION

DECLARATION OF COVENANTS, CONDITIONS, & RESTRICTIONS
RECORDED JUNE 8, 1978
OFFICIAL RECORDS, ALAMEDA COUNTY, CALIFORNIA RECORDER
AT 78-107965

**FREMONT VISTA HOMEOWNERS' ASSOCIATION
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DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS

FREMONT VISTA ASSOCIATES, a California Limited Partnership, hereinafter called "Grantor," is the Owner of Lot 1 as shown on the Subdivision Map entitled,

TRACT NO. 3891 FREMONT QUADS II, CITY OF FREMONT, ALAMEDA COUNTY, CALIFORNIA," which Map was filed for record in the office of the Recorder of the County of ALAMEDA, State of California, on February 15, 1978, in Book 100 of Maps at Pages 15 and 16 (hereinafter referred to as "the Map");

WHEREAS, Grantor recorded a Condominium Plan, TRACT 3891, FREMONT, CALIFORNIA, in the Office of the Recorder of the County of Alameda, State of California, on June 8, 1978 in SERIES #78-107965 of Official Records (hereinafter referred to as "the Plan");

WHEREAS, the Plan is a "project: within the meaning of California Civil Code Section 1350(3), is subject to the provisions of the California Condominium Act (Title 6, Part 4, Division Second of the Civil Code), and it is the desire and intention of Grantor to divide the project into Condominiums by means of deed substantially in the form attached hereto and marked Exhibit A; and

WHEREAS, it is Grantor's intention to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all of said Condominiums and the Owners thereof:

NOW, THEREFORE, the Grantor hereby declares that the project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into Condominiums and are established and agreed upon for the purpose of enhancing and perfecting the value,

desirability and attractiveness of the project and every part thereof. All of the limitations, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title, or interest therein or any part thereof, and shall be for the benefit of each Owner of any portion of said project or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the Owners thereof. These Restrictions are made by Grantor pursuant to California Civil Code Section 1355.

1. Definitions. For the purposes of these Restrictions the terms used shall have the following meanings:

(a) "Condominium" shall mean an estate in real property as defined in real property as defined in California Civil Code Section 783 consisting of an undivided interest in a Common Area together with an interest in a Unit including certain easements appurtenant to such Unit. For the purpose of these Restrictions, the ownership of each Condominium shall include a Unit together with the easements appurtenant to such Unit, the respective undivided interests in the Common Area and a membership in the Association hereinafter defined.

(b) "Unit" shall mean the elements of a Condominium which are not owned in common with the Owners of other Condominiums. Each Unit is a numbered parcel as shown on the Plan. The boundary lines of each Unit are as defined under California Civil Code Section 1353 (a).

(c) The "Association" shall mean THE FREMONT VISTAS HOMEOWNERS ASSOCIATION, membership in which shall be limited to Owners as hereinafter defined and in which all Owners shall have a membership interest.

(d) The "Common Area" shall mean the entire project excepting all the Units therein granted or reserved.

(e) "Owner" or "Owners" shall mean the holder or holders of record of fee title to a Condominium as defined in California Civil Code Section 783. Owners, including Grantor, shall be entitled to exercise the rights and privileges

of membership in the Association for themselves for each Condominium owned.

(f) "Mortgage" shall mean a Deed of Trust as well as a mortgage.

(g) "Mortgagee" shall mean a beneficiary under or holder of a Deed of Trust as well as a mortgage.

(h) "Board" or "Board of Governors" shall mean the governing body of the project elected pursuant to Article 6 hereof.

2. Association. All Owners shall be members of a non-profit corporation to be known as THE FREMONT VISTAS HOMEOWNERS ASSOCIATION for the purpose of regulating and conducting the business affairs of the Condominium project. It was created by Articles of Incorporation and its affairs are governed in accordance with its By-Laws.

There shall be no dissolution of the Association without termination of the condominium regime. There shall be no sale or development of the land owned in common (except for sale of individual Units) without prior approval of the City of Fremont.

Each Owner, including Grantor, by virtue of being an Owner and for so long as he is an Owner, shall be a member of the Association. Where there is more than one record Owner, any or all of such persons may attend any meeting of the Owners, but it shall be necessary for those present to act unanimously in order to cast the vote to which they are entitled. Any designation of an agent to act for such persons must be signed by all such persons.

Except as provided in Civil Code Section 1354, there shall be no judicial partition of Common Area, or any part thereof, nor shall any such member or other person acquiring any interest in said property, or any part thereof, seek any such judicial partition.

3. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners with the exception of Grantor, and shall be entitled to one (1) vote for each Unit owned by such Owner on all

matters properly submitted for vote to the members of the Association.

Class B. The Class B member shall be the Grantor and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and shall be converted to Class A on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in Class A membership equal the total votes outstanding in the Class B membership; or
- (b) April 1, 1980.

Every member entitled to vote at any election of the members of the Board may accumulate his votes and give any one or more candidates a number of votes equal to the number to which such member is entitled for each Unit multiplied by the number of Governors to be elected. The right to vote may not be severed or separated from any Unit, and any sale, transfer or conveyance of any Unit to a new Owner, including foreclosure sale, shall operate to transfer the appurtenant vote without the requirement of any express reference thereto.

Any member entitled to vote may attend and vote at meetings in person, or by proxy holder duly appointed by a written proxy signed by the member and filed with the Secretary. Any proxy shall be for a term not to exceed eleven (11) months unless otherwise expressly provided therein and may be revoked at any time by written notice to the Secretary. It shall be deemed revoked when the Secretary shall receive actual notice of the death or judicially declared incompetence of such member or upon termination of such member's status by transfer or conveyance of any Unit to a new Owner. All votes cast in the election of the Board of governors shall be by secret written ballot.

Any action by the Association which must have the approval of the Association membership before being taken shall expressly require the vote or written assent of a majority of the votes of each class of membership during the time when there are two (2) classes of membership. Where the vote or written assent of each class of membership is made a prerequisite to the initiation of action by the Association, any requirement that the vote of Grantor be excluded is not applicable.

4. Meetings of Members.

(a) Quorum. The presence, either in person or by proxy, at any meeting of the members having at least the vote of fifty percent (50%) of members shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the members upon the affirmative vote of a majority of the total votes present at such meeting in person or by proxy. If any meeting cannot be held because a quorum is not present, the members present, either in person or by proxy, may as otherwise provided by law, adjourn the meeting to a time not less than five (5) days nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirements shall be a least twenty-five percent (25%) of the total voting power of the Association.

(b) Organizational Meeting. The first meeting shall be held no later than six (6) months after the close of escrow on the sale of the first Unit or forty-five (45) days after the sale of fifty-one percent (51%) of the Units, whichever is the first to occur.

(c) Annual Meeting. There shall be a meeting of the members on the first Tuesday of March of each year at 7:30 p.m. within the subdivision or at a meeting place as close thereto as possible or time (not more than sixty (60) days before or after such date) as may be designated by written notice of the Board delivered to the members not more than sixty (60) days nor less than ten (10) days prior to the date fixed for said meeting. More than ten (10) days prior to the annual meeting the Board shall deliver to all members an annual operating statement of the maintenance fund, itemizing receipts and disbursements for the preceding fiscal year.

(d) Special Meetings. Special meetings of the members may be called at any time for the purpose of considering matters which, by the terms of these Restrictions, the Articles of Incorporation or the By-Laws, require the approval of all or some of the members, or for any other reasonable purpose. A special meeting shall be promptly called by the Board upon the vote for such a meeting by a majority of a quorum of the Board or upon receipt of a written request therefor signed by members representing not less than twenty-five percent (25%) of the total voting power residing in members other than Grantor. Said meeting shall be called by written notice, signed by the President, or by any two (2) members of the Board or by the number of members required to request a special meeting, and delivered not less than ten (10) days prior to the date fixed for said meeting, except in emergency situations, the notice period may be shortened. Said notice shall specify a reasonable place, day and hour of the meeting and the matters to be considered thereat. Special meetings shall be held within the subdivision or as close thereto as possible. Unless unusual

conditions exist, member's meetings shall not be held outside the County of Alameda.

5. Notices. Any notice permitted or required to be delivered as provided herein may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States Mail, postage prepaid, addressed to each person at the address given by such person to the Secretary for the purpose of service of such notice or to the Unit of such person if no address has been given to the Secretary. Such address may be changed from time to time by notice in writing to the Secretary.

6. Election and Tenure of Board of Governors.

(a) Election. The Board members named in the Articles of Incorporation shall serve until the organizational meeting; at which time the members shall elect a Board of Governors who shall be known as the Board of Directors, consisting of five (5) Association members. All positions on the Board are to be filled at that election. The three (3) Governors receiving the highest number of votes will serve until one (1) year after the next annual meeting and the two (2) Governors receiving the next highest number of votes will serve only until the said next annual meeting. Thereafter, at each annual meeting, the members shall elect Governors. To fill the expired terms of the Board of Governors.

In electing Governors, cumulative voting shall be permitted so that the member voting on behalf of each Unit may cast a number of votes equal to the number of positions being filled on the Board of Governors, multiplied by the number of votes derived from his membership. He may give one candidate all his votes or distribute his votes over two or more candidates in any manner he wishes. The candidates receiving the highest number of votes up to the number of members of the Board to be elected shall be deemed elected. All votes shall be cast by secret written ballot.

From the first election of the Board and thereafter for so long as a majority of the voting power of the Association resides in the Grantor, or so long as there are two (2) outstanding classes of membership in the Association, not less than twenty percent (20%) of the incumbents on the Board shall have been elected solely by the votes of Owners other than the Grantor.

(1) Term. Except as provided above in subparagraph (a), members of the Board shall serve for a term of two (2) years commencing on the first day of April following the meeting at which they are elected or until their respective successors are elected, or until their death, resignation or removal, which ever is earlier; provided, that if any member ceases to be an Owner, his membership on the Board shall thereupon terminate and provided further, that if the election is held at a meeting after April 1, the Board terms shall commence on the date of such meeting.

(2) Resignation. Any member may resign at any time by giving written notice to the Secretary.

(3) Proceedings. Three (3) members of the Board shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board. The Board shall elect a President who shall preside over both its meetings and those of the Owners. In case of a tie at a Board meeting, the existing President of the Association shall cast the deciding vote. Meetings of the Board may be called and held as prescribed in the By-Laws.

(4) Notice of Election. Any two (2) Board members may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Board. The most recently recorded affidavit shall be prima facie evidence that the persons named therein are all the incumbent members of the Board and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

(b) Vacancies. A vacancy in the Board of Governors exists in case of the happening of any of the following events:

- 1) The death, resignation or removal of any Governor;
- 2) The authorized number of Governors is increased; or
- 3) At any annual, regular or special meeting of members at which any Governor is enacted, the members fail to elect the full authorized number of governors to be voted for at the meeting.

Vacancies may be filled by a majority of the remaining governors, though less than a quorum, or by a sole remaining governor, unless the Articles of By-Laws provide otherwise. Each governor so elected shall hold office until his successor is elected at an annual, regular or special meeting of the members.

The members may elect a Governor any time to fill any vacancy not filled by the governors. If the Board of Governors accepts the resignation of a governor tendered to take effect at a future time, the Board or the members may

elect a successor to take office when the resignation becomes effective. A reduction of the authorized number of governors does not remove any governor prior to the expiration of his term of office.

(c) Removal of Governors. The entire Board of Governors may be removed from office by a vote of members holding a majority of the outstanding memberships entitled to vote at an election of governors, provided a Board member who has been elected solely by the vote of members of the Association other than Grantor may be removed from office prior to the expiration of his term of office only by the vote of at least a simple majority of the voting power residing in members other than Grantor. In any other situation, unless the entire Board is removed, an individual governor shall not be removed prior to the expiration of his term of office if the number of votes cast against his removal is greater than the quotient arrived at by dividing the total number of votes that may be cast under cumulative voting procedures by a divider equal to 1 plus the authorized number of governors. If any or all governors are so removed, new governors may be elected at the same meeting.

7. No Partition. The Common Area shall remain undivided. Except as provided in Civil Code Section 1354, there shall be no judicial partition of the project or any part thereof, nor shall Grantor or any person acquiring any interest in the project or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Article 20 hereof; provided, however, that if any Condominium shall be owned by two or more co-tenants as tenants-in-common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition as between such co-tenants.

8. Authority of the Board. The Board shall have the following authority, duties and powers to be exercised for the benefit of the Units and the Owners:

The Association shall have all of the powers set forth in the Articles of Incorporation together with its general powers as a non-profit corporation, generally to do any and all things that a corporation organized under the laws of California may lawfully do in operating for the benefit of its members, subject only to the limitations upon the exercise of such powers as are expressly set forth in the Articles, the By-Laws and these Restrictions, and to do any and all lawful things which may be authorized,

required or permitted to be done by the Association under and by virtue of these Restrictions and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association or for the peace, health, comfort, safety and/or general welfare of the Owners and their guests. Without in any way limiting the generality of the foregoing:

- (a) To operate, maintain, repair, paint, landscape, care for and preserve the Common Area and the community facilities thereon to the standard of maintenance prevalent in the neighborhood and to pay for such equipment, tools, supplies, and other personal property for use in such maintenance;
- (b) To carry out the functions of a property manager;
- (c) To levy monthly assessments in advance for maintenance and other purposes;
- (d) To create assessment funds into which the Board shall place all funds collected by assessment or otherwise, such funds to be used and expended for the purposes herein set forth;
- (e) To increase the annual assessment or vote a special assessment in excess of that amount if required to meet any additional expenses. After the first year following the conveyance of the first Unit, the maximum annual assessment may be increased each year not more than twenty percent (20%) above the maximum assessment for the previous year without the vote or written assent of a majority of the voting power of the Association residing in members other than Grantor. In any fiscal year, the Board may not, without the vote or written assent of a majority of the voting power of the Association residing in members other than Grantor, levy special assessments to defray the cost of any action or undertaking on behalf of the Association which in the aggregate exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year;
- (f) To pay taxes and assessments levied and assessed against the real property or jointly owned personal property (except taxes or assessments assessed to the separate Units);
- (g) To pay for all public utilities (except for utilities individually metered to separate Units), legal and accounting services necessary in the proper

operation of the Common Area, or the enforcement of these Restrictions, insurance and other expenses;

(h) To repair and replace common facilities, machinery and equipment;

(i) To insure and keep insured all jointly owned personal property, the buildings and other improvements erected upon the subdivided property, including the Common Area, against destruction by fire and other casualties;

(j) To collect the delinquent assessment or otherwise and to enjoin or seek damages from Owners for violations of the covenants herein contained on the part of the Owners to be performed or for violations of the rules hereinafter referred to;

(k) To employ the services of a person or firm to manage the affairs of the Association herein called "Manager" to the extent deemed advisable by the Board as well as such other personnel as the Board shall determine shall be necessary or proper for the operation of the Common Area, whether such personnel are employed directly by the Board or are furnished by the Manager; provided, however, any contract for such services must provide for termination: (1) for cause upon thirty (30) days written by the Association; (2) by either party without cause of payment of a termination fee on ninety (90) days or less written notice; and (3) shall be limited in duration to one (1) year unless a longer period is approved by a majority of the members of the Association. The Board may delegate any of its duties, powers or functions to the Manager, providing such delegation shall be revocable upon notice by the Board. The members of the Board shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board. In the absence of any appointment, the President of the Association shall act as Manager;

(l) To enter into contracts except that neither the Board nor any officer may encumber or dispose of any interest of any Owner except in order to satisfy a judgment against such Owner for violation of these Restrictions or the deeds to grantees. Provided, however, Grantor shall not enter into any contract which will bind the Association for a period of time or more than one (1) year unless such contract contains a reasonable cancellation provision exercisable at the option of the Association. contracts for more than one (1) year must be approved by a majority of the members;

(m) To make reasonable rules and regulations concerning the use of the herein described real property and to amend the same from time to time, and such rules and regulations and amendments shall be binding upon the Owners when the Board has approved them in writing; a copy of such rules and

regulations and all amendments shall be delivered to each Owner prior to the time when the same shall become effective;

(n) To impose fines of up to Fifty Dollars (\$50.00) each for violations of these Restrictions or said rules and regulations, after notice and a hearing before the Board;

(o) To landscape and maintain the gardens; provided, however, that all landscaping inside balconies or patios appurtenant to the Unit shall be provided by the Owner;

(p) To maintain and paint the exterior surfaces of the Condominium buildings, including, without limitations, caulking, painting, replacement of trim, and repairs to the roof covers; to make miscellaneous repairs to the roof covers; to make miscellaneous repairs of a non-structural nature as often as the Board shall deem necessary;

(q) To acquire and pay for out of the assessment fund any materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurances, taxes and assessments which the Board is required to secure or pay for pursuant to the terms of these Restrictions or by law, or which in its opinion shall be necessary or proper for the operation of the Common Area or for the enforcement of these Restrictions;

(r) To pay any amount necessary to discharge any lien or encumbrance levied against the entire property or any part thereof which may constitute a lien against the subdivided property or against the Common Area other than merely against the interests therein of the particular Owners. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the costs of discharging it, and any costs incurred by the Board by reason of said lien or liens shall be specifically assessed to said Owners;

(s) To maintain and repair any Unit if reasonably necessary in the discretion of the Board, to protect the Common Area or to preserve the subdivided property. In the event the Board gives written notice to an Owner of the necessity of maintenance or repair and said Owner has failed or refused to perform the required maintenance or repair within a reasonable time, the Board may seek a judgment of any court of competent jurisdiction or may file an arbitration proceeding with the American Arbitration Association. After a judgment or arbitration decision favorable to the Association, the Board may acquire and pay out of the assessment fund any materials, supplies, labor, services, maintenance repairs or structural alterations as are authorized by the judgment or arbitration decision and shall levy a special assessment against the Unit of such Owner for the expenses and for all costs of litigation, including court

costs, arbitration fees and attorneys' fees actually incurred;

(t) To dedicate, transfer or grant licenses to all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the members. No such dedication, transfer or grant of license shall be effective unless an instrument signed by two-thirds (2/3) of the members agreeing to such dedication, transfer or grant of license has been recorded;

(u) To engage legal, accounting and management services for the Common Area;

(v) To expend funds, including court costs and attorneys' fees for enforcing these Restrictions;

(w) To delegate any of its powers or functions to the officers of the Association or to committees of Association members;

(x) To contract for the services of a person or firm (hereinafter referred to as the "Manager") to manage and supervise the use and operation of the Common Area in the event that the Federal Home Loan Mortgage Corporation ("FHLMC") or the Federal National Mortgage Association/Government National Mortgage Association ("FNMA/GNMA") shall insure any mortgage or deed of trust on a Condominium in the Project, but if neither FHLMC nor FNMA/GNMA shall insure any such mortgage or deed of trust, the Association may, at its option, retain a Manager as it deems necessary and proper;

(y) Unless at least seventy-five percent (75%) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than Grantor) have given their prior written approval, the Association shall not be entitled to:

(1) By act or omission seek to abandon, partition, subdivide, or terminate the condominium project;

(2) Change the pro rata interest or obligations of any individual Condominium Unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determine the pro rata share of ownership of each Condominium Unit in this clause;

(3) Partition or subdivide any Condominium Unit;

(4) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. (The granting of easements for public utilities or for other public purposes consistent with

the intended use of the common elements by the condominium project shall not be deemed a transfer within the meaning of this clause);

(5) Use hazard insurance proceeds for losses to any condominium property (whether to Units or common elements) for other than the repair, replacement or reconstruction of such condominium property except as provided by statute in case of substantial loss to the Units and/or common elements of the condominium project;

(z) The Board shall not, except with the vote or written assent of a majority of the voting power of the Association residing in members other than the Grantor:

(1) Enter into a contract with a third person wherein the third person will furnish goods or services for the Common Area or the Owner's Association for a term longer than one (1) year with the following exceptions:

(A) A management contract, the terms of which have been approved by the Federal Housing Administration or Veterans Administration.

(B) A contract with a public utility company if the rates charged for the materials or services are regulated by the Public Utilities Commission provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

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

(2) Incur aggregate expenditures for capital improvements to the Common Area in any fiscal year in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year.

(3) 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.

(4) Pay compensation to members of the governing body or to officers of the Association for services performed in the conduct of the Association's business provided, however, that the governing body may cause a member or officer to be reimbursed for expenses incurred in carrying on the business of the Association.

9. Insurance. The Association (or Grantor until the election of the first Board) shall purchase and maintain the following insurance policies:

(a) A master blanket comprehensive liability, bodily injury and property damage policy insuring the interests of the Board and the Owners against public liability as a result of their ownership of the Common Area with a combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence (such limits and coverage shall be reviewed at least annually by the Board and increased at its discretion). Such policy shall be maintained with respect to the Common Area and those portions of the Condominium buildings or structures owned in common by the Owners. Such policy shall provide for a cross liability endorsement wherein the rights of the named insured under the policy or policies shall not be prejudiced as respects his, her or their action against another named insured. Such policy or policies shall also contain a provision requiring the insurer to defend any suit against any insured, even if the allegations of the suit are groundless, false or fraudulent, but authorizing the insurer to make such investigation and settlement of any claim or suit within the policy limits as it deems expedient. Such liability insurance shall not cover the personal bodily injury and property damage exposure of the individual Owner within his Unit;

(b) A policy of insurance covering the Condominium buildings and all buildings, structures, furnishings, equipment and personal property owned in common by the Owners, or by the Association for the interests of the Owners, and all the Owners and mortgagees, as their interests may appear (excepting only improvements made that shall be at least equal to one hundred percent (100%) of the full insurable replacement value of all of them against the perils covered by California Standard Fire Policy, Extended Coverage Endorsement, and Special Extended Coverage Endorsement (or its equivalent). Such policy shall name as insureds Grantor, the Association, all Owners and mortgagees to the extent of their insurable interests, if any; first mortgagees of Units shall be entitled to ten (10) days prior notice of cancellation of such policies. Such insurance shall not cover personal household contents or improvements made by the Owners to their respective Units;

(c) Workmen's Compensation Insurance shall at all times be carried as required by law with respect to the employees, if any, or the Association;

(d) A fidelity bond covering loss or theft of funds, naming the Manager and such other persons as may be designated by Grantor as principals and the Owners as obligees in an amount equal to at least one-half (1/2) of the estimated cash requirement of the Association for the succeeding year;

No Owner shall separately insure his Unit or any of the improvements to the Common Area against loss by fire or other casualty covered by the insurance maintained by the Board, pursuant to Article 9 (b) above. Should any Owner

violate this provision, any diminution of insurance proceeds resulting from the existence of such separately carried insurance shall be chargeable to the Owner and may be assessed by the Board against his Condominium. Notwithstanding the foregoing, the Owner may carry separate insurance against loss by fire and other casualty to the contents of his Unit and any improvements to his Unit installed by Owner or his predecessor in interest which were not included in the original construction plan of the building in which the Unit is located (including improvements specifically ordered by Owners or his predecessor in interest in contracting for the purchase of an Owner's Condominium), and may carry separate insurance covering any loss not covered by insurance maintained by the Board, such as rental value insurance and other casualties not insured against in the master policy or policies. All separate insurance carried by any Owner shall contain a waiver of subrogation and set-off or contribution rights as to claims against a person who is an insured under the policy or a member of Owner's household who is not himself an insured.

At the request of any Owner, the Board shall cause any insurance coverage which may be separately carried by the Owner pursuant to the foregoing provisions to be added to the coverage the Owner is permitted by the underwriting rules of the insurer and such addition of coverage in no way prejudices the protection provided by such master policy or policies to the other person or entities insured thereby. The premium for such added coverage shall be paid by the Owner if not promptly paid upon the board's written demand:

Should the board despite its reasonable efforts to do so, be able to obtain insurance coverage meeting all of the specifications set forth above, it shall observe such specifications as closely as possible, and where forms of coverage of insuring agreements specified above are unavailable, the Board shall substitute available forms of coverage and insuring agreements which in its judgment are the nearest equivalent to those specified;

The Board may engage one or more reputable insurance brokers of consultants to assist it in complying with the insurance provisions of these Restrictions and may rely on the analysis and recommendations of the persons so engaged;

For the purposes of the insurance policies maintained pursuant to these Restrictions, the Association shall be deemed an agent of the Owners coupled with the interest;

The Owners shall obtain comprehensive personal liability insurance covering liability for damage to person or property of others located within such Owner's Unit, or in another Unit of the development, or upon any Common Area resulting from the negligence of the insured Owner, in such amounts as shall from time to time be determined by the Board, but in no case less than One Hundred Thousand Dollars (\$100,00.00) for each occurrence. Each Owner will provide the Association with a

certificate from the insurer showing the liability insurance obtained by such Owner and providing for written notice to the Association of cancellation of said policy at least ten (10) days prior to the effective date of such cancellation;

The Association and the Owners shall use their best efforts to see that all property and liability insurance carried by an Owner or the Association shall contain appropriate provisions whereby the insurer waives its rights of subrogation as to any claims or causes of action against a person who is an insured under the policy. Each policy of insurance obtained by the Association pursuant to the foregoing provisions shall be written by a company rated no lower than A+AAA in the edition of Best's Insurance Guide current at the time such policy is written. Each such policy shall be written so as to be primary insurance with respect to the risk covered by it, and any "no other insurance" clause in such policy shall exclude from consideration insurance carried by any Owner and contain an agreement that the said clause cannot be canceled, invalidated or suspended on account of the conduct of any one individual Owner or more;

All premiums upon insurance purchased by the Association shall be included in the Association's budget in accordance with Article 8 hereof, except that the amount of increase over such premiums occasioned by the use, misuse, occupancy or abandonment of a Condominium Unit, or the Common Area by an Owner shall be assessed against such Owner;

Proceeds of all insurance policies owned by the Association shall be received by the Association, held in a separate account and distributed to the Association and the Owners and their mortgages subject to the provisions of these Restrictions, as their interest may appear, provided, however, whenever repair or reconstruction is required the proceeds of any insurance received by the Association as a result of any loss shall be applied to such repair or reconstruction. The Board shall levy a special assessment against all Owners to make up for any deficiency in making necessary repairs or reconstruction;

Each Owner shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of the Master Policy. Without limitation on the generality of the foregoing, the Association as said attorney shall have full power and authority to purchase and maintain such insurance, to collect and remit the premiums therefore, to collect proceeds and to distribute the same to the Association, the Owners and their respective mortgages (subject to the provisions of these Restrictions) as their interest may appear, to execute releases of liability and to execute documents and to do all things on behalf of the Owners as shall be necessary or convenient to the accomplishment of the foregoing; and any insurer may deal exclusively with the Association in regard to such matters. The Association shall not be responsible for procurement or maintenance of any insurance covering the contents or the interior of any Unit nor the liability of any Owner for occurrences therein not caused by or connected with the Association's operation,

maintenance or use of the Common Area.

10. Duties of First Governors. The Governors named in the Articles of Incorporation shall perform the foregoing duties until the election of the first Board of Governors. The Board upon election shall assume said duties and by such assumption the original Governors will be relieved of any liability for future failure to perform such duties. Grantor agrees to pay when due all general and special assessments on unsold Condominiums levied according to the within provisions and to be bound by the rules regulations promulgated by the Board.

11. Limitation of Powers of Board. The Board's powers, hereinabove enumerated, shall be limited in that, except with the vote or written assent of a majority of the voting power of the Association residing in members other than Grantor, the Board shall have no authority to acquire and pay for out of the maintenance fund capital additions to, structural alterations to, or capital improvement to the Common Area, requiring an expenditure by the Association in excess of five percent (5%) of the budgeted gross expenses of the Association for the fiscal year. Nothing herein shall authorize the Board to furnish to any person services primarily for the convenience of the Owners or of any occupant of any Unit or occupants of the Common Area, or of any portion thereof, other than services customarily rendered in connection with the rental of space for occupancy only.

12. Board's Powers Exclusive. After the election of the first Board of Governors, the Board shall have the exclusive right to contract for all goods, services and insurance payment for which is to be made from the maintenance fund, and the exclusive right and obligation to do so, except as otherwise provided herein.

13. Owner's Obligation to Repair. Except for those portions which the board is required to maintain and repair hereunder, each Owner shall, at his sole cost and expense, maintain and repair his Unit, keeping the same in good condition. Each Owner shall also, at his own expense, keep those portions of the Common Area to which he has an exclusive easement in a clean sanitary condition.

14. Maintain Fund - Assessments. Within six (6) months after the first conveyance of the first Unit and not less than sixty (60) days prior to the beginning of

each fiscal year thereafter, the Board shall estimate the total charges to be paid during such year and shall distribute the proposed pro forma operating statement to each Owner. The estimated annual cash requirement shall be assessed equally to the Owners of each Unit.

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 an interest in the subdivision - -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 number of the subdivision interest and the name of the entity assessed.

A balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year shall be distributed within ninety (90) days after the close of the fiscal year.

An external audit by an independent certified public accountant shall be required for fiscal year financial statements (other than Budget) for any fiscal in which the gross income to the Association exceeds Seventy - Five Thousand Dollars (\$75,00.00).

All funds budgeted, allocated and collected for contingencies, deferred maintenance and replacement of all capital improvements, shall be held in trust by the Association for and on behalf each Owner and shall be used solely for contingencies, deferred maintenance and replacement of capital improvements. Said funds shall be deposited in common trust accounts, either commercial or interest-bearing entitled THE FREMONT VISTAS HOMEOWNER ASSOCIATION DEFERRED CAPITAL MAINTENANCE AND REPLACEMENT TRUSTEE ACCOUNT. The Owners shall not be entitled to receive their share of the principal amount of such accounts except on dissolution of the Association. Each Owner's interest in the account will be appurtenant to the Unit and will transfer with the conveyance of the Unit without express reference thereto.

All funds collected for current operation and maintenance shall be deposited in and expended from accounts either commercial or interest-bearing, entitled THE

FREMONT VISTAS HOMEOWNERS ASSOCIATION CURRENT MAINTENANCE AND OPERATION ACCOUNT. Funds for current operation and maintenance which are unexpended at the end of the fiscal year may be refunded to the Owners or credited to the following year's assessment at the discretion of the Board.

If the estimated total charges for the year prove inadequate for any reason, including non-payment of any Owner's assessment, the Board may at any time levy a further assessment, which shall be assess to the Owners in like proportions, unless otherwise provided herein, provided, however,

(1) In any fiscal year, the Board may not, without the vote or written consent of a majority of the voting power of the Association residing in members other than the Grantor, (a) levy special assignments to defray the costs of any action or undertaking on behalf of behalf of the Association which in the aggregate exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, and (b) impose a regular annual assessment per subdivision interest which is more than twenty percent (20%) greater than the regular assessment for the immediately preceding year.

(2) The above provisions with respect to special assessments do not apply in the case where the special assessment against a member is a remedy for cost incurred in bringing the member and his subdivision interest into compliance with provisions of the governing instruments for the subdivision.

Each Owner shall be obligated to pay assessments made pursuant to this paragraph to the Board in equal monthly installments on or before the first day of each month during the year, or in such other reasonable manner as the Board shall designate. All funds collected hereunder shall be expended for the purposes designated herein. No Owner may avoid the burdens or obligations incidental to membership or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Unit. Regular assessments against all subdivision interest shall commence on the date of closing of the first sale of the subdivision interest or on the first day of the month following the closing of the first such sale. Upon conveyance or sale of Unit to a new Owner or Owner's , the selling Owner or Owner's shall be liable for any assessments levied upon the membership in

the Association appurtenant to such Unit until the date of the close of escrow on the sale of the Unit.

15. Default in Payment of Assessment. Each monthly assessment and each special assessment shall be separate, distinct and personal debts and obligations of the Owner against whom the same are assessed. The amount of any assessment, whether regular or special, assessed to the Owner of any Condominium, plus interest at ten percent (10%), and cost, including reasonable attorney's fees, shall become a lien upon such Condominium upon recondition of a notice of assessment as provided in Section 1356 of the civil code. The Owners authorize, empower and appoint the Board, as trustee, to enforce collection of any assessment levied pursuant to these Restrictions. A certificate executed and acknowledged by a majority of the Board stating the indebtedness secured by a lien created hereunder upon any Condominium shall be conclusive upon the Board and the Owners as to the amount of such indebtedness on the date of the certificate, in favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any Owner upon request at a reasonable fee, not to exceed Fifteen Dollars (\$15.00).

Any such lien may be foreclosed by appropriate action in Court, or in the manner provided by law for the foreclosure of a mortgage under power of sale. Any action in court to foreclose such lien shall be commenced prior to the expiration to said lien as provided in Section 1346 of the Civil Code. In the event such foreclosure is by action in court, reasonable attorneys' fees, which shall be fixed by the court, shall be allowed. In the event the foreclosure is as in the case of a mortgage under power of sale, the Board, or any person designated by it in writing, shall be deemed to be acting as the agent of the lienor and shall be entitled to actual expenses and such fees as may be allowed by law, or as may be prevailing at the time the sale is conducted.

Such sale shall be conducted in accordance with the provisions of California Civil Code Sections 2924, 2924b and 2924c applicable to the exercise of powers of sale and mortgages and deeds of trust, or in any other manner permitted by law. The certificate of sale shall be executed and acknowledged by any two (2) members of the Board, or by the person conducting a sale. A deed upon Court foreclosure shall be executed in

like manner, after the lapse of the then required statutory period of redemption.

In the event any installment payment of an assessment levied pursuant to the provisions of these Restrictions remains delinquent or in the event of a breach of the provisions of these Restrictions, the Articles of Incorporation, the By-Laws or the rules and regulations promulgated from time to time by the Board, in addition to the other remedies provided in these Restrictions, after written notice to the Owner in breach or in default of payments and an opportunity to be heard by a quorum of the Board, the Board may suspend the voting privileges of such Owner or suspend such Owner's rights to use and enjoy the recreational facilities on the Common Area until such time as the breach is cured or the assessment payments of such Owner are paid currently.

In a voluntary conveyance of a Condominium, the Grantee of the same shall be jointly and severally liable with the selling Owner for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the Grantee's right to recover from the selling Owner the amounts paid by the Grantee therefor. However, any such Grantee shall be entitled upon written request therefor, to a statement from any officer of the Association or management agent, setting forth the amount of the unpaid assessment against the selling Owner due the Association and such Grantee shall not be liable for, nor shall the Condominium conveyed be subject to a lien for any unpaid assessments made by the Association against the selling Owner in excess of the amount set forth in the statement, provided, however, the grantee shall be liable for any such assessment becoming due after the date of any such statement.

Where the mortgages of a first mortgage (meaning any mortgage with first priority over other mortgages) of record or other purchaser of a Condominium obtains title to the same as a result of foreclosure of any such first mortgage, such acquirer of title, his successors and assigns shall not be liable for the share of the common expenses or assessments by the Association chargeable to such Condominium by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectable from all of the Condominiums including such acquirer, his successors and assigns.

16. Mortgage Protection.

(a) The liens created hereunder upon any Condominium shall be subject and subordinate to, and shall not effect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage with first priority over other mortgages) upon such interest made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Article 15 hereof on the interest of the purchaser at such foreclosure sale, which said lien, if any claimed, shall have the same effect and be enforced in the same manner as provided herein;

(b) No amendment to this Article shall effect the rights of the holder of any such mortgage recorded prior to the recordation of such amendment who does not join in the execution thereof;

(c) No breach of any of the covenants, conditions, restrictions, limitations, or uses herein contained shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith or for value, but all of said matters shall be binding upon any Owner whose title is derived through foreclosure or trustee's sale;

(d) Each holder of a first mortgage or first deed of trust encumbering any Condominium which comes into possession of such Condominium pursuant to the remedies provided in such mortgage or deed of trust, or by foreclosing of such mortgage or deed of trust, shall be exempt from any "right of first refusal" or other restriction on the sale or rental of such Condominium, including, but not limited to, restrictions on the age of occupants of such Condominiums and restrictions on the posting of signs pertaining to the sale or rental of such Condominium;

(e) All taxes, assessments, and charges which may become liens prior to the first mortgage under local law shall relate only to the individual Condominium, and not to the project as a whole;

(f) The Association will give FHLMC and FNMA/GNMA notice (c/o Service at Servicer's address in writing of any loss to, or taking exceeds Ten Thousand Dollars (\$10,000.00) or damage to a Condominium Unit purchased in whole or in part by FHLMC exceeds One Thousand Dollars (\$1,000.00);

(g) The Association shall, upon request of any institutional holder of a first mortgage on a Condominium in the project, (1) give written notice of all meetings of the Association and permit the lender to designate a representative to attend all such meetings, and (2) transmit to such lender and annual audited financial statement of the project within ninety (90) days following the end of any fiscal year of the project;

(h) Of any Condominium Unit or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain

proceeding or is otherwise sought to be acquired by a condemning authority, then the institutional lender of any first mortgage on a Condominium shall be entitled to timely written notice of any such proceedings or proposed acquisition, and no provision in this Declaration shall be interpreted to entitle the Owner of a Condominium or any other party to priority over such institutional holder with respect to the distribution to such Condominium of the proceeds of any awards or settlement;

(i) First mortgage holders on individual Units are entitled to written notification from the Association of any default by the mortgagor in the performance of obligations under these Restrictions which are not cured within thirty (30) days;

(j) First mortgages shall have the right to examine the books and records of the Association or any entity which owns the common property of the Association;

(k) There shall be no change in the pro rata interests or obligations of any Unit for purpose of levying assessments and charges and determining shares of Common Area and proceeds of the project without prior written approval of all holders of first mortgages on individual Units;

(l) First mortgage holders on Condominium Units may pay taxes or other charges which are in default and may pay overdue premiums on hazard insurance policies; or secure new hazard insurance coverage on the lapse of a policy and first mortgages making such payments shall be owed immediate reimbursement therefor from the Association.

17. Architectural Control Committee. The committee for the control of structural and landscaping architecture and design (Architectural Control Committee) within the subdivision shall consist of not less than three (3) nor more than five (5) members.

The Grantor may appoint all of the original members of the committee and all replacements until the first anniversary of the issuance of a public report for the subdivision, the grantor may reserve to himself the power to appoint a majority of the members of the Committee until ninety percent (90%) of all the subdivision interest in the overall development have been sold or until the fifth anniversary of the issuance of the final public report for the first (or only) phase of the subdivision, whichever first occurs.

After one year from the date of the issuance of the original final subdivision public report for the subdivision, the Board of the Association shall have the power to

appoint one member of the Architectural Control Committee until ninety percent (90%) of all of the subdivision interest in the overall development have been sold or until the fifth anniversary date of the issuance of the final public report for the first (or only) phase of the subdivision whichever first occurs. Thereafter, the Board of the association shall have the power to appoint all of the members of the Architectural Control Committee.

Members appointed to the Architectural Control Committee by the Board shall be from the membership of the Association. Members appointed to the Committee by Grantor need not be members of the Association.

18. Delegation to Manager. The Board may delegate any of its duties, powers or functions, including but not limited to, the authority to give the certificate provided for in Article 15 hereof to any person or firm, to act as Manager of the building, provided that any such delegation shall be revocable upon notice by the Board. The members of the Board shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board. In the absence of any appointment, the President shall act as Manager.

19. Entry for Repairs. The Board or its agent may enter any Unit when necessary in connection with any inspection maintenance, landscaping or construction for which the Board is responsible. In the event of emergency, entry may be made without notice. Non-emergency entry may be made only upon twenty-four (24) hours prior notice to the Owner. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

20. Damage and Destruction. Each Owner shall be responsible for the reconstruction, repair, or replacement of the interior of his Unit, including, but not limited to, the floor coverings, wall coverings, window shades, draperies, interior walls, furniture, furnishings, decorative light fixtures, and all appliance located therein irrespective of whether or not such appliances are "built-in" to the Unit.

If any of the buildings are damaged by fire, or other casualty and said damage is

limited to a single Unit, all insurance proceeds shall be paid to the Owner, or mortgagee of the Owner of such Unit, as their respective interests may appear, and such Owner or mortgagee shall use the same to rebuild or repair such Unit in accordance with the original plans and specifications therefor. In the event damage to all or any part of the interior of an Owner's Unit is covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction or repair of such damage upon receipt of the insurance proceeds or any portion thereof from the Association, subject to the rights of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof. In the event damage to the interior of an Owner's Unit is not covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction or repair of his Unit within sixty (60) days after the date of such damage, subject to the right of the Association to supervise, approve or disapprove such reconstruction or repair during the course thereof.

In the event such damage extends to two or more Units:

(a) If the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed;

(b) If the insurance proceeds are within Five Thousand Dollars (\$5,000.00) or less of being sufficient to effect total restoration to the Common Area, then the Association shall cause such Common Area to be repaired and reconstructed substantially as it previously existed, and the difference between the insurance proceeds and the actual cost shall be levied as a special assessment equally against each of the Owners;

(c) If the insurance proceeds are insufficient by more than Five Thousand Dollars (\$5,000.00) to effect total restoration to the Common Area, then by the written consent or vote of a majority of the Owners, they shall determine whether (i) to rebuild and restore the Common Area to substantially the same condition as it existed prior to damage, and to raise the necessary funds over the insurance proceeds by levying equal assessments against all Condominiums (ii) to rebuild and restore the Common Area in a way which utilizes all available proceeds and additional amount not in excess of Five Thousand Dollars (\$5,000.00) and which is assessable equally to all Condominiums, but which is less expensive than rebuilding and restoring the Common Area to substantially the same manner as it existed prior to being

damaged, or (iii) to not rebuild and to distribute available insurance proceeds equally to the Owners and mortgagees of the Condominiums as their interests may appear. Provided, however, that unless the City shall agree to the contrary, it shall be the obligation of the Association and each of the Owners to rebuild the private streets, if any, utilities, and open spaces, at least to the extent said streets, utilities and spaces were accepted initially by the City in lieu of payment of fees due pursuant to the Quimby Act;

(d) Upon a decision to rebuild, all insurance proceeds, whether or not subject to liens of mortgagees, shall be received by the Association and held in a separate account to be used for such rebuilding. If any Owner shall fail to pay the special assessment within thirty (30) days after the levy thereof, the Board shall make up the deficiency by payment from the maintenance fund. Upon receipt of sufficient funds the Board shall let a contract to the successful bidder;

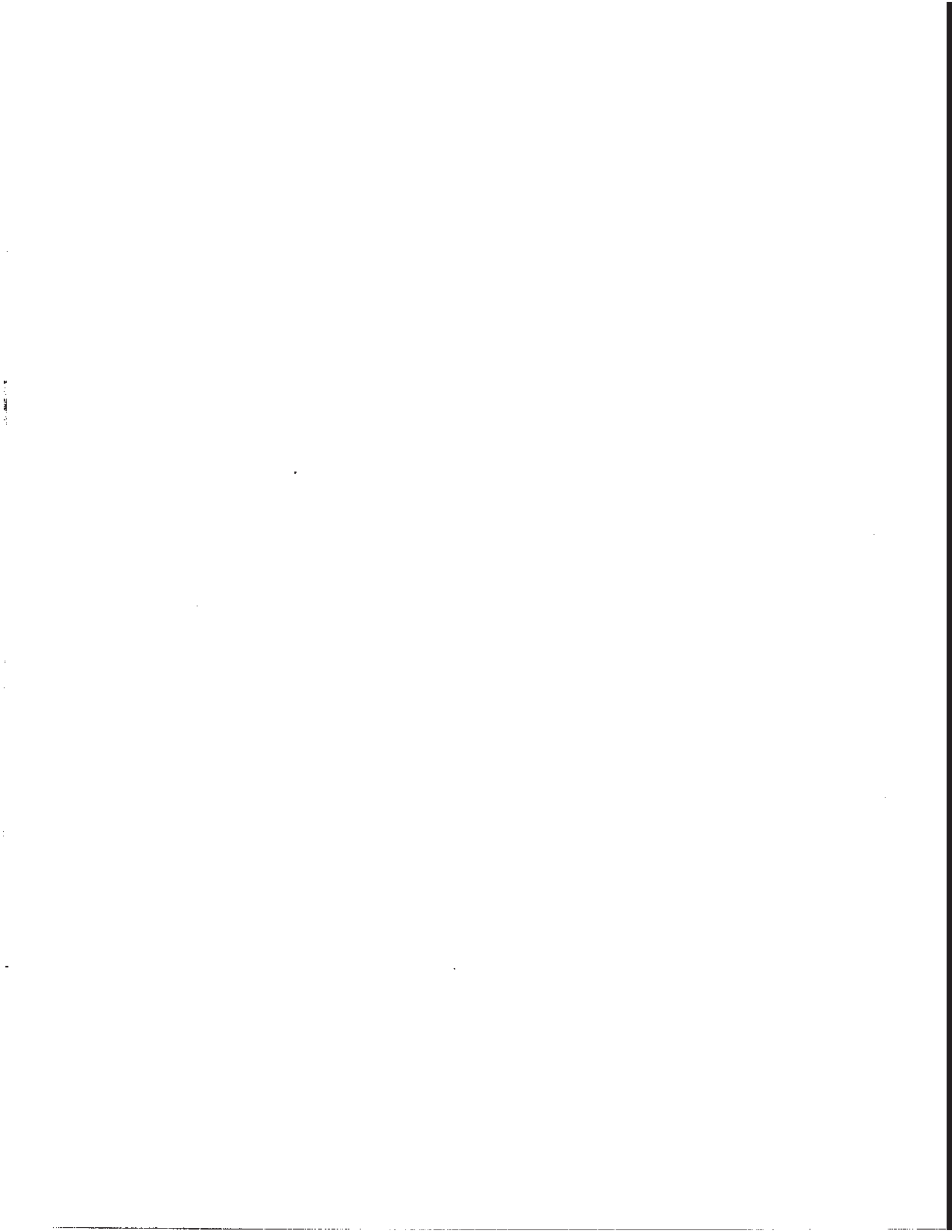
(e) Upon a decision not to rebuild, the Board, as soon as reasonably possible and as agent to the Owners, shall sell the entire project, in its then condition, which shall terminate upon such sale, on terms satisfactory to the Board, the net proceeds shall thereupon be distributed to the Owners in proportion to each Owner's obligation to pay maintenance assessments, and to mortgagees of the interests of the Owners, as their interests may appear;

(f) If the Owners decide not to rebuild, then the Manager, or the Board, or if they do not, any Owner or mortgagee of any Owner, shall record a sworn declaration setting forth such decision and reciting that under the provisions of these Restrictions the prohibition against judicial partition provided for in Article 7 hereof has terminated and that judicial partition of the project may be obtained pursuant to Section 872.010 and following the code of Civil Procedure of the State of California. Upon final judgment of a Court of competent jurisdiction decreeing such partition, these Restrictions shall terminate.

21. Inspection of Association's Books and Records. The membership register, books or account and minutes of meetings of the members, of the governing body and of committees of the governing body of the Association shall be made available for inspection and copying by any member of the Association - or by his duly-appointed representative--at any reasonable time and for a purpose reasonably related to his interest as a member, at the office of the Association or at such other place within the subdivision as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

1) Notice to be given to the custodian of the records by the member desiring



to make the inspection.

- 2) Hours and days of the week when such an inspection may be made.
- 3) Payment of the cost of reproducing copies of documents requested by a member.

Every governor shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a governor includes the right to make extracts and copies of documents.

22. Limitation of Liability of Board of Governors. Neither the Board nor the Association shall be liable for any failure of water supply or other service to be obtained and paid for by the Association hereunder, or for injury or damage to person or property caused by the elements or by another Owner or person in the project, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of the buildings, or from any of its pipes, drains, conduits, appliances or equipment, or from any other place unless caused by gross negligence of the Association. No diminution or abatement of common expense assessments shall be claimed or allowed for inconveniences or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with any law, ordinance or orders of a governmental authority.

23. Indemnification of Board of Governors. Each member of the Board of Governors shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a member of the Board of Governors, or any settlement thereof, whether or not he is a member of the Board of Governors at the time such expenses are incurred, except in such cases wherein the member of the Board is adjudged guilty of willful misfeasance in the performance of his duties; provided that in the event of a settlement the indemnification shall apply only when the Board approves such settlement and reimbursement as being for the best interests of the Association.

24. Unallocated Taxes. Any unallocated taxes or assessments levied or assessed against the Common Area, the Association or the personal property of the Association, shall be deemed a common expense and assessed equally to the Owners. In the event the real property taxes are not assessed separately to the Condominiums pursuant to Section 2188.2 of the California Revenue and Taxation Code, for the fiscal year during which the first Unit is conveyed, or for the next fiscal year, the Association shall levy a special assessment against the Condominiums in an amount equal to such tax to be paid in two installments, thirty (20) days prior to the due date of each property tax settlement.

25. Use of Units and the Common Area. The Units and the Common Area shall be occupied and used as follows:

(a) Each Unit shall be used for residential purposes only. No other use is allowed except as specifically permitted by local ordinance or state law.

(b) Nothing in this Article or elsewhere in these Restrictions shall limit the right of Grantor to complete construction of improvements to the Common Area and to Condominium Units owned by Grantor or to alter the foregoing or to construct such additional improvements as Grantor deems advisable prior to completion and sale of the entire project. The rights of Grantor under these Restrictions may be assigned by Grantor to any successor to all or any part of Grantor's interest in the project, as developer, by an express assignment incorporated in a recorded deed transferring such interest to such successor;

(c) There shall be no obstruction of the Common Area. No Owner shall allow to be placed in the Common Area any furniture, packages, or objects of any kind except temporarily in connection with mail or freight deliveries or when residents are moving in or out of Units. The Common Area shall not be used for storage of supplies, personal property, trash or refuse of any kind nor shall the Balcony, Patio or other Common Area be used in any way for the drying, shaking or airing of clothing or other fabrics. Nothing shall be stored in the Common Area without prior consent of the Board, except as herein expressly provided or in storage areas;

(d) Nothing shall be done or kept in any Unit or in the Common Area which will increase the rate of insurance without prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit or in the Common Area which will result in the cancellation of insurance on any Unit, or

any part of the Common Area, or which will be in violation of any law. No waste shall be committed in the Common Area;

(e) No sign of any kind shall be displayed to the public view on or from any Condominium Unit, or any Common Area, without the approval of the Association, except such signs as may be used by Grantor in connection with the development of the project and sale of Condominiums, and except one (1) "for sale" or "for lease" sign on any Condominium Unit; provided, however, that all signs permitted under this Section shall conform with the City's Comprehensive Sign Ordinance;

(f) No Owner shall install clotheslines, awnings, wiring for electrical or telephone installation, television antennae or cables or other machines or devices, on the exterior of the building of the project or that protrude through the walls or the roof of the building except as authorized by the Board;

(g) No Owner shall store any dangerous explosive or inflammable liquids in his Unit or in the Common Area;

(h) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Area, except that one (1) dog or one (1) cat or other ordinary household pet may be kept, provided that it is not kept, bred or maintained for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor or unsanitary condition and provided the size of the pet is reasonable considering the size of the project and the proximity of the Units. Owners shall prevent their pet from running loose upon the Common Area. Owners shall prevent their pet from making excessive noise and from soiling walks, paths, patios, courtyards, and all portions of the Common Area where other persons customarily walk. Each Owner shall be financially responsible for any damage caused by the pet;

(i) No immoral, improper, unlawful, noxious or offensive activity shall be carried on in any Unit or in the Common Area nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners;

(j) No activities shall be carried on nor condition maintained by any Owner which despoils the appearance of the project. No Owner shall make any alterations, additions or modifications to or on any portion of the Common Area or cause drapes, curtains or shades to be installed or placed in any part of his Unit or Balcony which is visible from the exterior of his Unit in colors or patterns which are inconsistent with those approved by the Architectural Control Committee, pursuant to Article 17 hereof. White or off-white drapes, curtains or shades shall be acceptable. In the event the Architectural Control Committee deems any such condition objectionable, after written notice to the Owner, and an opportunity to be heard before the Board, the Owner shall correct such

condition;

(k) No Owner shall park, store, or maintain in or on the project any boats, trailers, motorcycles, or vehicles other than ordinary passenger cars, family station wagons and trucks small enough to fit inside the covered parking spaces in the original construction. The temporary parking of boats, trailers, or other vehicles not customarily used for means of general transportation for periods of short duration, but not to exceed four (4) hours within any forty-eight (48) hour period as an incident to loading or unloading therefor shall not be deemed a violation of this paragraph. Unless specific approval is granted by the Board, no Owner shall park more than two (2) passenger vehicles on the premises. No repairs to any automobile or other motor driven vehicle may be made on the premises, except in case of strict emergency;

(l) None of the rights and obligations of the Owners created herein, or by the Deed creating the Condominiums, shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they shall exist; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful conduct of said Owner or Owners;

(m) Each Owner, tenant or occupant of a Condominium shall comply with the provisions of these Restrictions, the Articles or Incorporation and By-Laws of the Association, decision, rules, regulations and resolutions of the Association or its duly authorized representative, all as lawfully amended from time to time, and failure to comply with any such provisions, decisions, rules, regulations or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief;

(n) The administration of the real property herein described shall be in accordance with these Restrictions, the Articles of Incorporation and By-Laws of the Association. In the event of any inconsistency, the Articles shall prevail over the By-Laws and these Restrictions shall prevail over the By-Laws;

(o) An easement for vehicular ingress and egress to and from each Unit over the private driveway in the Common Area is reserved the non-exclusive use of each Unit. Parking of automobiles and other motor driven vehicles on the private driveway shall not be permitted except in designated parking spaces;

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

(q) Each parcel designated on the plan with a "B" is a Balcony, the exclusive use of which is reserved to the Owner of the adjacent Unit. Each parcel designated with a "CP" and a number is a Covered Parking Space, and each parcel designated with a "UP" and a number is an Uncovered Parking Space. Each parcel designated on this plan with a "P" is a Patio, the exclusive use of which is reserved to the Owner of the adjacent Unit. The exclusive use of Parking Spaces shall be allocated in the first conveyance of each Unit and thereafter shall be appurtenant to such Unit so that title to the exclusive use of such Parking Space or Spaces shall thereafter pass with conveyance of the Unit with express reference thereto;

(r) Each Condominium Owner shall maintain and keep in repair everything in his Unit and shall have the exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows, doors bounding his own Unit; and the right to paint decorate the interior surface of the Balcony fence;

(s) No Owner shall enlarge his Unit or alter or paint the exterior thereof without prior written consent of the Board;

(t) The Association will not exercise its powers in a manner which will impede Grantor's construction program. Grantor reserves the right to use unsold Condominiums and/or Common Rooms as sales models and to display "for sale" signs on all unsold Units at the entrance to the project and at any other reasonable location;

(u) In the event of arbitration or litigation between the Association and any member, the prevailing party shall be entitled to an arbitration decision or judgment for all costs of controversy, including arbitration fees and costs, court costs and attorneys' fees actually incurred;

(v) With the exception of a lender in possession of a Condominium following: (1) a default in a first mortgage; (2) a foreclosure proceeding or; (3) a conveyance or other arrangement in lieu of foreclosure, no Owner shall be permitted to lease his Condominium for transient or hotel purposes. No Owner may lease less than the entire Condominium Unit. All lease agreements shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of these Restrictions and by-Laws, and that any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease. Other than the foregoing, there are no restrictions on the right of an Owner to lease his Condominium Unit.

26. Custodian Unit. Anything in the Restrictions or By-Laws to the contrary notwithstanding, the Association, upon appropriate resolution of the Board,

shall have the power and authority, with the vote or written consent of a majority of the voting power, to purchase a Unit (the "Custodian Unit") to be occupied by the custodian of the project. In such case, during the period the Custodian Unit is owned by the Association: (a) no right to vote shall be exercised on behalf of the Custodian Unit; (b) all of the other Owners will contribute equally to the assessment on the Custodian Unit; and (c) each other Unit Owner shall be charged in addition to his usual assessment, his share of the assessment that would have been contributed by the Custodian Unit, if not for the provisions of this paragraph.

27. Condemnation. In the event of any taking of all or any portion of the herein described real property by eminent domain, or threat thereof, the interest in the award or settlement shall be equitably allocated among the Owners based upon the amounts of loss suffered in the value of the Units as a result of the taking, adjusted for the expense, if any, required to repair or restore damage to Common Area or to Units occasioned by such taking.

If an award is for the acquisition of all the herein described real property, the amount payable shall be paid to the Association, as Trustee, for distribution to the Owners in the same proportion as normal assessments are levied against the Owners, subject to the rights of mortgagees holding mortgages on the Units and subject to any unpaid assessments of such Owners.

If the award is for taking a part of a Unit, the Owner of each Unit taken shall be entitled to receive the award for such taking subject to the rights of mortgagees and unpaid assessments and shall have the option to apply the proceeds to restoring the portion of his Unit remaining or to terminate his interest in the development. In the event he terminates his interest and any repair or rebuilding of the remaining portions of the real property is required as a result of the taking, the Association will be entitled to so much of the award as is required for such repair or rebuilding. After any taking the project may be resurveyed and appropriate amendments to maps, assessments or to these Restrictions may be recorded.

In the event of any taking the Association shall poll the members on the

desirability of engaging counsel to represent the Owners as a group. Expenses of such representation shall be specially assessed against the Owners who consent in writing to be so represented.

28. Amendment. Until the Class B membership becomes Class A memberships, these Restrictions may be amended only by the vote or written consent of fifty-one percent (51%) of the voting power of each class of membership. When all memberships become Class A memberships, these restrictions may be amended only by the vote or written consent of fifty-one percent (51%) of the voting power which shall include not less than fifty-one percent (51%) of the voting power of the Association vested in members other than Grantor. However, the percentage of voting power necessary to amend a specific clause or provisions shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. The amendment will be effective only upon recordation in the Office of the County Recorder of the County of Alameda, California.

29. Interpretation. The provisions of these Restrictions shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium project. Failure to enforce any provisions hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

30. Severability. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision thereof.

31. Action on Common Area Bond. The Association is obligee under a bond to secure performance of the commitment of Grantor to complete certain Common Area improvements. Unless a Notice of Completion for said improvements is recorded in the Office of the County recorder of Alameda County, California within (60) days after the completion date in the planned construction statement appended to the bond, the Board shall consider and vote on the question of action by the Association to enforce the obligations under the bond. If the Association has given an extension in writing for

the completion of any Common Area improvement, the Board shall consider and vote the aforesaid question if Notice of Completion has not been filed within sixty (60) days after the expiration of the extension. Not less than fifteen (15) days nor more than (30) thirty days after receipt by the Association of a petition signed by not less than ten percent (10%) of a total voting power of the Association, the Board shall hold a special meeting of members for the purpose of voting to override a decision of the Board not to initiate action to enforce the obligations under the bond or on the failure of the Board to consider and vote on the question. Grantor shall not be entitled to vote on the question at the special meeting. A vote of a majority of the voting power of the Association residing in members other than Grantor to take action to enforce the obligations under the bond shall be deemed to be the decision of the Association and the Board shall thereafter implement this decision by initiating and pursuing appropriate action in the name of the Association.

32. Term. These Restrictions shall run with and bind the land and shall continue in full force and effect for a term of fifty (50) years from the date hereof, after which time these Restrictions shall be automatically extended for successive periods of ten (10) years unless removed by the terms hereof. If any provision of these Restrictions would otherwise violate the rule against perpetuities or any rule, statute or law imposing time limits, then such provision shall be deemed to remain in effect only until the death of the last survivor of the now living descendants of Senator Barbara Boxer, plus twenty-one (21) years thereafter.

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“If this document contains any restriction based on race, color, religion, sex, familial status, marital status, disability, national origin, or ancestry, that restriction violates state and federal fair housing laws and is void. Any person holding an interest in this property may request that the county recorder remove the restrictive covenant language pursuant to subdivision (c) of Section 12956.1 of the Government Code.”

ANN RANKIN
EDWARD NEMETZ
JANE K. PENHALIGEN
TERRY WILKENS

LAW OFFICES OF ANN RANKIN

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December 15, 2000

Board of Directors
c/o Ms. Sherry Higgs
MASSINGHAM & ASSOCIATES
42840 Christy St. Suite 201
Fremont, CA 94538

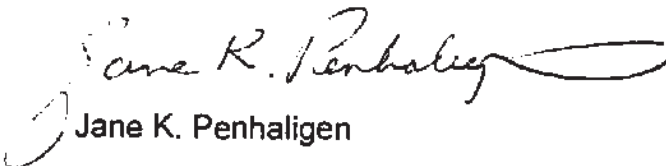
Re: *Fremont Vista HOA/Compliance with SB 1148*

Dear Board Members and Ms. Higgs:

Enclosed please find the Certification of Secretary to be signed by the Secretary of the Board of Directors and a copy of the First Restated and Amended CC&Rs for Fremont Vista HOA to remove discriminatory language. Please have the Secretary fill in his or her name where indicated and sign the certification and return it to my office then we will forward the documents to the Alameda County Recorder's office. If you have any questions, please call.

Very truly yours,

LAW OFFICES OF ANN RANKIN


Jane K. Penhaligen

JKP/dlm
Enclosure

cc: Ann Rankin, Esq., w/o encl.

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WHEN RECORDED RETURN TO:

Law Offices of Ann Rankin
3911 Harrison Street
Oakland, CA 94611

FREMONT VISTA HOMEOWNERS' ASSOCIATION

CERTIFICATION OF APPROVAL OF FIRST RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS AMENDING ORIGINAL DOCUMENT RECORDED JUNE 8, 1978, OFFICIAL RECORDS OF ALAMEDA COUNTY RECORDER AT 78-107965

I, _____ am the duly elected Secretary of the FREMONT VISTA HOMEOWNERS' ASSOCIATION and I do hereby certify:

1. That pursuant to Civil Code § 1352.5, the Board a Directors at a regularly scheduled Board Meeting voted on an amendment to the FREMONT VISTA HOMEOWNERS' ASSOCIATION's Covenants, Conditions and Restrictions to remove discriminatory language. The Amendment was passed by a majority of the Board Members and the First Restated and Amended Covenants, Conditions and Restrictions of FREMONT VISTA HOMEOWNERS' ASSOCIATION's was drafted to remove said discriminatory language and is shown in Exhibit 1 attached hereto and incorporated herein by reference;

2. That the attached First Restated and Amended Declaration of Covenants, Conditions and Restrictions of FREMONT VISTA HOMEOWNERS' ASSOCIATION was approved by a majority of the Board of Directors of the Association;

3. That there is no provision in the Original Declaration of Covenants, Conditions and Restrictions limiting the passage of such Amended Declaration and that said resolution is in conformity with the provisions in the Original Declaration of Covenants, Conditions and Restrictions.

In witness whereof, I have hereunto set my hand this 25 day of January, 2000.

Stacie Maguire
Secretary
FREMONT VISTA HOMEOWNERS' ASSOCIATION